

Financial

# Lawsuit Addresses Gender-Related Tariff Rates

Accepted wisdom has it that women often pay more for purchases and services than men. But gender discrepancies should not extend to federal taxes, according to a recently filed lawsuit.

The suit, filed by Neville Peterson LLP on behalf of Totes-Isotoner Corp. against the U.S., challenges the customs duty rate for men's leather gloves, which is 14 percent; the rate for women's and children's gloves is 12.6 percent.

The lawsuit, filed in the U.S. Court of International Trade, raises the broader question of whether different tariff rates for men's and women's apparel violate Constitutional equal protection provisions.

"Plaintiff [Totes-Isotoner] seeks recovery of duties that were assessed against it on the basis of provisions of the Harmonized Tariff Schedule of the United States, or HTS, which

provisions unlawfully and unconstitutionally discriminate on the basis of gender or age," the complaint asserted.

"This isn't the same as women's haircuts and dry cleaning being more expensive. Private [companies] have flexibility in determining price points, but here, it's the government," said Michael Cone, an attorney with Neville Peterson who is affiliated with the case.

Other lawyers agreed. Lisa Pennington, global employment attorney at law firm Baker Hostetler LLP, which is not involved in the case, said it was the state's involvement that puts the case on par with other discrimination cases. Private companies often charge women higher rates, she said, "but it's a whole different story when it's the government doing it." Discrimination concepts are well entrenched in current federal laws.

Many provisions for wearing apparel under the Harmonized Tariff Schedule and older tariff laws hinge on gender and age, said Mark Joye, import and export attorney at Baker Hostetler. That provides a good context for addressing the tariff structure from the perspective of discrimination laws, he said.

The potential damages that could be recovered by apparel, footwear and glove importers are calculated to be in the neighborhood of \$300 million a year, Cone said. If the case takes four years to litigate and other companies file lawsuits as well, both of which the firm expects, the potential damages, with interest, could reach as high as \$1.5 billion.

"Totes-Isotoner was the opening salvo across the government's ship. We are going to file soon on behalf of other importers of apparel and footwear," Cone said.

The suit seeks to level tariff schedules by moving the rates in line with the lowest rate in each category. Raising duty rates would violate World Trade Organization agreements, he said.

The government could decide to fight the case in court or settle. If the case is litigated all the way through the Supreme Court, it could take as long as five years, said Curtis Knauss, another lawyer with Neville Peterson.

In the international trade court, there's also a special procedural consideration. Test cases, or lead cases, are tried in situations like this when a number of companies could file lawsuits, Cone said. If other importers file similar cases, the judge appointed would determine which of the cases best represented the argument being made, and that case would be tried while the others were put on hold.

— Liza Casabona

## Weekly Stocks

52-WEEK		RETAILERS	P/E	VOLUME (000'S)	LAST	AMT	CHANGE	52-WEEK		RETAILERS	P/E	VOLUME (000'S)	LAST	AMT	CHANGE
HIGH	LOW							HIGH	LOW						
83.87	49.99	Abercrombie & Fitch (ANF)	16.7	96788	79.76	2.91	36.10	27.30	Jones Apparel (JNY)	15.5	31555	34.08	0.28		
28.14	19.51	Acacia (ARK)	56.9	8914	27.64	-0.21	48.12	22.14	Jos. A. Bank (JOSB)	15.3	13698	32.41	1.08		
59.35	21.07	Aeropostale (ARPO)	22.4	44809	38.28	0.57	34.84	24.46	Kellwood (KWD)	36.7	9081	32.99	0.58		
23.72	17.01	Alberto Culier (ACV)	10.3	27864	23.55	0.05	28.72	21.75	Kenneth Cole (KCP)	18.2	5601	23.95	-0.57		
3.20	1.88	Alpha Pro Tech (APT)	20.1	9351	3.20	0.21	70.00	56.96	Kimberly Clark (KMB)	21.3	49213	70.00	0.66		
34.80	16.57	American Eagle (AEO)	20.5	115282	31.80	0.17	53.60	34.20	Kimco Realty (KIM)	38.2	46911	52.09	0.30		
45.15	32.25	Ann Taylor (ANTV)	17.0	37798	35.39	-0.04	75.54	44.50	Kohl's (KSS)	24.7	72472	72.60	-1.22		
10.45	6.17	Asworth (ASHW)	113.0	2125	7.98	0.23	37.81	22.54	K-Swiss (KSWS)	13.2	48901	29.00	-5.05		
40.13	26.16	Avin (AVN)	36.0	113013	36.56	-0.43	15.64	11.06	LaCrosse Footwear (BOOT)	14.4	688	15.01	0.47		
21.99	8.63	Bakers (BCKS)	38.8	750	12.00	0.30	18.86	11.37	Lakeland Inds (LAKE)	14.5	304	14.20	-0.10		
26.86	14.07	Babe (BBBL)	22.6	31118	19.42	0.42	32.60	22.80	Limited Brands (LTD)	15.7	128853	29.51	0.29		
40.00	24.16	Bethellon (BETH)	44.4	125	33.89	-0.09	24.23	8.66	Liquidity Services (LQDT)	60.6	9881	19.36	-1.42		
16.50	9.05	Big Dog (BDOG)	88.1	353	15.90	0.20	46.84	33.62	Liz Claiborne (LIZ)	18.5	13018	46.40	0.25		
9.60	6.01	Birks & Mayors (BMV)	16.2	356	8.28	-0.63	12.64	2.69	LJ Intl (JADE)	52.2	137281	11.42	2.16		
13.65	75.18	Bis (BS)	19.8	34721	33.38	1.35	32.15	24.17	Luwotica (LUK)	29.2	2466	32.31	0.89		
46.44	23.73	Bio (BIO)	701.7	1295	42.18	0.03	103.59	67.11	Macerich (MAC)	30.4	18204	96.24	-2.01		
6.80	1.48	Blue (BLU)	15.1	3910	1.94	-0.08	22.84	9.42	Maidenform (MFB)	18.3	4910	19.30	-0.44		
1.60	0.65	Bluefly (BLFY)	-	3669	1.26	0.10	45.01	29.81	Men's Wearhouse (MWH)	18.6	22460	44.83	0.73		
48.40	20.22	Bluebon (BLON)	-	13600	50.22	6.14	26.31	15.20	Marcus (MCS)	24.7	3676	23.82	0.88		
56.52	30.14	Brown Shoe (BWS)	23.5	14048	54.92	0.95	57.65	20.12	Mothers Work (MWRK)	19.7	2502	35.84	0.70		
177.37	92.25	Buffalo (BUFF)	27.0	3829	53.84	-0.24	30.50	17.91	Moynihan (MWH)	19.4	5272	30.00	0.00		

## Fast Stats

● U.S. direct investment to banks in China: \$129 million

● U.S. direct investment to banks in Europe: \$1.4 billion

● Percent change of people employed in retail trade between 2000 and 2005: +6.7%

● Percent change of the