

Billing Code:

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 362

Docket No.[ ]

RIN 0625-AA76

Canadian Softwood Lumber Import Licensing System

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Interim Final Rule

SUMMARY: The Department of Commerce (Commerce) publishes this interim final rule to implement a licensing system for imports of softwood lumber from Canada. This licensing system is intended to enable Commerce to monitor the imports of softwood lumber subject to the 2006 Softwood Lumber Agreement (SLA 2006 or Agreement).

DATES: This interim final rule is effective 45 days from publication of this notice. Comments on the softwood lumber import licensing system must be submitted on or before 5 p.m. e.s.t. XX, 2008.

Paperwork Reduction Act: Comments regarding the information collection requirements must be submitted to both Diana Hynek, Departmental Paperwork Officer, Office of the Chief Information Officer, Room 6625, Washington, DC 20230, and the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: ITA Desk Officer) on or before 5 p.m., e.s.t., XX, 2008.

ADDRESSES: Written comments should be sent to Daniel O'Brien, Special Assistant to the

Deputy Assistant Secretary, Import Administration, Room 1870, Department of Commerce, 14th and Constitution Ave., NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Daniel O'Brien (202) 482-1376; Scott McBride (202) 482-6292; or Quentin Baird (202) 482-0834.

SUPPLEMENTARY INFORMATION: On September 12, 2006, U.S. Trade Representative Susan C. Schwab and Canada's Minister for International Trade, David Emerson, signed the SLA 2006. The SLA 2006 settled the U.S.-Canada Softwood Lumber dispute which involved Commerce's countervailing and antidumping duty orders on Canadian lumber and numerous related pieces of litigation before U.S. courts, North American Free Trade Agreement panels and World Trade Organization dispute panels. The SLA 2006 is a complex agreement involving the application of export taxes or a combination of volume restraints and export taxes, collectively "Export Measures," on exports of softwood lumber from Canada to the United States.

An import license system is necessary for Commerce to monitor compliance with the terms of the SLA 2006. Information that is relevant to the provisions of the SLA 2006, but not otherwise collected by U.S. Customs and Border Protection (CBP) upon entry of merchandise subject to the SLA 2006 – particularly the date of shipment as defined by the SLA 2006, the export price, whether the export price was adjusted to account for the \$500/mbf (thousands of board feet) cap, the relevant exchange rate, and whether the merchandise was remanufactured -- is needed to better monitor compliance with the terms of the Agreement. By collecting this information, the United States will be able to better monitor compliance of subject entries with the terms of the SLA 2006 and be able to identify compliance issues that potentially threaten the viability of the SLA 2006 before, for example, the volume and value of the imports at issue grow

to a magnitude that makes resolution untenable.

### Canadian Softwood Lumber Import Licensing System

The Canadian Softwood Lumber Import Licensing System will include both the online registration system for importers and the automatic softwood lumber import license issuance system. In order to obtain a softwood lumber import license, an importer, or the importer's agent or customs broker, would first register with Commerce and be assigned a user identification number. This identification number will be required to log on to the softwood lumber import license issuance system. A single user identification number will be issued to an importing company or brokerage house. Operating units within the company (e.g., individual branches, divisions or employees) will use the same user identification code. The softwood lumber import license issuance system will be designed to allow multiple users of a single identification number from different locations within the company to enter information simultaneously.

#### Registration

Any company or broker with a U.S. address may register and obtain a user identification number. There is no fee to register and a user identification number will be issued electronically by Commerce to the registered party within two (2) business days. As part of the online registration process, the importer, U.S. agent or customs broker will be required to provide certain general information. Such information will include the applicant company name, Employer Identification Number (EIN) or the CBP ID number (where no EIN is available), address, phone number, contact information and e-mail address for both the company headquarters and any branch offices that would be applying for softwood lumber import licenses.

