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CLASSIFICATION OF "ROUGHER HEADED LUMBER"

(Item VIII.22 on Agenda)

"Rougher headed lumber", i.e., lumber that has been run through a planing/milling type machine fitted with notched knives in order to produce a product that has the texture of rough sawn or split wood but which is accurately sized. The textured surface is imparted to at least one face but such lumber may also be textured on the edges and opposite face. This product is usually produced in thicknesses of about 2 cm ($\frac{3}{4}$ inch) to about 3.8 cm (1 $\frac{1}{2}$ inch) and widths of about 5 cm (2 inches) to about 30 cm (12 inches) and lengths up to about 550 cm (18 feet). The board may be primed or painted white on all sides. This product is particularly suitable for non-structural use in the construction of buildings, in particular, for applications such as exposed building trim and fascia. It is usually produced from spruce/pine/fir lumber but similar products are produced from Western Red cedar.

I. BACKGROUND

1. On 3 August 1999, the Secretariat received a note from the Canadian Customs Administration, asking for the classification of "rougher headed lumber" to be added to the Agenda for the 24th Session of the Harmonized System Committee in October 1999. The Canadian note is reproduced in the Annex to this document.

II. SECRETARIAT COMMENTS

2. The Secretariat would like to point out first that no information has been provided by the Canadian Administration as to whether it is a Customs administration, a private company, an international organization, etc. which applies a classification opinion differing from the one applied by the Canadian Administration. It is also not indicated whether the Canadian Administration has tried to settle the question under Article 10 of the HS Convention, assuming that another Contracting Party to the Harmonized System is involved. Secondly, no indication has been given vis-à-vis the code number applied in the allegedly incorrect classification. The Canadian Administration may wish to clarify these points.
3. With respect to the possible classification, the Secretariat would like to offer the following comments. First, it appears that headings 44.07, 44.18 and 44.21 merit consideration. Secondly, from the description given it appears that it concerns lumber having

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a rectangular cross-section, with at least one face “processed” by a machine with notched knives to resemble the structure of rough wood.

Heading 44.07

4. Heading 44.07 covers wood sawn lengthwise, which may have been planed or sanded. In this context the Secretariat would like to point out that planing or sanding of the wood (both processes are applied to smooth the surface) is not obligatory for classification in this heading. On the other hand, the heading does not exclude wood that has undergone a further processing, e.g., painting (see the General Explanatory Note to Chapter 44, second paragraph, page 671). The heading, therefore, covers wood, sawn or chipped lengthwise, sliced or peeled, of a thickness exceeding 6 mm, which may have been planed, sanded or finger-jointed, or may have undergone a processing that does not render it into a product more specifically referred to in another heading of Chapter 44.

Heading 44.18

5. This heading covers builders' joinery and carpentry, i.e., wood used in the construction of any kind of building, in the form of assembled goods or as recognizable unassembled pieces. The Secretariat considers that the mere notching of the lumber (on one or more faces) does not render it as recognizable for the construction of buildings.
6. The Secretariat does not agree with the Canadian Administration that shingles and shakes are classified in heading 44.18 because of their exterior application in the construction of buildings. Shingles and shakes, of wood are classified in heading 44.18 because they are, *expressis verbis*, referred to in the heading text, without any restriction vis-à-vis the processes they must have undergone. Therefore, the arguments put forward in this respect (see paragraph 8 of the Canadian note) seem to be out of place.

Heading 44.21

7. This heading covers articles of wood, not specified or included in one of the preceding headings. If the Committee considers that classification of the lumber in headings 44.07 or 44.18 would not be appropriate, the Secretariat suggests classification in this heading (subheading 4421.90).
8. In conclusion, the Secretariat considers that the lumber at issue is not recognizable as builders' joinery and carpentry of heading 44.18. It also considers that it has still the characteristics of wood of heading 44.07, in particular where it concerns the rough surface, bearing in mind that the process of “notching” is not excluded from that heading. Consequently, the Secretariat would be inclined to classify the lumber in heading 44.07, subheading 4407.10 (if coniferous).

III. CONCLUSION

9. The Committee is invited to consider the classification of the lumber described above, taking into account the comments of the Canadian Administration as set out in the Annex, and of the Secretariat as set out in paragraphs 2 to 8 above. It is also invited to indicate what action, if any, should be taken to reflect that decision.

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CLASSIFICATION OF ROUGHER HEADED LUMBER

(Note by the Canadian Customs Administration)

1. The Canadian Administration has encountered a classification opinion on the product described below which differs from the classification applied by Canada. For this reason we would like a classification decision by the Harmonized System Committee.

GOODS:

2. The goods at issue are rougher headed lumber, which is lumber that has been run through a planing/milling type machine fitted with notched knives in order to produce a product that has the texture of rough sawn or split wood but which is accurately sized. The textured surface is imparted to at least one face but such lumber may also be textured on the edges and opposite face. This product is usually produced in thicknesses of $\frac{3}{4}$ inch to $1\frac{1}{2}$ inch and widths of 2 inches to 12 inches and lengths up to 18 feet. The board may be primed or painted white on all sides. This product is particularly suitable for non-structural use in the construction of buildings, in particular, for applications such as exposed building trim and fascia.
3. The product described above is usually produced from spruce/pine/fir lumber but similar products are produced from Western Red cedar.

