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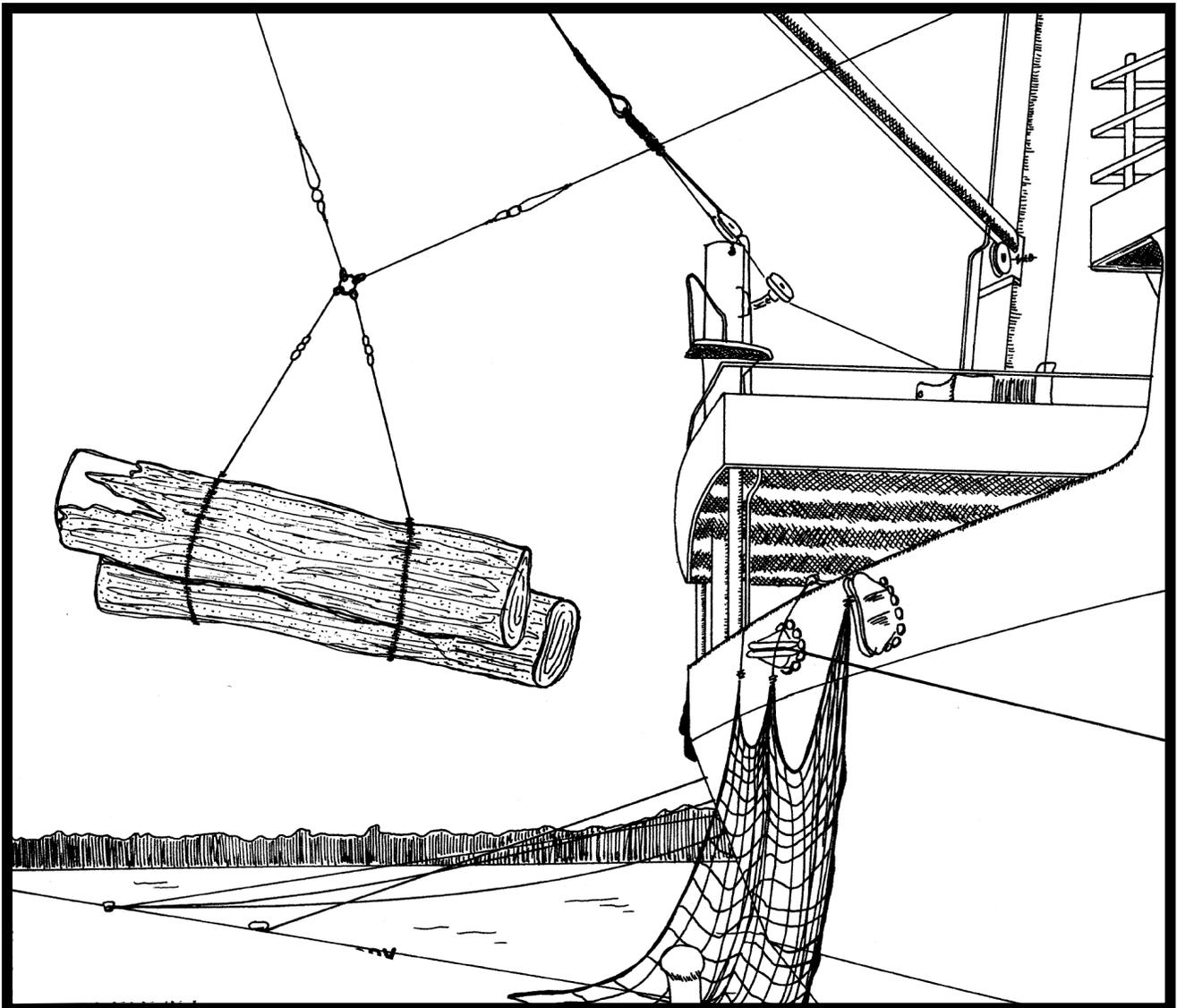
Pacific Northwest
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General Technical
Report PNW-GTR-208



Log Export Restrictions of the Western States and British Columbia

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ABSTRACT

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The export of unprocessed timber is restricted from lands managed by the Forest Service, U.S. Department of Agriculture, and the Bureau of Land Management, U.S. Department of the Interior, in the West. In addition, the Forest Service and the Bureau of Land Management have implemented regulations to ensure that Federal timber is not substituted for private timber.

