



WORLD CUSTOMS ORGANIZATION
ORGANISATION MONDIALE DES DOUANES

Established in 1952 as the Customs Co-operation Council
Créée en 1952 sous le nom de Conseil de coopération douanière

HARMONIZED SYSTEM
COMMITTEE

-
24th Session

NC0159E1

O. Eng.

Brussels, 11 October 1999.

CLASSIFICATION OF "NOTCHED LUMBER"

(Item VIII.23 on Agenda)

Reference document :

NC0141E1 (HSC/24)

I. BACKGROUND

1. Following the publication of Doc. NC0141E1, the Secretariat received on 1 October 1999 a Note from the United States Customs Administration concerning the classification of "notched lumber". This Note is reproduced in the Annex to this document.

II. SECRETARIAT COMMENTS

2. Given the late arrival of the Note, the Secretariat has reproduced it without comments.

III. CONCLUSION

3. The Committee is invited to take into account the Note of the United States reproduced in the Annex to this document when considering the classification of notched lumber.

*

*

*

File No 2781

U.S. Note on the Classification of Certain Notched Lumber

1. The Canadian Administration has requested that the Harmonized System Committee determine the classification of certain notched lumber. This issue concerns a dispute between the US and Canada.
2. For the reasons set forth below, the United States believes that this notched lumber is classified in heading 44.07 as sawn lumber and not in heading 44.18 as builders' carpentry or joinery.

Description of the Merchandise

3. The merchandise before the Committee is a type of dimension lumber (nominal 2x4 and 2x 6 lumber) which has been called "notched lumber." It consists of a rectangular piece of solid wood measuring approximately 1½ inches (3.81 cm) thick and 3¼ inches (8.25 cm) wide, or 1½ inches thick and 5½ inches wide, kiln dried, with eased edges, unworked ends and cut to standard lumber lengths of 8 to 12 feet. Each piece of dimension lumber has one or two small notches, measuring ¾ or 1 inch deep and ¾ to 5½ inches wide, cut into the edge. These notches are said to be intended to allow wires or cables or pipes to be recessed into the lumber.

Classification

Heading 44.07

4. Heading 44.07 provides "for wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed, of a thickness exceeding 6 mm". The text places no restrictions on whether or not the wood may have one or two small notches. The notched lumber under consideration is nothing more than a standard piece of dimension lumber, sawn lengthwise, with a notched edge.
5. The Explanatory Notes to heading 44.07, state, in pertinent part, that:

With a few exceptions, this heading covers all wood and timber, of any length but of a thickness exceeding 6 mm, sawn or chipped along the general direction of the grain or cut by slicing or peeling. Such wood and timber includes sawn beams, planks, flitches, boards, laths, etc., and products regarded as the equivalent of sawn wood or timber, which are obtained by the use of chipping machines and which have been chipped to extremely accurate dimensions, a process which results in a surface better than that obtained by sawing and which thereby renders subsequent planing unnecessary. It also includes sheets of sliced or peeled (rotary cut) wood, and strips and friezes for parquet flooring, other than those which have been continuously shaped along any of their edges or faces (heading 44.09). (Emphasis added.)

It is to be noted that the wood of this heading need not necessarily be of rectangular (including square) section nor of uniform section along the length. (Emphasis added.)

The products of this heading may be planed (whether or not the angle formed by two adjacent sides is slightly rounded during the planing process), sanded or end-jointed, e.g. finger-jointed (see the General Explanatory Note to this Chapter).

The heading also excludes:

* * * * *

(f) Builders' joinery and carpentry (heading 44.18).

6. In this case, there is no question that, without the notches, the sawn lumber under consideration is classifiable in heading 44.07, and it would have been subjected to numerous processes that are not listed in the heading text such as treating, easing, precision end trimming, or kiln drying. Canada's position that heading 44.07 excludes all processes not enumerated in the heading would exclude these processes, all of which are much more substantial than is notching and which unlike notching add significant value to the product. These processes are neither necessary to create lumber, nor do they render lumber classifiable other than in heading 44.07. Thus, it is clear that heading 44.07 is not restricted to only those processes listed in the legal text to that heading.
7. As with the legal text, there is no indication in the Explanatory Notes that simply notching sawn wood precludes the sawn wood from classification in heading 44.07. On the contrary, when taken together, the legal text and the Explanatory Notes to heading 44.07 indicate that the heading is broad in coverage and includes all wood that has in fact been subjected to further minor processing that does not alter its character as general purpose sawn wood, such as the notching. Clearly, then, the notched lumber under consideration meets the terms of heading 44.07.
8. This Committee recently declined to adopt an interpretation of the text of heading 44.09 and its Explanatory Notes which is very similar to Canada's interpretation of heading 44.07 in this case. The decision related to the classification of wood flooring that is worked with a tongue and groove on both its edges and ends.
9. This administration and Canada contended that classification in heading 44.09 was precluded because the additional work (i.e., the ends being tongued and grooved) exceeded the text of the heading. This application of the heading text was supported by the Explanatory Notes to heading 44.09 which described the "continuously shaped" as a process along the length and which also specifically excluded end worked products.
10. Classification in heading 44.18 was suggested. This Committee declined to view heading 44.09 narrowly. Instead, at its twentieth session, the HSC classified the product under 44.09.20, finding no implicit exclusion in either the legal text or the Explanatory Notes for the additional processing. See Annex F/4 to Document 41.600. Thus, this Committee has recently rejected the same rationale relied upon by Canada in its argument for classifying notched lumber outside of 44.07.