The use of this information will be strictly limited to the administration of the Agreement and it will not be kept longer than the period of time legally required beyond the expiration or

termination of the Agreement. Commerce will register and issue user identification numbers at least one week prior to the implementation date of the Canadian Softwood Lumber Import Licensing System. The user ID will be needed for any company or broker to apply for the license. Individuals or groups of individuals acting in a personal capacity are not required or permitted to provide personally identifiable information in order to obtain an identification number.

#### Automatic Licensing System

Softwood lumber import licenses will be issued to registered importers, customs brokers or their agents through an automatic Canadian Softwood Lumber Import Licensing System. The separately issued user identification number discussed above will be required to access the system. There will be no fee charged to apply for the import licenses. Softwood lumber import licenses will be issued automatically after the completion of the application form. In order to obtain a license, the applicant will be required to report the importer's user ID, the manufacturer of the lumber, shipment information, the Canadian export permit number, the quantity of lumber imported, the export price, and whether the lumber is excluded from Export Measures or has been remanufactured. See § 362.103(c) below for a complete list of what information will be required of an applicant.

Upon completion of the application form, the importer, customs broker or the importer's agent will certify as to the accuracy and completeness of the information and submit the form electronically. After refreshing the page, the system will automatically issue a softwood lumber import license number. The refreshed form containing the submitted information and the newly issued import license number will appear on the screen (the "license form"). Applicants will only be able to print the import license form at that time. Users will not be able to retrieve

licenses from the license system at a later date for reprinting. Following the issuance of this Federal Register notice, if needed, copies of completed license forms can be requested from Commerce during normal business hours (i.e., between 8 a.m. and 5 p.m. e.s.t.).

The softwood lumber import license will be required for every entry summary (CBP Form 7501) submitted for entries of merchandise subject to the SLA 2006. A single license could cover multiple products as long as the products share a single export permit. However, separate licenses will be required if the products do not share a single export permit. As a result, a single CBP entry summary could require more than one Canadian softwood lumber license. The applicable license number(s) must cover the total quantity of subject Canadian softwood lumber entered and should match the information provided on the CBP Form 7501. There is no requirement to present physical copies of the license forms at the time of submitting CBP Form 7501; however, parties must retain copies of substantiating documentation pursuant to the recordkeeping requirements set forth in part 163 of title 19 to the CFR.

#### Confidentiality of Information Collected

The use of information collected by the Canadian Softwood Lumber Licensing System will be strictly limited to the administration of the SLA 2006. The information collected will not be kept longer than the period of time legally required beyond the expiration or termination of the Agreement. Only certain aggregate information collected from the license application system will be made available to the public, and some of the information will be posted on the Import Administration website. All other information, including copies of the licenses and the names of importers, exporters, and manufacturers, will be considered confidential business proprietary information and will not be released to the public. To the extent allowed by U.S. law, and in accordance with the terms of the SLA 2006, the information collected may be provided to U.S.

government agencies responsible for the administration of the SLA 2006 and to the Canadian government, on a restricted basis.

#### Duration of the Softwood Lumber Import License

The softwood lumber import license can be applied for up to 30 days prior to the expected date of importation and until the date of filing of CBP Form 7501. The softwood lumber import license is valid for up to 60 days; however, import licenses will be accepted if they were valid on the date of importation but expired prior to the filing of CBP Form 7501. Special timing issues surrounding withdrawal of products from a warehouse, Foreign Trade Zone (FTZ) issues, and temporary imports will be handled separately, as they arise.

#### Handling of Softwood Lumber to Foreign Trade Zones

Commerce will require a license for Canadian softwood lumber shipped into a United States FTZ. Because a CBP entry number will not be available for shipments entering the FTZ, the code "FTZ" would be entered on the license application. There is no requirement to present physical copies of the license forms at the time of the FTZ admission; however, copies must be maintained in accordance with CBP's normal requirements. Entries for which FTZ admission documents are submitted without the required license number(s) will be considered to be in circumvention of the Agreement. A further Canadian softwood lumber license will not be required for shipments from FTZs into the commerce of the United States.

