Canadian International Trade Tribunal
Tribunal canadien du commerce extérieur

CANADIAN INTERNATIONAL TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal Nos. AP-2014-013 and AP-2014-015

AMD Ritmed Inc.

v.

President of the Canada Border Services Agency

Decision and reasons issued Thursday, September 24, 2015

Canada

TABLE OF CONTENTS

IN THE MATTER OF appeals heard on May 12, 2015, pursuant to section 67 of the *Customs Act*, R.S.C., 1985, c. 1 (2nd Supp.);

AND IN THE MATTER OF decisions of the President of the Canada Border Services Agency, dated May 21, 2014, with respect to a request for re-determination pursuant to subsection 60(4) of the *Customs Act*.

BETWEEN

AMD RITMED INC. **Appellant**

AND

THE PRESIDENT OF THE CANADA BORDER SERVICES AGENCY **Respondent**

DECISION

The appeals are allowed.

Ann Penner
Ann Penner
Presiding Member

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	May 12, 2015
Tribunal Member:	Ann Penner, Presiding Member
Counsel for the Tribunal:	Eric Wildhaber Peter Jarosz
Case Assistance Officer:	Cassandra Baker
Registrar Officer:	Ekaterina Pavlova

PARTICIPANTS:

Appellant	**Counsel/Representatives**
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Respondent	**Counsel/Representative**
President of the Canada Border Services Agency	Lune Arpi

WITNESSES:

Ian Levine
President
AMD Ritmed Inc. & Medicom North America

Dick Erik Zoutman
Chief of Staff
Quinte Health Care

Lydia Renton
Director, Occupational Hygiene, Safety & Security
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STATEMENT OF REASONS

BACKGROUND

1. These are appeals filed by AMD Ritmed Inc. (AMD) with the Canadian International Trade Tribunal (the Tribunal) pursuant to subsection 67(1) of the *Customs Act*[1] in response to four decisions made by the President of the Canada Border Services Agency (CBSA) on May 21, 2014, pursuant to subsection 60(4).

2. The issue in these appeals is whether isolation gowns are properly classified under tariff item No. 6210.10.90 of the schedule to the *Customs Tariff*[2] as other garments, as determined by the CBSA, or should be classified under tariff item No. 6210.10.10 as protective suits to be employed in a noxious atmosphere, as claimed by AMD.

GOODS IN ISSUE

3. The goods in issue are isolation gowns, designed for the protection of patients and health professionals. They are single use and disposable, and have cuffs, back closures, and ties for the waist, neck and/or back.[3]

PROCEDURAL HISTORY

4. AMD imported the goods in issue between June 26 and July 23, 2013, and classified them under tariff item No. 6210.10.90.

5. AMD then requested refunds pursuant to section 74 of the *Act* on the basis of a reclassification of the goods under tariff item No. 6210.10.10. The CBSA granted these requests between December 30, 2013, and January 31, 2014 pursuant to section 59.

6. AMD requested a second reclassification to revert back to tariff item No. 6210.10.90. On May 21, 2014, the CBSA granted this request and issued four decisions pursuant to subsection 60(4) of the *Act*, reverting the classification back to tariff item No. 6210.10.90.

7. On June 12, 2014, AMD filed Appeal No. AP-2014-013 with the Tribunal with respect to the CBSA's decision of May 21, 2014. On July 24, 2014, AMD filed Appeal No. AP-2014-015 with respect to three parts of the CBSA's decision of May 21, 2014. On July 30, 2014, the Tribunal decided to hear the two appeals together. A hearing date was set for May 12, 2015.

8. Between July 30, 2014, and May 12, 2015, the parties filed several motions concerning issues involved in the appeals.

9. On April 24, 2015, the CBSA submitted a motion regarding the report by AMD's proposed expert witness, Dr. Dick Erik Zoutman. The CBSA argued that Dr. Zoutman's report should be stricken from the record because it lacked sufficient detail and did not meet the provisions of section 22 of the *Canadian International Trade Tribunal Rules*.[4] The Tribunal denied the CBSA's motion on May 5, 2015, finding that,

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1. R.S.C., 1985, c. 1 (2nd Supp.) [*Act*].
2. S.C. 1997, c. 36.
3. Exhibit AP-2014-013-12A, tab 2, Vol. 1.
4. S.O.R./91-499 [*Rules*].

while the outline of the testimony was not as detailed as it could have been, sufficient detail was provided for the CBSA and the Tribunal to have a detailed understanding of what Dr. Zoutman intended to say.

