

Excerpt from the Food, Conservation, and Energy Act of 2008 (Enrolled as Agreed to or Passed by Both House and Senate), H.R. 6124:

Subtitle D--Softwood Lumber

SEC. 3301. SOFTWOOD LUMBER.

(a) In General- The Tariff Act of 1930 (19 U.S.C. 1202 et seq.) is amended by adding at the end the following new title:

^TITLE VIII--SOFTWOOD LUMBER

^SEC. 801. SHORT TITLE; TABLE OF CONTENTS.

^(a) Short Title- This title may be cited as the 'Softwood Lumber Act of 2008'.

^(b) Table of Contents- The table of contents for this title is as follows:

^TITLE VIII--SOFTWOOD LUMBER

^Sec. 801. Short title; table of contents.

^Sec. 802. Definitions.

^Sec. 803. Establishment of softwood lumber importer declaration program.

^Sec. 804. Scope of softwood lumber importer declaration program.

^Sec. 805. Export charge determination and publication.

^Sec. 806. Reconciliation.

^Sec. 807. Verification.

^Sec. 808. Penalties.

^Sec. 809. Reports.

^SEC. 802. DEFINITIONS.

^In this title:

^(1) APPROPRIATE CONGRESSIONAL COMMITTEES- The term 'appropriate congressional committees' means the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

^(2) COUNTRY OF EXPORT- The term 'country of export' means the country (including any political subdivision of the country) from which softwood lumber or a softwood lumber product is exported before entering the United States.

^(3) CUSTOMS LAWS OF THE UNITED STATES- The term 'customs laws of the United States' means any law or regulation enforced or administered by U.S. Customs and Border Protection.

^(4) EXPORT CHARGES- The term 'export charges' means any tax, charge, or other fee collected by the country from which softwood lumber or a softwood lumber product, described in section 804(a), is exported pursuant to an international agreement entered into by that country and the United States.

^(5) EXPORT PRICE-

`(A) IN GENERAL- The term `export price' means one of the following:

`(i) In the case of softwood lumber or a softwood lumber product that has undergone only primary processing, the value that would be determined F.O.B. at the facility where the product underwent the last primary processing before export.

`(ii)(I) In the case of softwood lumber or a softwood lumber product described in subclause (II), the value that would be determined F.O.B. at the facility where the lumber or product underwent the last primary processing.

`(II) Softwood lumber or a softwood lumber product described in this subclause is lumber or a product that underwent the last remanufacturing before export by a manufacturer who--

`(aa) does not hold tenure rights provided by the country of export;

`(bb) did not acquire standing timber directly from the country of export; and

`(cc) is not related to the person who holds tenure rights or acquired standing timber directly from the country of export.

`(iii)(I) In the case of softwood lumber or a softwood lumber product described in subclause (II), the value that would be determined F.O.B. at the facility where the product underwent the last processing before export.

`(II) Softwood lumber or a softwood lumber product described in this subclause is lumber or a product that undergoes the last remanufacturing before export by a manufacturer who--

`(aa) holds tenure rights provided by the country of export;

`(bb) acquired standing timber directly from the country of export; or

`(cc) is related to a person who holds tenure rights or acquired standing timber directly from the country of export.

`(B) RELATED PERSONS- For purposes of this paragraph, a person is related to another person if--

`(i) the person bears a relationship to such other person described in section 152(a) of the Internal Revenue Code of 1986;

`(ii) the person bears a relationship to such other person described in section 267(b) of such Code, except that `5 percent' shall be substituted for `50 percent' each place it appears;

`(iii) the person and such other person are part of a controlled group of corporations, as that term is defined in section 1563(a) of such Code, except that `5 percent' shall be substituted for `80 percent' each place it appears;

`(iv) the person is an officer or director of such other person; or

`(v) the person is the employer of such other person.

`(C) TENURE RIGHTS- For purposes of this paragraph, the term 'tenure rights' means rights to harvest timber from public land granted by the country of export.

`(D) EXPORT PRICE WHERE F.O.B. VALUE CANNOT BE DETERMINED-

`(i) IN GENERAL- In the case of softwood lumber or a softwood lumber product described in clause (i), (ii), or (iii) of subparagraph (A) for which an F.O.B. value cannot be determined, the export price shall be the market price for the identical lumber or product sold in an arm's-length transaction in the country of export at approximately the same time as the exported lumber or product. The market price shall be determined in the following order of preference:

`(I) The market price for the lumber or a product sold at substantially the same level of trade as the exported lumber or product but in different quantities.

`(II) The market price for the lumber or a product sold at a different level of trade than the exported lumber or product but in similar quantities.

`(III) The market price for the lumber or a product sold at a different level of trade than the exported lumber or product and in different quantities.

