Maryland Journal of International Law

Volume 1 | Issue 2 Article 7

Michelin Tire Corp. v. Wages

Leslie D. Gradet

RECENT DEVELOPMENTS

IMPORTS — STATE TAXATION OF A STATE-IMPOSED NON-DISCRIMINATORY AD VALOREM PROPERTY TAX ON IMPORTED GOODS IS CONSTITUTIONAL UNDER THE IMPORT-EXPORT CLAUSE.

Michelin Tire Corp. v. Wages, 423 U.S. 276 (1976)

On January 14, 1976, the Supreme Court[1] affirmed the decision of the Georgia Supreme Court[2] allowing the assessment of a nondiscriminatory ad valorem property tax[3] on petitioner's[4] stock of imported tires, which were no longer in import transit,[5] and which were maintained in its wholesale distribution warehouse in Georgia.[6] In its rejection of petitioner's argument that

---

1. Michelin Tire Corp. v. Wages, 423 U.S. 276 (1976).

2. Wages v. Michelin Tire Corp., 233 Ga. 712, 214 S.E.2d 349 (1975).

3. The tax had been assessed by respondents, the tax commissioner and tax assessor of Gwinnett County, Georgia, on inventory held in petitioner's warehouse on January 1, 1972 and January 1, 1973.

4. Petitioner, Michelin Tire Corporation, a New York corporation authorized to do business in Georgia, is an importer and wholesaler of automobile and truck tires and tubes.

5. The tires imported from Canada and France arrive at Michelin's warehouse by either of two methods. Some are delivered in over-the-road trailers which are packed and sealed at the foreign factories and brought directly to the warehouse by common carrier. The other goods are transported in sea vans (over-the-road trailers with removable wheels) which are packed and sealed at the foreign factories. The vans are then hauled to the port where the wheels are removed and the goods are transported by ship to the port of entry. There the vans are unloaded from the ship, the wheels are replaced, and the goods move on to the warehouse.

The tires are packed in the trailer and vans in bulk — they are not packaged or bundled. Each trailer or van load is unloaded and sorted upon arrival at the warehouse. The individual shipments are no longer separate identifiable units. The tires are stored in the warehouse where they are stacked on wooden pallets, segregated by size and type awaiting sale to retail dealers. Although each tire has a serial number, the individual tires are not treated or altered in any way.

6. Respondents had also assessed a tax on imported tubes in the warehouse. The packing and handling of the tubes is different from that of the tires; they are not shipped in bulk, but are individually packaged in small boxes which are transported in corrugated cartons. The tube shipments, like the tire shipments, are sorted upon arrival at the warehouse at which time they cease to be separately identifiable

the tax violated the Import-Export Clause of the Constitution,[7] the Court's decision casts doubt on the viability of the venerated original package doctrine,[8] which heretofore has been the principal judicial test for establishing the constitutional limits on the power of the states to tax foreign imports. A brief review of the historical development of the law prior to the *Michelin* decision will serve to demonstrate the importance of that case in elucidating the meaning and operation of the relatively obscure Import-Export Clause.

Brown v. Maryland[9] was the first case to examine the effect of the Import-Export Clause on the ability of states to tax imports. In *Brown* a Maryland statute requiring an importer to purchase a license before selling imported goods at wholesale was challenged on the grounds that it violated the Import-Export Clause. The Court acknowledged that it was necessary to determine at what point the prohibition on the states ceased and their taxing power began. A test was needed to aid the Court in establishing the limits of permissible state taxation. The Court's response was to articulate the so-called "original package doctrine:"

> It is sufficient for the present to say, generally, that when the importer has so acted upon the thing imported, that it has become incorporated and mixed up with the mass of property in the country, it has, perhaps, lost its distinctive character as an import, and has become subject to the taxing power of the State; but while remaining the property of

---

units. The cartons are stored by size in the full case area until they are opened; the individual boxes of tubes are then shelved in the shelf area and are ready for sale in small quantities.

Petitioner had conceded that the tubes in the shelf area were taxable. The other tubes, remaining in their cartons in the full case area, had been held to be non-taxable by the Georgia Supreme Court. Respondents did not raise this question on cross-petition, so that issue was not before the Court.