#### Canadian Export License License Requirement

Pursuant to Article XV of the Agreement and Section 12.140(b)(2) of the Appendix to Part 163 of CBP's Interim Amendments to title 19 of the CFR , as found at 71 FR 61399 (Oct. 18, 2006), CBP requires each importer to submit a valid Canadian Export Permit to CBP with its 7501 entry summary.

### CBP Requirements

CBP intends to publish a separate Interim Final Rule, setting requirements for the timely filing of the Canadian softwood lumber import license information at entry.

### Hours of Operation

As currently proposed, parties will be able to access the system 24 hours a day, 7 days a week. If the system is down for an extended period of time, parties will be able to obtain licenses from Commerce via fax during regular business hours (i.e., between 8 a.m. and 5 p.m. e.s.t.) at fax number (202) 482-xxxx.

### Duration

The licensing program will be in effect for the earlier of five years or the termination of the SLA 2006. The licensing program may be further extended until the termination of the SLA 2006. The licenses, however, will be valid for 10 business days after the expiration or termination of the Agreement to allow for the final filing of required CBP documentation.

### Classification

#### Administrative Procedure Act

ITA finds good cause under 5 U.S.C. § 553(b)(B) to waive prior notice and the opportunity for comment as it is impracticable and contrary to the public interest. This interim final rule would require all importers of Canadian softwood lumber covered by the scope of the SLA 2006 to obtain an import license from Commerce prior to completing their U.S. Customs and Border Protection entry summary documentation (CBP form 7501). Commerce will use the information recorded in the import license form as the basis for monitoring compliance with the SLA 2006.

CBP entry summaries do not collect the date of shipment as defined by the SLA 2006, the

export price, whether the export price was adjusted to account for the \$500/mbf (thousands of board feet) cap, the relevant exchange rate, and whether the merchandise was remanufactured. The absence of shipment information relevant to the terms of the SLA 2006 permits compliance problems to remain undetected by the United States for up to a year until they are discovered in the reconciliation process. Because of the difference between export price as defined by the SLA 2006 and entered value as reported on the CBP entry summary, problems related to the export price and the corresponding export tax may go undetected even after reconciliation. By collecting this information, the United States will be able to identify compliance issues and raise those issues with Canada before the volume and value of the imports at issue grow to a magnitude that makes resolution unnecessarily difficult, potentially threatening the viability of the SLA 2006.

The need for implementation of the licensing system is urgent because the only practical and timely way to collect this information on the number of entries that are covered by the SLA 2006 is through an automated information collection system such as the one proposed. There are tens of thousands of entries covered by the scope of the SLA 2006 each month. Therefore, without the import licensing system, it will be extremely difficult, and costly in time and resources, to manually gather the necessary information for entries, and it is very difficult for the United States to effectively monitor Canada's compliance with the terms of the SLA 2006 without relying on data exclusively provided by Canada.

#### Regulatory Flexibility Act

The Chief Counsel for Regulation certified to the Chief Counsel for Advocacy of the Small Business Administration that this interim final rule will not have a significant impact on a substantial number of small entities as that term is defined in the Regulatory Flexibility Act, 5



U.S.C. § 601 et seq. A summary of the factual basis for this certification is below.

Based on historical data, Commerce estimates that there are approximately 1,450 brokerage companies and importers that will be considered small entities under Small Business Administration's standard (5 U.S.C. § 603(b)(3)). Each importer or broker must fill out the license form for each entry of the subject merchandise. Based on CBP entry summary information, we estimate that 360,000 licenses will be issued each year. Of this number, approximately 300,000 licenses will be requested by a small entity as a result of this rule.

