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Wood Transportation, 1977, 1978  
35 M.R.S.A. 1560

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STATE OF MAINE  
DEPARTMENT OF THE ATTORNEY GENERAL

AUGUSTA, MAINE 04333

September 24, 1978

Honorable Jasper S. Wyman  
Webb Road, R.F.D. 1  
Pittsfield, Maine 04967

Re: Relationship of Crown Limitation and An Act Relating to the  
Transportation of Primary Wood Products.

Dear Representative Wyman:

This responds to your request for an opinion on the applicability of An Act Relating to the Transportation of Primary Wood Products, P.L. 1977, c. 676, to the so-called "crown lumber limitation" of wood products of Quebec, RSQ 1964, c. 93, and whether Chapter 676 is applicable to the crown lumber limitation.

Chapter 676 enacted 35 M.R.S.A. § 1560, sub-§ I, the last paragraph. For the purposes of this opinion, the new paragraph provides that if any province prohibits in any way, the transportation of wood, pulpwood or logs from that province to Maine, then similar restrictions shall be imposed by Maine on the residents of that province who transport wood, pulpwood or logs from Maine to that province. The limitations of the new paragraph do not apply to sale of sawlogs and pulpwood but do apply to transportation and methods of transportation of sawlogs and pulpwood.

The crown lumber limitation is adopted by RSQ 1964, c. 93.\* It provides that all wood derived from the public domain in the Province of Quebec must be processed in Quebec. C. 93, § 2. The Quebec Government may, under certain circumstances, waive this rule and authorize shipment of incompletely processed wood derived from a public domain to another province in Canada but not, apparently, to any State in the United States. C. 93, § 3. Further, the Quebec Government may impose such other limits on the quantities of wood that may be harvested from the public domain as it deems necessary. C. 93, § 4. The provisions of the Forest Products Act apply to all forest concessions issued by the Province of Quebec, C. 93, § 7.

The effect of the crown lumber limitation, in this context, is to prohibit the export from Quebec to Maine of pulpwood, sawlogs and tree length logs which were cut on the public domain in Quebec.

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\* A copy of Chapter 93, the Quebec Forest Utilization Act, is attached to this opinion as an appendix.

Resolving the questions you have posed requires determination of three issues:

1. Whether the crown lumber restriction imposed by RSQ 1964, c. 93 is a restriction on transportation, subject to the reciprocal requirements of Chapter 676 or a restriction on sales which is exempt therefrom.

2. Whether, if the Quebec restriction is a restriction on transportation, the reciprocal provisions cause the Maine law to become a control on exports and thus invade the exclusive prerogatives of the United States in areas of control of foreign policy and foreign commerce pursuant to Article I, § 8, Clause 3, of the United States Constitution?

3. If the reciprocal restriction imposed by Maine is one which is permissible under the United States Constitution, what is its impact on the current commerce between Maine and the Province of Quebec?

#### TRANSPORTATION OR SALES RESTRICTION

Our review of the crown lumber restriction law convinces us that it is, indeed, a restriction on transportation of unprocessed wood within and out of the Province of Quebec. We base this conclusion particularly on the provisions of C. 93, § 3, which notes that the Quebec Government may make exceptions to the rule to authorize "shipments" to another province of Canada. If it is the "shipment" which may be authorized by the exception, not the sale of the wood product, then it is the shipment of the product which is restricted and such a restriction is a transportation restriction subject to application of the reciprocal provisions of 35 M.R.S.A. § 1560, sub-§ I, last paragraph.

#### FOREIGN AFFAIRS AUTHORITY:

The United States Constitution at Article I, Section 8, the Third Clause, specifies that:

"The Congress shall have power . . . . to regulate commerce with the foreign nations, and any of the several States, and with the Indian tribes."

Since its enactment, this clause has been interpreted to vest in the United States Government the exclusive authority to regulate the foreign affairs and foreign commerce. Gibbons v. Ogden, 22 U.S. 1, 196-222 (1824); Henderson v. Mayor of New York, 92 U.S. 259 (1875); Board of Trustees of Univ. of Illinois v. United States, 289 U.S. 48 (1932); United States v. Arjona, 120 U.S. 479 (1887); Chy Lung v. Freeman, 92 U.S. 275 (1875); United States v. Elliott, 266 F. Supp. 318 (S.D.N.Y., 1967).

For reasons discussed below, we do not view the reciprocal restrictions imposed by P.L. 1977, c. 676, as violative of the Federal Constitution's exclusive reservation of foreign policy and foreign commerce control to the United States Government. Further, we would note that any impact on foreign policy and foreign commerce occasioned by implementation of the provisions of Chapter 676 would only have incidental effect on Foreign commerce, and such incidental effects have been allowed in cases such as Portland Pipeline, Inc. v. Environmental Improvement Commission, 307 A.2d 1, 31 - 36 (Me., 1973).