7. "No state shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Control of the Congress." U.S. CONST., art. 1, § 10, cl. 2.

8. *See* notes 10 and 11 *infra,* and accompanying text.

9. 25 U.S. (12 Wheat.) 419 (1827).

> the importer, in his warehouse, in the *original form or package* in which it was imported, a tax upon it is too plainly a duty on imports to escape the prohibition in the Constitution[10] (emphasis added).

Here, because the goods were still within their "original packages," the Court held that the requirement of a license fee to sell them was an unconstitutional tax on imports.[11]

Later in the *License Cases*,[12] the Court applied similar reasoning in adjudicating a question which arose under the Commerce Clause.[13] The Massachusetts and Rhode Island cases concerned state statutes prohibiting the retail sale of imported liquor in small quantities without state licenses.[14] Finding that the laws acted upon the liquor only after it had passed the boundary of foreign commerce, and had become a part of the general mass of property in the respective states, the Court held the statutes to be nonviolative of the Commerce Clause, and therefore valid regulations of intrastate commerce.[15]

Next, in *Low v. Austin*,[16] the Court addressed itself for the first time to the legality of a nondiscriminatory *Michelin*-type ad valorem property tax. Relying solely upon the original package doctrine, the Court struck down the state levy on the grounds that it constituted a direct state tax on imports in contravention of the Import-Export Clause.[17] Petitioners in *Low* were merchants who had paid duties on imported champagne at the custom-house, and had then stored the wine in its original cases

---

10. *Id.* at 441–42.

11. *Id.* at 445.

12. Thurlow v. Massachusetts, Fletcher v. Rhode Island, Pierce v. New Hampshire, 46 U.S. (5 How.) 504 (1847).

13. "The Congress shall have Power To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." U.S. CONST., art. 1, § 8, cl. 2.

14. Chief Justice Taney, who had been counsel for the State of Maryland in *Brown*, perceived the issue to be whether these state laws were regulations of foreign commerce or of the internal traffic of the individual states. He understood the original package doctrine to have drawn the line at the point when the original package had been broken up, for use or for retail by the importer and the commodity had passed from the importer to the purchaser. License Cases, 46 U.S. (5 How.) 504 at 574 (1847).

15. *Id.* at 577.

16. 80 U.S. (13 Wall.) 29 (1871).

17. *Id.* at 35.

in their warehouse, where it remained awaiting sale to retailers. The Court, citing *Brown* and the *License Cases*, stated that imported goods did not lose their character as imports (and thereby become incorporated into the "mass of property" of the state) until they had passed from the control of the importer or had been broken up by him from their original cases. Thus, even the nondiscriminatory ad valorem property tax levied on such goods by the locality was held to be a violation of the Import-Export Clause. This acceptance of the original package doctrine, forbidding the assessment of nondiscriminatory ad valorem property taxes on imports, continued for many years. The *Low* rationale was subsequently applied by the courts to invalidate similar property taxes in varying factual contexts.[18]