`(ii) LEVEL OF TRADE- For purposes of clause (i), 'level of trade' shall be determined in the same manner as provided under section 351.412(c) of title 19, Code of Federal Regulations (as in effect on January 1, 2008).

`(6) F.O.B- The term 'F.O.B.' means a value consisting of all charges payable by a purchaser, including those charges incurred in the placement of merchandise on board of a conveyance for shipment, but does not include the actual shipping charges or any applicable export charges.

`(7) HTS- The term 'HTS' means the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202) (as in effect on January 1, 2008).

`(8) PERSON- The term 'person' includes any individual, partnership, corporation, association, organization, business trust, government entity, or other entity subject to the jurisdiction of the United States.

`(9) UNITED STATES- The term 'United States' means the customs territory of the United States, as defined in General Note 2 of the HTS.

`SEC. 803. ESTABLISHMENT OF SOFTWOOD LUMBER IMPORTER DECLARATION PROGRAM.

`(a) Establishment of Program-

`(1) IN GENERAL- The President shall establish and maintain an importer declaration program with respect to the importation of softwood lumber and softwood lumber products described in section 804(a). The importer declaration program shall require importers of softwood lumber and softwood lumber

products described in section 804(a) to provide the information required under subsection (b) and declare the information required by subsection (c), and require that such information accompany the entry summary documentation.

`(2) ELECTRONIC RECORD- The President shall establish an electronic record that includes the importer information required under subsection (b) and the declarations required under subsection (c).

`(b) Required Information- The President shall require the following information to be submitted by any person seeking to import softwood lumber or softwood lumber products described in section 804(a):

`(1) The export price for each shipment of softwood lumber or softwood lumber products.

`(2) The estimated export charge, if any, applicable to each shipment of softwood lumber or softwood lumber products as calculated by applying the percentage determined and published by the Under Secretary for International Trade of the Department of Commerce pursuant to section 805 to the export price provided in subsection (b)(1).

`(c) Importer Declarations- Pursuant to procedures prescribed by the President, any person seeking to import softwood lumber or softwood lumber products described in section 804(a) shall declare that--

`(1) the person has made appropriate inquiry, including seeking appropriate documentation from the exporter and consulting the determinations published by the Under Secretary for International Trade of the Department of Commerce pursuant to section 805(b); and

`(2) to the best of the person's knowledge and belief--

`(A) the export price provided pursuant to subsection (b)(1) is determined in accordance with the definition provided in section 802(5);

`(B) the export price provided pursuant to subsection (b)(1) is consistent with the export price provided on the export permit, if any, granted by the country of export; and

`(C) the exporter has paid, or committed to pay, all export charges due--

`(i) in accordance with the volume, export price, and export charge rate or rates, if any, as calculated under an international agreement entered into by the country of export and the United States; and

`(ii) consistent with the export charge determinations published by the Under Secretary for International Trade pursuant to section 805(b).

`SEC. 804. SCOPE OF SOFTWOOD LUMBER IMPORTER DECLARATION PROGRAM.

`(a) Products Included in Program- The following products shall be subject to the importer declaration program established under section 803:

`(1) IN GENERAL- All softwood lumber and softwood lumber products classified under subheading 4407.10.00, 4409.10.10, 4409.10.20, or 4409.10.90 of the HTS, including the following softwood lumber, flooring, and siding:

- `(A) Coniferous wood, sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded, or finger-jointed, of a thickness exceeding 6 millimeters.
- `(B) Coniferous wood siding (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded, or the like) along any of its edges or faces, whether or not planed, sanded, or finger-jointed.
- `(C) Other coniferous wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded, or the like) along any of its edges or faces (other than wood moldings and wood dowel rods) whether or not planed, sanded, or finger-jointed.
- `(D) Coniferous wood flooring (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded, or the like) along any of its edges or faces, whether or not planed, sanded, or finger-jointed.
- `(E) Coniferous drilled and notched lumber and angle cut lumber.
- `(2) PRODUCTS CONTINUALLY SHAPED- Any product classified under subheading 4409.10.05 of the HTS that is continually shaped along its end or side edges.
- `(3) OTHER LUMBER PRODUCTS- Except as otherwise provided in subsection (b) or (c), softwood lumber products that are stringers, radius-cut box-spring frame components, fence pickets, truss components, pallet components, and door and window frame parts classified under subheading 4418.90.46.95, 4421.90.70.40, or 4421.90.97.40 of the HTS.
- `(b) Products Excluded From Program- The following products shall be excluded from the importer declaration program established under section 803:
 - `(1) Trusses and truss kits, properly classified under subheading 4418.90 of the HTS.
 - `(2) I-joist beams.
 - `(3) Assembled box-spring frames.
 - `(4) Pallets and pallet kits, properly classified under subheading 4415.20 of HTS.
 - `(5) Garage doors.
 - `(6) Edge-glued wood, properly classified under subheading 4421.90.97.40 of the HTS.
 - `(7) Complete door frames.
 - `(8) Complete window frames.
 - `(9) Furniture.
 - `(10) Articles brought into the United States temporarily and for which an exemption from duty is claimed under subchapter XIII of chapter 98 of the HTS.
 - `(11) Household and personal effects.