IMPACT ON CURRENT COMMERCE WITH QUEBEC:

The effect of the crown lumber limitation is to prohibit the export from Quebec to Maine of pulpwood, sawlogs or tree length logs grown on the public domain in Quebec. Because this limitation is a transportation restriction, as discussed above, and because, in our view, there is no violation of the foreign policy and foreign commerce powers of the United States by Maine imposing a reciprocal restriction on Quebec, the provisions of law enacted by P.L. 1977, c. 676, are operative to impose reciprocal restrictions on unprocessed wood grown on the public domain of the State of Maine. This does not, however, have a significant effect on the commerce between Maine and Quebec because of the very limited amount of unprocessed wood originating on state owned land in Maine.

The State of Maine would be perfectly within its rights in adopting a statute saying that wood grown on state-owned land could only be processed in Maine. Similarly, by reciprocal effect of 35 M.R.S.A. § 1560, sub-§ I, the State can adopt such a restriction on sales of wood grown on state land.

It must be emphasized, however, that the restriction imposed by the reciprocal enforcement of RSQ 1964, c. 93 upon the sales of wood from public domain land in Maine is limited to state owned land, such as the State parks, Baxter State Park and other State owned facilities. It would not apply to sales of wood from privately owned land in Maine. Nor could the State of Maine in any way restrict sales or transport of wood from federal reservations in Maine, such as the White Mountain National Forest or the Moosehorn National Wildlife Refuge.

However, as long as the crown lumber restrictions of c. 93 remain in effect, wood cut on the public lands of the State under any license, agreement, commission from the State, or any other source of authority, should not be transported to Quebec in an unprocessed state as pulpwood, sawlogs or tree length logs. The State should amend any forms permitting cutting of wood on state property to include this provision. Further, in the same manner as provided in § 7 of Chapter 93, existing contracts allowing cutting of wood on State-domain should be considered amended to prohibit export of the unprocessed wood to the Province of Quebec.


The State would not have authority to restrict transportation of unprocessed wood from private lands, nor do the provisions of Chapter 676, reciprocally enforcing the crown lumber limitations, purport to apply such restrictions. Any restrictions which the State of Maine attempted to impose on export from the State of wood cut from privately owned land would be violative of the exclusive power of the Federal Government to regulate interstate and foreign commerce, as indicated in the cases noted above. This problem would apply regardless of whether the restriction was placed on wood being cut and sold for transport to a foreign nation, such as Quebec and Canada, or wood cut and sold for transportation to another state of the United States.

Further, it must be emphasized that application of this restriction to sales of wood from publicly owned land in no way affects the transport of unprocessed wood into Maine from Quebec to the extent such transport presently occurs as a result of operations on privately owned lands in Quebec or operations on lands in Maine where the wood carriers travel from Maine through Quebec to processing facilities in Maine.

Because of the much larger percentage of public domain land (land under the ownership or contractual control of the Province of Quebec) in Quebec than state-owned or controlled land in Maine, the impact of the crown lumber restriction, now reciprocally applied to Maine, is and remains more significant on transport and availability of wood in Quebec for transport to Maine than it does on availability of wood in Maine for transport to Quebec. However, this is the effect of reciprocal application in terms of the law, and such reciprocal application cannot be extended beyond the terms of the law to sales and shipment of wood from privately owned land in Maine, which is where the great bulk of commerce in unprocessed wood from Maine to Quebec originates.

I hope this information is helpful.

Sincerely,

  
DONALD G. ALEXANDER  
Deputy Attorney General

DGA:jg

cc: Hon. John Martin  
Hon. Donald Hall  
Richard Barringer  
Charles Wyman  
Maj. Albert Jamison  
Robert True - P.U.C.