---

18. *See, e.g.,* Anglo-Chilean Corp. v. Alabama, 288 U.S. 218 (1933) (Annual ad valorem levied by Alabama on goods in stock held unconstitutional as applied to importer engaged in landing, storing and selling nitrate in manufacturer's 100-pound bags); May & Co. v. New Orleans, 178 U.S. 496 (1900) (Shipping packages, rather than small parcels in which foreign manufacturer packaged goods, considered "original packages," the breaking open of which validly subjected goods to property tax); Galveston v. Mexican Petroleum Corp., 15 F.2d 208 (S.D. Tex. 1926) (Where oil shipped by tanker from Mexico was pumped into tanks in U.S. to await disposition under previously arranged contracts, such intermediate pumping merely constituted step in larger transaction and oil retaining its import character was not subject to local taxation); Wilson v. County of Wake, 19 N.C. App. 536, 199 S.E.2d 665 (1973) (Ad valorem tax held unconstitutional as applied to items which remained in the condition in which they were shipped because shipment consisting of undercarriage parts imported in wooden crates, in bundles and individually, was not the original package, so sale of one portion of shipment did not break the package; nor did sorting and stockpiling of the components of any shipment cause them to lose import character); Volkswagen Pacific, Inc. v. City of Los Angeles, 7 Cal. 3d 48, 101 Cal. Rptr. 869, 496 P.2d 1237 (1972) (Separately packaged auto parts held taxable where their removal from sea vans in which they were shipped constituted final act of importation before sales from warehouse by Volkswagen; further, where packaging is inherently impossible or impracticable, an imported, unpackaged item loses its immunity from state or local taxation when it is removed from an aggregate of other similar unpackaged items imported as a unit with it and hence, the cars in question were taxable); Michigan State Tax Commission v. Garment Corp. of America, 32 Mich. App. 715, 189 N.W.2d 72 (1971), *cert. denied* 404 U.S. 992 (1971) (Garments packaged in cartons which were shipped by sea van remained in the "original package" as long as they were in the cartons even though the cartons had been removed from the van); American Mannex Corp. v. Cronvich, 251 La. 1014, 207 So. 2d 778 (1968) (Original package consisted of all oil well casings covered by a given bill of lading and hence when a portion of the shipment was sold at retail, all of the joints covered in the bill lost their previous status as imports and became subject to local taxation); Florida Greenheart Corp. v. Gautier, 172 So. 2d 589 (Fla. 1965), *cert. denied* 382 U.S. 825 (1965) (Though shipments of lumber were com-

With *Hooven & Allison Co. v. Evatt*,[19] a new aspect of the original concept came before the Court, namely, the distinction, for purposes of the doctrine, between imports for sale and imports for manufacture. The Court held that imported hemp fibers still bound in their original bales were immune from state taxation under the Import-Export Clause, because imports for manufacture lost their protected status only when (1) the packages in which they were imported were broken; and (2) such goods were appropriated to the manufacture for which they had been imported.[20] This import for use in manufacture concept was taken one step further in *Youngstown Sheet & Tube Co. v. Bowers* and *United States Plywood Corp. v. City of Algoma*.[21] Applying *Brown* and distinguishing *Hooven*, the Court upheld the levy of both taxes because the materials for manufacture there had lost their distinctive character as imports, *i.e.*, all phases of importation had ended. The goods were essential to supply the daily needs of the manufacturers and had been put to the use for which they were intended.[22]

Thus, by the time the *Michelin* case came up for review, the Supreme Court had behind it a body of law under which the

---

mingled with other similar imports held for resale, the individual pieces of lumber were not subject to tangible personal property tax while they retained their original form, *i.e.* while they remained in importer's yard before sale); Tricon, Inc. v. King County, 60 Wash. 2d 392, 374 P.2d 174 (1962), *cert. denied* 372 U.S. 227 (1963) (Steel and glass products held in importers' warehouses in original bundles, reels, crates or packages until time of resale not subject to ad valorem tax).

19. 324 U.S. 652 (1945).

20. *Id.* at 666.

21. 358 U.S. 534 (1959). In *Youngstown*, iron ore, transported in bulk across Ohio after having arrived at various ports, was received at Youngstown's iron and steel plant. The ores were unloaded in the yards next to the plant and grouped there by country of origin. As the ore was needed for daily manufacturing purposes, it was taken from the piles to stock bins and finally to the furnaces. After the ore had been consumed, other imported material was brought in, unloaded and placed on the dwindling piles. An ad valorem property tax had been assessed on all ore in the yards.

United States Plywood Corporation, which manufactured veneered wood products made of both domestic and imported lumber, had a similar usage process. The wood was shipped to the plant by rail directly from Canada, either loose or in bulk. Since the wood was green when it arrived, it was taken to a storage yard, segregated by country of origin, and allowed to dry before use. To facilitate the drying process, the wood was stacked and then treated in kilns just before being used. The state assessed an ad valorem property tax on half of the imported wood.