10. On May 1, 2015, the CBSA filed another motion to request that the hearing be postponed, given that AMD tried to file the *General Rules for the Interpretation of the Harmonized System*[5] as an additional submission. According to the CBSA, it did not have sufficient time to respond to what it considered new pleadings from AMD. On May 5, 2015, the Tribunal denied the CBSA's motion, but struck from the Tribunal's record the cover letter that AMD had attached to the *General Rules*, on the grounds that the cover letter included new submissions.

11. On May 5, 2015, AMD filed a motion to have the CBSA's "Book of Documents" stricken from the record. According to AMD, the "Book of Documents" contained many additional documents that the CBSA had not previously included in its original or supplementary briefs. In a letter dated May 6, 2015, the CBSA justified its actions by citing paragraph 34(3)(*a*) of the *Rules* as the purported authority to submit these documents as of right, not less than 10 days before the hearing. On May 7, 2015, the Tribunal accepted the "Book of Documents" in order to promote fairness in the proceedings and to have the best evidence available. However, the Tribunal also allowed AMD the opportunity to file rebuttals to certain documents that, in the Tribunal's view, ought to have been filed earlier.

12. Finally, on May 5, 2015, AMD filed a motion to have the CBSA's physical exhibits stricken from the record. The Tribunal denied this motion, noting that the exhibits had been filed in accordance with the *Rules* and were therefore permitted to stay on the record.

13. The Tribunal held a public hearing on May 12, 2015.

14. AMD proposed Dr. Zoutman, Chief of Staff of Quinte Health Care as an expert witness in the area of infectious and communicable diseases, including hospital-associated infections, epidemiology, viruses, diseases, health risks associated with certain diseases, exposure to and routes of transmission of viruses and pathogens, the purpose of and use of personal protective equipment (PPE) in hospital settings, and prevention and control of infectious diseases in hospital settings. The CBSA accepted Dr. Zoutman's expertise in this area at the hearing[6] and, given Dr. Zoutman's education and experience, the Tribunal decided to qualify him as an expert as such.[7]

15. The CBSA proposed Ms. Lydia Renton, Director, Occupational Hygiene, Safety & Security, WESA, Professional Services Division BluMetric Environmental Inc. as an expert witness in the area of occupational hygiene, health and safety, including PPE. In light of her education and experience, the Tribunal decided to qualify her as an expert in the proposed area.[8]

16. Mr. Ian Levine, President, AMD Ritmed Inc. and Medicom North America, testified on behalf of AMD as a lay witness.

17. After the conclusion of the hearing, the Tribunal requested and received submissions as to the applicability of an alternative tariff provision: tariff item No. 6217.90.10. The parties filed submissions on June 23, 2015. They both submitted that tariff item No. 6217.90.10 was not applicable to the goods in issue, as it applied to parts of garments, whereas the goods in issue were complete garments in and of themselves.

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5. S.C. 1997, c. 36, schedule.
6. *Transcript of Public Hearing*, 12 May 2015, at 38-39.
7. *Ibid.* at 50.
8. *Ibid.* at 141.

STATUTORY FRAMEWORK

18. The tariff nomenclature is set out in detail in the schedule to the *Customs Tariff*, which is designed to conform to the Harmonized Commodity Description and Coding System (the Harmonized System) developed by the World Customs Organization (WCO).[9] The schedule is divided into sections and chapters, with each chapter containing a list of goods categorized in a number of headings and subheadings and under tariff items.

19. Subsection 10(1) of the *Customs Tariff* provides that the classification of imported goods shall, unless otherwise provided, be determined in accordance with the *General Rules* and the *Canadian Rules*[10] set out in the schedule.

20. The *General Rules* comprise six rules. Classification begins with Rule 1, which provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to the other rules.

