

ORIGINAL

UNITED STATES COURT OF INTERNATIONAL TRADE

U.S. COURT OF INTERNATIONAL TRADE

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TOTES-ISOTONER CORPORATION :

07-00001

Plaintiff, :

RECEIVED  
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v. :

Court No. 07-

UNITED STATES, :

Defendant. :

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COMPLAINT

Plaintiff Totes-Isotoner Corporation, by its undersigned counsel, brings this action against defendant the United States and for its Complaint does state and allege as follows:

CAUSE OF ACTION

1. This action is commenced to recover customs duties assessed against plaintiff by defendant United States in respect of gloves and other merchandise which plaintiff has imported into the United States pursuant to entries which have been liquidated by Customs within two years prior to the date of filing of this lawsuit, or such longer period as may be provided by law. Plaintiff seeks recovery of duties that were assessed against it on the basis of provisions of the Harmonized Tariff Schedule of the United States (HTS) which provisions unlawfully and unconstitutionally discriminate on the basis of gender or age.

## **JURISDICTION**

2. This Court has exclusive jurisdiction of this action pursuant to 28 U.S.C. § 1581(i)(1), as the action arises out of a law of the United States providing for “revenue from imports or tonnage.” This action has been commenced within the limitation period specified in 28 U.S.C. § 2636(i).

3. Because this action involves a challenge to the constitutionality of one or more laws of the United States, exhaustion of administrative protest remedies would be futile, and is neither necessary nor appropriate.

## **STANDING**

4. Plaintiff is a United States importer of men’s seamed leather gloves, which is the subject merchandise. In connection with plaintiff’s importations of the subject merchandise, the defendant has assessed, and plaintiff has paid, customs duties at a rate of 14 percent *ad valorem* during the period covered by this action. Should plaintiff prevail in its action, it will be entitled to a refund of customs duties in respect of all entries of such gloves.

## **FACTS**

5. At all times relevant to this action, the subject merchandise has been described in

Subheading 4203.29.30 of the Harmonized Tariff Schedule of the United States (“HTSUS”), which provides for “Articles of apparel and clothing accessories, of leather or of composition leather: Gloves, mittens and mitts: Other: Other: Other: Men’s,” which imposes duty at a rate of 14 percent *ad valorem*.

6. During the period covered by this action, plaintiff imported subject merchandise that was classified under HTSUS Subheading 4203.29.30.

7. In connection with plaintiff’s importation of subject merchandise classified under HTSUS subheading 4203.29.30, plaintiff was obligated to pay, and in fact did pay, a duty rate of 14 percent *ad valorem* to defendant United States.

8. The HTSUS divides the subject merchandise, for statistical reporting purposes, according to 10-digit statistical subheadings. In particular, HTSUS subheading 4203.29.3010 provides for “Articles of apparel and clothing accessories, of leather or of composition leather: Gloves, mittens and mitts: Other: Other: Other: Men’s . . . Not lined.” Accordingly, men’s seamed leather gloves which lack interior linings are classified under subheading 4203.29.3010. On the other hand, men’s seamed leather gloves manufactured with interior linings are classified under Subheading 4203.29.3020, which provides for “Articles of apparel and clothing accessories, of leather or of composition leather: Gloves, mittens and mitts: Other: Other: Other: Men’s . . . Lined.” Regardless of the statistical subheading under which the goods are classified, they are subject to duty at the rate of 14% *ad valorem*.

9. When imported for persons other than men, seamed leather gloves lacking interior linings are classified under HTSUS Subheading 4203.29.40, which provides for “Articles of apparel and clothing accessories, of leather or of composition leather: Gloves, mittens and mitts: Other: Other: Other: For other persons . . . Not lined.” At all times relevant to this action, goods classified pursuant to HTSUS subheading 4203.29.40 have been subject to duty at a rate of just 12.6 percent *ad valorem*.

10. When imported for persons other than men, seamed leather gloves manufactured with interior linings are classified under HTSUS subheading 4203.29.50, which provides for “Articles of apparel and clothing accessories, of leather or of composition leather: Gloves, mittens and mitts: Other: Other: Other: For other persons . . . Lined.” At all times relevant to this action, goods classified under HTSUS Subheading 4203.29.50 have been subject to duty at a rate of just 12.6 percent *ad valorem*.

11. Accordingly, the United States imposes a 14 percent *ad valorem* rate of duty on seamed leather gloves when they are imported for men. However, the United States imposes only a 12.6 percent *ad valorem* rate of duty on seamed leather gloves that the HTSUS describes in identical language *but for* the distinction that they are imported for persons other than men (*i.e.*, women or children).

