international taxation

Customs & Trade

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Classification Quandaries

Wood That "Would" vs. Wood That "Could," and "Oil and Water" or "Oil or Water"?

An inescapable point revisited several times in this column is that there are three key elements of the international trading system, the application of which allows customs authorities to monitor, control, and, ultimately, levy duties on goods crossing their borders. In this column's eighth year, these are the familiar elements and their underlying questions: (1) tariff classification—what is it?; (2) customs valuation—how much is this article worth?; and (3) origin—where is this coming from?[1]

No matter how many times we may want to depart from them, or how many sophisticated programs come into play, we always come back to these three elements. A mastery of these is essential before one can hope to apply some of the more nuanced exercises, such as an application of a tariff preference or the benefits of a free trade agreement at entry.

Although my personal preference is for the challenges raised by customs valuation, probably the single most important of the three is tariff classification, the application of which is central to so many customs and trade programs. For example, the requirement of filing a notice of intended export (Electronic Export Information) (EEI) with the Census Bureau via the Automated Export System (AES) is triggered by the daily physical movement of $2,500, per the Harmonized Tariff Schedule of the United States (HTSUS).[2] In short, knowledge of the tariff classification of the imported or exported goods is crucial to being compliant, as well as to being able to take advantage of planning opportunities.

One way to approach tariff classification is with the knowledge that it is all about lines being drawn, and that a product may cross from one tariff heading to another, whether or not the importer or the seller is aware of the implications of the presence or absence of certain parts, or the dedication to a specific use that speaks to the degree of finishing of the imported article.

Classification of Lumber

A useful example of that last point and of the innate connection between tariff classification and trade remedy laws in general is the recent Court of International Trade decision in *Millenium* [sic].[3] In this first case to be decided in 2013, the government successfully moved for summary judgment on its liquidated damage claim of over $1.8 million. That claim arose from the importer's breach of its bond obligation, specifically the need to obtain a valid export permit to cover the export of lumber products that the government argued were subject to the Softwood Lumber Agreement (SLA), which was a bilateral agreement that the United States and Canada signed to resolve disagreements in a countervailing duty case based on subsidies that Canada provided on softwood lumber.

What illustrates the point is that certain lumber products fall under the terms of the SLA while others do not. The deciding factor is the tariff classification of the product. The importer in *Millenium* had imported the goods, described as "angle-cut softwood lumber" under heading 4418, HTSUS, which covers "[b]uilders' joinery and carpentry of wood." The government reclassified the imported articles under heading 4407, HTSUS, which covers "[w]ood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger-

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