## CHAPITRE 93

## CHAPTER 93

### Loi de l'utilisation des ressources forestières

### Forest Resources Utilization Act

#### SECTION I

#### DIVISION I

##### DÉFINITIONS

##### DEFINITIONS

*Interprétation:* 1. Dans la présente loi, à moins que le contexte n'indique un sens différent, les termes suivants signifient:

*Interpretation:* 1. In this act, unless the context indicates a different meaning, the following terms mean:

*« concession forestière »:* tout permis, bail, contrat de louage ou d'affermage ou convention de quelque nature que ce soit, accordant à une personne, société ou corporation, sous l'empire d'une loi quelconque, le droit de couper du bois sur un ou des terrains du domaine public de la province;

*« forest concession »:* any license, lease, contract of lease and hire or of farming-out, or agreement of any kind granting to any person, firm or corporation, under any law, the right to cut wood on any land or lands of the public domain of the Province;

*« consommateur »:* toute personne, société ou corporation ayant son domicile ou, selon le cas, son siège d'affaires dans la province de Québec et y publiant ou imprimant, ou y faisant publier ou imprimer, un journal;

*« consumer »:* any person, firm or corporation having his domicile or its place of business, as the case may be, in the Province of Quebec and there publishing or printing, or there causing to be published or printed, a newspaper;

*« produit forestier »:* le bois à l'état brut ou transformé en pâte ou pulpe de bois par des procédés mécaniques, chimiques ou autres. 4-5 Eliz. II, c. 26, a. 1 (*partie*).

*« forest product »:* wood in its raw state or transformed into pulp or wood-pulp by mechanical, chemical or other processes. 4-5 Eliz. II, c. 26, s. 1 (*part*).

#### SECTION II

#### DIVISION II

##### UTILISATION DES RESSOURCES FORESTIÈRES AU BÉNÉFICE DE LA PROVINCE

##### UTILIZATION OF FOREST RESOURCES FOR THE BENEFIT OF THE PROVINCE

*Bois doit être ouvré dans le Québec.* 2. Nonobstant toute disposition législative inconciliable avec la présente, tous les bois provenant du domaine public de la province, quelle que soit la nature de la concession forestière dont dépende le droit de coupe, doivent être entièrement ouvrés dans le Québec.

2. Notwithstanding any legislative provision inconsistent herewith, all wood derived from the public domain of the Province, whatever be the nature of the forest concession on which the right to cut the same is based, must be completely processed in Quebec.

Bois  
entière-  
ment  
ouvré.

Le bois est entièrement ouvré au sens de la présente loi lorsqu'il a subi tous les traitements et procédés de fabrication et passé par toutes les phases de transformation nécessaires pour le rendre propre à l'usage auquel il est finalement destiné, de telle sorte que ses produits aient acquis la forme définitive dans laquelle la marchandise doit être livrée au consommateur. 4-5 Eliz. II, c. 26, a. 27.

Wood is completely processed within the meaning of this act when it has undergone all the treatments and processes of manufacture and has passed through all the phases of transformation necessary to render it suitable for the use to which it is intended finally to be put, in such manner that the products thereof have acquired the definitive form in which the merchandise is to be delivered to the consumer. 4-5 Eliz. II, c. 26, s. 27.

Excep-  
tion.

3. Le lieutenant-gouverneur en conseil peut toutefois, par exception, autoriser l'expédition, dans une autre province du Canada, de bois non entièrement ouvré provenant du domaine public de la province de Québec, lorsqu'il le juge dans l'intérêt de cette dernière ou d'une de ses régions, en raison de conditions industrielles, économiques ou sociales particulières.

3. Nevertheless, the Lieutenant-Governor in Council may, by way of exception, authorize the shipment to another Province of Canada of incompletely processed wood derived from the public domain of the Province of Quebec, whenever he deems it in the interest of the Province or of a region thereof, by reason of particular industrial, economic or social conditions.

Permis  
spéciaux.

Cette autorisation est donnée au moyen de permis spéciaux, pour la quantité et aux conditions que détermine le lieutenant-gouverneur en conseil. 4-5 Eliz. II, c. 26, a. 28.

Such authorization shall be given by means of special permits, for such quantity and on such conditions as the Lieutenant-Governor in Council may determine. 4-5 Eliz. II, c. 26, s. 28.

Pouvoirs  
du li-  
gouv. en  
conseil.

4. Le lieutenant-gouverneur en conseil peut:

4. The Lieutenant-Governor in Council may:

a) limiter, pendant telles périodes qu'il spécifie, les quantités de bois qui peuvent être coupées sur les terres du domaine public de la province faisant l'objet d'un droit de coupe en vertu d'une concession forestière;

(a) limit, for such periods as he may specify, the quantities of wood that may be cut on the lands of the public domain of the Province which are subject to cutting rights under a forest concession;

b) imposer à toute personne, société ou corporation qui exploite une industrie forestière ou une entreprise dans laquelle sont utilisés des produits forestiers, l'obligation de faire des rapports attestés sous serment concernant les bois coupés, les bois ouvrés et ceux qui ont subi une transformation quelconque, et déterminer la forme de ces rapports, ainsi que le temps où ils doivent être produits;

