



Memorandum D10-15-26

Ottawa, May 4, 2022

“Goods to be employed in a noxious atmosphere”

In Brief

This memorandum has been updated as a result of Canadian International Trade Tribunal (CITT) decisions on the classification of rubber medical examination gloves, which confirm the requirements of conditional relief of the specified tariff items.

This memorandum outlines the CBSA’s interpretation of the expression “to be employed in a noxious atmosphere” throughout the Customs Tariff.

Legislation

Departmental Consolidation of the Customs Tariff

Tariff items:

- 3926.20.10 - - - Protective suits and their accessories (including gloves), to be employed in a noxious atmosphere;
- 3926.90.10 - - - Respirators, consisting of several layers of nonwovens of man-made fibres, whether or not treated with activated carbon, with or without an exhalation valve, to be employed in a noxious atmosphere;
- 4015.19.10 - - - Protective gloves to be employed with protective suits in a noxious atmosphere;
- 4015.90.10 - - - Protective suits and parts thereof, to be employed in a noxious atmosphere;
- 6113.00.10 - - - Protective suits, to be employed in a noxious atmosphere;
- 6117.90.10 - - - Of protective suits, to be employed in a noxious atmosphere;
- 6210.10.10 - - - Protective suits, to be employed in a noxious atmosphere;
- 6210.40.10 - - - Protective suits, to be employed in a noxious atmosphere;
- 6210.50.10 - - - Protective suits, to be employed in a noxious atmosphere;
- 6307.90.10 - - - Respirators, NIOSH approved or equivalent, consisting of several layers of nonwovens of man-made fibres, whether or not treated with activated carbon, with or without an exhalation valve, to be employed in a noxious atmosphere

Guidelines and General Information

1. The term “noxious atmosphere” has the same scope in every tariff item in which it occurs.
2. Each of the tariff items listed in the legislation must first meet the terms of the headings and subheadings under which they fall.
3. The Canadian International Trade Tribunal (CITT), in its decision in *AMD Ritmed Inc. v. the President of the Canada Border Services Agency* (AP-2014-013-/015) (referred as AMD Ritmed in this memorandum) established

that a hospital falls within the term “noxious atmosphere” as many serious and even life-threatening types of infection are present in a hospital setting.

4. The decision also confirmed that isolation gowns are a protective suit as it protects parts of the body from exposure to infections. The CBSA also recognizes single use coveralls, single use aprons and disposable lab coats as protective suits.

What is a “noxious atmosphere”?

5. In *AMD Ritmed*, the CITT examined the definitions of noxious atmosphere, as indicated below:

- Noxious: harmful, injurious (noxious fumes), synonyms: poisonous, virulent, toxic, harmful.
- Atmosphere: the air in a particular place, especially if unpleasant.

6. The CITT found that noxious atmosphere does not only include “life-threatening environments... that legally require specific protective apparel to be worn.”, but also includes environments that are “potentially harmful to life, injurious to health and/or fatal.”

7. Examples of noxious atmospheres include:

- Medical or health care environments (e.g., hospitals, doctor’s offices, dental offices, environments to which emergency response teams or first responders are deployed, residential care homes, long term care institutional facilities, medical and veterinary clinics) which can be contaminated with microorganisms that are considered harmful to human health; or
- Potentially life-threatening, environments (e.g., radioactive atmospheres, bio-safety containment level 4 laboratories) that legally require specific protective apparel to be worn, as well as injurious to health and/or fatally suspended airborne particle environments, such as building sites where asbestos is being installed or removed, and areas where sulfur dioxide gas, or vaporized sulphuric acid, are present.

8. The noxious substance or contaminant may be in the air, in a gas, in a liquid/fluid, on/in a surface/object, or in an infected host organism (e.g., human, plant or animal).

9. Mildly uncomfortable environments or minor conditions (e.g., rain, cold, mud, minor electric shock) are excluded as noxious atmosphere.