The export of unprocessed timber is also restricted from lands managed by the States of Alaska, Oregon, California, and Idaho. As a result of a suit against the State of Alaska and subsequent appeals, however, the attorneys general of the States of Alaska, Oregon, and Idaho have rendered opinions that language restricting exports should be removed from State timber sale contracts, contending that no enforcement is defensible until the litigation is resolved. The State of California attorney general's opinion is that "while California's restriction probably could not stand up to judicial scrutiny, the California constitution says a State agency has no power to declare a statute unenforceable. Therefore, until a California or Federal court specifically invalidates California code we are required to enforce the terms of the contract." The States of Washington and Montana impose no restrictions on exports.

The export of logs or chips from British Columbia is permitted when it has been established that these are surplus to domestic needs. Certain species have been declared nonsurplus. Export approval criteria are most stringent in the southern coastal portion of the Province.

KEYWORDS: Import/export (forest products), trade policy (international, legislation).

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INTRODUCTION

This report presents the main features of log export restrictions imposed by various State and Federal agencies as well as by British Columbia. Restrictions are summarized by political jurisdiction on page 12. Some of the information here is repeated from the earlier publications (Austin 1969, Lindell 1978).

FEDERAL LEGISLATIVE HISTORY

Restriction of Log Exports From Federal Lands

On April 16, 1968, the Secretaries of Agriculture and the Interior issued joint orders restricting the volume of timber that could be harvested and exported from Forest Service, U.S. Department of Agriculture, and Bureau of Land Management, U.S. Department of the Interior, lands in unprocessed form. 1/

The Secretaries limited the volume of timber that could be exported from Federal lands to 350 million board feet annually. They deemed this restriction necessary for maintaining a viable domestic wood-processing industry. 2/

The Secretaries' 350-million-board-foot quota was legislated, effective January 1, 1969, by an amendment to the Foreign Assistance Act of 1968 (82 Stat. 966). The amendment, commonly referred to as the "Morse Amendment," section 921 of the Housing and Urban Development Act of 1970 (84 Stat. 1817), extended the expiration date for this provision to December 31, 1973.

1/ A determination by the Secretary of Agriculture concerning primary processing of timber from National Forests of the Pacific Northwest. Specified in a memorandum from the Secretary of Agriculture to the Chief of the Forest Service, April 16, 1968.

2/ for requiring domestic primary manufacturing of logs from National Forest land in the Pacific Northwest. Response to the April 16, 1968, memorandum of the Secretary of Agriculture.

A provision attached to the Department of the Interior and Related Agencies Appropriation Act, 1974 (P.L. 93-120, October 4, 1973), in effect prohibited the export of unprocessed timber harvested from Federal lands in the West. The act stated that:

No part of any appropriation under this Act shall be available to the Secretaries of the Interior and Agriculture for use for any sale hereafter made of unprocessed timber from Federal lands west of the 100th Meridian in the contiguous 48 States which will be exported from the United States, or which will be used as a substitute for timber from private lands which is exported by the purchaser: Provided, that this limitation shall not apply to specific quantities of grades and species of timber which said Secretaries determine are surplus to domestic lumber and plywood manufacture needs.

This provision was attached to all subsequent Interior and related agencies appropriation acts.

The provision also prohibited purchasers from using timber harvested from Federal lands in their processing facilities while they were exporting non-Federal timber that could have been used. This practice is termed "direct substitution." In a February 1974 letter to the Chief of the Forest Service, however, the Chairman, Subcommittee on Interior and Related Agencies, House Committee on Appropriations, explained that the committee intended to allow historic patterns of trade to continue without disruption. The chairman said the provision was intended to prohibit firms in the export trade from increasing their log exports in the future through direct substitution.

In March 1974, the Forest Service established regulations implementing this provision, including the restriction on log substitution (Code of Federal Regulations, Title 36, Chapter II, Part 221.25). The Forest Service defined "purchaser" as the person who purchases National Forest timber directly from the Forest Service. This definition precludes the purchaser from substituting or replacing private exported timber with National Forest timber. The regulations do not prevent others (third parties) from buying National Forest timber from the purchaser and substituting it for the private timber they export (Code of Federal Regulations, Title 36, Chapter II, Change part number from 221.25 to 223.10, December 17, 1979). This practice is termed "third-party substitution." The Acting Associate Deputy Chief of the Forest Service in a letter to the General Accounting Office dated January 11, 1984, defined third-party substitution as follows:

Third-party substitution is the acquisition of National Forest timber from a National Forest timber sale purchaser by a firm which is not eligible to purchase the National Forest timber directly because direct purchase would constitute substitution under 36 CFR 223.160.