These entities will not incur significant costs to comply with the proposed regulations. The great majority of small entities importing lumber from Canada use brokers. Most brokerage companies that are currently involved in filing required documentation for importing goods into the United States, specifically CBP documentation, are accustomed to CBP's automated systems. Today, more than 99 percent of the CBP filings are handled electronically. Therefore, the web-based nature of this simple license application should not impose a significant cost to any firm in completing this new requirement. However, should a company prefer or need to apply for an ID or license by other than electronic means, a fax/phone option will be available at Commerce during regular business hours. There is no cost to register for a company-specific user identification number and no cost to file for the license.

Each license form is expected to take at most about 10 minutes to complete using much of the same information the brokers will use to complete their CBP entry summary documentation. The response time should not vary widely because the same information is used to fill out other required CBP documents. The estimated average cost to private sector respondents is \$20.00 per hour.

Based on the estimated 360,000 licenses that will be issued each year, the total cost to

respondents as a result of this rule is \$1,200,000. On this factual basis, this action will not have a significant economic impact on a substantial number of small entities.

#### Paperwork Reduction Act

This interim final rule contains collection-of-information requirements subject to review and approval by OMB under the Paperwork Reduction Act (PRA). These requirements have been approved by OMB under Control Number \_\_\_\_\_. The public reporting burden for these collections of information is estimated at 10 minutes. By law, parties must already maintain copies in accordance with CBP's existing requirements. The Canadian Softwood Lumber Import License System requests information already required of an importer, approval is automatic, and the importer will have ample opportunity and time to apply. These estimates of time required to complete an application include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments on the reporting burden estimate or any other aspect of the requirements in this interim final rule to both Diana Hynek, Departmental Paperwork Officer, Office of the Chief Information Officer, Room 6625, Washington, DC 20230, and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: ITA Desk Officer).

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the Paperwork Reduction Act unless that collection displays a valid OMB Control Number.

See Executive Order 12866.

It has been determined that this rule is significant for purposes of Executive Order 12866 of September 30, 1993 ("Regulatory Planning and Review") (58 FR 51735 (October 4, 1993)).

See Executive Order 13132.

This rule does not contain policies with federalism implications as that term is defined in Section 1(a) of Executive Order 13132, dated August 4, 1999 (64 FR 43255 (August 10, 1999)).

For the reasons set out in the preamble, 19 CFR part 362 is added as follows:

## PART 362—CANADIAN SOFTWOOD LUMBER IMPORT LICENSING SYSTEM

Sec.

362.101 Canadian Softwood Lumber Import Licensing System.

362.102 Online registration.

362.103 Automatic issuance of import licenses.

362.104 Confidentiality of information.

362.105 Fees.

362.106 Hours of operation.

362.107 Filing during system failure.

Authority: 13 U.S.C. 301(a) and 302.

§ 362.101 Canadian Softwood Lumber Import Licensing System.

(a) *In general.* (1) On October 12, 2006, the Softwood Lumber Agreement (SLA 2006) went into effect. The Canadian Softwood Lumber Import Licensing System will collect information from importers about entries of Canadian softwood lumber covered by the SLA 2006.

(2) *Covered Imports.* All imports of Canadian softwood lumber subject to the SLA 2006 are subject to the Canadian Softwood Lumber Import Licensing requirements. These imports are

defined in Annex 1A of the SLA 2006. See [www.ustr.gov](http://www.ustr.gov) for more information. Information gathered from these licenses will be used to ensure that the terms of the Agreement are complied with and enforced.

(3) *Canadian Softwood Lumber Export Permit Requirement.* Each importer is required to submit a valid Canadian Softwood Lumber Export License to CBP with the relevant CBP entry documents.

(4) A single license may cover multiple products as long as the products share a single export permit issued by the proper Canadian government authority in accordance with the SLA 2006, if applicable. However, separate licenses for Canadian softwood lumber entered under a single entry will be required if the products do not share a single export permit. As a result, a single CBP entry summary may require more than one Canadian softwood lumber import license. The applicable license(s) must cover the total quantity of Canadian softwood lumber entered and should cover the same information provided on the relevant CBP entry documents.<sup>1</sup>

(b) *Entries for consumption.* All entries for consumption of covered Canadian softwood lumber products will require an import license prior to the filing of the relevant CBP entry documents. The license number(s) must be reported on the relevant CBP entry documents at the time of filing. There is no requirement to present physical copies of the license forms at the time of filing the relevant CBP entry documents; however, copies must be maintained in accordance with CBP's existing requirements. If the relevant CBP entry documents are submitted without the required license number(s) it will be considered circumvention of the Agreement.

