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Constitutional Law - Taxation Immunity of Imports - Imports for Sale v. Imports for Manufacture

Paul H. Dué

The unanimous position reached by the court that a state is powerless to reserve or protect its local markets is sound. Any inroad into this concept no matter how justified by a balance of interests would open the door to trade barriers and other economic retaliation among the states. The commerce clause stands for the proposition that economic prosperity lies in a federal common market and not in the state as an independent trade unit. It may well be that Florida producers require a large share of the Florida beverage milk sales to be financially stable, but this may be equally true for producers from other states who sell milk in Florida. By virtue of the commerce clause, the decision whether the plight of the dairy industry requires that the interests of out-of-state producers be subordinated to those of local producers should be committed to Congress where the needs of the dairy industry of the nation as a whole are represented, and not to the individual states who are clearly incapable of impartial resolution of such conflicting economic interests.

William Shelby McKenzie

CONSTITUTIONAL LAW — TAXATION IMMUNITY OF IMPORTS — IMPORTS FOR SALE V. IMPORTS FOR MANUFACTURE

Plaintiff newspaper imported newsprint from Canada, maintaining an average inventory equal to a thirty-five day supply.

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prices is well settled. Milk Control Board v. Eisenberg Farm Products, 306 U.S. 346 (1939); Highland Farms Dairy v. Agnew, 300 U.S. 608 (1937). The distance between the permitted economic regulation in *Eisenberg* and the prohibited one in *Hood* is close and gives the best indication of the outer barrier for state regulation. A state may enact reasonable legislation to alleviate a local evil even though it places some burden on interstate commerce, provided it does not discriminate against that commerce—*i.e.*, provided it places an equal burden on all intrastate commerce as well. The producer price-fixing scheme in *Eisenberg* required all instate and outstate purchasers to pay the minimum price. But when the regulation goes one step further and attempts to curtail interstate commerce to stimulate intrastate commerce or curtail both interstate and intrastate commerce to protect commerce in one area of the state, then the regulation must fall under the commerce clause. In *Hood* the state tried to protect the Greenwich area processors by excluding other New York and out-of-state processors.

For a thorough discussion of the many ways in which a state may use its sanitary regulations as an economic barrier, see Hutt, *Restrictions on the Free Movement of Fluid Milk under Federal Milk Marketing Orders*, 37 U. Det. L. J. 525, 541-53 (1960). Even though the court appears to have reached a solidary position on economic regulation, it will still have to tangle with the balance-of-interests in situations in which the state has discriminatory sanitary regulations. At least when nondiscriminatory alternatives are available, the state cannot erect such barriers. Dean Milk Co. v. Madison, 340 U.S. 349 (1951). See Minnesota v. Barber, 136 U.S. 313 (1890); Brimmer v. Rebman, 138 U.S. 78 (1891). *But see* Mintz v. Baldwin, 289 U.S. 346 (1933).

The city of Denver assessed an ad valorem property tax on the entire supply which plaintiff paid under protest, later suing for a refund on the ground the tax violated the import-export clause of the United States Constitution. The trial court upheld the assessed tax but only for that portion of the newsprint needed in current operation; it held that current operational needs were to be determined by multiplying daily requirements by shipping time from Canada. On appeal the Supreme Court of Colorado affirmed. *Held,* the portion of imported newsprint required to meet current operational needs was put to the use for which imported, and therefore was subject to taxation although it remained in the original packages until ready for the presses. *City & County of Denver v. Denver Publishing Co.*, 387 P.2d 48 (Colo. 1963).

The Constitution guarantees imports immunity from state taxation,[1] but a state has power to tax property within its borders.[2] Difficulties arise in determining the ambit of protection granted by the Constitution. Dicta by Chief Justice Marshall in *Brown v. Maryland*[3] suggested three possible criteria, each of which was subsequently utilized, for determining when the state may properly exercise its power of taxation. The import may be taxed when sold in the taxing state,[4] when the original package is broken,[5] and when it is put to the use for which imported.[6] Imported inventories for manufacturing purposes were first held beyond the taxing power of the state on analogy to the immunity retained by imported inventories held for sale.[7] This standard of immunity was subsequently restricted in *Youngstown Sheet & Tube Co. v. Bowers*[8] by the decision that imported inventories essential to "current operational needs" were "put to the use for which . . . imported" and therefore lost their immunity.[9] There was strong dissent on the ground that

1. U.S. CONST. art. I, § 10: "No State shall, without the Consent of Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection laws . . . ."

2. See Gulf Fisheries Co. v. MacInerney, 276 U.S. 124 (1928); American Steel Co. v. Speed, 192 U.S. 500 (1904); Nathan v. Louisiana, 49 U.S. 73 (1850).

3. 25 U.S. 419 (1827).

4. Waring v. The Mayor, 75 U.S. 110 (1868).

5. May v. New Orleans, 178 U.S. 496 (1900).

6. Gulf Fisheries Co. v. MacInerney, 276 U.S. 124 (1928).

7. Hooven & Allison Co. v. Evatt, 324 U.S. 652, 667 (1945): "We do not perceive upon what grounds it can be thought that imports for manufacture lose their character as imports any sooner or more readily than imports for sale. The Constitutional . . . immunity . . . is the same in both cases."