On July 26, 1983, the chairman of the Senate Committee on Appropriations and the chairman of the Subcommittee on Interior and Related Agencies, Senate Committee on Appropriations, requested the General Accounting Office to provide them with information on the magnitude and potential impacts of tighter restrictions on export of Forest Service logs. In a report published on January 28, the U.S. General Accounting Office (1985) provided the following information:

Federal law restricts the export of unprocessed timber cut from National Forests in the western half of the United States. Also purchasers of National Forest timber are restricted from substituting timber harvested from Federal lands for privately owned timber that they export. GAO reviewed the magnitude of and the potential impacts from extending the substitution restriction to cover third parties who subsequently acquire Forest Service timber from the original purchasers--an export industry commonly referred to as third-party substitution.

According to the Forest Service and timber industry association, third-party substitution approximates 100 million board feet annually in the western United States. They said that if the practice were banned, some companies could acquire National Forest timber at lower prices because of decreased demand and competition, and the lower prices would result in less government revenues. Also, a ban could disrupt traditional log markets and business practices.

The Forest Service believes it could not enforce a ban on third-party substitution without additional legal authority and staff.

Restriction of Redcedar Exports From Federal and State Lands

Export of western redcedar and waney (lacking wood on one or more corners) lumber has been prohibited from State and Federal lands since late 1982, by the Export Administration Act of 1979 and the regulations that implement the act (15 CFR 377.7). Federal and State lands in Alaska, and Indian trust lands everywhere, are not affected. All exporters of this kind of material, however, are required to obtain export licenses from the International Trade Administration, Office of Export Administration.

NATIONAL FORESTS OUTSIDE ALASKA

On April 20, 1981, the Forest Service published revised regulations in the Federal Register regarding the export of timber from National Forest System lands and the substitution of such timber for private timber to be exported by the purchaser. This document further clarified the definition of tributary area and incorporated a definition of unprocessed western redcedar. The regulations (Code of Federal Regulations, Title 36, Chapter II, Part 223) include the following major Provisions:

1. Export is either direct or indirect export to a foreign country. Unprocessed timber is exported directly when the exporter is the purchaser of National Forest timber. Timber is exported indirectly when export results from a sale to another person or from a
2. subsequent transaction.
Historic level is the average annual volume of unprocessed timber
3. purchased or exported in calendar years 1971, 1972, and 1973.
4. Private lands are lands held or owned by a private person. Nonprivate lands include, but are not limited to, lands held or owned by the United States, a State or political subdivision thereof, or any other public agency, or lands held in trust by the
5. United States for Indians.
Substitution of public timber for exported private timber occurs when:
 - a. a buyer of National Forest timber increases purchases in any calendar year 10 percent above the historic level and in the same calendar year exports unprocessed timber from private land in the tributary area; or
 - b. a purchaser of National Forest timber increases exports of unprocessed timber from private land in any tributary area more than 10 percent above the historic level in any calendar year while having National Forest timber under contract.

6. Tributary area is the geographic area is from which unprocessed timber delivered to a specific processing facility or complex.
7. Unprocessed timber does not mean pulp (utility) grade logs and
8. Douglas-fir special cull logs.
Processed timber is:
 - a. Lumber and construction timbers, regardless of size, sawn on four sides.
 - b. Chips, pulp, and pulp products.
 - c. Green veneer and plywood.
 - d. Poles, posts, or piling cut or treated for use as such.
 - e. Cants cut for remanufacture, 8-3/4 inches or less in thickness.
9. Unprocessed western redcedar is trees or portions of trees of that species that have not been processed into:
 - a. Lumber of American Lumber Standards grades of number 3 dimension or better, or Pacific Lumber Inspection Bureau Export R-List grades of number 3 common or better.
 - b. Chips, pulp, and pulp products.
 - c. Veneer and plywood.
 - d. Poles, posts, or piling cut or treated with preservatives and not intended to be further processed.
 - e. Shakes and shingles.

NATIONAL FORESTS IN ALASKA

Federal land in Alaska is excluded from the annual Interior and Related Agencies Appropriation Act pertaining to log exports. The Forest Service limits the export of unprocessed timber from National Forests in Alaska under general authority of the Organic Administration Act of June 4, 1897 (16 U.S.C. 475,551), National Forest Management Act of October 22, 1976 (90 Stat. 2949 (16 U.S.C. 472a et seq.) and 36 CFR 223.161).

