

DEPARTMENT OF HOMELAND SECURITY**U.S. Customs and Border Protection****DEPARTMENT OF THE TREASURY****19 CFR Parts 12 and 163**

[CBP Dec. 10–27; USCBP 2008–0052]

RIN 1515–AD62 (Formerly RIN 1505–AB98)

Entry Requirements for Certain Softwood Lumber Products Exported From Any Country Into the United States

AGENCIES: U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule the interim amendments to title 19 of the Code of Federal Regulations (19 CFR) that prescribe special entry and documentation requirements applicable to certain softwood lumber and softwood lumber products exported from any country into the United States. This final rule implements Title VIII (“Softwood Lumber Act of 2008”) of the Tariff Act of 1930, as added by section 3301 of Title III, Subtitle D, of the Food, Conservation, and Energy Act of 2008, which requires the President to establish and maintain an importer declaration program with respect to the importation of certain softwood lumber and softwood lumber products and prescribes special entry requirements whereby importers must submit the export price, estimated export charge, if any, and an importer declaration with the entry summary. The Act also established new recordkeeping requirements applicable to certain imports of softwood lumber home packages and kits that are subject to declaration requirements, but that are not subject to the softwood lumber importer declaration program of section 803 of the Act.

DATES: *Effective Date:* August 26, 2010.

FOR FURTHER INFORMATION CONTACT: Renee D. Chovanec, Chief, International Coordination, Trade Agreements and Planning Division, Office of International Trade, Tel: (202) 863–6384.

SUPPLEMENTARY INFORMATION:**Background**

On August 25, 2008, CBP published in the *Federal Register* (73 FR 49934), as Customs and Border Protection Decision (CBP Dec.) 08–32, interim regulations prescribing special entry

and documentation requirements applicable to certain softwood lumber and softwood lumber products exported from any country into the United States. These interim regulations, set forth in new § 12.142 of title 19 of the Code of Federal Regulations (19 CFR 12.142), implemented the terms of Title VIII (Softwood Lumber Act of 2008 or “the Act”) of the Tariff Act of 1930, as added by section 3301 of Title III, Subtitle D, of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246, enacted June 18, 2008). The Act required the President to establish and maintain an importer declaration program with respect to the importation of certain softwood lumber and softwood lumber products and prescribe special entry requirements whereby importers must provide the export price, estimated export charge, if any, and an importer declaration with the entry summary documentation. The Act also imposed new recordkeeping requirements applicable to certain imports of softwood lumber home packages and kits.

CBP solicited public comment on the interim rule.

Discussion of Comments

Five commenters responded to the solicitation of comments in CBP Dec. 08–32, and CBP considered all comments that were timely submitted. Several of the commenters raised numerous issues in each of their submissions and these issues are addressed individually in this document. A description of the comments received, together with CBP’s analyses, is set forth below.

Comment

One commenter notes that while it considers the additional reporting requirements imposed on softwood lumber imports by the Act unnecessary, CBP has nevertheless chosen the best method for collecting the required data. The commenter further suggests that the additional reporting requirements will impose further collection and reporting burdens on importers that will translate into additional costs that importers that will pass down to consumers.

CBP Response

Pursuant to the terms of the Act, CBP is required to collect the information described in CBP Dec. 08–32. While CBP is cognizant of the additional reporting burden the new softwood lumber entry requirements place on the importer, the agency has devised a method of data collection that minimizes the associated costs and

burdens to importers of softwood lumber and softwood lumber products.

Comment

One commenter suggests that CBP should explain in the final rule that the declaration language set forth in § 12.142(c)(3)(iii)(B)(3), which states that “the exporter has paid, or committed to pay, all export charges due,” includes export charges that may be imposed retroactively after initial export charges are collected.

CBP Response

Section 12.142(c)(3)(iii)(B)(3) of the interim rule requires the importer to declare, to his best knowledge and belief, that the exporter has paid or committed to pay “all export charges due.” It is CBP’s view that as this language includes export charges imposed retroactively after initial export charges are collected, the commenter’s suggested language is unnecessary.

Comment

One commenter submits that CBP Dec. 08–32 properly reflects the requirements of the Act and should be adopted as final without change.

CBP Response

CBP agrees that CBP Dec. 08–32 properly reflects the requirements of the Act.

Comment

One commenter recommends that the final rule should retain the condition set forth in CBP Dec. 08–32 that an importer declaration is required for each shipment of covered merchandise and that blanket declarations should not be accepted.

CBP Response

CBP concurs and will continue to require a declaration on each entry summary line item in the final rule.

Comment

One commenter notes that the 2008 Harmonized Tariff Schedule of the United States (HTSUS) subheading numbers set forth in section 804(a) of the Act, which describe products covered by the Act, may change over time. The commenter states that as section 804(d) of the Act addresses this issue by providing that “the descriptions of the covered articles, rather than the HTS subheading number, control whether a product is covered by the importer declaration program,” § 12.142(b) should be amended accordingly.

