



## International Affiliates

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# UPDATE

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#### **Totes-Isotoner Petitions for Supreme Court Review of HTS Discrimination Claim**

Totes-Isotoner Corp. has filed a petition for certiorari with the U.S. Supreme Court, asking the high court to review the decision by the U.S. Court of Appeals for the Federal Circuit (CAFC) that dismissed the glovemaker's claim that the Harmonized Tariff Schedule discriminates on the basis of gender, in violation of the equal protection clause of the Constitution.

The CAFC found that the government's right to tax includes the right to differentiate among groups, so there is no "facial discrimination" even if the different tariff rates means there is a disparate impact. In the absence of a finding that the tariff schedule is discriminatory on its face, the CAFC said, Isotoner had to allege in its complaint an intent by the government to discriminate, which Isotoner did not do.

The petition, filed last week, presents three issues on which the Supreme Court could grant review:

- whether HTS provisions that set different duty rates based on gender, such as 14 percent for men's leather gloves and 12.6 percent for women and children are discriminatory.
- whether, if the HTS, simply by virtue of its different rates based on gender, is not discriminatory, the CAFC was correct in requiring Isotoner to plead facts sufficient to establish a governmental purpose to discriminate

between men and women users of gloves.

- whether a corporate taxpayer has standing to assert an equal protection violation based on gender or age of those for whom it imports merchandise. (This last issue was actually decided in favor of Isotoner by the CAFC, but the Government had argued that Isotoner did not have standing because every importer of men's gloves, regardless of the gender of the importer, paid the same rate.)

It is entirely up to the Supreme Court whether to accept the case. The Government – the U.S. Department of Justice – now has an opportunity to file a response to the petition and to present its views on whether the certiorari should be granted.



#### **President's Committee on the ILO Meets for First Time in Ten Years**

On May 4, the U.S. Labor Department held a meeting of the President's Committee on the International Labor Organization (ILO). The Committee last met during the Clinton Administration. The purpose of the Committee is to formulate U.S. policy toward the ILO. Labor Secretary Hilda Solis chairs the Committee, which also includes Secretary of State Hillary Clinton, Commerce Secretary Gary Locke, and representatives from the AFL-CIO and the U.S. Council for International Business. Solis says that this meeting "shows the world that the United States takes the ILO and international labor standards seriously."

According to the Labor Department, the Committee agreed to:

- Resume the review of ILO conventions for possible U.S. ratification;
- Work towards ratification of ILO Convention 111 on employment discrimination, which was submitted to the Senate in 1998;
- Develop a list of other conventions that could be ratified in the near-term.



### **USA-ITA Joins NAM Coalition to Urge Passage of Miscellaneous Tariff Bill**

On May 5, the National Association of Manufacturers (NAM) sent a letter to House Speaker Pelosi, Leader Boehner and to Ways & Means Chairman Levin and Ranking Member Camp urging swift passage of the Miscellaneous Tariff Bill (MTB). USA-ITA joined the coalition letter in support of Congressional action to approve the MTBs. While this bill is currently held up in Congress by the ban on earmark spending, the coalition letter makes clear that the MTB does not contain earmarks but is a transparent and bipartisan law that reduces costs for American companies.

The last MTB, passed in 2006, has expired and many companies are concerned that this legislation is not on the Congressional agenda for 2010. USA-ITA member companies concerned about the proposed MTBs should contact your Representatives today. [Click here to read the MTB Coalition letter.](#)

### **Kerry-Lieberman Climate Change Legislation Includes Weaker Border Measures than House Bill**



On May 12, Senators John Kerry (D-MA) and Joe Lieberman (I-CT) unveiled new climate change legislation that is expected to move ahead of other proposals. The American Power Act includes provisions for a cap and trade system that would reduce U.S. carbon emissions by seventeen percent in 2020 and by eighty percent in 2050. The bill summary says that the legislation would provide predictability for U.S. businesses by ensuring one set of rules rather than a patchwork of state regulations. Introductory carbon prices are set between \$12-25, and increase with inflation. The reduction targets apply only to large emission

sources, and include separate requirements for power plants, heavy industry, and transportation.

