



HARMONIZED SYSTEM  
COMMITTEE  
-  
24<sup>th</sup> Session  
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(+ Annex)  
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Brussels, August 1999.

### CLASSIFICATION OF NOTCHED LUMBER

(Item VIII.23 on Agenda)

Notched spruce/pine/fir (softwood) lumber used in building construction (e.g., structural framing of a house). The lumber is of rectangular cross-section and made of solid wood measuring approximately 3.8 cm (1½ inches) thick by 8.25 cm (3¼ inches) wide (nominal 2 x 4) or 3.8 cm (1½ inches) thick by 14 cm (5½ inches) wide (nominal 2 x 6), in lengths varying from 244 cm to 365 cm (8 to 12 feet), with eased edges and unworked ends. The lumber is further worked by having one or more notches (grooves) cut out of one or both edges. The notches are from 2 cm to 2.5 cm (¾ to 1 inch) deep and 2 cm to 14 cm (¾ to 5½ inches) wide and are located between 15 cm to 45 cm (6 to 18 inches) from the ends of the piece. The purpose of the notch(es) is to allow electrical wiring, cables or pipes to be recessed in the lumber.

#### I. BACKGROUND

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

#### II. SECRETARIAT COMMENTS

2. The Canadian Administration has indicated that a classification opinion concerning the product at issue is applied, differing from the one applied by that administration. The Secretariat would like to point out 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 another classification opinion. 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. Finally, 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.

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3. With respect to the possible classification, the Secretariat would like to offer the following comments. First, it appears that headings 44.07, 44.09, 44.18 and 44.21 merit consideration. Secondly, from the description given it appears that it concerns lumber having a rectangular cross-section, with at least on one edge having one or more notches cut out.

Heading 44.07

4. Heading 44.07 covers wood sawn lengthwise, which may have been planed or sanded. It also covers wood that has undergone a further processing, e.g., painting (see the General Explanatory Note to Chapter 44, second paragraph, page 671), provided it has not attained the character of a product covered by a later heading of Chapter 44.

Heading 44.09

5. This heading covers wood continuously shaped along its edges (including ends) or faces. The Explanatory Note to this heading (last paragraph on page 677) excludes notched strips for cupboard and bookcase shelves and direct them to heading 94.03 as parts of furniture. The Secretariat understands from this referral that heading 44.09 does not exclude, *à priori*, notched wood panels. However, the heading is restricted to wood having been shaped along the edges or faces (emphasis added), whereas the notches in the lumber at issue run crosswise.

Heading 44.18

6. 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 notching of the lumber renders it as a recognizable piece for the construction of buildings.
7. In addition, the Secretariat would observe the following vis-à-vis the scope of heading 44.18 in relation to the comments provided by the Canadian Administration, as reproduced in the Annex to this document. Firstly, the Canadian Administration indicates that the term "woodwork" (see paragraph 6 of the note) embraces "articles of wood that have been further worked which are used in the construction of a building". The Secretariat has some concern about the scope of this statement, since (i) the term "woodwork" as used in the first paragraph of the Explanatory Note to heading 44.18, on page 686, is qualified (and consequently restricted) by the words "in the form of assembled goods or as recognisable unassembled pieces", and (ii) the phrase "further worked" is not specified.
8. Secondly, the Canadian Administration has indicated that the case at issue is very similar to the case of drilled lumber, the classification of which was discussed by the Committee at its 23<sup>rd</sup> Session (Doc. NC0090E2, Annex IJ/9 – HSC/23 Report, May 1999) (see paragraph 7 of the Canadian note). Although there might be some similarity (e.g., what is relationship between headings 44.07 and 44.18), the Secretariat is of the view that a product should be classified on the basis of the characteristics of that product and not on the basis of similarity with another product already classified. In this context, it is to be noted, however, that a reservation has been entered against the Committee's decision to classify the drilled lumber in heading 44.18 (see Agenda item VII. 6).

Heading 44.21

9. This heading covers articles of wood, not specified or included in one of the preceding headings. Classification of the notched lumber in heading 44.21 (subheading 4421.90) seems appropriate if the Committee considers that headings 44.07, 44.09 or 44.18 would not cover the product.
10. In conclusion, the Secretariat considers that the lumber at issue is recognizable as builders' joinery and carpentry of heading 44.18. It also considers that heading 44.09 does not cover the lumber at issue, since the profiling is not along the edges but crosswise. Consequently, the Secretariat would be inclined to classify the lumber in heading 44.18, subheading 4418.90.

III. CONCLUSION

11. The Committee is invited to consider the classification of the notched lumber described above, taking into account the comments of the Canadian Administration as set out in the Annex to this document, and of the Secretariat as set out in paragraphs 2 to 10 above. It is also invited to indicate what action, if any, should be taken to reflect that decision.