`(c) Exceptions for Certain Products- The following softwood lumber products shall not be subject to the importer declaration program established under section 803:

`(1) STRINGERS- Stringers (pallet components used for runners), if the stringers--

`(A) have at least 2 notches on the side, positioned at equal distance from the center, to properly accommodate forklift blades; and

`(B) are properly classified under subheading 4421.90.97.40 of the HTS.

`(2) BOX-SPRING FRAME KITS-

`(A) IN GENERAL- Box-spring frame kits, if--

`(i) the kits contain--

`(I) 2 wooden side rails;

`(II) 2 wooden end (or top) rails; and

`(III) varying numbers of wooden slats; and

`(ii) the side rails and the end rails are radius-cut at both ends.

`(B) PACKAGING- Any kit described in subparagraph (A) shall be individually packaged, and contain the exact number of wooden components needed to make the box-spring frame described on the entry documents, with no further processing required. None of the components contained in the package may exceed 1 inch in actual thickness or 83 inches in length.

`(3) RADIUS-CUT BOX-SPRING FRAME COMPONENTS- Radius-cut box-spring frame components, not exceeding 1 inch in actual thickness or 83 inches in length, ready for assembly without further processing, if radius cuts are present on both ends of the boards and are substantial cuts so as to completely round 1 corner.

`(4) FENCE PICKETS- Fence pickets requiring no further processing and properly classified under subheading 4421.90.70 of the HTS, 1 inch or less in actual thickness, up to 8 inches wide, and 6 feet or less in length, and having finials or decorative cuttings that clearly identify them as fence pickets. In the case of dog-eared fence pickets, the corners of the boards shall be cut off so as to remove pieces of wood in the shape of isosceles right angle triangles with sides measuring 3/4 of an inch or more.

`(5) UNITED STATES-ORIGIN LUMBER- Lumber originating in the United States that is exported to another country for minor processing and imported into the United States if--

`(A) the processing occurring in another country is limited to kiln drying, planing to create smooth-to-size board, and sanding; and

`(B) the importer establishes to the satisfaction of U.S. Customs and Border Protection upon entry that the lumber originated in the United States.

`(6) SOFTWOOD LUMBER- Any softwood lumber or softwood lumber product that originated in the United States, if the importer, exporter, foreign processor, or original United States producer establishes to the satisfaction of U.S. Customs and Border Protection upon entry that the softwood lumber

entered and documented as originating in the United States was first produced in the United States.

`(7) HOME PACKAGES OR KITS-

`(A) IN GENERAL- Softwood lumber or softwood lumber products contained in a single family home package or kit, regardless of the classification under the HTS, if the importer declares that the following requirements have been met:

`(i) The package or kit constitutes a full package of the number of wooden pieces specified in the plan, design, or blueprint necessary to produce a home of at least 700 square feet produced to a specified plan, design, or blueprint.

`(ii) The package or kit contains--

`(I) all necessary internal and external doors and windows, nails, screws, glue, subfloor, sheathing, beams, posts, and connectors; and

`(II) if included in the purchase contract, the decking, trim, drywall, and roof shingles specified in the plan, design, or blueprint.

`(iii) Prior to importation, the package or kit is sold to a United States retailer that sells complete home packages or kits pursuant to a valid purchase contract referencing the particular home design, plan, or blueprint, and the contract is signed by a customer not affiliated with the importer.

`(iv) Softwood lumber products entered as part of the package or kit, whether in a single entry or multiple entries on multiple days, are to be used solely for the construction of the single family home specified by the home design, plan, or blueprint matching the U.S. Customs and Border Protection import entry.

`(B) ADDITIONAL DOCUMENTATION REQUIRED FOR HOME PACKAGES AND KITS- In the case of each entry of products described in clauses (i) through (iv) of subparagraph (A) the following documentation shall be retained by the importer and made available to U.S. Customs and Border Protection upon request:

`(i) A copy of the appropriate home design, plan, or blueprint matching the customs entry in the United States.

`(ii) A purchase contract from a retailer of home kits or packages signed by a customer not affiliated with the importer.

`(iii) A listing of all parts in the package or kit being entered into the United States that conforms to the home design, plan, or blueprint for which such parts are being imported.

`(iv) If a single contract involves multiple entries, an identification of all the items required to be listed under clause (iii) that are included in each individual shipment.

`(d) Products Covered- For 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.

SEC. 805. EXPORT CHARGE DETERMINATION AND PUBLICATION.