(c) *Foreign Trade Zone entries.* All shipments of covered Canadian softwood lumber

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<sup>1</sup>Currently CBP Form 7501 and, for FTZ entries, CBP Form 214.

into FTZs, known as FTZ admissions, will require an import license prior to the filing of FTZ admission documents. The license number(s) must be reported on the application for FTZ admission and/or status designation (currently CBP Form 214) at the time of filing. There is no requirement to present physical copies of the license forms at the time of FTZ admission; however, copies must be maintained in accordance with CBP's existing requirements. FTZ admission documents submitted without the required license number(s) will be considered to be in circumvention of the Agreement. A further Canadian softwood lumber license will not be required for shipments from FTZs into the commerce of the United States.

§ 362.102 Online registration.

(a) *In general.* (1) The Canadian Softwood Lumber Import Licensing System includes an online registration system. Any company or business entity representing itself as an importer, customs broker or importer's agent with a United States street address, but not a P.O. Box address, may register and obtain the user identification number necessary to log on to the automatic Canadian softwood lumber import license issuance system. Individuals or groups of individuals acting in a personal capacity are not required or permitted to provide personally identifiable information to obtain a user identification number. Foreign companies may obtain a user identification number if they have a United States address through which they may be reached; P.O. Boxes will not be accepted. A user identification number normally will be issued within two business days. Companies will be able to register online through the import licensing web site. However, should a company prefer to apply for a user identification number non-electronically, a phone/fax option will be available at Commerce during regular business hours.

(2) This user identification number will be required in order to log on to the Canadian Softwood Lumber Import License System. A single user identification number will be issued to

an importing company, brokerage house or importer's agent. Operating units within the company (e.g., individual branches, divisions, or employees) will all use the same company user identification number. The Canadian Softwood Lumber Import License System will be designed to allow multiple users of a single identification number from different locations within the company to enter information simultaneously.

(b) *Information required to obtain a user identification number.* In order to obtain a user identification number, the importer, importing company, customs broker or importer's agent will be required to provide general information. This information will include: the filer's company name, employer identification number (EIN) or CBP ID number (where no EIN is available), United States street address, telephone number, contact information and e-mail address for both the company headquarters and any branch offices that will be applying for Canadian softwood lumber import licenses. Individuals or groups of individuals acting in a personal capacity are not required or permitted to provide personally identifiable information to obtain a user identification number.

§ 362.103 Automatic issuance of import licenses.

(a) *In general.* Canadian softwood lumber import licenses will be issued to registered importers, customs brokers or their agents through an automatic Canadian Softwood Lumber Import License System. The licenses will be issued automatically after the completion of the form.

(b) *CBP entry number.* Filers are not required to report a CBP entry number to obtain an import license, but are encouraged to do so if the CBP entry number is known at the time of filing for the license.

(c) *Information required to obtain an import license.* (1) The following information is

required to be reported in order to obtain an import license (if using the automatic licensing system, some of this information will be provided automatically from information submitted as part of the registration process):