21. Section 11 of the *Customs Tariff* provides that, in interpreting the headings and subheadings, regard shall be had to the *Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System*[11] and the *Explanatory Notes to the Harmonized Commodity Description and Coding System*,[12] published by the WCO. While classification opinions and explanatory notes are not binding, the Tribunal will apply them unless there is a sound reason to do otherwise.[13]

22. The Tribunal must therefore first determine whether the goods in issue can be classified at the heading level according to Rule 1 of the *General Rules* as per the terms of the headings and any relative section or chapter notes in the *Customs Tariff*, having regard to any relevant classification opinions and explanatory notes. If the goods in issue cannot be classified at the heading level through the application of Rule 1, then the Tribunal must consider the other rules.[14]

23. Once the Tribunal has used this approach to determine the heading in which the goods in issue should be classified, the next step is to use a similar approach to determine the proper subheading.[15] The final step is to determine the proper tariff item.[16]

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9. Canada is a signatory to the *International Convention on the Harmonized Commodity Description and Coding System*, which governs the Harmonized System.
10. S.C. 1997, c. 36, schedule.
11. World Customs Organization, 2nd ed., Brussels, 2003.
12. World Customs Organization, 5th ed., Brussels, 2012.
13. See *Canada (Attorney General) v. Suzuki Canada Inc.*, 2004 FCA 131 (CanLII) at paras. 13, 17, where the Federal Court of Appeal interpreted section 11 of the *Customs Tariff* as requiring that explanatory notes be respected unless there is a sound reason to do otherwise. The Tribunal is of the view that this interpretation is equally applicable to classification opinions.
14. Rules 1 through 5 of the *General Rules* apply to classification at the heading level.
15. Rule 6 of the *General Rules* provides that ". . . the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related Subheading Notes and, *mutatis mutandis*, to the above Rules [i.e. Rules 1 through 5] . . ." and that ". . . the relative Section and Chapter Notes also apply, unless the context otherwise requires."
16. Rule 1 of the *Canadian Rules* provides that ". . . the classification of goods in the tariff items of a subheading or of a heading shall be determined according to the terms of those tariff items and any related Supplementary Notes and, *mutatis mutandis*, to the [*General Rules*] . . ." and that ". . . the relative Section, Chapter and Subheading Notes also apply, unless the context otherwise requires." Classification opinions and explanatory notes do not apply to classification at the tariff item level.

TARIFF CLASSIFICATION PROVISIONS AT ISSUE

24. The relevant provisions of the *Customs Tariff* are as follows:

Section XI		**Section XI**	
TEXTILES AND TEXTILE ARTICLES		**MATIÈRES TEXTILES ET OUVRAGES EN CES MATIÈRES**	
. . .		[...]	
Chapter 62		**Chapitre 62**	
ARTICLES OF APPAREL AND CLOTHING ACCESSORIES, NOT KNITTED OR CROCHETED		**VÊTEMENTS ET ACCESSOIRES DU VÊTEMENT, AUTRES QU'EN BONNETERIE**	
. . .		[...]	
62.10	**Garments, made up of fabrics of heading 56.02, 56.03, 59.03, 59.06 or 59.07.**	**62.10**	**Vêtements confectionnés en produits des n^{os} 56.02, 56.03, 59.03, 59.06 ou 59.07.**
6210.10	**-Of fabrics of heading 56.02 or 56.03**	**6210.10**	**-En produits des n^{os} 56.02 ou 56.03**
6210.10.10	- - -Protective suits, to be employed in a noxious atmosphere	6210.10.10	- - -Scaphandres de protection, devant être utilisés dans l'air empoisonné
6210.10.90	- - -Other	6210.10.90	- - -Autres

POSITIONS OF PARTIES

25. AMD argued that the goods in issue should be classified under tariff item No. 6210.10.10 as protective suits, to be employed in a noxious atmosphere, on the basis of the evidence that the goods in issue protect the wearer in a hospital setting. It submitted that the principles from *Kappler Canada Ltd. v. Deputy M.N.R.*[17] should be applied to the case at hand.

26. In contrast, the CBSA argued that the goods in issue cannot be classified under tariff item No. 6210.10.10 because (1) they are not "protective suits" in their own right, but must be combined with something else, and (2) a hospital setting is not a noxious atmosphere.

27. The parties also made extensive arguments on what they claimed to be a question of bilingual interpretation: whether the words "*scaphandre de protection*" in the French version of tariff item No. 6210.10.10 were more restrictive than the words "protective suit" in the English version. The CBSA submitted that a shared meaning was possible between the French and English versions, i.e. the terms "protective suits" and "*scaphandre*" both convey a shared meaning that goods must be designed to protect against "contamination".[18] AMD argued against the use of the shared meaning rule, suggesting that a plain

17. (26 October 1995), AP-94-232 (CITT) [*Kappler*]. In that case, the Tribunal found that certain coveralls used by persons removing asbestos qualified as protective suits for use in a noxious atmosphere.
18. *Transcript of Public Hearing*, 12 May 2015, at 235-36.

reading of the text is more applicable to the tariff heading at hand. AMD suggested that ordinary dictionary definitions can be used to interpret the various parts of the tariff heading.[19]

ANALYSIS

28. The parties agreed that the sole issue before the Tribunal is whether the goods in issue are properly classified under tariff item No. 6210.10.90 as other garments or should be classified under tariff item No. 6210.10.10 as protective suits to be employed in a noxious atmosphere.