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**CLASSIFICATION OF NOTCHED 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 notched spruce/pine/fir (softwood) lumber used in the construction of a building (structural framing of a house). The lumber is of a rectangular cross-section and made of solid wood measuring approximately 1½ inches thick by 3¼ inches wide (nominal 2x4) or 1½ inches thick by 5½ inches wide (nominal 2x6), in lengths varying from eight to twelve feet, with eased edges and unworked ends. The lumber is further worked by having one or more notches (grooves) cut out of one or both edges. The notches are from ¾ to 1 inch deep and ¾ to 5½ inches wide and are located between 6 to 18 inches from the ends of the piece. The purpose of the notch(es) is to allow electrical wiring, cables or pipes to be recessed in the lumber.

**ISSUE:**

3. The issue is whether the subject notched softwood lumber is 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**

4. The terms “sawn or chipped lengthwise, sliced or peeled, planed, sanded or finger-jointed”, as they appear in heading 44.07, deal with the surface of pieces of wood and the direction in which the wood must be sawn or chipped. There is nothing in the terms of the heading that allows for further working by cross-cutting a notch on the edge of the wood. Indeed, the heading is very specific in that the goods must be sawn or chipped lengthwise. (“Finger-jointed” is intended to cover extended pieces of wood that have been joined together at the ends or intended to be joined together, but not further worked than sawn, chipped lengthwise, sliced, peeled, planed or sanded.)
5. Heading 44.09 includes, among other things, wood, continuously shaped along (“tout au long”) any of its edges. The Explanatory Notes to heading 44.09, page 677, first paragraph, indicates that heading 44.09 covers continuously shaped wood throughout its length. The notches cut into the goods at issue, which are  $\frac{3}{4}$  to 1 inch in depth by  $\frac{3}{4}$  to  $5\frac{1}{4}$  inches wide and located a distance from the end(s), are created by a transverse cut which is across the edge and not along the edge as specified by the terms of the heading. By observing the lumber at right angles to the length, one notes that there is no uniform cross-section throughout its length. Therefore, the goods at issue, not being continuously shaped lengthwise from end to end, cannot be classified in heading 44.09.
6. The Explanatory Note to heading 44.18 indicates that the terms “builders’ joinery and carpentry of wood” apply to woodwork used in the construction of any kind of building. Furthermore, the term “carpentry” refers to woodwork used for structural purposes. Nothing in the Explanatory Notes suggests that notching is a process that should be excluded from that heading. In fact, the term “woodwork” embraces articles of wood that have been further worked which are used in the construction of a building.
7. A very similar product to notched lumber was before the HS Committee at its 23<sup>rd</sup> Session. That product was “drilled lumber used in construction” (ref. Doc 42.487 & NC0070E). The insignificant difference, from a classification standpoint, between the drilled lumber and notched lumber is merely the size, shape and positioning of the conduits cut into the lumber in order to accommodate the passage of wire, cable or piping. In the drilled lumber case, the Committee classified the goods in heading 44.18.
8. Therefore, it is clear that heading 44.18 supports classification of notched lumber used for structural purposes, and not headings 44.07 or 44.09.

### **Any relative Section, Chapter or Explanatory Notes**

9. There are no relevant Section or Chapter Notes specifically relating to the goods at issue for headings 44.07, 44.09 or 44.18. Neither are there any Notes, whether Section, Chapter or Explanatory that would suggest that notched pieces of wood dedicated for use in construction should be classified other than in heading 44.18.

10. The notched lumber does not meet the terms of continuously shaped wood in accordance with heading 44.09 and its Explanatory Notes. The goods meet the terms of heading 44.18 and as such are precluded from classification under heading 44.07 (ref. exclusion (f), page 676, of the Explanatory Notes). Therefore, the notched lumber, similar to drilled lumber, should be classified as builders' carpentry of wood under heading 44.18 of the HS by application of General Interpretative Rule 1.

**CONCLUSION :**

11. Notched lumber cannot be classified under heading 44.07 or 44.09 since the cutting of notches across an edge is not one of the processes referred to in either the legal texts or the Explanatory Note to those headings. The legal text to heading 44.07 provides for wood that has been processed by either sawing, or chipping lengthwise, slicing or peeling, whether or not planed, sanded or finger-jointed. Heading 44.09 provides for wood which must be continuously shaped along the edge throughout its length. Notched lumber does not meet the terms of either heading 44.07 or 44.09. Furthermore, notched lumber is designed to accommodate the passing of wiring, cables or pipes, and notching limits the use of the lumber to the construction of structural walls. Considering the location and size of the notch(es), this type of lumber is recognizable and committed by design for structural woodwork and, as its use is limited, it can no longer serve as general purpose lumber.
12. Therefore, it is the position of the Canadian Administration that notched 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, and have been processed to a degree beyond that permitted by heading 44.07 or 44.09.
13. The Canadian Administration requests that the Harmonized System Committee consider the classification of these goods.
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