The Regional Forester for Alaska set the following policy governing the processing of Alaska National Forest timber (U.S. Department of Agriculture, Forest Service, Alaska Region 1986):

1. Export of spruce and hemlock logs is prohibited (since 1926).
2. Export of Alaska-cedar and western redcedar logs is allowed.
3. In limited circumstances, logs from sales appraised at less than
4. \$2,000 may be exported.
Export of other species is allowed from timber sales in which more than half the volume is salvage material. This provision was renewed annually from 1934 to 1986; it may not be continued.

5. Beach logs administratively disposed of with or without charge may be exported.
6. Export of logs, cordwood, bolts, and similar products requiring primary manufacture elsewhere is prohibited.
7. Before any material may be exported, approval must be granted by the Regional Forester.

In 1986, the maximum thickness allowed for export cants was relaxed from 8-3/4 to 12 inches.

BUREAU OF LAND MANAGEMENT LANDS OUTSIDE ALASKA

On July 28, 1976, the Bureau of Land Management published regulations in the Federal Register about the export of timber from Federal lands administered by the U.S. Department of the Interior. The regulations (Code of Federal Regulations, Title 43, Chapter II, Part 5400.5) contain the following major provisions:

The Department of the Interior and Related Agencies Appropriation Act, 1976 (Public Law 94-165) prohibits the use of funds appropriated there under for sale of unprocessed timber from Federal lands west of the 100th Meridian in the contiguous 48 States which will be exported from the United States, or which will be used as a substitute for timber from private lands which is exported by the purchaser. The law also provides that the export restriction shall not apply to specific quantities of grades and species of timber which the Secretary of the Interior determines to be surplus to domestic lumber and plywood manufacturing needs.

Unprocessed timber is:

- a. any logs except those of utility grade or below, such as saw logs, peeler logs, and pulp logs;
- b. cants or squares exceeding 8-3/4 inches in thickness that will be remanufactured;
- c. split or round bolts, or other roundwood not processed to standards and specifications suitable for end product use.

Federal lands are: all lands administered by the Department of the Interior west of the 100th Meridian in the contiguous 48 States with the exception of tribal and trust allotted lands managed by the Bureau of Indian Affairs on behalf of the Indians.

Substitution means:

- a. The purchase of a greater volume of Federal timber by an individual purchaser than has been the [purchaser's] historic pattern within 12 months of the sale of export [logs] by the same purchaser or a greater volume of [the purchaser's] historic pattern during the preceding 12 months, exclusive of Federal timber purchased by negotiated sale for right-of-way purposes, and
- b. The increase of both the purchase of Federal timber and export of timber from private lands tributary to the plant for which Bureau of Land Management timber covered by a specific contract is delivered or expected to be delivered.

BUREAU OF LAND MANAGEMENT LANDS IN ALASKA

The Bureau of Land Management does not have a major timber sale program in Alaska. A few small sales are made only for local, domestic needs. Consequently, no regulations have been written about the export of logs from Bureau of Land Management lands.

BUREAU OF INDIAN AFFAIRS

The Department of the Interior ban on log exports does not apply to lands managed on behalf of the Indians. Individual reservations, however, may impose restrictions. None existed in 1986.

Unprocessed timber may not be exported from one 61,360-acre area of land managed on behalf of the Indians; this area, known as the "McQuinn Strip," borders the north and west sides of the Warm Springs Reservation of Oregon. Ownership of this strip was disputed for many years because of an earlier contested survey. Finally, in 1972, title to the former Federal land that formed parts of two National Forests was ceded to the Confederated Tribes of the Warm Springs Reservation of Oregon (Act of September 21, 1972; P.L. 92-427, S.2969).

That 1972 act contained language that retained existing marketing patterns for timber from the strip until January 1, 1992 (Harved 1985). Among other things, the act specified that timber from the strip must be designated for primary manufacture in the United States. In administering the act, the Bureau of Indian Affairs adopted the Forest Service definition of processed versus unprocessed timber to define primary manufactured items; that is, lumber, chips or pulp, green veneer, poles and piling, or cants 8-3/4 inches in thickness or less.

GENERAL EXPORT POLICIES OF THE WEST COAST STATES

Alaska, California, Idaho, and Oregon have enacted legislation restricting export of unprocessed logs. These States have had to review their policies in light of a recent U.S. Supreme Court decision about the State of Alaska.