1. Company Name/Address
2. Contact Name/Phone Number/Fax/E-mail
3. Importer Name
4. Exporter Name
5. Manufacturer Name
6. Region of Origin (as defined in Art. XXI.46 of the SLA 2006)
7. Port of Entry
8. Date of Importation
9. Date of Shipment (as defined in Art. XXI.16 of the SLA 2006)
10. Customs Entry Number (If Available)
11. Canadian Export Permit Number
12. Total MBF of the Entry.
13. Is the product excluded from export measures pursuant to Art. X.1 of the SLA 2006?
  - 13a. If yes, identify the basis for exclusion: (a) Art. X.1(a)(Maritimes); (b) Art. X.1(b) (Yukon, NW Territories, Nunavut); or (c) Art. X.1(c)(excluded companies in Annex 10).
    - 13a(i). If the basis for exclusion is (c), identify the producer of the product (from list in Annex 10).
14. Identify the Export Price (as defined in Article XXI.25 of the SLA), indicating if the value reported in United States dollar or Canadian dollar denominations.
  - 14a. Was the export price adjusted to account for the \$500/mbf cap pursuant to Art. VII.6 of

the SLA 2006?

14a(i) If so adjusted, report quantity in mbf with an unadjusted export price above \$500/mbf.

14b. What is the export price that appears on the Canadian Export Permit?

14c.(i) If 14 is denominated in Canadian dollars, will the same export price be reported to the Canadian Revenue Agency (CRA) for purposes of the export tax?

(ii) If 14 is denominated in United States dollars, will the same export price (converted to Canadian dollars using the applicable exchange rate (the nominal exchange rate quoted by the Bank of Canada for the day before the Date of Shipment)) be reported to the CRA for purposes of the export tax?

14d. Confirmation of average unit export price based on previously provided information.

15. Entered Value (as reported on CBP's relevant entry documents)

16. Was any part of the entry last remanufactured before export by an Independent Manufacturer of Remanufactured Softwood Lumber Products certified by the CRA pursuant to Annex 7C of the SLA 2006?

16a. If yes, identify the Independent Remanufacturer(s) and the mbf product last remanufactured by each.

(2) Certain fields will be automatically filled out by the automatic license system based on information submitted by the filer (e.g., product category, unit value). Filers should review these fields to help confirm the accuracy of the submitted data.

(3) Upon completion of the form, the importer, customs broker or the importer's agent will certify as to the accuracy and completeness of the information and submit the form electronically. After submitting the completed form, the system will automatically issue a



Canadian softwood lumber import license number. The refreshed form containing the submitted information and the newly issued license number will appear on the screen (the “license form”). Filers can print the license form only at that time. For security purposes, users will not be able to retrieve licenses from the license system at a later date for reprinting. If needed, copies of completed license forms can be requested from Import Administration during normal business hours.

(d) *Duration of the Canadian softwood lumber import license.* The Canadian softwood lumber import license can be applied for up to 30 days prior to the expected date of importation and until the date of filing of the relevant entry documents. The Canadian softwood lumber import license is valid for 60 days; however, import licenses will be accepted if they were valid on the date of importation but expired prior to the filing of the relevant CBP entry documents .

(e) *Correcting submitted license information.* It will not be possible to alter an existing license electronically once it has been issued. However, prior to the entry date listed on the relevant CBP entry documents, filers will be able to cancel previously issued licenses and file for a new license with the correct information.

#### § 362.104 Confidentiality of information.

All information provided by the applicant to the Department of Commerce through this website will be treated as confidential, pursuant to 13 U.S.C. § 302, and will not be released to the public without the authorization of the applicant, except as part of aggregated data. To the extent allowed by U.S. law, and in accordance with the terms of the SLA 2006, the information collected may be provided to U.S. government agencies responsible for the administration of the SLA 2006 and to the Canadian government, on a restricted basis.

#### § 362.105 Fees.

No fees will be charged for obtaining a user identification number or issuing a Canadian softwood lumber import license.

§ 362.106 Hours of operation.

The automatic licensing system will generally be accessible 24 hours a day, 7 days a week but may be down at selected times for server maintenance.

§ 362.107 Filing during system failure.

If the system is down for an extended period of time, parties will be able to obtain licenses from Import Administration directly via fax during regular business hours (i.e., between 8 a.m. and 5 p.m. e.s.t.) at fax number (202) 482-xxxx.

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David M. Spooner  
Assistant Secretary  
for Import Administration

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Date