



HARMONIZED SYSTEM  
COMMITTEE  
-  
24th Session  
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NC0157E1  
(+ Annex)  
O. Eng.

Brussels, 13 October 1999.

### **CLASSIFICATION OF "ROUGHER HEADED LUMBER"**

(Item VIII.22 on Agenda)

Reference document :

NC0140E1 (HSC/24)

#### **I. BACKGROUND**

1. Following the publication of Doc. NC0140E1, the Secretariat received on 1 October 1999 a Note from the United States Customs Administration concerning the classification of "rougher headed 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, but would like to offer a clarification concerning its own remarks in Doc. NC0140E1.
3. The Secretariat has noticed, that the wording of the second sentence of paragraph 5 of Doc. NC0140E1 might be confusing when read in conjunction with paragraph 6 of Doc. NC0141E1. The text concerned reads as follows : "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." Paragraph 6 of Doc. NC0141E1, which deals with the classification of so called "notched lumber", contains the same language, but in that case the Secretariat concluded that "notching" did render the lumber as recognizable for construction.
4. The Secretariat would like to clarify the fact that the reference to "notching" in paragraph 5 of Doc. NC0140E1 was taken from the description provided in the box on the first page of that document (i.e., ". . .lumber that has been run through a planing/milling type machine fitted with notched knives . . ."). On reflection, the Secretariat feels that, when reading paragraph 5 of Doc. NC0140E1 in conjunction with paragraph 6 of Doc. NC0141E1, the wording used may be confusing. It, therefore, suggests that the second sentence of paragraph 5 to Doc. NC0140E1 should read as follows : "The Secretariat considers that the mere texturing of the surface of the lumber (on one or more faces) does not render it as recognizable for the construction of buildings." (amendment underlined).

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III. CONCLUSION

5. 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 rougher headed lumber, and the clarification of the Secretariat set out in paragraphs 3 and 4 above.

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## U.S. Note on the Classification of Certain Rougher Headed Lumber

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

### *Description of the Merchandise*

3. The merchandise before the Committee is board lumber which is called "rougher headed lumber." Rougher headed lumber is lumber that has been surface worked by means of a planing machine fitted with "broken" or notched knives to impart a textured surface similar to the texture of rough sawn or split wood. It is a rectangular piece of solid wood accurately sized by the planing and is produced in thicknesses of approximately  $\frac{3}{4}$  inch to  $1\frac{1}{2}$  inches, in widths from 2 inches to 12 inches and is cut to lengths up to 18 feet. It may be painted or primed on all sides.

### *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." (Emphasis added.) The heading text specifically permits planing. Planing is a process by which sawn lumber is brought to dimensional standard and texture. While the Canadian Administration argues that planing is associated with a smooth finish, even they do not contend that the subject lumber is not planed. The heading does not impose a restrictive meaning on the term "planed."
5. The Explanatory Notes to heading 44.07 indicate that its terminology would be read without implied restrictions. The EN 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). (Emphasis added.)

The heading also excludes :

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

6. Planed sawn wood is classifiable in heading 44.07. The text of heading 44.07 specifically provides for sawn wood whether or not planed. The Canadian Administration proposes that heading 44.07 permits only one type of planed sawn wood. However, since the process is admitted to be "planing," it is inappropriate to imply a restriction on the unrestrictive terminology, i.e., "whether or not planed." The EN do not support implying such restrictions because the heading covers "all" wood sawn lengthwise, subject to a "few" exceptions in other headings of the Chapter, and a surface can be "better" without necessarily being smooth.
7. The rougher headed lumber under consideration is a standard piece of board lumber that has been sawn lengthwise and planed to specific dimensions and texture with a "broken knife" planer.
8. The Canadian Administration has previously indicated that the heading text is not exhaustive of the types of processes that may be performed on sawn wood of heading 44.07. For example, Canada would agree that heading 44.07 permits numerous unlisted processes such as treating, easing, precision end trimming, kiln drying, priming, painting, preserving, staining or varnishing. These processes are not necessary to produce lumber. More importantly, these processes do not render sawn wood so as to be classifiable as builder's carpentry or joinery.
9. It is at least anomalous that the Canadian Administration now wants the Committee to conclude that the term "planing" is a term that applies only to planing flat surfaces with a smooth knife planer. Planing is a process which imparts dimensional tolerances and surface texture to sawn wood. Heading 44.07 is not restricted to only that planing which imparts a smooth texture to sawn wood. It is inconsistent to narrow the meaning of a process that is actually named in the heading.
10. As planed sawn wood or lumber, the rougher headed lumber under consideration meets the express terms of heading 44.07.