8. 358 U.S. 534 (1959).

9. *Id.* at 544, 548.

this amounted to an overruling *sub silentio* of the entire prior jurisprudence.[10]

The effect of *Youngstown* has been to create a double standard for determining the taxability of imports. Cases involving imported inventories for sale have ignored *Youngstown* and have followed former rules of taxation immunity,[11] whereas those concerned with imported manufacturing inventories have invoked the "current operational needs" test to allow state taxation.[12]

The instant case is well aligned with its precursors in both rationale and result. It illustrates the administrative problem of the *Youngstown* rule — determination of current operational needs. The court glossed over this by affirming the method used by the district court, and emphasized this determination must be made on the facts of each individual case.[13] The court did not consider, however, the more fundamental question why should imported inventories for manufacturing uses be taxable while those for sale are not. A comparison of the instant case with an earlier Michigan one[14] illustrates the incongruity of this dichotomy. In both cases the municipality assessed a personal property tax on imported Canadian newsprint even though still in the original packages. Both importers claimed immunity via the import-export clause, but only the Michigan state tax was struck down. The only distinction between the two cases is that the

10. *Id.* at 553 (dissenting opinion).

11. See Miehle Printing Press & Mfg. Co. v. Department of Revenue, 18 Ill. 2d 445, 448, 164 N.E.2d 1, 3 (1960): "There is nothing to indicate that the Supreme Court has changed the view it has taken with regard to imports held for sale."; H. A. Morton Co. v. Board of Review, 15 Wis. 2d 330, 334, 112 N.W.2d 914, 916 (1962). *Youngstown* clearly did not abolish "original package" doctrine as applied to goods imported for sale. Standard-Triumph Motor Co. v. City of Houston, 220 F. Supp. 732, 734 (1963). "Intended use" test is applied primarily in cases of imports for use rather than imports for sale. Tricon, Inc. v. King County, 60 Wash. 2d 392, 396, 374 P.2d 174, 176 (1962): "We do not think the Supreme Court has indicated . . . that goods imported for resale . . . lose their character as imports immune from state taxation when they become a part of the importer's current inventory of goods held for sale." James B. Beam Distilling Co. v. Department of Revenue, 367 S.W.2d 267 (Ky. 1963).

12. See South Coast Fisheries, Inc. v. Department of Fish & Game, 213 Cal. App. 2d 325, 28 Cal. Rptr. 537 (1963); Continental Coffee Co. v. Bowers, 174 Ohio St. 435, 439, 189 N.W.2d 901, 905 (1963): "Once an import is irrevocably committed to supply the current operating needs of a manufacturer and is being used to supply its daily operating needs the status as an import is lost."

13. 387 P.2d at 53: " 'There is no rigid and inflexible rule which can be laid down to determine the "current operational needs" of a taxpayer. This is an area wherein the policy of the law dictates *ad hoc* determinations based on the facts presented in each particular case.' "

14. Detroit v. Lake Superior Paper Co., 202 Mich. 22, 167 N.W. 852 (1918).

Michigan tax was on imported inventories held for sale rather than for use as in the instant case.[15]

It is submitted that there is no just basis for allowing immunity to inventories for sale and denying it to those for manufacturing uses. The imported inventories are as essential to "current operational needs" in the one case as they are in the other. Imports for sale are as much "used to supply" needed inventories and therefore "put to the use for which imported" as are those for manufacturing purposes. In effect the "current operational needs" test is discriminating against the manufacturer in favor of the seller. As was pointed out by one of the dissenting Justices in *Youngstown*[16] there is even less reason for denying the immunity to goods imported for manufacture as the state retains the right to tax the manufactured product. It becomes apparent, therefore, that the cases, by sanctioning immunity to imports for sale and by denying it to those for manufacture, have created an unjust dichotomy. The instant case, although correctly invoking the *Youngstown* rule, works unmerited prejudice against the taxpayer merely because he chooses to use a product to effectuate a later sale rather than to sell initially.

Paul H. Dué

CRIMINAL LAW — BILL OF PARTICULARS

A person charged with a criminal offense has a constitutional right to be fully informed of the nature and cause of the accusation against him.[1] To secure this right the district attorney may be required to furnish a bill of particulars to the defendant, supplying him with the necessary information.[2] Whether the district attorney must furnish the bill of particulars rests within the discretion of the trial judge,[3] provided that he may not arbitrarily refuse to order particulars necessary to the ade-

15. The tax was held invalid even though the goods were essential to current operational needs, viz., "to insure the fulfillment of its contracts . . . to supply said papers with the necessary paper to print said newspapers." *Id.* at 24, 167 N.W. at 853.

16. Youngstown Sheet & Tube Co. v. Bowers, 358 U.S. 534, 563 (1959).

1. LA. CONST. art I, § 10.

2. LA. R.S. 15:235, 288 (1950).

3. State v. Williams, 230 La. 1059, 89 So.2d 898 (1956).