Goods to be employed in a noxious atmosphere

10. Goods typically worn by health care workers as personal protective equipment (PPE) will qualify for classification under one of the applicable tariff provisions only if they meet the terms of the heading, subheading and tariff item and are not more specifically classified elsewhere.

11. For example, as discussed in CITT decision *Cardinal Health Canada Inc. v. President of the Canada Border Services Agency* (referred subsequently as *Cardinal Health*) (AP-2018-038), subheading 4015.11 specifically provides for surgical gloves of vulcanized rubber other than hard rubber; therefore surgical gloves of vulcanized rubber other than hard rubber cannot be classified under subheading 4015.19, which includes tariff item 4015.19.10 (“Protective gloves to be employed with protective suits in a noxious atmosphere”).

12. The use of PPE goods is recognized internationally as critical control measures to help mitigate against the transmission of infection, disease and other life-threatening hazards.

PPE standards and/or technical specifications

13. The World Health Organization (WHO), the Canadian Centre of Occupational Health and Safety (CCOHS) and the United States Center for Disease Control (CDC) and other internationally recognized health and safety organizations have guidelines and recommendations with respect to the use of PPE in managing the risks posed by hazards found in noxious atmosphere, including infection prevention and control.

14. A list of safety standard designations are provided in Appendix A - Table of Personal Protective Equipment (PPE) Goods and Standards and/or Technical Specification Requirements.

15. A list of recognized certifying bodies is provided in Appendix B - Table of Recognized Certifying Bodies for Personal Protective Equipment (PPE).

16. A Health Canada licence for a Class II medical device will be considered equivalent to certification by an internationally recognized standards body.

Conditional Relief

17. Tariff items providing for goods “to be employed in a noxious atmosphere” are considered to be conditional relief provisions; this means that duties are relieved only if the condition(s) of relief are met.

18. As confirmed by the CITT decisions of *Cardinal Health* (AP-2018-038) and *AMD Medicom Inc* (AP-2018-044), in addition to meeting PPE standards/specifications, (see paragraph 12 above), goods must also actually satisfy the specified use. As such, it must be proven that the qualifying goods **will be** employed in a noxious atmosphere and not simply intended for that purpose.

19. For example, plastic disposable gloves imported by, or imported and sold to spas, nail salons, hair salons or the food service industry would not qualify as gloves to be employed in a noxious atmosphere under tariff item 3926.20.10 because they will not be employed in a potentially life-threatening, injurious to health, and/or fatal environment.

20. Classification in these tariff items requires sufficient evidence to establish that the goods will be employed in a noxious atmosphere, by means of proper imported goods records, as is required by the [Imported Goods Records Regulations \(SOR/86-1011\)](#), as well as requires that the goods meet the PPE standards/specifications.

21. For example, purchase orders, invoices to or end-use certificates from, the ultimate consumer are not necessary documents, but are considered to be sufficient evidence to satisfy the end-use condition.

22. An invoice to an intermediary wholesaler is not sufficient proof of an end-use condition, since they in turn may sell the goods to various other buyers. However, an invoice from an intermediary wholesaler to the buyer(s) could support evidence of a qualifying end use (for example, where the buyer is a hospital). The importer must provide sufficient evidence that the ultimate consignee would be employing the good in a noxious atmosphere.

23. The importer may also provide some other evidence that indicates the goods were actually made for and marketed exclusively for use in a noxious atmosphere, for example, in hospitals, laboratories, or other potentially life-threatening industrial environments.

24. The proper imported goods records must be made available to the CBSA, upon request from an officer during a post-release verification, or submitted when filing a form B2, Canada Customs-Adjustment Request.

25. Please refer to Memorandum D11-8-5, Conditional Relief Tariff Items for details on importing goods subject to conditional relief.