Heading 44.18

11. Heading 44.18 provides for "builders' joinery and carpentry of wood, including cellular wood panels, assembled parquet panels, shingles and shakes." ¹
12. The Explanatory Notes to heading 44.18 state, in pertinent part, that:

¹ The terms "joinery" and "carpentry" are not defined in the Nomenclature. Joinery is generally defined as something constructed "by joining pieces of wood," Volume I, *The Compact Edition of the Oxford English Dictionary* (1987), page 1512. Carpentry is generally defined as "an assemblage of pieces of timber connected by framing, or letting them into each other, as are the pieces of a roof, floor, centre, etc.," Volume I, *The Compact Edition of the Oxford English Dictionary* (1987), page 343. The product under consideration does not meet either of those two definitions.

This heading applies to woodwork, including that of wood marquetry or inlaid wood, used in the construction of any kind of building, etc., **in the form of assembled goods or as recognisable unassembled pieces (e.g., prepared with tenons, mortises, dovetails or other similar joints for assembly)**, whether or not with their metal fittings such as hinges, locks, etc. (Emphasis added.)

The term “joinery” applies more particularly to builders’ fittings (such as doors, windows, shutters, stairs, door or window frames), whereas the term “carpentry” refers to woodwork (such as beams, rafters and roof struts) used for structural purposes or in scaffoldings, arch supports, etc., and includes assembled shuttering for concrete constructional work. However, plywood panels, even if surface treated for the purposes of concrete shuttering, are classified in heading 44.12.

13. The notched lumber under consideration is quite different from the woodwork described in the above-mentioned Explanatory Notes to heading 44.18. It is neither an assembled good, nor is it a recognizable unassembled piece prepared with a joint such as a tenon, mortise or dovetail. The products of heading 44.18 have undergone processing to the point where they have lost their character as sawn wood of heading 44.07. The same cannot be said about the lumber under consideration which is a piece of wood that is neither imported as an assembled good nor imported with a joint or similar working so as to make it into a recognizable unassembled piece of builders’ joinery or carpentry. Rather, it retains the essential character of lumber. It is not identifiable as any particular article such as a builders’ fitting, beam, rafter, roof strut, etc. With or without the notches, the piece of lumber remains suitable for the wide variety of purposes for which dimension lumber may be used (e.g., for framing, for pallets, or for crates and boxes). Accordingly, this lumber cannot be classified in heading 44.18 because it does not meet the terms of the heading as joinery or carpentry.
14. It is anticipated that it will be suggested that notched lumber is analogous to the shingles listed in the legal text to heading 44.18, and thus should be classified in heading 44.18 on this basis. A careful review of the Explanatory Notes to that heading shows that this analogy is not at all apt. The Explanatory Notes to heading 44.18 state, in pertinent part, that:

A shingle is wood sawn lengthwise which is generally thicker than 5 mm at one end (the butt) but thinner than 5 mm at the other end (the tip). It may have its edges resawn to be parallel; its butt may be resawn to be at right angles to its edges or to form a curve or other shape. One of its faces may be sanded from the butt to the tip or grooved along its length.
15. As indicated above, the shingles of heading 44.18 are products that are specially designed and shaped (by being thicker at one end and thinner at the other), and are often further worked by being curved shaped, sanded, etc. Moreover, shingles are specific articles that are enumerated in the terms to heading 44.18.
16. By contrast, the notched lumber under consideration is simply a board in which notches have been cut. Moreover, as indicated above, it remains dimension lumber and is utilized as such. Accordingly, the notched lumber cannot logically be classified in heading 44.18 by analogy to the shingles of that heading.
17. The Canadian Administration’s proposal that notched lumber should be classified in heading 44.18 by the Committee appears to be based on the conclusion that the notched lumber is to be used in the construction of buildings. However, use cannot be determinative in this case, lest all imported construction grade lumber – with or without notches – be deemed classifiable in heading 44.18, based on its use in construction applications, in particular, framing walls. Obviously, such an approach would clearly be inconsistent with the language and intent of the Harmonized System.

Conclusion

18. Notched lumber is not excluded by the terms of heading 44.07. It is dimension lumber that has general application in construction. It does not satisfy the terms of heading 44.18. It is not a specific product known as either builders' carpentry or joinery.
 19. In view of the above, the notched lumber at issue is classified in heading 44.07 by application of General Interpretative Rule 1.
-