Customs quotas, Canadian wood

In a move strongly championed by the domestic industry, the U.S. Customs Service published two notices on June 9 to the effect that it is revoking six New York rulings addressing the tariff classification of certain solid stud-grade wooden boards and other notched lumber, as well as certain rougher header lumber, all imported from Canada.

Such items are normally classified within Chapter 44 of the Harmonized Tariff Schedule of the United States, which covers wood and articles of wood, in addition to other materials.

Merchandise within this chapter is generally classified according to its level of processing. Less-treated wood appears earlier in the chapter while wood subject to more advanced processing falls farther toward the end.

In the rulings at issue, the subject merchandise was originally classified within Heading 4418, HTS, which provides for, among other items, builders' joinery and carpentry of wood, duty-free from Canada.

Customs initially determined that as notch studs and rougher header lumber were used for structural purposes (i.e., for framing houses), they were properly classifiable within Heading 4418, HTS. This classification appeared to comport with the relevant definitions of both "joinery" and "carpentry." These terms have been interpreted to mean "builders' fittings such as doors and windows," and "woodwork for structural purposes," respectively.

Notched studs demoted under new classification

However, Customs has now determined that notched studs or planed wood boards do not qualify as builders' joinery and carpentry of wood under Heading 4418, HTS. Customs' current view is that the instant merchandise is more properly classifiable within subheading 4407.10.00, HTSUS, the provision for wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed, of a thickness exceeding 6 mm, coniferous, duty-free.

This position is based on the assumption that the notching or planing of the instant merchandise is not significant enough to change their classification from relatively unprocessed wood to "joinery and carpentry of wood."

Customs even noted that unnotched articles, like notched articles, are similarly used for the purpose of framing houses. Moreover, Customs determined that the notched studs at issue do not serve a structural purpose in conformity with articles normally classified within Heading 4418, HTS.

With regard to both notched studs and rougher header lumber, it determined that an article classifiable within Heading 4418, HTS, must be in the form of an assembled good or have a form (such as dovetails or other similar joints for assembly) which qualifies it as a recognizable piece.

As the merchandise at issue does not have such characteristics, Customs concluded that it was more properly classifiable in a provision for minimally processed wood rather than wood subject to advanced processing.

The significance of this change is that currently quota-free imports from Canada of notched studs and rougher header siding will now be subject to quota for softwood lumber which Canada is permitted to export into the United States under the five-year Softwood Lumber Agreement signed in 1996.

After reaching a limit of 14.7 billion board feet per year, exports above this level will be subject to significant graduated fees.

In response to a Notice of Proposed Revocation issued on Feb. 3, regarding notched studs, Customs received 565 postcards relating generally to lumber products as well as 60 comments relating to the subject tariff classification issues.

Various commentators attempted to distinguish their grades of notched studs from those at issue (e.g., studs which feature notches on the face of the board to accommodate an additional piece of lumber, which when assembled together produce another good, would arguably qualify for the distinction set forth in the proposed revocation).

However, Customs cautioned that all items of this nature are subject to ongoing review and that those importers who believe that their merchandise bears a distinction should submit a request for a binding ruling detailing this point.

Also, in response to a Notice of Proposed Revocation issued on March 10 regarding rougher header lumber, Customs received 565 postcards related to general lumber products and 204 comments addressing substantive issues.

Ruling, and warning, intended to cover all variations

Customs alerted the public that the recent Notices of Revocation are intended to cover any rulings on this issue whether or not individually highlighted. As such, Customs is similarly revoking any treatment previously accorded (i.e., in a ruling letter, internal advice memorandum, protest, etc.) to essentially identical transactions.

In addition, it is Customs' position that any importer engaged in transactions of the nature described in this decision, or who relies on a ruling covering similar merchandise (not identified in the Revocation Notice), may not be exercising reasonable care. Such a finding could result in penalties assessed by the Customs Service.

Whether Customs' reversal of years of solid administrative precedent on this classification issue has merit is clearly debatable.

Heading 4407, HTS, and the accompanying Explanatory Notes, specifically describe various processes to which lumber may be subjected (e.g., finger-jointing), but notched studs or rougher header lumber are not discussed, possibly indicating that items of this nature are not properly classifiable therein.

Moreover, in fact, they very well may be considered carpentry of Heading 4418, HTS, because they are intended for a particular function in building construction.

On the other hand, Customs' position is certainly viable. The wood at issue appears to comport with the description in Heading 4407, HTS, and the Explanatory Notes clearly state that with certain exceptions, "this heading covers all wood and timber, of any length but of a thickness exceeding 6 mm."

In addition, Customs has a valid argument that notching or planing lumber is not shaping, assembling or joining it for building purposes within the definitions of "jointing" and "carpentry."

While the correct classification of this merchandise remains unclear, one thing is almost certain: This issue appears ripe for litigation.

If the interest displayed to date by both the domestic U.S. lumber industry and its adversary, the Canadian exporters and U.S. importers of the lumber at issue, is any indication, this matter is far from resolved.

Stay tuned and, depending upon which side you are on, knock wood.

Customs Update is a weekly column examining critical aspects of the relationship between customs agencies and importers. This column was prepared by Steven S. Weiser and Ami L. Kaplan, partners and associate, respectively, in the international law firm of Graham & James LLP, N.Y., and reflects the opinion of the writer. Please address any questions to Customs Update, Trade Desk, The Journal of Commerce, Two World Trade Center, Suite 2750, New York, NY 10048.