



HARMONIZED SYSTEM
COMMITTEE

-
24th Session
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NC0125E1
(+ Annexes I and II)
O. Eng.

Brussels, 22 September 1999.

CLASSIFICATION IN SUBHEADING 4418.90 OF
CERTAIN DRILLED LUMBER USED IN CONSTRUCTION
(RESERVATION BY THE US)

(Item VII.6 on Agenda)

Reference documents :

42.487 (HSC/22)
42.750, Annex H/21 (HSC/22 – Report)
NC0070E1 (HSC/23)
NC0090E2, Annex IJ/9 (HSC/23 – Report)

Drilled spruce/pine/fir (softwood) boards used as structural studs in the framing of a house, consisting of a rectangular piece of solid wood measuring approximately 1½ inches (3.81 cm) thick and ¾ inches (8.25 cm) wide, in lengths varying from eight to twelve feet (243.84 cm to 365.76 cm), with eased edges and unworked ends. There are drilled holes, one inch (2.54 cm) in diameter, centred about 16 inches (40.64 cm) from each end for the purpose of allowing electrical wiring, cables or pipes to be run through the studs.

I. BACKGROUND

1. On 12 August 1999, the Secretariat received the arguments from the United States Administration in support of the reservation it had entered in respect of the decision at the Harmonized System Committee's 23rd Session to classify certain drilled lumber in subheading 4418.90. This Note is reproduced in Annex I to this document.
2. On 10 August 1999, the Secretariat received additional information from the Canadian Customs Administration concerning the same subject, for consideration by the Committee. This Note is reproduced in Annex II to this document.

File No. 2752

II. SECRETARIAT COMMENTS

3. At its 23rd Session (May 1999), the Committee took the view that drilled lumber should be classified in heading 44.18 (subheading 4418.90) (21 votes to 1).
4. The Secretariat considers that the main question at issue is whether or not the drilled lumber is recognizable as “builder’s joinery and carpentry” of heading 44.18. If it is, classification in heading 44.18 would be appropriate. If it is not so recognizable, classification in heading 44.07 would appear appropriate, as advocated by the US Administration.
5. In the broader context, however, the Committee may wish to consider the scope of heading 44.07, i.e., whether or not that heading is limited by the processes enumerated in the heading text. The Canadian Administration holds the view that the scope is restricted (see paragraph 6 of Annex II to this document and paragraph 4 of the Annex to Doc. NC0070E1), whereas the US considers that wood of heading 44.07 may have been subjected to various processes not listed in the heading (see paragraph 6 of Annex I to this document).

III. CONCLUSION

6. The Harmonized System Committee is invited to re-examine the classification of drilled lumber, taking into account the arguments put forward by the US and Canadian Administrations reproduced in, respectively, Annexes I and II to this document, and the Secretariat comments in paragraphs 3 to 5 above. It is also invited to indicate what further action should be taken in this matter.

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

1. At its last session, the United States requested that the Harmonized System Committee defer any final action on the classification of certain drilled lumber in view of a pending judicial proceeding in the United States dealing with its classification. Nevertheless, the Committee decided not to defer the decision and classified the lumber in heading 44.18. Given that there is an ongoing court case in the United States and a dispute between the US and Canada on the same matter, the United States is disappointed that the Committee could not agree to defer final action on this matter and took a decision on the lumber without the benefit of a written submission from the United States.
2. The United States believes that the classification decision is in error and has entered a reservation. For the reasons set forth below, the United States believes that this drilled 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 which has been called "drilled lumber" or drilled studs. It consists of a rectangular piece of solid wood measuring approximately 1.2 inches (3.81 cm) thick and 3 1/4 inches (8.25 cm) wide, kiln dried, with eased edges and cut to standard lumber lengths. Each piece of dimension lumber has a small hole drilled in it approximately 16 inches (40.64 cm) from each end. The holes are 1 inch (2.5 cm) in diameter, and are said to be intended to allow wires or cables or pipes to pass through the piece of 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 two small predrilled holes. The drilled lumber under consideration is nothing more than a standard piece of sawn dimension lumber with two small holes.
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.