(a) Determination- The Under Secretary for International Trade of the Department of Commerce shall determine, on a monthly basis, any export charges (expressed as a percentage of export price) to be collected by a country of export from exporters of softwood lumber or softwood lumber products described in section 804(a) in order to ensure compliance with any international agreement entered into by that country and the United States.

(b) Publication- The Under Secretary for International Trade shall immediately publish any determination made under subsection (a) on the website of the International Trade Administration of the Department of Commerce, and in any other manner the Under Secretary considers appropriate.

SEC. 806. RECONCILIATION.

The Secretary of the Treasury shall conduct reconciliations to ensure the proper implementation and operation of international agreements entered into between a country of export of softwood lumber or softwood lumber products described in section 804(a) and the United States. The Secretary of Treasury shall reconcile the following:

(1) The export price declared by a United States importer pursuant to section 803(b)(1) with the export price reported to the United States by the country of export, if any.

(2) The export price declared by a United States importer pursuant to section 803(b)(1) with the revised export price reported to the United States by the country of export, if any.

SEC. 807. VERIFICATION.

(a) In General- The Secretary of Treasury shall periodically verify the declarations made by a United States importer pursuant to section 803(c), including by determining whether--

(1) the export price declared by a United States importer pursuant to section 803(b)(1) is the same as the export price provided on the export permit, if any, issued by the country of export; and

(2) the estimated export charge declared by a United States importer pursuant to section 803(b)(2) is consistent with the determination published by the Under Secretary for International Trade pursuant to section 805(b).

(b) Examination of Books and Records-

(1) IN GENERAL- Any record relating to the importer declaration program required under section 803 shall be treated as a record required to be maintained and produced under title V of this Act.

(2) EXAMINATION OF RECORDS- The Secretary of the Treasury is authorized to take such action, and examine such records, under section 509 of this Act, as the Secretary determines necessary to verify the declarations made pursuant to section 803(c) are true and accurate.

SEC. 808. PENALTIES.

(a) In General- It shall be unlawful for any person to import into the United States softwood lumber or softwood lumber products in knowing violation of this title.

(b) Civil Penalties- Any person who commits an unlawful act as set forth in subsection (a) shall be liable for a civil penalty not to exceed \$10,000 for each knowing violation.

`(c) Other Penalties- In addition to the penalties provided for in subsection (b), any violation of this title that violates any other customs law of the United States shall be subject to any applicable civil and criminal penalty, including seizure and forfeiture, that may be imposed under such custom law or title 18, United States Code, with respect to the importation of softwood lumber and softwood lumber products described in section 804(a).

`(d) Factors To Consider in Assessing Penalties- In determining the amount of civil penalties to be assessed under this section, consideration shall be given to any history of prior violations of this title by the person, the ability of the person to pay the penalty, the seriousness of the violation, and such other matters as fairness may require.

`(e) Notice- No penalty may be assessed under this section against a person for violating a provision of this title unless the person is given notice and opportunity to make statements, both oral and written, with respect to such violation.

`(f) Exception- Notwithstanding any other provision of this title, and without limitation, an importer shall not be found to have violated subsection 803(c) if--

`(1) the importer made an appropriate inquiry in accordance with section 803(c)(1) with respect to the declaration;

`(2) the importer produces records maintained pursuant to section 807(b) that substantiate the declaration; and

`(3) there is not substantial evidence indicating that the importer knew that the fact to which the importer made the declaration was false.

`SEC. 809. REPORTS.

`(a) Semiannual Reports- Not later than 180 days after the effective date of this title, and every 180 days thereafter, the President shall submit to the appropriate congressional committees a report--

`(1) describing the reconciliations conducted under section 806, and the verifications conducted under section 807;

`(2) identifying the manner in which the United States importers subject to reconciliations conducted under section 806 and verifications conducted under section 807 were chosen;

`(3) identifying any penalties imposed under section 808;

`(4) identifying any patterns of noncompliance with this title; and

`(5) identifying any problems or obstacles encountered in the implementation and enforcement of this title.

`(b) Subsidies Reports- Not later than 180 days after the date of the enactment of this title, and every 180 days thereafter, the Secretary of Commerce shall provide to the appropriate congressional committees a report on any subsidies on softwood lumber or softwood lumber products, including stumpage subsidies, provided by countries of export.

`(c) GAO Reports- The Comptroller General of the United States shall submit the following reports to the appropriate congressional committees:

`(1) Not later than 18 months after the date of the enactment of this title, a report on the effectiveness of the reconciliations conducted under section 806, and verifications conducted under section 807.

`(2) Not later than 12 months after the date of the enactment of this title, a report on whether countries that export softwood lumber or softwood lumber products to the United States are complying with any international agreements entered into by those countries and the United States.'

(b) Effective Date- The amendments made by this section shall take effect on the date that is 60 days after the date of the enactment of this Act.