Additional Information

26. For certainty regarding the tariff classification of a product, importers may request an advance ruling on tariff classification. Details on how to make a request for a tariff classification advance ruling are found in CBSA Memorandum D11-11-3, Advance Rulings for Tariff Classification, which is found on the CBSA website.

27. For more information, call contact the [CBSA Border Information Service](#) (BIS):

Calls within Canada & the United States (toll free): **1-800-461-9999**

Calls outside Canada & the United States (long distance charges apply):

1-204-983-3550 or 1-506-636-5064

TTY: **1-866-335-3237**

[Contact Us online](#) (webform)

[Contact Us](#) at the CBSA website

Appendix A

TABLE OF PERSONAL PROTECTIVE EQUIPMENT (PPE) GOODS AND STANDARDS AND/OR TECHNICAL SPECIFICATION REQUIREMENTS TO QUALIFY FOR “TO BE EMPLOYED IN A NOXIOUS ATMOSPHERE”

The following is a table of standards that apply to various types of personal protective equipment (PPE) for which there are related “to be employed in a noxious atmosphere” conditional relief tariff items.

The standards listed below are not exhaustive; other standards or technical specifications may qualify if it can be demonstrated that the alternative standard is recognized as equivalent to a standard listed in the table.

PPE Good	Standard/technical specification
Gloves, except surgical gloves - disposable, single use	EU Regulation 2017/745 (former EU Council Directive 93/42/EEC), EN 455; EU Regulation 2016/425 (former EU Council Directive 89/686 EEC), EN 374; ANSI/ISEA 105; ASTM D3578; ASTM D5151; ASTM D5250; ASTM D6319; ASTM D6977; ASTM D6978; ASTM D7866; ASTM F1671; Health Canada Class II Medical Device Licence
Surgical or Isolation gowns - disposable, single use	EN 13795; ISO 16603 class 3 exposure pressure, or equivalent; ISO 16604 class 2 exposure pressure, or equivalent; ANSI/AAMI PB70; ASTM F1671
Coveralls – disposable, single use	EN13934 EN 14126; ISO 16603 class 3 exposure pressure, or equivalent; ISO 16604 class 2 exposure pressure, or equivalent; NFPA 1999; ASTM F1671
Aprons – disposable, single use, waterproof	ANSI/AAMI PB70
Particulate respirator (including single use, disposable masks that form a seal around the mouth and nose)	NIOSH N95; NIOSH N100; EN 149 FFP2 or equivalent; Fluid resistance: minimum 80 mmHG pressure based on ASTM Level I F1862, ISO 22609, or equivalent
Lab coats – disposable, single use	ASTM F1671; AATCC Method 42 – Water Resistance: Impact Penetration Test

Appendix B

TABLE OF RECOGNIZED CERTIFYING BODIES
FOR PERSONAL PROTECTIVE EQUIPMENT (PPE)

Certifying Body/Association	Acronym
American Association of Textile Chemists and Colourists	AATCC
American Society for Testing Materials	ASTM
American National Standards Institute	ANSI
Association for the Advancement of Medical Instruments	AAMI
Canadian General Standards Board	CGSB
Canadian Centre of Occupational Health and Safety	CCOHS
Canadian Standards Association	CSA
Center for Disease Control	CDC
Conformité Européen (<i>English « European Conformity »</i>)	CE
European Economic Community	EEC
International Standards Organization	ISO
National Institute of Occupation Safety and Health	NIOSH
National Fire Protection Association	NFPA

References	
Issuing Office	Trade and Anti-dumping Programs Directorate
Headquarters File	HS 3926, HS 4015, HS 6113, HS 6117, HS 6210, HS 6217, HS 6307
Legislative References	<u>Departmental Consolidation of the Customs Tariff</u>
Other References	<u>AP-2018-038</u> <u>AP-2018-044</u> <u>AP-2014-013-/015</u> <u>D11-3-3, D11-8-5</u> <u>Form B2</u>
Superseded Memorandum D	D10-15-26 dated September 17, 2019