22. *Id.* at 549.

constitutionality of state taxation of imports under the Import-Export Clause was primarily determined on the basis of whether the subject goods were classifiable as imports (as defined by the original package doctrine or a variation thereof) at the time of assessment.[23] Abandoning this time-honored approach, the Court elected instead to focus on the nature of the state levy, rather than the status of the goods, in order to ascertain whether the tax was of a type intended to be prohibited by the Clause.

The Court began by examining the policies which the Constitutional framers originally sought to implement through the Import-Export Clause, and then evaluated the nondiscriminatory ad valorem property tax in light of these purposes. The Court noted that the Clause was designed to effectuate three objectives. First and foremost, the framers believed that the United States, through the federal government, should speak with one voice in its commercial dealings with foreign states.[24] State-imposed tariffs which could affect foreign commercial relations would be inconsistent with that exclusive power. Secondly, the authors of the Constitution anticipated that taxation of imports would be a principal source of revenue for the federal government.[25]

---

23. The Georgia Supreme Court had addressed the question of the tires' import status. First, the court rejected the theory propounded by appellants that the sea vans were the original packages. The Georgia court maintained that this view would make it impossible for importers using this contemporary method of transportation to maintain the character of the imports once they had arrived in the United States. Thus the imports did not lose that status as soon as they were removed from the sea vans. Next, to determine whether the tires lost their import character when they were sorted and commingled with other shipments preliminary to sale, the court adopted the "two-hat" approach purportedly taken in *Brown, viz.*, when the importer deals with the goods as an importer, they are immune from tax, but when he deals with them as a seller, they are taxable by the state. Finally, the court determined that the tires were susceptible to a nondiscriminatory ad valorem property tax because they were unpackaged and commingled by size and type to make the individual units immediately ready for sale. Wages v. Michelin Tire Corp., 233 Ga. 712, 722–23, 214 S.E.2d 349, 355 (1975).

24. 423 U.S. 276, 285.

25. *Id.* at 291, n.12, quoting THE FEDERALIST No. 12 (A. Hamilton): "It is evident from the state of the country, from the habits of the people, from the experience we have had on the point itself, that it is impracticable to raise any very considerable sums by direct taxation. Tax laws have in vain been multiplied; new methods to enforce the collection have in vain been tried; the public expectation has been uniformly disappointed, and the treasures of the States have remained empty. The popular system of administration inherent in the nature of popular government, coinciding with the real scarcity of money incident to a lanquid and mutilated state of

Diversion of needed revenues to the states, through their assessment of import taxes, would have seriously endangered the national fisc. Finally, it was hoped that a ban on state import taxation would promote harmony among the states by depriving seaboard states of the opportunity to tax indirectly inland states by levying what would amount to transit fees.[26]

In light of these goals, the Court concluded that the framers never intended an Import-Export Clause to preclude states from assessing a nondiscriminatory ad valorem property tax. First, such a tax would have little impact on the federal regulation of foreign commerce, since by definition it is unrelated to an article's place of origin.[27] Furthermore, this tax, if nondiscriminatory, could not be used to create special protective tariffs or preferences for domestic goods.[28] Nor would such a tax have any adverse impact on the federal government's right to revenue from imposts and duties, since ad valorem taxes, by their nature, are not imposts and duties. The latter are basically taxes on the commercial privilege of bringing goods into the country, whereas an ad valorem tax is an assessment by which the state apportions the cost of local services provided for the benefit of its citizens.[29]

---

trade, has hitherto defeated every experiment for extensive collections, and has at length taught the different legislatures the folly of attempting them.

". . . In so opulent a nation as that of Britain . . . far the greatest part of the national revenue is derived from taxes of the indirect kind, from imposts, and from excises. Duties on imported articles form a large branch of this latter description.

"In America, it is evident that we must a long time depend for the means of revenue chiefly on such duties."

26. *Id.* at 285–86.

27. *Id.* at 286.

28. *Id.* Not only would a discriminatory tax pose serious constitutional problems, it might also violate certain provisions of the General Agreement on Tariffs and Trade (GATT); *see especially* Article III, ¶ 1 which provides in pertinent part:

"1. . . . [I]nternal taxes . . . affecting the internal sale, offering for sale, purchase, transportation, distribution or use of products, . . . should not be applied to domestic products so as to afford protection to domestic production."