One controversial point for any climate change legislation is the topic of border measures to prevent carbon leakage. The Senate bill includes border measures that are reportedly much weaker than those contained in the House Climate Change legislation passed last year.

The bill summary states, "In order to protect the environmental goals of the bill, we phase in a WTO-consistent border adjustment mechanism. In the event that no global agreement on climate change is reached, the bill requires imports from countries that have not taken action to limit emissions to pay a comparable amount at the border to avoid carbon leakage and ensure we are able to achieve our environmental objectives."

Press reports indicate that domestic energy intensive industries and some midwestern Senators oppose the legislation, saying that the border measures too weak. They say that compared to the House legislation, the President is given too much discretion to waive the measures, creates a more difficult trigger to impose them, and removes some industry subsidies. One press report described the border measures as "designed never to be implemented."

So far, the World Trade Organization (WTO) has been vague on the legality of proposed systems. The Kerry-Lieberman bill could face a challenge because the border measures are included as "job protection," and the U.S. may not be able to defend them as purely environmental. However, the additional Presidential discretion contained in the bill could delay any WTO action until the border measures went into effect.



### **House Subcommittee Hears Testimony on Proposed Fur Labeling Bill**

On May 13, the House Energy and Commerce Subcommittee on Commerce, Trade and Consumer Protection held a hearing to discuss H.R. 2480, the Truth in Fur Labeling Act of 2009. That bill, which has 166 co-sponsors, would require all fur to bear labels indicating the type of fur, country of origin and other information. Current law exempts fur valued at \$150 or less from labeling requirements.

Subcommittee Chairman John Barrow (D-GA) gave no indication about whether or when the bill might move through Congress, although there was scant opposition to the bill in the hearing.

James Kohm of the Federal Trade Commission said the FTC supports the bill as a way to give consumers more information about the garments they buy. He said many consumers want to avoid buying fur and accurate labeling even on garments with fur trim would help them make that choice.

Michael Markarian of the Humane Society of the United States said his group supports the bill because the presence of synthetic fur makes it harder for consumers to detect when they are buying fake or real fur.

Keith Kaplan of the Fur Information Council of America also said his group supports removing the \$150 exemption, although he said his group is seeking the elimination of a section of the bill that would limit federal preemption. That section says nothing in the bill precludes state or local governments from enforcing their own, more restrictive fur labeling guidelines.

Kaplan said this language could lead to confusion among consumers and would give fur activists a chance to require very stringent labeling requirements at a local level, which would only add costs for retailers and manufacturers. However, Rep. Jim Moran (D-VA) said that language is a restatement of current law.

Markarian said that today, roughly 87% of all fur-containing garments are covered by the current labeling law and that H.R. 2480 would cover the remaining 13% of garments that now face no labeling requirement.

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*Articles for this issue of the International Affiliates Update were provided by Brenda A. Jacobs and Pete Kasperowicz, Sidley Austin LLP.*

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## USA-ITA Upcoming Events

**WEBINAR:**

### **The Global Supply and Demand Situation for Cotton: Implications for Prices Today and Tomorrow**

May 25, 2010

12:00 PM -1:00 PM EDT

\$50 USA-ITA members | \$100 non-members

Worried about higher cotton prices? Unsure about global availability? Join experts from FC Stone for an update on the latest information and insights about cotton prices, availability and futures.

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#### **The Presenters:**

##### **Robert Antoshak**

President, FCStone Fibers & Textiles

##### **Andy Ryan**

Senior Vice President, Risk Management Consulting, FCStone Fibers & Textiles

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*International Affiliates may register at the reduced Member rate. Sign-up today for this excellent informational webinar, and stay tuned throughout the year for additional offerings.*

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*USA-ITA, established in 1989, is the U.S. trade association for importers and retailers of textile and apparel products. Headquartered in Washington, DC, USA-ITA is the voice for the industry before Congress, the Administration, the business community and the public, as well as industry groups and governments around the world.*