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 holes, 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 drilling and which unlike drilling 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 drilling holes in 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 drilling of two holes. Clearly, then, the drilled 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 its edges and ends. Both 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. 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 drilled lumber outside of 44.07.

Heading 44.18

9. Heading 44.18 provides for “builders’ joinery and carpentry of wood, including cellular wood panels, assembled parquet panels, shingles and shakes.”¹
10. The Explanatory Notes to heading 44.18 state, in pertinent part, that:
- 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.
11. The drilled 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 pre-drilled holes, the piece of lumber remains suitable for the wide variety of purposes for which dimension lumber may be used (e.g., 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.
12. During the discussion of this matter at the 23rd session of the Committee, it was suggested that this predrilled 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

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.

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.

13. 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. Without a doubt, these shingles are advanced to the point where they are specific articles that are enumerated in the terms to heading 44.18. By contrast, the drilled lumber under consideration is simply a board in which holes have been drilled. Moreover, as indicated above, it remains dimension lumber and is utilized as such. Accordingly, the drilled lumber cannot logically be classified in heading 44.18 by analogy to the shingles of that heading.
14. Classification of the drilled lumber in heading 44.18 by the Committee appears to have been based on the conclusion that the drilled 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 pre-drilled holes – 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

15. In view of the above, the drilled lumber at issue is classified in heading 44.07 by application of General Interpretative Rule 1.

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Note from the Canadian Administration

1. The Canadian Administration encountered a classification opinion on certain drilled lumber used in construction which differed from the classification applied by Canada. The drilled lumber had been further processed by the drilling of one inch (2.54 cm) diameter holes, centred 16 inches (40.64 cm) from each end, for the purpose of allowing the passing of electrical wiring, cables or pipes during the construction of a house. The question of classification was brought before the Harmonized System Committee at its 23rd Session. The Committee classified the goods in heading 44.18 and a Reservation against the decision has been entered by the United States.
2. In order to address a concern mentioned in the HSC 23 Report to the Customs Co-Operation Council (Doc. NC0090E2, Annex IJ/9), Canada is of the opinion that additional information on the meaning of the term "carpentry" might be useful. Therefore, the following is submitted for consideration by the Committee:

Webster's Encyclopedic Dictionary of the English Language (Canadian Edition 1998):

carpentry: woodwork, the carpenter's trade

carpenter: a workman in wood; the person who makes the wooden frames of a house, ship etc.

The Concise Oxford Dictionary (1982):

carpentry: do, or make by, carpenter's work

carpenter: craftsman in woodwork (esp. of rough solid kinds as in ship or house building)
3. Further to the dictionary definitions, carpentry can be divided into two main types - rough carpentry and finish carpentry. The term rough carpentry generally refers to construction using lumber which deals with the structural framing of a building. It can involve floor, wall or roof framing and also includes the installation of subfloors, and partitions. Finish carpentry applies more to the installation of doors, windows, interior and exterior trim, siding, panelling, cabinets, and other items that will result in the completed structure (ref. Residential Carpentry, John Capotosto, Reston Publishing Co. Inc., 1979).
4. This is consistent with the Explanatory Notes to heading 44.18, page 686, which indicate that the heading applies to woodwork recognizable for use in the construction of any kind of building and that carpentry more particularly applies to woodwork used for structural purposes.
5. Shingles and shakes are cited in the heading text as inclusions within the scope of the terms builders' joinery and carpentry. These products are dedicated by their design for building construction. Similarly, drilled lumber has been worked to facilitate its use in house (building) construction.
6. Since drilled lumber has been dedicated for use in the construction of a building, particularly in the building of homes, and has been worked beyond that which is permitted by the terms of heading 44.07 or heading 44.09, Canada maintains that the goods are builders' carpentry of wood of heading 44.18.

7. The foregoing is submitted by the Canadian Administration to assist the Committee when the matter of the Reservation by the United States is discussed.
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