CBP Response

CBP is of the view that § 12.142(b) accurately reflects the scope of the statutory language and does not require further clarification. Section 804(d) of the Act provides, “[F]or purposes of determining if a product is covered by the importer declaration program, the President shall be guided by the article descriptions provided in this section.” Section 804(a) of the Act describes the products covered by the softwood lumber importer declaration program by identifying the applicable HTSUS tariff subheading numbers *and* accompanying article descriptions. The commenter’s concern that potential changes to the 2008 HTSUS subheadings identified in section 804(a) of the Act may have the effect of altering the scope of coverage is unwarranted inasmuch as section 804(d) of the Act ensures that a product’s description will dictate whether it is covered by the Act. The fact that an article, otherwise described in section 804(a) of the Act, may be subsequently classified in a HTSUS subheading that is different from the tariff provisions originally listed in the statute will not preclude that article from being covered by the Act.

Comment

One commenter is of the opinion that a conflict exists between the manner by which the export price must be reported on the entry summary pursuant to the Softwood Lumber Act of 2008 and the U.S.-Canada Softwood Lumber Agreement (SLA) of 2006. Specifically, the commenter notes that pursuant to the Softwood Lumber Agreement of 2006 the Canadian-issued export permit allows for an aggregated export price. Conversely, pursuant to section 803(b)(1) of the Softwood Lumber Act of 2008, the export price reported on the entry summary may not be aggregated and must be listed for each line with a different line required for each consignee.

CBP Response

CBP acknowledges that Canadian-issued export permits often present the export price as an aggregate figure. Presenting this data as an aggregate is not prohibited by the terms of the U.S.-Canada Softwood Lumber Agreement of 2006; however, it is prohibited under the terms of the Softwood Lumber Act of 2008, which requires that the export price reported on the entry summary be listed for each line with a different line required for each consignee. To reconcile this situation, CBP advises that in situations where the export price on a Canadian-issued export permit is

aggregated, importers should allocate the export price among the lines on the entry summary. For example, if the export price listed on the export permit is \$1000 and there are two line items on the entry summary, divide the \$1000 to reflect each line item’s respective percentage of the entered value. If seventy-five percent (75%) of the entered value is reported on one line item and twenty-five percent (25%) on the other, then list \$750 as the export price on the first line item and \$250 as the export price on the other line item. The export price listed on both line items on the entry summary should add up to the export price on the one line item of the Canadian-issued export permit.

Comment

One commenter raises the concern that the reconciliation requirements set forth in the Act put into place a process that overlaps with the reconciliation process mandated under the U.S.-Canada Softwood Lumber Agreement of 2006 and that this could cause confusion or delay.

CBP Response

CBP does not view the data collection and reconciliation requirements mandated by the Softwood Lumber Act of 2008 to be in conflict with those required by the U.S.-Canada Softwood Lumber Agreement of 2006. CBP acknowledges that while some of the data required to be submitted by importers pursuant to the 2008 Act may also be collected by Canada pursuant to the 2006 Agreement, there is no duplication in that a shipper is not required to submit the same information to the same country more than once. The common data elements that are submitted to both the U.S. and Canada should be the same. Therefore data reconciliation as required under the Softwood Lumber Act of 2008 should not affect data reconciliations under the U.S.-Canada Softwood Lumber Agreement of 2006.

Comment

One commenter notes that the interim rule set forth in CBP Dec. 08–32 unnecessarily places an increased burden on importers. It also impacts small and medium-sized enterprises, including the U.S. housing industry, and is likely to have a trade dampening effect.

CBP Response

With regard to the commenter’s statement that the interim rule places an unnecessary burden on importers, CBP reiterates that the interim rule merely

implements the entry and recordkeeping requirements mandated by the Softwood Lumber Act of 2008. The interim rule does not impose any burdens on trade other than those explicitly required by law. Moreover, the prescribed method of data collection set forth in the regulation is intended to streamline the reporting process and minimize any administrative burden associated with reporting the required information. This process should help mitigate the administration burden for all enterprises, including small and medium-sized businesses.

Comment

One commenter requests that CBP identify the standard to be used in assessing civil penalties under the Softwood Lumber Act of 2008 by using the standard contained in 19 U.S.C. 1592 in a new 19 CFR 12.142(f).

CBP Response

CBP does not believe it is necessary to add this language to 19 CFR 12.142 as the standards for assessing civil and criminal penalties are clearly prescribed by section 808 of the Softwood Lumber Act of 2008.

Comment

One commenter states that CBP Dec. 08–32 does not specify which date should be used as the basis for the export price and export charge listed on the entry summary line. Without specifying the date required as the basis for the export price and export charge, different dates may be used which would create discrepancies between the export permit date and the entry summary data. The commenter suggests using the shipping date to be consistent with the U.S.-Canada Softwood Lumber Agreement of 2006.

