GAO

United States
General Accounting Office
Washington, D.C. 20548

Office of the General Counsel

Subject: Timber Export Law

File: B-280055

Date: June 9, 1998

GAO

United States
General Accounting Office
Washington, D.C. 20548

Office of the General Counsel

B-280055

June 9, 1998

The Honorable Peter DeFazio
House of Representatives

Dear Mr. DeFazio:

In your December 1, 1997 letter, you asked us whether Title VI of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1998 authorized activities that would have been deemed illegal substitution under the 1990 Forest Resources Conservation and Shortage Relief Act and its implementing regulations.[1] We found that Title VI of the Appropriations Act contains several changes authorizing activities formerly prohibited. You also asked us whether these changes apply to states other than Washington. We conclude that they do, and that the new act contains provisions generally applicable throughout the western states, applicable to states other than Washington and Idaho, applicable only to Washington, and applicable only to Idaho.

Background

The export of federal timber from the western United States has been banned since 1973. Timber harvested from private lands may be exported. As a result of significant demand for raw logs in Japan and high transportation costs, exported private timber generally sells for a significantly higher price than timber harvested from public lands.[2]

---

[1] Your letter also posed two additional questions, but in an April 2, 1998 meeting we agreed to delay start of the audit work on these questions until the Forest Service issues regulations.

[2] Log Export Legislation: Hearings on S. 754 and S. 755 Before the Subcomm. Or International Finance and Monetary Policy of the Senate Comm. On Banking, Housing, and Urban Affairs, 101st Cong., 1st Sess. At 92 (statement of R. Dennis Hayward, Executive Vice President, Northwest Timber Ass'n) (hereinafter Log Export Hearing); see also id. At 198-99 (statement of Douglas Caffall, President, Caffall Bros. Forest Products).

A company with large holdings of private land could in theory sell its own timber overseas, while using federal and state timber to supply its domestic mills. If the private and federal timber originate form the same area this practice is called "substitution," on the theory that these companies are substituting public timber for its own timber to supply their mills.[3] It is called "direct substitution" when the company buys the federal or state timber directly from the government, and "indirect substitution" when the company buys federal timber from a third party.[4]

It has been argued that substitution drives up the price of publicly held timber, and thus places smaller mills (and their employees) at risk, because the large companies are able to use their export profits to subsidize their bids for public timber.[5] Opponents also contend that substitution drives up timber harvests, particularly of old growth timber on public lands, thus damaging the environment.[6] Proponents of substitution insist that it is an economically efficient practice that allocates to mills the species and grades of logs they need.[7] Proponents assert that environmental restrictions on federal timber sales, not substitution, are to blame for timber supply problems in the Pacific Northwest.[8]

The Forest Resources Conservation and Shortage Relief Act of 1990 (the 1990 act) generally prohibits the export of unprocessed timber from federal lands west of the

---

[3] See H.R. conf. Rep. No. 650, 101st Cong., 2d Sess. At 252 (1990); See Potential Impacts of Tighter Forest Service Log Export Restrictions, GAO/RCED-85-17 (1985) at 3.

[4] We discuss these concepts in greater detail below.

[5] Log Export Hearing at 45 (statement of Rep. DeFazio).

[6] Id. at 133 (statement of George Frampton, President, Wilderness Society).

[7] E.g., id. at 261 (statement of John P. McMahon, Vice President Timberlands, Weyerhauser Company). According to a Department of Agriculture letter to Senator Mark Hatfield in 1983:

> Almost every sale in the Northwest involves species, sizes or grades of logs which cannot be efficiently processed in the purchaser's manufacturing facility. The timber industry in [the Pacific Northwest] has developed well-functioning log markets which permit the movement of logs to the sawmills, stud mills, veneer mills, pulp mills, or other facilities to which they are best suited.

Quoted at id.

[8] E.g., id. at 257.

100th meridian in the 48 contiguous states.[9] Under the 1990 act, timber purchasers may generally not engage in direct substitution, which occurs when a company uses timber harvested from federal lands in its processing facility while exporting nonfederal timber from the same geographic and economic area that it could have used in the facility.[10] In addition, the 1990 act generally prohibits indirect substitution, which is similar to direct substitution, except that the exporting company purchases federal timber from a third party, rather than directly from the government.[11]

---

[9] 16 U.S.C. § 620a(a) (1992). The act codifies an earlier prohibition appearing in annual appropriations acts. See, e.g., Pub. L. No. 101-121, § 302, 103 Stat. 741 (1989). In the United States, the 100th meridian extends from North Dakota through Texas.

[10] Specifically, with regard to direct substitution, section 490(a)(1) of the 1990 act provides in relevant part as follows:

> [N]o person may purchase directly from any department or agency of the United States unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 states if -- (A) such unprocessed timber is to be used in substitution for exported unprocessed timber originating from private lands; or (B) such person has, during the preceding 24-month period, exported unprocessed timber originating from private lands.

