

# Gender & Age Discrimination is costing US Importers Billions of Dollars

By Matt Gersper and Tom Gould

Importers of apparel and footwear, large and small, may be due a big refund.

Data mining analysis has determined US Importers have overpaid more than \$1.3 billion in discriminatory duties over the past two years. More than 40 importers have already filed a lawsuit to protect their interests. What's your share of this potential multi-billion dollar refund?

The lawmakers of the United States Congress have been legalizing age & gender discrimination for years. The duties applied to clothing, shoes and other age or gender differentiated products as they enter the country's ports may be the last legal form of age & gender discrimination in the U.S... and it may be costing your company more than you think.

Importers are using data mining analysis to precisely calculate their potential claim, secure the data necessary to protect their interests, and file a claim now to maximize their refund.

The financial impact on companies importing goods into the US may surprise you. For example, men's bathing suits have a 28 percent duty on imports, but just 12 percent on women's. The duty rate for men's woven wool suits is 17.5 percent -- 3.5 percent higher than on women's suits. The tariff on silk shirts for women is 6.9 percent, but just 1.1 percent for men's shirts. In one example, discriminatory duties cost an importer \$53,000 on just one classification of women's footwear. This single classification (one of more than 2,000 with discriminatory duties) has cost all US importers more than \$1.2 million.

There is no apparent pattern to the tariffs, which penalize men in some instances, and women in others. There are also significant differences with age groups such as babies, boys and men.

According to Michael Barbaro, in his April 28<sup>th</sup>, 2007 article in the New York Times, the government's only known opinion on the matter appeared in 1960, during a study of the United States tariff system — and it appears to help the clothing companies' legal case, rather than hurt it. Describing the gender disparities on shoes, federal regulators conceded that “their economic justification is questionable.”

The discriminatory duties have an additional impact on US consumers. Tariffs based on age or gender can discourage US companies from making certain products thereby limiting shoppers' options. When a company decides to make and import a product with higher tariffs, they either suffer reduced profits or pass the costs along to the ultimate consumer.

A discrimination case has been filed in the Court of International Trade by Totes-Isotoner Corporation against the U.S. Government (Totes-Isotoner Corporation v. United States, Court No. 07-00001). In this case Totes-Isotoner claims that Customs duty rates for leather gloves, which are currently 14% for men and just 12.6% for women and children, unfairly discriminate on the basis of gender.

Other major apparel and footwear importers, such as Payless Shoesource, Steve Madden, Asics and Columbia Sportswear have also filed lawsuits against the federal government. As has the large retailer Target Corp. and its affiliate, Associated Merchandising Corp.

These companies are asking that duties be equalized at the lower tariff rate. The New York-based Court of International Trade handles all trade related cases. One leading attorney involved has predicted it could go all the way to the U.S. Supreme Court.

In his article *In Apparel, All Tariffs Aren't Created Equal* Michael Barbaro quoted Peter Bragdon, the general counsel at Columbia Sportswear. Columbia Sportswear imports a rugged hiking boot from

China called the Diamond Peak. The men's and women's boots are virtually identical. But the tariff on the women's version is 1.5 percentage points higher than the men's (10 percent, compared with 8.5 percent). "It's irrational, I think any first-year law student would have the same gut reaction we did — wait, you cannot do that," Mr. Bragdon said.

New research has identified more than 2,200 pairs of US Harmonized Tariff codes (HS codes) impacted by discriminatory duties, over 300 for Age Discrimination and more than 1900 for Gender Discrimination. One leading retailer has filed a lawsuit claiming unfair taxation on far fewer HS codes than its product line represents. We fear the 40 plus importers who have already filed claims may have missed some opportunity and not maximized their potential refund.

Data mining techniques provide a more comprehensive and less expensive solution than traditional legal or manual research. It can provide an importer a detailed screening report to the line item level of each entry number and entry date for every shipment in the last two years. Your company's actual trade data can be used to precisely calculate the potential refund. Data mining has lowered the costs associated with this type of analysis to the point that even smaller importers can afford to participate.

It's been said that business information can and should be used to outthink rivals, and there's no better way to outthink them than by using analytics to make decisions. In this case, companies can use the same data to outthink their rivals and to defend their claims against the government, at a fraction of the costs associated with researching and assembling the required documentation through traditional legal methods.

Act now. Time is of the essence. The law permits you to go back two years for a claim and then protects all imports until the case is solved. Companies like Totes-Isotoner, Steve Madden, Asics, Columbia Sportswear and Target Corp. have created a competitive advantage by filing early. Their claim will be protected longer than companies that have not yet filed.

Act now to calculate your potential claim, secure the data necessary to protect your interests, and file your claim now to maximize your refund.

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