CBP Response

CBP does not believe this change is necessary as importers of softwood lumber and softwood lumber products from Canada need only report the export price listed on the permit issued by the Government of Canada.

Comment

One commenter notes that CBP Dec. 08–32 does not reflect the fact that Canadian exporters are permitted to cap the export price at \$500 per thousand board feet when calculating the export charge. For this reason, the commenter submits that the export price on the entry summary will be inconsistent with that on the Canadian export permit when capped.

CBP Response

CBP does not believe this change is necessary as importers of softwood lumber and softwood lumber products only need to report the export price listed on the permit issued by the Government of Canada.

Comment

One commenter requests that CBP add language to the interim rule that provides that where an international agreement between a country that exports softwood lumber or softwood lumber products and the United States provides greater specificity regarding aspects of the Softwood Lumber Act of 2008, CBP will implement 19 CFR 12.142 in accordance with the more specific law to the extent that it does not conflict with the 2008 Act.

CBP Response

CBP is of the view that such language is unnecessary. CBP Dec. 08–32 implements the Softwood Lumber Act of 2008 in a manner that does not conflict with international softwood lumber agreements to which the U.S. is a signatory.

Comment

One commenter strongly supports the requirement for the presentation of the original paper Maritime Lumber Bureau Certificate of Origin, as prescribed in CBP Dec. 08–32. The commenter, however, urges CBP to exclude entirely softwood lumber imported from the Canadian Maritime provinces from the importer declaration program promulgated in 19 CFR 12.142.

CBP Response

The Softwood Lumber Act of 2008 requires CBP to collect the export price, export charge, if any, and importer declaration on all importations of covered softwood lumber and softwood lumber products. Accordingly, CBP is without authority to except softwood lumber imported from the Canadian Maritime provinces from the importer declaration program. CBP will continue to require the presentation of the original paper Maritime Lumber Bureau Certificate of Origin.

Conclusion

After review of the comments and further consideration, CBP has decided to adopt as final the interim rule published in the **Federal Register** (73 FR 49934) on August 25, 2008, as CBP Dec. 08–32.

Inapplicability of Notice and Delayed Effective Date Requirements

CBP has determined, pursuant to the provisions of 5 U.S.C. 553(b)(B) and (d)(3), that prior public notice and comment procedures on this regulation are unnecessary and contrary to the public interest. These regulations align the CBP regulations to reflect the terms of Title VIII of the Tariff Act of 1930, as added by section 3301 of Title III, Subtitle D, of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246, enacted June 18, 2008), which went into effect August 18, 2008. The regulatory amendments inform the public of the special entry and documentation requirements applicable to certain softwood lumber and softwood lumber products exported from any country into the United States. The regulations are currently in effect as an interim rule and this final rule does not change the interim rule. For these reasons, pursuant to the provisions of 5 U.S.C. 553(d)(3), CBP finds that there is good cause for dispensing with a delayed effective date.

Regulatory Flexibility Act and Executive Order 12866

CBP Dec. 08–32 was issued as an interim rule rather than a notice of proposed rulemaking because CBP had determined there was good cause. The amendments were necessary to inform the public on how to comply with statutory requirements. Because no notice of proposed rulemaking was required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*) do not apply. Further, these amendments do not meet the criteria for a “significant regulatory action” as specified in E.O. 12866.

Paperwork Reduction Act

The collections of information in this document are contained in §§ 12.142(c) and (d) (19 CFR 12.142(c) and (d)). This information is used by CBP to fulfill its information collection obligations under Title VIII of the Tariff Act of 1930, as added by section 3301 within Title III, Subtitle D, of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246), whereby importers of certain softwood lumber and softwood lumber products are required to submit the export price, estimated export charge, if any, and an importer declaration with the entry summary information or, where applicable, to submit additional documentation required for home packages and kits. The likely respondents are business organizations including importers and brokers.

The collection of information associated with the entry summary documentation (CBP Form 7501) was previously approved by the Office of Management and Budget under control number 1651–0052. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), CBP has submitted to OMB for review an adjustment to the information provided to OMB for the previously approved OMB control number to account for the changes in this rule. The estimated annual burden associated with the collection of information in this final rule is now estimated to be 1,269 hours per respondent. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Signing Authority

This document is being issued in accordance with 19 CFR 0.1(a)(1).

List of Subjects

19 CFR Part 12

Bonds, Customs duties and inspection, Entry of merchandise, Imports, Prohibited merchandise, Reporting and recordkeeping requirements, Restricted merchandise.

19 CFR Part 163

Customs duties and inspection, Reporting and recordkeeping requirements.

Amendment to the CBP Regulations

■ Accordingly, the interim rule amending Parts 12 and 163 of the CBP Regulations (19 CFR Parts 12 and 163), which was published at 73 FR 49934 on August 25, 2008, is adopted as a final rule.

Alan Bersin,

Commissioner, U.S. Customs and Border Protection.

Approved: August 23, 2010.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

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