29. The Tribunal will address that issue in three parts by: (1) considering the principles of bilingual interpretation to address the apparent differences between the English and French versions of the tariff item in question; (2) reviewing the evidence to determine whether the goods in issue are "protective suits"/"*scaphandres de protection*"; and (3) reviewing the evidence to determine whether the goods in issue are employed in a "noxious atmosphere"/"*air empoisonné*".

Principles of Bilingual Interpretation and Tariff Item in Question

30. As noted above, the Tribunal heard and received extensive argument from both parties on the principle of bilingual statutory interpretation and how to reconcile certain parts of the French and English versions of tariff item No. 6210.10.90 and, in particular, the phrases "protective suits"/"*scaphandres de protection*".

31. When faced with differences in the English and French versions of the *Customs Tariff*, the Tribunal has looked to the courts for principles and tools of bilingual interpretation, such as the shared meaning rule.[20]. The Tribunal has also followed the courts' use of the modern contextual approach to statutory interpretation which provides that ". . . the words of an Act are to be read in their *entire context* and in their *grammatical and ordinary sense* harmoniously with the *scheme* of the Act, the *object* of the Act, and the *intention* of Parliament"[21] [emphasis added].

32. The Tribunal finds that, although the phrases "protective suits" and "*scaphandres de protection*" are somewhat discordant, there is a shared meaning in the English and French versions of the *Customs Tariff*. This shared meaning becomes all the more clear when the phrases in question are considered in the entire context of tariff item No. 6210.10.90, namely, in the context of their intended use in a "noxious atmosphere" (or "*air empoisonné*" in French).

33. Placing the phrases in their larger context enables the Tribunal to reconcile the parties' arguments about the apparent differences between the English and French versions of tariff item No. 6210.10.90. Notably, the Tribunal finds that both the French and English texts require the goods in issue to have the characteristics of a specialized article of clothing that covers the body and is intended to protect the wearer in a potentially harmful or injurious environment, as will be discussed more fully below.

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19. Exhibit AP-2014-013-12A at para. 62, Vol. 1.
20. See, for example, *Great West Van Conversions Inc. v. President of the Canada Border Services Agency* (30 November 2011), AP-2010-037 (CITT) at para. 50.
21. *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, 1998 CanLII 837 (SCC) at para. 21; *Canada Trustco Mortgage Co. v. Canada*, [2005] 2 S.C.R. 601, 2005 SCC 54 (CanLII) at para. 10; *R. v. Steele*, 3 S.C.R. 138, 2014 SCC 61 (CanLII) at para. 23; *BalanceCo*; *Emco Electric International - Electrical Resource International v. President of the Canada Border Services Agency* (25 June 2009), AP-2008-010 (CITT) at para. 29.

34. Therefore, the Tribunal will proceed by comparing evidence about the characteristics of the goods in issue at the time of their importation into Canada with the terms of the proposed tariff items to determine which is most appropriate in the case at hand.

Are the Goods in Issue "Protective Suits"/"*Scaphandres de Protection*"?

35. The parties put into evidence the following dictionary definitions about the meaning of "protective suits"/"*scaphandres de protection*":

- protective: affording protection;[22] intended to protect[23]
- suit: a set of clothes or protective covering that is worn for a special purpose or under particular conditions[24]; a set of clothes for a special occasion, occupation[25]
- *scaphandre*: *vêtement pressurisé et étanche que portent les plongeurs pour travailler sous l'eau et les spationautes à bord de certains vaisseaux spatiaux ou lors de sorties extravéhiculaires*[26] (pressurized and watertight clothing worn by divers to work under water and by astronauts aboard certain spacecraft or during spacewalks)

36. The CBSA suggested that the French definition of "*scaphandre*" is best translated into English as a "diving suit; spacesuit". At the same time, however, it acknowledged that the term also encompasses clothing that is pressurized (*pressurisé*) and watertight (*étanche*).[27] The Tribunal agrees and finds that the language of tariff item No. 6210.10.90 is broader than diving and/or space suits alone, as it focuses more on the *protective* element of a garment rather than on the manner in which the protection is given. As such, the *protective* nature of a "protective suit"/"*scaphandre de protection*" should to be examined on a case-by-case basis depending on what type of environment is at issue and/or the conditions under which the garment will be worn.