Alaska

State regulations have granted the Director of the Department of Natural Resources of Alaska the option of restricting the primary manufacture of State-owned timber to the State. These regulations have been disputed (Frank 1985). South Central Timber Development, Inc. brought suit against the State of Alaska in Federal District Court on the grounds, among others, that Alaska's in-State primary manufacturing requirement violated the implications of the Commerce Clause of the U.S. Constitution (South Central Timber vs. Wunnicke). The District Court found that the primary manufacturing requirement did violate the Commerce Clause, and that Congress had not consented to the requirement. The U.S. Court of Appeals for the Ninth Circuit unanimously reversed the District Court. In a May 22, 1984, decision, the U.S. Supreme Court held that a State restriction on the place of "primary manufacture" of State-owned timber constitutes an unconstitutional burden on interstate commerce; the Court thereby upheld the decision of the District Court..

In 1984, the State of Alaska filed a notice of appeal with the Ninth Circuit Court of Appeals (Frank 1986). The Circuit Court, however, refused to reconsider the case. Meanwhile, a memorandum issued on August 2, 1984, by the Alaska Department of Natural Resources said, "Until further notice, refrain from issuing prospectus, notice, and contracts that, as a requirement of sale, state that timber harvested from State forest lands will require primary manufacture." (Wallingford 1984). Thus, the State is not limiting log exports.

California

In 1974, the State of California directed that "timber from state forests shall not be sold to any primary manufacturer, or to any person for resale to a primary manufacturer, who makes use of such timber at any plant not located within the United States unless it is sawn on four sides to dimensions not greater than 4 inches by 12 inches" (California Public Resources Code, Section 4650.1).

In a policy statement on June 21, 1984, the California attorney general's office responded to the U.S. Supreme Court's Alaska decision (Fago 1986):

...until such time as a California or Federal court specifically invalidates the portions of PRC4650.1 which deal with foreign commerce, we should continue to enforce them. If anyone asks our opinion on the subject, it is that we are required by statute and the state constitution to enforce the terms of the contract. Until such time as a court orders us to do otherwise or the Legislature removes the requirement, we will continue to do so.

Idaho

The Idaho State Board of Land Commissioners (Idaho Code, 58-403) is required by statute to put certain sales restrictions on all State timber sales. The pertinent language reads:

The state board of land commissioners are hereby required when contracting for the sale of timber on lands owned by the state to prescribe that the timber cut from said lands under said contract shall be manufactured into lumber or timber products within the state of Idaho; provided, that the sale of any timber to be used in the manufacture of wood pulp shall be excepted from the above provision.

The State of Idaho, alluding to the Alaska case, stated (Attorney General Opinion, 84-9):

Idaho Code (58-403) is even more restrictive than the Alaska regulation in that the land board must restrict rather than may restrict timber exports; on the other hand, the Idaho statute does not restrict the export of pulp logs, whereas the Alaska regulation allows the director to do so.

Because the Alaska regulation and the Idaho Code seek to accomplish the same thing - restrict the first step in the manufacture of state-owned timber to state businesses - that part of the Idaho Code requiring a contractual export restriction is clearly unconstitutional and should not be enforced.

Therefore, the Idaho State Board of Land Commissioners and the Idaho State Department of Lands should cease enforcement of the export restriction in all existing contracts and delete the offending statutory language in future timber sale contracts.

Montana

Small volumes of softwood logs normally flow from the Montana Customs District into Canada each year. The Montana Customs District includes all ports in Montana. Montana imposes no restrictions on the export of unprocessed timber (Johnson 1985).

Oregon

By an emergency act passed in 1963 (Oregon Resources Code 526.805 and 526.835), the State of Oregon determined that all timber sold by the State or any of its political subdivisions must receive primary processing in the United States unless the State Department of Forestry has granted an export permit. Primary processing was defined by the act as "that stage of manufacture next beyond the log form of said timber."

In an opinion dated July 31, 1984, the Attorney General rendered the following response to a question posed by the State Forester (Frohmayer 1982):

The Attorney General has previously concluded that Oregon's unprocessed log export ban...is probably unconstitutional. What is the effect, if any, of the recent decision of the U.S. Supreme Court in South Central Timber vs. Wunnicke, et al.? The Supreme Court's decision does not change our conclusion that the Oregon statutes are probably unconstitutional and that no enforcement action should be undertaken under these statutes until the South Central Timber litigation is concluded.