(b) oblige any person, firm or corporation operating a forest industry or undertaking in which forest products are used, to make reports under oath respecting the wood cut, the wood processed and the wood that has been transformed in any manner, and determine the form of such reports and the time when they must be filed;

c) déterminer les conditions, la forme et le mode d'émission des permis spéciaux accordés en vertu de l'article 3, ainsi que les honoraires payables sur l'émission de tout permis de cette nature;

(c) determine the conditions, form and mode of issue of the special permits granted under section 3 and the fees payable on the issue of any such permit;

d) décréter toutes autres dispositions conciliables avec la présente loi qu'il juge

(d) enact such other provisions consistent with this act as he deems expedient

opportunes pour l'application des dispositions de la présente section. 4-5 Eliz. II, c. 26, a. 29.

for the application of the provisions of this Division. 4-5 Eliz. II, c. 26, s. 29.

5. Quiconque viole ou tente de violer ou aide à violer une disposition de la présente section ou d'un décret adopté en vertu de l'article 4 ou une condition d'un permis accordé en vertu de l'article 3 commet une infraction et est passible, pour la première infraction, d'une amende d'au moins deux mille dollars et d'au plus cinq mille dollars et, pour toute infraction subséquente, d'une amende d'au moins dix mille dollars et d'au plus cinquante mille dollars, en outre des frais dans tous les cas.

5. Whosoever infringes or attempts to infringe or assists in the infringement of any provision of this Division or of any order made under section 4 or any condition of a permit granted under section 3 is guilty of an offence and liable, for the first offence, to a fine of not less than two thousand dollars nor more than five thousand dollars, and for any subsequent offence to a fine of not less than ten thousand dollars nor more than fifty thousand dollars, in addition to the costs in all cases.

Si l'infraction est commise par une corporation, ces amendes sont portées au triple des montants spécifiés à l'alinéa précédent.

If the offence is committed by a corporation, such fines shall be increased to thrice the amounts specified in the preceding paragraph.

Sans préjudice des sanctions ci-dessus, tout bois en cours d'expédition, ou dont il y a lieu de croire qu'il sera expédié en contravention de l'article 2 ou en violation des conditions d'un permis accordé en vertu de l'article 3, peut être saisi et, sur preuve de la contravention, la confiscation doit en être prononcée au profit de la couronne. 4-5 Eliz. II, c. 26, a. 30.

Without prejudice to the aforesaid penalties, any wood in transit, or of which there is reason to believe that any will be shipped in contravention of section 2 or in violation of the conditions of a permit granted under section 3, may be seized and, on proof of the contravention, shall be confiscated in favour of the Crown. 4-5 Eliz. II, c. 26, s. 30.

6. Les poursuites résultant de l'article 5 sont intentées sur autorisation du procureur général devant un juge des sessions ou un juge de district. Seule, la première partie de la Loi des poursuites sommaires (chap. 35) s'applique à ces poursuites. 4-5 Eliz. II, c. 26, a. 31.

6. Proceedings resulting from section 5 shall be brought on the authorization of the Attorney-General before a judge of the sessions or a district judge. Part I only of the Summary Convictions Act (Chap. 35) shall apply to such proceedings. 4-5 Eliz. II, c. 26, s. 31.

## SECTION III

## DIVISION III

CONDITIONS ESSENTIELLES DES  
CONCESSIONS FORESTIÈRESESSENTIAL CONDITIONS OF FOREST  
CONCESSIONS

7. Nonobstant toute disposition législative inconciliable avec le présent article, les dispositions de la présente loi et de tout décret et règlement adoptés sous son empire par le lieutenant-gouverneur en conseil sont réputés être des conditions essentielles et *sine qua non* de toute concession forestière et en faire partie intégrante, comme si elles y étaient expressément incorporées. 4-5 Eliz. II, c. 26, a. 32.

7. Notwithstanding any legislative provision inconsistent with this section, the provisions of this act and of every order and regulation made thereunder by the Lieutenant-Governor in Council shall be deemed to be essential conditions, *sine qua non*, of every forest concession and to form an integral part thereof, as if they had been expressly incorporated therein. 4-5 Eliz. II, c. 26, s. 32.

## SECTION IV

## DIVISION IV

## DIVERS

## MISCELLANEOUS

Priorité. 8. Relativement aux matières qui en font l'objet, les dispositions de la section II prévalent sur celles de toutes autres lois et de tous règlements adoptés en vertu de ces dernières. 4-5 Eliz. II, c. 26, a. 33 (partie).

8. As regards the matters therein dealt with, the provisions of Division II shall prevail over those of all other acts and of all regulations made under such acts. 4-5 Eliz. II, c. 26, s. 33 (part).