37. In this regard, the Tribunal is cognizant of the fact that there is an apparent redundancy in the French version that precludes a more narrow reading, as suggested by the CBSA. Indeed, the French word "*scaphandre*" necessarily implies a form of protection. Accordingly, if the word "*scaphandre*" had been intended to have the narrow meaning that the CBSA ascribed to it and, thus, be limited to diving and/or space suits, the words "*de protection*" would be unnecessary. However, the French version makes sense if the word "*scaphandre*" is understood simply as being of the type of garment that would cover and protect a person in a certain environment or under certain conditions, as implied in the English words "protective suit".

38. Therefore, the Tribunal finds that it must consider whether the goods in issue cover and protect a person under certain conditions in order to deem them "protective suits"/"*scaphandres de protection*" in the context of tariff item No. 6210.10.90.

39. All witnesses agreed that the goods in issue are articles of clothing designed and worn in a certain way to afford protection. For example, when commenting on a video about the goods in issue, Dr. Zoutman noted that the goods in issue will protect a person's arms and body up to where they seal at the neck and that

22. Exhibit AP-2014-013-12A at para. 62, Vol. 1.
23. Exhibit AP-2014-013-19A at para. 23, Vol. 1B.
24. Exhibit AP-2014-013-12A at para. 62, Vol. 1.
25. Exhibit AP-2014-013-19A at para. 23, Vol. 1B.
26. *Ibid.* at para. 24; Exhibit AP-2014-013-22A at para. 7, Vol. 1B.
27. Exhibit AP-2014-013-19A at paras. 25-26, Vol. 1B.

the ties will ensure optimal coverage.[28] This is particularly evident by the manner in which the goods in issue are to be removed. Dr. Zoutman described the detailed process of removing the goods in issue ". . . in such a way that you peel [them] forward off your body so that you minimize any risk of getting the outside of the gown, now contaminated, touching you."[29] Ms. Renton similarly agreed that removing the goods in issue in a proper way is a positive safety feature.[30]

40. Furthermore, both expert witnesses testified that the goods in issue are examples of PPE. Ms. Renton defined PPE as ". . . specialized clothing . . . worn . . . for protection against infectious materials . . . toxic chemicals, gases, vapour and other things . . . ."[31] She explained that there is a wide variety of PPE, including the goods in issue.[32] Dr. Zoutman cited recommendations from the World Health Organization that PPE, including the goods in issue, is "crucial" in preventing contact and air transfer of infections to patients, visitors and healthcare workers.[33]

41. In this way, both expert witnesses agreed that the goods in issue "protect" the wearer in a variety of ways.[34] Dr. Zoutman explained that the goods in issue prevent contamination and cross-contamination between patients and healthcare workers.[35] Even though the goods in issue are not fully fluid-resistant, he maintained that they do not need to be fully fluid-resistant in the average healthcare setting.[36] Ms. Renton agreed that the goods in issue provide a barrier for ". . . part-body protection . . ."[37] and provide some limited protection against certain risks, as they are made of fluid-repellant materials.[38]

42. However, the witnesses also made it clear that the goods in issue could provide greater, or more effective, protection if worn with other types of PPE, such as gloves, masks, head coverings and foot coverings. For example, Mr. Levine testified that, while the goods in issue are sold separately, they may be used with other products such as masks, gloves, etc.,[39] depending on the user's specific needs.

43. Similarly, Dr. Zoutman noted that, while the goods in issue provide a measure of protection on their own, they should be used with other types of PPE (e.g. gloves, eye goggles, etc.) to more fully protect healthcare workers depending on the risks that they face with certain patients.[40] Ms. Renton also identified that the protection provided by the goods in issue is limited to the parts of the body that they cover.[41]

44. On the basis of the evidence, and in light of the following, the Tribunal finds that the goods in issue meet the terms of the heading describing "protective suits" and "*scaphandre de protection*". When worn as intended and under particular conditions, the goods in issue provide a measure of protection, albeit to a limited degree, as they cover a portion of the body. In this sense, the goods in issue are comparable to the

28. *Transcript of Public Hearing*, 12 May 2015, at 85-86.
29. *Ibid.* at 89.
30. *Ibid.* at 191.
31. *Ibid.* at 142-43.
32. *Ibid.* at 143-44, 148, 180, 198.
33. *Ibid.* at 53.
34. *Ibid.* at 116, 185.
35. *Ibid.* at 92.
36. *Ibid.* at 113.
37. *Ibid.* at 149.
38. *Ibid.* at 183, 185, 198; Exhibit AP-2014-013-36A, tab A at 4, Vol. 1E.
39. *Transcript of Public Hearing*, 12 May 2015, at 30-31.
40. *Ibid.* at 116-18.
41. *Ibid.* at 157.

goods in *Kappler*. While they may not provide full protection against everything, the goods in issue do indeed provide protection against something.