ISSUE:

4. The issue is whether the subject rougher headed lumber is to be classified under heading/subheading:

44.07 WOOD SAWN OR CHIPPED LENGTHWISE, SLICED OR PEELED, WHETHER OR NOT PLANED, SANDED OR FINGER-JOINTED, OF A THICKNESS EXCEEDING 6 MM.

4407.10 - Coniferous

OR

44.09 WOOD (INCLUDING STRIPS AND FRIEZES FOR PARQUET FLOORING, NOT ASSEMBLED) CONTINUOUSLY SHAPED (TONGUED, GROOVED, REBATED, CHAMFERED, V-JOINTED, BEADED, MOULDED, ROUNDED OR THE LIKE) ALONG ANY OF ITS EDGES OR FACES, WHETHER OR NOT PLANED, SANDED OR FINGER-JOINTED.

4409.10 - Coniferous

OR

44.18 BUILDERS' JOINERY AND CARPENTRY OF WOOD, INCLUDING CELLULAR WOOD PANELS, ASSEMBLED PARQUET PANELS, SHINGLES AND SHAKES.

4418.90 - Other

ANALYSIS:

The terms of the headings

5. The terms of heading 44.07 provide, in pertinent part, “Wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed...”. The term “planed”, when used in reference to the processing of wood and lumber products means “to run sawn wood through a planing machine to smooth its surface” (reference Terms of the Trade - Random Lengths 2nd Edition). The term “surfaced” in relation to wood processing “Refers to lumber that has been dressed by a planing machine for the purpose of attaining smoothness of surface and uniform size.” (same reference). It is clear, therefore, that both the common and trade usage of the term “planed” means processing for smoothness.
6. This interpretation is supported by the Explanatory Notes to heading 44.07 which, in describing products provided for in the heading that are obtained by the use of chipping machines, refers to that process as “a process that results in a surface better than that obtained by sawing and which thereby renders subsequent planing unnecessary.” In other words, the function of planing, for the purposes of this heading, is planing for smoothness.
7. The terms of heading 44.09 provide for wood that has been “continuously shaped”. This process is usually performed by a milling or moulding machine. While the subject goods have been processed by a planing/milling machine, this process is to impart a textured surface to the wood and is not a “shaping” process.
8. The terms of heading 44.18 provide for “Builders’ joinery and carpentry of wood, including cellular wood panels, assembled parquet panels, shingles and shakes.” It is important to note the inclusion of shingles and shakes in the terms of the heading as this serves to further define the nature of the products considered to meet the term “builders’ joinery and carpentry”. Shingles and shakes are building products specifically suitable for exterior application. While shingles are always sawn, shakes are split from a bolt of wood (usually cedar) and “have at least one surface with a natural grain textured split surface” (reference Terms of the Trade - Random Lengths 2nd Edition). Neither shingles nor shakes are typically prepared with any features such as tenons, mortises, dovetails or similar joints, but owe their inclusion in the terms of heading 44.18 simply by the fact that they are dedicated for exterior application in the construction of buildings. Therefore, it is clear that having joints is only an example of how a product may be recognizable as an unassembled piece. Other features, such as surface working to produce a particular texture, can also make a product recognizable as an unassembled piece.
9. Likewise, the rougher headed lumber at issue is prepared and dedicated for use as an exterior decorative building material and meets the terms of heading 44.18.
 - A. Any relative Section or Chapter Notes
10. There are no relative Section or Chapter Notes specifically relating to the goods of headings 44.07, 44.09, or 44.18. Neither are there any Notes, whether Section, Chapter or Explanatory that would suggest that rougher headed lumber should be classified under headings 44.07 or 44.09 rather than 44.18.
11. Therefore, it can be concluded that the rougher headed lumber is classified as builders' carpentry of wood, under heading 44.18 of the HS by application of General Interpretative Rule 1. The goods meet the terms of heading 44.18 and are precluded from classification under headings 44.07 (ref. to exclusion (f), page 676, of the Explanatory Notes to the HS) and 44.09.

CONCLUSION:

12. The rougher headed lumber at issue cannot be classified under heading 44.07 since the texturing planing/milling process is not the type of planing contemplated in the scope of the heading and is therefore a process that is not mentioned in either the legal text or the Explanatory Notes to that heading.
 13. The rougher headed lumber at issue cannot be classified under heading 44.09 since the planing/milling process does not result in shaping the wood as required by the terms of that heading.
 14. The rougher headed lumber at issue is particularly suitable for and can be considered to be dedicated for exterior decorative building applications and so meets the terms of heading 44.18. In particular, rougher headed lumber is further processed to give a rough texture for products such as fascia and trim boards and is recognizable as an unassembled piece of a building. Moreover, the inclusion of non-jointed products such as shingles and shakes within heading 44.18 demonstrates that the existence of the particular type of joints listed in the Explanatory Note is not a pre-requisite for inclusion in heading 44.18.
 15. Therefore, it is the position of the Canadian Administration that the rougher headed lumber is classified as builders' carpentry of wood, under heading 44.18 of the Harmonized Commodity Description and Coding System by application of General Interpretative Rule 1. The goods meet the terms of heading 44.18, do not meet the terms of heading 44.09, and have been processed to a degree beyond that permitted by heading 44.07.
 16. The Canadian Administration requests that the Harmonized System Committee consider the classification of these goods.
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