12. There is no actual important governmental objective at stake that provides an exceedingly persuasive justification for different rates of Customs duty or tax based on gender. Even if an important governmental objective were at issue, the higher rate of duty on men's seamed leather gloves, imposed on the basis of gender, could not be substantially related to achieving that important governmental objective.

13. There is no actual or putative legitimate governmental objective at stake that would justify different duty rates based on age. Even if a legitimate governmental objective could be identified, the higher rate of duty on men's seamed leather gloves, imposed on the basis of age, could not be rationally related to achieving a legitimate governmental objective.

### COUNT I

14. The allegations of Paragraphs 1 through 13 are restated and incorporated herein by reference as though fully set forth herein.

15. The Due Process Clause of the Fifth Amendment to the Constitution of the United States guarantees the equal protection of the citizenry, and thereby prohibits the defendant from discriminating in the assessment of taxes or duties on the basis of gender or age without an exceedingly persuasive justification.

16. Pursuant to HTSUS Subheading 4203.29.30, the rate of duty imposed on seamed

leather gloves imported for men is higher than the rate of duty imposed on seamed leather gloves imported for women, and there is no exceedingly persuasive justification for this discrimination. Defendant has thereby discriminated against plaintiff in violation of the equal protection guarantees secured by the Due Process Clause of the Fifth Amendment.

## COUNT II

17. The allegations of Paragraphs 1 through 13 are restated and incorporated herein by reference as though fully set forth herein.

18. The Due Process Clause of the Fifth Amendment to the Constitution of the United States guarantees the equal protection of the citizenry, and thereby prohibits the defendant from discriminating in the assessment of taxes or duties on the basis of age without a rational basis.

19. Pursuant to HTSUS Subheading 4203.29.30, the rate of duty imposed on seamed leather gloves imported for men is higher than the rate of duty imposed on seamed leather gloves imported for children, and there is no rational basis for this discrimination. Defendant has thereby discriminated against plaintiff in violation of the equal protection guarantees secured by the Due Process Clause of the Fifth Amendment.

**PRAYER FOR RELIEF**

WHEREFORE, plaintiff respectfully requests this Court to enter judgment in its favor:

(1) Holding that duties imposed by the defendant under HTSUS Subheading 4203.29.30 discriminate against plaintiff on the basis of gender, and thereby violate plaintiff's right to equal protection under the Fifth Amendment Due Process Clause;

(2) Holding that duties imposed by the defendant under HTSUS Subheading 4203.29.30 discriminate against plaintiff on the basis of age, and thereby violate plaintiff's right to equal protection under the Fifth Amendment Due Process Clause;

(3) Holding the rate of duty imposed under HTSUS Subheading 4203.29.30 to be unconstitutional, illegal, null and void;

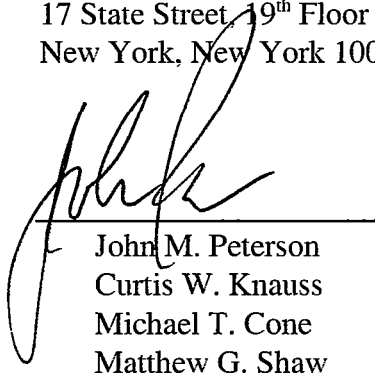
(4) Ordering the defendant United States to refund to plaintiff all duties unconstitutionally exacted in liquidation under HTSUS Subheading 4203.29.30 within 2 years prior to the date of initiation of this action (or such longer period provided by law), including any such payments made after initiation of this action, with interest; and

(5) Granting plaintiff such other and further relief as this Court deems just.

Respectfully submitted,

Neville Peterson LLP  
Counsel for Plaintiff, Totes-Isotoner Corp.  
17 State Street, 19<sup>th</sup> Floor  
New York, New York 10004

By:



John M. Peterson  
Curtis W. Knauss  
Michael T. Cone  
Matthew G. Shaw

Date: January 4, 2007



**CERTIFICATE OF SERVICE**

I hereby certify that I caused copies of the annexed summons and complaint to be served, by hand, upon:

Attorney-in-Charge  
United States Department of Justice  
Civil Division  
Commercial Litigation Branch  
International Trade Field Office  
26 Federal Plaza  
Room 346  
New York, New York 10278

Counsel for Defendants



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Michael T. Cone

January 5, 2007

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INTERNATIONAL TRADE  
NEW YORK, NY