Are the Goods in Issue Employed in a "Noxious Atmosphere"/"*Air Empoisonné*"

45. Having found that the characteristics of the goods in issue are "protective suits"/"*scaphandres de protection*", the Tribunal will now review the evidence to determine whether they are employed in a "noxious atmosphere"/"air empoisonné".

46. The parties submitted a the following dictionary definitions to develop the meaning of the phrase "noxious atmosphere" and "*air empoisonné*":

- noxious: harmful, injurious (noxious fumes)[42]; synonyms: poisonous, virulent, toxic, harmful[43]
- atmosphere: the air in any particular place, especially if unpleasant[44]
- *empoisonner*: *faire mourir, ou mettre en danger de mort, en faisant absorber du poison*[45]

47. Putting these definitions together, the CBSA suggested that the full expression "*air empoisonné*" is best translated as ". . . air that is poisonous and could be fatal . . .",[46] while AMD suggested it was best translated as "poisonous air".[47]

48. All three witnesses testified that the goods in issue are designed, and thereby intended, to be worn in a certain environment i.e. a hospital setting.

49. Mr. Levine explained that the goods in issue meet the guidelines set by the Public Health Agency of Canada for preventing the transmission of infections in healthcare settings.[48] He added that the goods in issue are intentionally made for and marketed to hospitals across Canada.[49] Dr. Zoutman noted that gowns like the goods in issue are routinely used in his hospital and stored, along with other PPE, ". . . by every patient door, without exception."[50] Ms. Renton noted that all types of PPE are used in a specific area or for a specific purpose. She accepted that gowns like the goods in issue are used in hospital settings.[51]

50. Dr. Zoutman testified that hospitals are "dangerous" places,[52] given the degree to which serious infections are transmitted by air and/or contact between patients and healthcare workers. He provided reports and testimony to confirm that many serious and even life-threatening types of infection (e.g. meningitides, influenza, flesh eating disease, RSV, tuberculosis, etc.) are present in a hospital.[53]

51. Dr. Zoutman also explained that infections are transmitted, as droplets become airborne when an infected patient sneezes or coughs. The droplets can then spread the infection by air when they are inhaled

42. Exhibit AP-2014-013-19A at para. 33, Vol. 1B.
43. Exhibit AP-2014-013-22A at para. 17, Vol. 1B.
44. Exhibit AP-2014-013-19A at para. 33, Vol. 1B.
45. *Ibid.* at para. 34.
46. *Ibid.*
47. Exhibit AP-2014-013-22A at para. 13, Vol. 1B.
48. *Transcript of Public Hearing*, 12 May 2015, at 23.
49. *Ibid.* at 31, 35.
50. *Ibid.* at 91.
51. *Ibid.* at 147, 190, 198.
52. *Ibid.* at 54.
53. *Ibid.* at 63-64, 70, 78.

by another person (e.g. healthcare worker) or by contact when they land on a person's clothing.[54] Ms. Renton also agreed that certain infections can be transmitted by air and/or by contact and threaten a person's health.

52. On this basis, the Tribunal finds that hospital environments fall within the term "noxious atmosphere" as defined by the parties in both languages, given that infections can be transmitted by air and are potentially harmful to life, injurious to health and/or fatal. Furthermore, as the evidence confirms that the goods in issue are intended for use in hospitals (i.e. noxious atmospheres), they meet the terms ". . . to be employed in a noxious atmosphere" of tariff item No. 6210.10.10.

SUMMARY

53. For the foregoing reasons, the Tribunal finds that the goods in issue should be classified under tariff item No. 6210.10.10 as protective suits to be employed in a noxious atmosphere.

DECISION

54. The appeals are allowed.

Ann Penner
Ann Penner
Presiding Member

54. *Ibid.* at 56-59; Exhibit AP-2014-013-35A, tab 8, Vol. 1E.