16 U.S.C. § 620b(a)(1) (1992). The act does not specifically define the term "substitution." However, section 493(8) of the act states that

> The acquisition of unprocessed timber from Federal lands west of the 100th meridian in the contiguous 48 states to be used in 'substitution' for exported unprocessed timber originating from private lands means acquiring unprocessed timber from such Federal lands and engaging in exporting, or selling for export, unprocessed timber originating from private lands within the same geographic and economic area.

16 U.S.C. § 620e(8) (1992). See Log Export Report at 3.

[11] Specifically, with regard to indirect substitution, section 490(b) of the act provides in relevant part as follows: "[N]o person may . . . purchase from any other person unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 states if such person would be prohibited from purchasing such timber directly from a department or agency of the United States." 16 U.S.C. § 620b(b)(1) (1992). See also Log Export Report at 3.

The prohibitions on substitution do not apply to purchasers who purchase federal timber from within a sourcing area,[12] and export timber only from areas outside the sourcing area. A sourcing area is an area within which a company obtains federal timber for processing at a particular mill, and which is geographically and economically separate from any area from which the applicant exports private timber. The Forest Service implemented various provisions of the 1990 act in a series of rules, the most comprehensive of which was issued in 1995.[13] In a rider contained in the act providing appropriations to the Forest Service for fiscal year 1996, Congress effectively suspended implementation of the 1995 rule.[14] The Forest Service's fiscal year 1997 appropriation act contained a similar rider.[15]

In 1997, Congress amended the 1990 act in Title VI of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1998, also known as the Forest Resources Conservation and Shortage Relief Act of 1997 (the 1997 act), inter alia, with regard to substitution and sourcing areas. The 1997 act also effectively repealed the 1995 rule implementing the 1990 act.

Discussion

In response to your request, we compared the 1990 act and its 1995 implementing regulation with the 1997 act. Several changes, including those discussed below, authorize activities that would have formerly been prohibited.

First, the 1997 act authorizes certain timber purchasers in Washington state to engage in direct substitution. Under the 1997 act, for federal lands in western Washington, the 1990 act's prohibition against direct substitution applies only if private timber to

---

[12] Although the 1990 act does not specifically define the term "sourcing area," section 490(c)(3) provides that the Forest Service could approve a sourcing area application only if it determined that the area in which the mills using the federal timber are located is geographically and economically separate from any area from which the applicant exports private timber. 16 U.S.C. § 620b(c)(3) (1992).

[13] 60 Fed. Reg. 46898 (1995). See also 55 Fed. Reg. 48572 (1990); 56 Fed. Reg. 14009 (1991); 56 Fed. Reg. 22105 (1991); 57 Fed. Reg. 11261 (1992); 59 Fed. Reg. 8823 (1994). The two principal statutes discussed in this letter apply to all federal lands west of the 100th meridian. Because the majority of federal timber comes from land administered by the Forest Service, this letter focuses on the relevant statutes as they apply to Forest Service lands.

[14] Pub. L. No. 104-134, § 333, 110 Stat. 1321-209 (1996).

[15] Pub. L. No. 104-208, § 318, 110 Stat. 3009-222 (1996).

be exported originated from land owned by the buyer or from land on which the buyer had the exclusive right to harvest timber for over seven years.[16]

Second, the 1997 act also makes several changes concerning sourcing areas. For example, it prohibits the Forest Service from restricting the transport of private timber across sourcing area boundaries.[17] Under the 1995 rule, such transport could have invalidated a sourcing area, subjecting the relevant area once again to the prohibitions on direct and indirect substitution.[18] Idaho is excepted from this provision, and the Forest Service may still prohibit mills in Idaho that have sourcing areas from processing timber harvested from private lands outside those sourcing areas.[19]

The 1997 act provides that, on relinquishment of a sourcing area, the former holder may begin exporting private timber from the area as soon as it no longer has unprocessed Federal timber from the area in its possession.[20] Previously, a company had to wait up to one year before beginning such exports.[21]

You also asked us to examine whether the changes that authorize activities that were formerly prohibited apply to states in addition to Washington. We found that the 1997 act contains provisions generally applicable throughout the western United States, including, as discussed above, the provision that, on relinquishment of a sourcing area, the former holder may begin exporting private timber from the area as soon as it no longer has unprocessed Federal timber from the area in its possession. The act also contains provisions applicable to western states other than Washington and Idaho, applicable only to Washington, and applicable only to Idaho. Examples of each follow.

---

[16] Pub. L. No. 105-83, § 602(a), 111 Stat. 1618 (1997).