#### Heading 44.18

11. The Canadian Administration argues that rougher headed lumber should be classified in heading 44.18. Heading 44.18 provides for "Builders' joinery and carpentry of wood, including cellular wood panels, assembled parquet panels, shingles and shakes."<sup>1</sup>
12. The Explanatory Notes to heading 44.18 state, in pertinent part on page 686, 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**

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<sup>1</sup> 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.

**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 rougher headed 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 recognizable as an unassembled piece prepared for assembly (as with a joint such as a tenon, mortise or dovetail). The products described in heading 44.18 have all 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 board 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 prepared for assembly. Rather, rougher headed lumber retains the essential character of sawn wood that has been planed. It is not identifiable as any particular article of builders’ carpentry, such as a fitting, beam, rafter, roof strut, etc.
14. The Canadian Administration suggests that rougher headed lumber should be considered analogous to the shingles or shakes listed in the legal text to heading 44.18, and thus should be classified in heading 44.18 on that basis. This analogy is inappropriate. On the one hand, rougher headed lumber is a sawn wood that has been planed and, therefore, falls squarely within the text of heading 44.07. On the other hand, shakes and shingles are specifically named in heading 44.18 to make it clear that the drafters intended for these specific products to fall in that heading.
15. A careful review of the Explanatory Notes to heading 44.18 also shows that the analogy between rougher headed lumber and shingle and shakes is not at all apt. The Explanatory Notes at page 686 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.
16. As indicated above, the shingles of heading 44.18 are products that are specially sawn and further shaped for a particular function. These products are specified in the terms of heading 44.18.
17. By contrast, the rougher headed lumber under consideration is simply sawn wood that has been planed by means of a “broken” or notched knife. As discussed above, rougher headed lumber remains board lumber and is used as such. It falls within the express terms of heading 44.07 as planed sawn wood. Furthermore, it is neither specified in heading 44.18 nor, as we have already noted, is it described in the Explanatory Notes to heading 44.18. Accordingly, the attempted analogy between “shingles or shakes” and rougher headed lumber is unsupportable and inapt.
18. The Canadian Administration also proposes that rougher headed lumber should be classified in heading 44.18 by the Committee on the basis of its conclusion that the rougher

headed lumber is intended to be used in the construction of buildings. Of course, both smooth planed board lumber and rough-cut board lumber of the same dimensions are also intended to be used in the construction of buildings. This use cannot be determinative, lest all lumber be shifted to heading 44.18 on the basis of this false syllogism. As this Committee has noted numerous times in the past, classification by use is generally inconsistent with the language and intent of the Harmonized System.

*Conclusion*

19. Rougher headed lumber falls within the terms of heading 44.07. It is sawn wood that has been planed. This heading expressing provides for sawn wood “whether or not planed.” Neither the heading text nor the Explanatory Notes preclude the use of different types of knives in a planing machine.
  20. Rougher headed lumber does not satisfy the terms of heading 44.18. It is not a specific product known as either builders’ carpentry or joinery. It is not a recognizable assembly or further worked in some manner relevant to assembly. It is not otherwise specified in heading 44.18. The Explanatory Notes to heading 44.18 do not describe this product.
  21. In view of the above, the rougher headed lumber at issue is classified in heading 44.07 by application of General Interpretative Rule 1.
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