29. *Id.* at 287. The term ad valorem means a tax or duty measured by a percentage of the value or property subject to taxation. Arthur v. Johnston, 185 S.C. 324, 194 S.E. 151, 154 (1937).

The phrase "ad valorem" means literally "according to the value," and is used in taxation to designate an assessment of taxes against property at a certain rate upon its value. Powell v. Gleason, 50 Ariz. 542, 74 P.2d 47, 50 (1937); State ex rel. Meyer v. Story, 173 Neb. 741, 114 N.W.2d 769, 772 (1962).

"Ad valorem" is a duty or charge laid upon goods at a certain rate per cent upon their value as stated in their invoice in opposition to specific sum upon given

The Court found no policy basis for not requiring an importer to bear his share of the costs of these local services, such as police and fire protection. Though the Import-Export Clause may prohibit taxation on the basis of the foreign origin of the goods, it does not require a state to grant preferential treatment to these goods. Further, although federal revenue may be diminished slightly if the tax discourages the purchase or importation of foreign goods, this consequence was not a major consideration of the framers.[30]

As for the policy of promoting intrastate harmony, the Court noted first that an ad valorem assessment is not a "transit fee" such as the framers sought to avoid; rather, it is a tax on goods more or less at rest, aimed at the importer and not at inland states or out-of-state consumers.[31] The Court further asserted on this point that modern methods of transportation make possible direct importation to inland states. Finally, the Court noted again that there was no reason why inland consumers should not share with local taxpayers the costs of state benefits received by the importer.[32]

Having determined that the objectives of the Import-Export Clause would not be furthered by the prohibition of this tax, the Court looked to the historical meanings of "imports" and "duties," as used in the Import-Export Clause,[33] to see whether a nondis-

---

quantity or number. Thomas v. City of Elizabethtown, 403 S.W.2d 269, 271, 272 (Ky. 1966).

30. 423 U.S. at 287. The Court noted that other decisions have allowed nondiscriminatory state taxes which were likely to have an incidental effect on the volume of goods imported, *citing* Waring v. The Mayor, 75 U.S. (8 Wall.) 110 (1868) (taxation after initial sale); May & Co. v. New Orleans, 178 U.S. 496 (1900) (taxation of goods after breakup of shipping packages); Youngstown Sheet & Tube Co. v. Bowers, 358 U.S. 534 (1959).

31. The Court suggested that if such a tax were assessed on goods still in transit, it would be invalid under the Commerce Clause, 423 U.S. at 290, n.11. *See* Powell, *Taxation of Things in Transit,* 7 VA. L. REV. 167 (1920).

32. 423 U.S. at 289.

33. "Impost is a tax received by the prince for such merchandise as are brought into any haven within his dominions from foreign nations. It may in some sort be distinguished from customs, because customs are rather that profit the prince maketh of wares shipped out; yet they are often confounded." BLACK'S LAW DICTIONARY 889 (4th ed. 1951) (*citing* Cowell's Law Dictionary). The word "imposts" in its more restricted sense as used in the federal Constitution signifies a duty on imported goods and merchandise. Union Bank v. Hill, 43 Tenn. (3 Cold.) 325, 328 (1866). In its broader sense, the word means any tax or tribute imposed by authority and applies as well to a tax on persons as a tax on property. City of Madera v. Black,

criminatory ad valorem property tax was specifically within the scope of those terms, as intended by the framers. Imposts, said the Court, are charges levied on imports at the time and place of importation. Duties were broader in scope, including excise taxes as well as customs duties. The Court compared the clause to the taxing power clause,[34] and determined that the latter's broader coverage ("taxes, duties, imposts and excises") required a narrow construction of the Import-Export Clause ("imposts" and "duties").[35] Acknowledging the ambiguity in the meanings of "imposts" and "duties" as used in the clause, the Court declined to impute to the framers an intention to include ad valorem property taxes in its prohibition.[36]