[17] Id. at 111 Stat. 1620 (1997).

[18] 36 C.F.R. § 223.190(k) (1997). According to the preamble to the 1995 rule, once unprocessed timber crosses into a sourcing area, that area is no longer geographically and economically separate, and the transporter thus risks losing agency approval for the area. 60 Fed. Reg. 46906 (1995).

[19] Pub. L. No. 105-83, § 602(a), 111 Stat. 1620 (1997).

[20] Pub. L. No. 105-83, § 602(a), 111 Stat. 1620 (1997).

[21] The 1990 act does not specifically establish restrictions on the relinquishment of sourcing areas by those holding them. In the 1995 rule, the Forest Service specified that the former holder of a sourcing area could not export any unprocessed private timber within the same fiscal year that the applicant held unprocessed federal timber from the area, even after relinquishment. 36 C.F.R. § 223.190(l)(1997).

Provisions Applicable to Western States Other Than Washington and Idaho

- For processing facilities outside Washington and Idaho, the 1997 act provides that the Forest Service, in determining whether to approve a sourcing area, shall consider the private timber export and federal timber sourcing patterns of the applicant and of others in the vicinity.[22] In making this determination, the Forest Service may not consider land in Washington, or include such land in a sourcing area even if such land is within the same geographic and economic area as the applicant's mill, unless requested by the applicant.[23]

- The 1997 act removes the requirement in the 1990 act that the Forest Service consider private timber sourcing patterns in making the approval decision for states other than Idaho,[24] and prohibits the Forest Service from establishing any restriction on the domestic transportation or processing of private timber.[25] Taken together, these provisions would allow transport of private timber into a sourcing area, and prohibit the Forest Service from considering this practice in considering whether to approve a sourcing area application.

Provisions Applicable Only Within Washington

- The 1997 act provides that, for federal lands west of the 119th meridian in Washington, the prohibition against direct substitution applies only if private timber to be exported originated from land owned by the buyer, or on which the buyer had the exclusive right to harvest timber for over seven years.[26]

- The 1997 act exempts facilities in the state of Washington from the procedures for application and approval of sourcing areas.[27] Within Washington, the 1997 act establishes that a sourcing area boundary shall be a circle around the processing facility of the applicant, whose radius is the furthest distance that the sourcing area applicant proposes to haul timber for processing at the facility.[28] The 1997

---

[22] Pub. L. No. 105-83, § 602(a), 111 Stat. 1618-19 (1997).

[23] Id. at 111 Stat. 1619 (1997).

[24] Compare 16 U.S.C. § 620b(c)(3) (1992) with Pub. L. No. 105-83, § 602(a), 111 Stat. 1618-19 (1997).

[25] Pub. L. No. 105-83, § 602(a), 111 Stat. 1619 (1997).

[26] Id. at 111 Stat. 1618 (1997).

[27] Id. at 111 Stat. 1619 (1997).

[28] Id.

act makes no mention of geographic and economic area as a criteria in determining sourcing areas within Washington. The boundary is determined solely by the applicant.[29] It becomes effective upon written notification to the Forest Service.[30] Unlike other sourcing areas, the Washington state sourcing areas become effective regardless of whether the applicant has exported unprocessed private timber from the area within the last 24 months.[31]

Provisions Applicable Only Within Idaho

- For approval of sourcing areas, the 1997 act requires the Forest Service to consider factors similar to those enumerated in the general provisions, except that the Forest Service must also consider the private sourcing patterns of the applicant and of others in the vicinity.[32] This does not differ greatly from the 1990 act, except that lands within Washington may not be included in an Idaho sourcing area without the applicant's consent.[33]

- The 1997 act authorizes the Forest Service to prohibit timber harvested outside sourcing areas established in Idaho from being transported into such sourcing areas.[34]

Conclusion

In summary, we found that Title VI of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1998 authorizes activities that would have been prohibited by the 1990 Forest Resources Conservation and Shortage Relief Act and its implementing regulations. We also conclude that the new act contains provisions generally applicable throughout the western states, applicable to states other than Washington and Idaho, applicable only to Washington, and applicable only to Idaho.

---

[29] Id.

[30] Id.

[31] Id.

[32] Id. at 111 Stat. 1618 (1997).

[33] Id.

[34] Id. at 111 Stat. 1620 (1997).

We hope you find this information helpful. Please contact Rich Johnson of my staff at 512-4729 if you have any questions.

Sincerely yours,

Susan A. Poling
Associate General Counsel

DIGEST

Title VI of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1998 authorizes activities that would have been prohibited by the 1990 forest Resources Conservation and Shortage Relief Act and its implementing regulations. The act contains provisions generally applicable throughout the western states, applicable to states other than Washington and Idaho, applicable only to Washington, and applicable only to Idaho.