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POTENTIAL REFUNDS ON APPAREL AND FOOTWEAR IMPORTATIONS

By Alan Lebowitz & Robert Silverman

An issue is being developed in the U.S. Court of International Trade ("CIT") which, if successful, may provide your company with an opportunity to obtain duty refunds. A test case has already been filed by one importer with respect to glove importations, but litigation will be required with respect to other commodities in order to secure refunds.

As you may know, the duty rates in the HTS applied to certain products favor one gender over another. For example, leather upper footwear for men is usually assessed with duty at 8.5% ad valorem, whereas the duty rate on such women's footwear is 10% ad valorem. Similar duty rate differences exist for certain garments (*i.e.* swimwear, wool suits and blazers...etc). An abbreviated list of these items has been attached. A more detailed list is available through our office.

We believe that these gender based differences run contrary to the equal protection guarantees found in the Fifth and Fourteenth Amendments of the United States Constitution. (*See e.g.*, United States vs. Virginia, 518 U.S. 515(1996) where the Supreme Court overruled Virginia's exclusion of women from the Virginia Military Academy, holding that this decision was the result of discrimination without justification.)

Against this background, we believe that a challenge to gender based discriminatory duty rates can be successful in the CIT. Such an action would follow a number of successful constitutionally based challenges in that court. In order to preserve rights to receive refunds in the event that the discriminatory tariff rates are overturned, importers must file an action in the CIT. Any potential recovery would include discriminatory duties paid within two years preceding the date of filing an action in the CIT and all discriminatory duties paid after the action is commenced. (Interest payments may also be available when refunds are issued.) We are prepared to assist you to quantify your potential refunds, file the appropriate claim in the CIT and litigate this matter to ensure that your company receives any refunds due.

Please contact us if you have questions or if you require assistance with respect to this matter.

DISFAVORED PRODUCTS AND GENDER

Men's Unlined Gloves Of Horsehide Or Cowhide.

Overcoats, Carcoats, Capes, Cloaks, Anoraks, Windbreakers, And Similar Articles (Some Provisions Favor Men, And Some Favor Women*).

Suits, Ensembles, Suit-Type Jackets, Blazers, And Trousers (Some Provisions Favor Men And Some Favor Women*).

Men's Cotton Nightshirts, Pajamas, Bathrobes, And Similar Articles.

Women's Cotton Briefs, Panties, Pajamas, Bathrobes, And Similar Articles.

Manmade Fiber Swimwear (Some Provisions Favor Women And Some Favor Men*).

Women's Tracksuits And Ski Suits.

Women's Leather Upper Footwear.

Women's Hat Forms, Bodies And Hoods.

A detailed list of specific HTS headings, products and duty differences is available through our office.

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* Depends on construction and fiber content.