The Court's final step was to overrule *Low*. That decision, the Court declared, was based on a wholly superficial and inaccurate interpretation of the original package doctrine engendered by an incorrect reading of *Brown* and the *License Cases*.[37] The Court then reinterpreted *Brown*, setting forth a new bifurcated standard putting the original package doctrine in its proper perspective. Under the test, as articulated by the Court, the prohibition of the Import-Export Clause would *not* apply in two situations, as outlined in *Brown* by Chief Justice Marshall. The first is when a state tax is levied on goods which are no longer considered imports. Properly used here, the original package doctrine can serve as an evidentiary tool in determining whether

---

181 Cal. 306, 184 P. 397, 400 (1919). *See also* Pacific Ins. Co. v. Spule, 74 U.S. (7 Wall.) 433, 445 (1868); Hancock v. Singer Mfg. Co., 62 N.J.L. 289, 41 A. 846, 849 (1898).

A "duty" is ordinarily used in referring to levies upon imports and exports. Gen. Mut. Ins. Co. v. United States, 119 F. Supp. 352, 354 (S.D.N.Y. 1953). "A duty as the word is used in its most usual signification is the synonym of imposts or taxes, but the word is sometime used in a broader sense as including all manner of taxes, charges or governmental imposition." In re Manville's Will, 102 N.Y.S.2d 530, 532 (Surr. Ct. 1950). *See generally* 1 W. CROSSKEY, POLITICS AND THE CONSTITUTION IN THE HISTORY OF THE UNITED STATES 296–97 (1953).

34. "The Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises" U.S. CONST. art. 1, § 8, cl. 1.

35. "[T]he clause is not written in terms of a broad prohibition of every 'tax.' The prohibition is only against States laying 'imposts or duties' on 'imports.' By contrast, Congress is empowered to 'lay and collect Taxes, Duties, Imposts, and Excises,' which plainly lends support to a reading of the Import-Export Clause as not prohibiting every exaction or 'tax' which falls in some measure on imported goods." 423 U.S. at 290.

36. *Id.* at 293–94.

37. 423 U.S. at 298–99.

an item is an import — that is, how far it has travelled along the continuum, from true import status to being "incorporated with the general mass of property in the state."[38]

Under the second branch of the test, a prohibition will not apply when a particular exaction does not qualify as an impost or duty.[39] The Court inferred from *Brown* that so long as a tax did not discriminate on the basis of the foreign origin of goods, it could be levied even though the goods in question may not yet be "mixed up with the mass of property in the country."[40]

Finally the Court read Chief Justice Taney's opinion in the *License Cases* to imply that the Import-Export Clause did not prohibit nondiscriminatory ad valorem taxes.[41]

The *Michelin* Court did not couch its holding in "original package" language; it stated unequivocally that nondiscriminatory ad valorem property taxes can be constitutionally assessed on goods no longer in import transit which are stored in a wholesale warehouse, awaiting sale to retailers. The tires here, in fact, would have fallen *outside* the protection of the doctrine as it has been interpreted by the courts since *Brown v. Maryland.* How-

---

38. The actions of an importer might cause his goods to become so mixed with the mass of property in the state that they lose their distinctive character as imports, and are thus validly subjected to the taxing power of the state; if the importer takes no such action, the goods are not automatically immune from state taxation.

39. The Court noted that Chief Justice Marshall had given examples of exactions excluded from the prohibition: a tax on an importer who sells his goods as an itinerant peddler, a service charge on an importer for selling his goods through a public auctioneer, or a property tax on plate or furniture used by the importer himself. 423 U.S. at 298, *citing* 25 U.S. (12 Wheat.) at 443–44.

40. "[T]he tax intercepts the import, as an import, on its way to become incorporated with the general mass of property, and denies it the privilege of becoming so incorporated, until it shall have contributed to the revenue of the State." 25 U.S. (12 Wheat.) at 443.

