

## INTERNATIONAL TRADE ALERT

### FARM BILL IMPOSES BURDENSOME CUSTOMS REQUIREMENTS ON U.S. IMPORTERS OF SOFTWOOD LUMBER



The 2008 farm bill conference report, passed by veto-proof margins in the House of Representatives and Senate this week, would amend U.S. customs laws to add new reporting requirements on U.S. importers of softwood lumber products. These amendments are titled the “Softwood Lumber Act of 2008.” While the Softwood Lumber Act of 2008 defines softwood lumber as covering the same range of products as the U.S.-Canada Softwood Lumber Agreement, which entered into effect on October 12, 2006, the reporting requirements would apply to all softwood lumber importers, regardless of the country of origin of the softwood lumber. If they become law, which now appears likely, these new reporting requirements will be burdensome, and the failure to comply with them may result in customs audits and significant penalties. Any importer of softwood lumber should be prepared to comply with these provisions and, if necessary, submit comments to U.S. Customs and Border Protection (CBP), so that the law is carried out in as facilitative a manner as possible. The following is a brief synopsis of this Act.

Section 803(b) of the Softwood Lumber Act of 2008 specifies two types of information that U.S. importers of covered softwood lumber will be required to supply to CBP. First, importers will be required to provide the “export price” for each shipment as defined in Section 802(5). The definition of “export price,” like the product coverage of the bill, is drawn from the U.S.-Canada Softwood Lumber Agreement and differentiates between lumber that undergoes only primary processing before exportation and lumber that undergoes remanufacturing prior to exportation. Second, importers will be required to identify the estimated “export charge,” if any, payable on exported softwood lumber. This concept is also derived from the U.S.-Canada Softwood Lumber Agreement, under which Canadian exporters must pay export charges to the Canadian government at rates that are linked to specified prevailing softwood lumber market index prices.

Under Section 803(c), importers will also be required to declare, among other things, that they have made the “appropriate inquiry” to the exporter as to the applicable export price and export charge. The bill does not explain how the new standard of “appropriate inquiry” relates to the existing statutory obligation, under the Customs Modernization Act of 1993, for importers to exercise “reasonable care” in transacting business with CBP. Nor does the bill distinguish

between U.S. importers related to foreign exporters and those that are unrelated — and who would be expected to face greater difficulty in obtaining the required export information.

The Softwood Lumber Act of 2008 also, at Section 807, requires CBP to “periodically verify” the declarations provided under Section 803(c) and authorizes audits of such documents as CBP determines are necessary to confirm the accuracy of the submitted declarations. Further, Section 808 establishes a new and additional class of civil penalties applicable to importers who commit “knowing” violations of the Softwood Lumber Act of 2008. Each such violation is subject to fines that may not exceed \$10,000 per violation, which, on an entry-by-entry basis, could be significant. Section 808(c) also clarifies the applicability of existing criminal penalty provisions for fraudulent violations of these new requirements.

If the farm bill becomes law, these new reporting requirements will enter into effect 60 days later. During this 60-day period, it is anticipated that CBP will conduct outreach — including possible notice and comment rulemaking. Softwood lumber importers that are affected by these new requirements will, if CBP conducts the outreach and rulemaking, have an opportunity to submit comments, so that CBP can consider possible ways to implement the law in as trade-facilitative manner as possible.

## CONTACT INFORMATION

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