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Brussels, 27 April 1999.

CLASSIFICATION OF CERTAIN DRILLED LUMBER USED IN CONSTRUCTION

(Item IX.9 on the Agenda)

Reference documents :

42.487 (HSC/22)
42.750, Annex H/21 (HSC/22 – Report)

I. BACKGROUND

1. At its 22nd Session the Committee agreed, at the request of the Delegate of the United States, to postpone discussions on the classification of certain drilled lumber for construction. This issue was presented to the Committee by the Canadian Administration, which had indicated that different opinions were held vis-à-vis the classification of the product in question. The product is described in paragraph 1 of Doc. 42.487 and the classification rationales submitted by the Canadian Administration are reproduced in Annex I to that document.

II. NOTE FROM CANADA

2. On 4 March 1999, the Secretariat received additional information from the Canadian Administration addressing certain questions raised by the Secretariat in Doc. 42.487. This note is reproduced in the Annex to this document.

III. SECRETARIAT COMMENTS

3. The Secretariat notes firstly that the references to Notes 3, 4 and 5 to Chapter 44 were apparently used by the Canadian Administration as an analogy to clarify the structure of Chapter 44, i.e., there is a relation between the level of processing or working of the wood and the heading number. The Secretariat agrees that there is a relation in that aspect vis-à-vis certain headings of Chapter 44, e.g., headings 44.03, 44.07, 44.09 and the following headings, which cover articles of wood. However, the connection between the referenced Notes and the concept of a hierarchical structure of the headings in Chapter 44 remains unclear to the Secretariat. The Secretariat is of the view that the headings of Chapter 44

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merit equal consideration, since none of them has been given priority with respect to any other heading of that Chapter by, e.g., a Chapter Note. Indeed, the scope of each of the headings is determined by the wording of the heading, which excludes classification of one product in two or more headings. Consequently, the Secretariat considers that the product at issue should be classified by reference to the heading texts only, the application of Chapter Notes 3 to 5 to Chapter 44 being disregarded in this case.

4. Secondly, the Canadian Administration indicates that “easing” is a planing process applied to the edge of sawn wood to remove the roughness caused during cutting. From this the Secretariat understands that the operation is not similar to any of the processes described in heading 44.09, and that it would not facilitate any assembly of the wood, as indicated in the Explanatory Note to that heading. That being the case, the Secretariat agrees with the Canadian view that heading 44.09 should be ruled out, thus leaving headings 44.07 and 44.18 as potential candidates for classification.
5. Thirdly, the Secretariat has some difficulty in following the statement of the Canadian Administration that all wood being worked beyond planing, sanding or end-jointing is excluded from heading 44.07 by application of the Explanatory Note to heading 44.09 (see paragraph 4 of the Annex). The second paragraph of the Explanatory Note to heading 44.09 (page 678) indicates that certain wood that has **not** been worked beyond planing, sanding or end-jointing is classified in heading 44.07. The Canadian Administration argues that therefore wood that has been worked beyond planing, sanding or end-jointing is **not** classified in heading 44.07. The Canadian Administration apparently considers that the drilling process is a process which goes beyond planing, sanding or end-jointing, and that, therefore, the drilled lumber cannot be classified in heading 44.07. The Secretariat is not in favour of such an argument because (i) the referenced part of the Explanatory Note concerned is restricted to certain types of wooden products and refers to the dividing line between headings 44.07 and 44.09 only and not between heading 44.07 and the other headings of Chapter 44, and (ii) the classification of wood is not affected by certain processes, e.g., treatment necessary for its preservation, or by reason of being painted, stained or varnished (see the General Explanatory Note to Chapter 44, second paragraph, page 671).
6. Nonetheless, the Secretariat considers that the product is recognisable as “builder’s joinery and carpentry” and that it, consequently, falls within the scope of heading 44.18. However, if the Committee considers that the product at issue is not recognisable as “builder’s joinery and carpentry”, the Secretariat considers that classification in heading 44.07 would be appropriate.
7. In conclusion, the Secretariat holds the view that the classification of the product at issue is not governed by a Chapter Note to Chapter 44, but simply by application of the text of the heading concerned, supported by the relevant parts of the Explanatory Notes to heading 44.18.

III. CONCLUSION

8. The Committee is invited to take into consideration the observations of the Canadian Administration set out in the Annex to this document and the comments of the Secretariat in paragraphs 3 to 7 above.

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**Note from the Canadian Administration
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1. The Canadian Administration submits the following to address certain questions raised by the Secretariat in document 42.487 CLASSIFICATION OF CERTAIN DRILLED LUMBER:
2. With respect to the question raised by the Secretariat in paragraph 5 of document 42.487 (HSC 22) regarding Canada's reference to Notes 3, 4, and 5 to Chapter 44, our administration attempted to demonstrate the hierarchical structure of Chapter 44 as it relates to wood that has been submitted to a further working operation. Canada agrees with the Secretariat that this analogy is not clear. However, it is important to keep in mind the operations to which the lumber has been submitted as they bear direct relationship to the descriptions enumerated in the terms of the various headings.
3. Regarding the question raised by the Secretariat in paragraph 6 concerning "eased edges", it is our understanding that "easing" is a minimum amount of abrasion applied to the edge of sawn wood in order to remove the roughness caused during cutting. According to industry, easing is a planing process performed by wood planing machines. In our opinion, this clarifies that heading No. 44.09 would not be appropriate as the wood has not been worked to the extent necessary to meet the terms of that heading.
4. While the sawn wood at issue has two drilled holes, one should also consider those instances where three or even a dozen holes are present (see Annex to this document). In this regard, the Explanatory Notes to heading No. 44.09, which covers certain continuously shaped wood, are instructive. The last paragraph of the Explanatory Notes to heading No. 44.09, page 678, states that if certain narrow boards "...have not been worked beyond planing, sanding or end-jointing, e.g. finger-jointing, they fall in **heading 44.07**". Therefore, if the wood has been worked beyond planing, sanding or end-jointing (finger-jointing), in Canada's opinion, it was clearly the intent of the drafters of the HS to classify the goods elsewhere than in heading No. 44.07. Consistent with exclusion (f), page 676, section IX - 44.07₂/08₁ of the Explanatory Notes, drilled studs are therefore classified in heading No. 44.18 as builders' carpentry of wood.

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