Washington

Washington imposes no restrictions on export of timber from lands managed by the State. The most recent referendum was in 1968 when voters defeated initiative measure 32, which would have required that all timber from State-managed lands receive primary manufacture within the State (Hoppala 1985).

British Columbia

Since 1901, the forestry laws and policies of British Columbia have required that timber produced on Crown lands or wood residue produced from such timber be used or manufactured in the Province. In 1906, the constraint was extended to Crown-granted land. Current law (1980 Forest Act, Chapter 140, Part 12) requires that timber from Crown land be used in the Province as unprocessed wood or as lumber or sawn wood products other than lumber, manufactured to an extent required by the Minister of Forests; shingles or fully manufactured shakes; veneer, plywood, or other wood panel products; pulp, newsprint, or paper; peeled poles and piles less than 28 cm (about 11 inches) in diameter and fenceposts; Christmas trees; sticks and timber with diameter less than 15 cm (about 6 inches); ties; or mining timbers.

Exemptions may be granted by either the Minister or the Lieutenant Governor in Council. The Minister may authorize exemptions of volumes of harvested logs up to 15 000 cubic meters (about 3.3 million board feet) for each application. The Lieutenant Governor in Council may authorize the exemption of timber that has been harvested or of standing timber, in unlimited volumes. Exemptions, however, will not be granted unless the Minister or Lieutenant Governor in Council is satisfied that (1) the timber or wood residue is surplus to timber-processing requirements in the Province, or (2) the timber or residue cannot be processed economically in the vicinity of production and cannot be transported economically to a processing facility elsewhere in the Province, or (3) the exemption would prevent the waste of or would increase use of timber extracted from Crown lands.

Exemption from the export constraint has been given to timber within the Mid Coast, North Coast, and Queen Charlotte Timber Supply Areas through March 1988, provided that the timber is surplus to the requirements of timber-processing facilities in the Province, with the determination to be made by local officials of the Ministry of Forests and Lands. Elsewhere along the coast, exemption rules are more stringent, requiring advertising for offers from timber processors; review of resulting prices by the Ministry's headquarters; and with export of upper grades of spruce, Douglas-fir, hemlock, and balsam (true firs) precluded.

Certain species may not be exported from any part of the Province. They are redcedar and yellow-cedar.

SUMMARY OF LOG EXPORT RESTRICTIONS^{1/}

Geographic area and lands affected	General limitations	Exemptions	Primary processing	Definition of substitution
U.S. Federal and State lands except those in Alaska	No export of unprocessed western redcedar		Lumber without wane, chips and pulp products, veneer and plywood, poles and piling, shakes and shingles	
National forests in contiguous States west of 100th Meridian	No export of unprocessed National forest timber not substitution for timber exported from private lands	Port-Orford cedar, Alaska yellow-cedar	Cants 8-3/4 inches or less thick; lumber and squares; chips; pulp; green veneer; and plywood; poles and piling	Compared with historical levels, the purchaser continues to export and increases purchase of National Forest timber
Bureau of Land Management lands	No export of unprocessed BLM timber not substitution for exported timber from private lands	Port-Orford cedar, Alaska yellow-cedar	Cants 8-3/4 inches or less thick; lumber and squares; chips; pulp; green veneer; and plywood; poles and piling	Compared with historical pattern, both purchase of BLM timber and export of private timber increase
National Forests in Alaska	No export of unprocessed timber from State	Alaska yellow-cedar; beach cedar; Sitka spruce; spruce; fir; hemlock; and minor species lacking local demand, including western redcedar	Cants 8-3/4 inches or less thick (12-inch maximum on trial basis); green veneer and plywood; poles and piling	Not applicable
Alaska, State-owned lands	No restriction			
California, State-owned lands	Restrictions enforced			
Idaho, State-owned lands	No restriction			
Oregon, State-owned lands	No restriction			
British Columbia, all lands	No export of red or yellow cedars or of upper grades or other commercial softwoods	None for cedars; other species exempted in Mid Coast, North Coast, Queen Charlotte Areas	Lumber meeting wane requirements for No. 3 common (utility) grade under export No. 1 list	

^{1/}See the text for definitions and more complete description of rules.

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The Forest Service of the U.S. Department of Agriculture is dedicated to the principle of multiple use management of the Nation's forest resources for sustained yields of wood, water, forage, wildlife, and recreation. Through forestry research, cooperation with the States and private forest owners, and management of the National Forests and National Grasslands, it strives — as directed by Congress — to provide increasingly greater service to a growing Nation.

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