41. Chief Justice Taney spoke of the validity, as applied to importers, of a personal property tax imposed on all State citizens which would include the value of an importer's goods in his possession, but outside of foreign commerce:

> Undoubtedly, a State may impose a tax upon its citizens in proportion to the amount they are respectively worth; and the importing merchant is liable to this assessment like any other citizen, and is chargeable according to the amount of his property, whether it consists of money engaged in trade, or of imported goods which he proposed to sell, or any other property of which he is the owner. But a tax of this description stands upon a very different footing from a tax on the thing imported, while it remains a part of foreign commerce, and is not introduced into the general mass of property in the State. 46 U.S. (5 How.) 504 at 576 (1847).

ever, because the Court chose not to ascertain the tires' status as imports, the decision's impact on the original package concept is not entirely clear. The Court seems to have acknowledged the doctrine's viability, yet diminished its importance by relegating it to one of two alternative approaches to the question of state taxation of imports. It may be of significance here that the tires were no longer in "import transit;" this factor could in future decisions be a key preliminary determination to the assessability of a nondiscriminatory ad valorem property tax.

It is of interest that in October, 1976, the Court declined to review two companion cases from the Texas Supreme Court, *American Honda Motor Company, Inc. v. City of Farmers Branch*[42] and *Matsushita Electric Corporation of America v. City of Farmers Branch.*[43] Inventories of goods in those cases, which had a history of importation, shipment, and storage similar to that of the items in *Michelin,*[44] *had* remained in their original shipping cartons, and were the subject of a disputed tax assessment. Despite this fact, the Texas Supreme Court applied *Michelin* retroactively,[45] and held the disputed inventories to be subject to the nondiscriminatory ad valorem property taxes assessed since 1972. The results in these cases further attest to the diminished importance of the original package doctrine after *Michelin.*

The ramifications of the *Michelin* decision on international trade patterns remain to be seen, for states' responses now are varied. Many states have already assessed ad valorem property taxes on goods in warehouses. Others, including California and

42. 527 S.W.2d 776 (Tex. 1976), *cert. denied,* 45 U.S.L.W. 3253 (U.S. Oct. 5, 1976).

43. 527 S.W.2d 768 (Tex. 1976), *cert. denied,* 45 U.S.L.W. 3253 (U.S. Oct. 5, 1976). The cases came before the Texas Supreme Court twice. On the day that the court denied the first application for certiorari, the *Michelin* decision was announced; as a result, the court agreed to rehear the application.

44. American Honda deals in imported parts and accessories for motorcycles, automobiles, and outboards which are packed in corrugated cartons and shipped in sea vans. On arrival at the Honda warehouse, the cartons are segregated into those for surplus storage, and those for open stock. Matsushita's imported electrical products are packed in cartons and shipped in sea vans. The cartons arrive in Farmers Branch still sealed.

45. It was on the issue of retroactivity of the tax, as mandated by the Texas Supreme Court's decision, that the parties sought review by the U.S. Supreme Court. Subsequent to the *Michelin* decision, the Court also denied a petition by Michelin itself for a rehearing on the question of Georgia's power to apply the property tax retroactively. 424 U.S. 935 (1976).

Texas, have declared publicly that they intend to do so.[46] Some commentators assert that as a practical matter, local authorities will be compelled to impose such taxes, because no local government would pass up the opportunity to exploit a new source of revenue by taxing warehoused imports. Further, local officials might not wish to be accused of discriminating against United States-made goods by taxing such goods in inventory while exempting similarly situated imported goods from the property tax.[47]

When other legal and economic issues are considered, some states do not see the immediate imposition of the taxes as a foregone conclusion. The Louisiana constitution, for example, exempts imports from ad valorem taxes.[48] Thus, unless the state constitution is amended, imports are not likely to be taxed at the parish and local levels. Massachusetts, Florida, and Virginia tax officials are awaiting legal rulings and results of economic impact studies before making their decisions.[49]

On the other hand, some states, such as Maryland, have taken steps to ensure their economic welfare, not by levying the taxes but by protecting importers from them.[50] There has been some concern expressed in trade circles that states like Maryland which do not tax imports will attract importers away from ports which do impose such levies, causing a serious diversion of trade flows. As yet, there is little substantial evidence to support this fear. Furthermore, since New York and New Jersey do not tax

---

46. The Journal of Commerce, Jan. 23, 1976, at 1, col. 3.

47. The Journal of Commerce, Feb. 2, 1976, at 1, col. 4.

48. LA. CONST. art. 7, § 21(d). Tax officials say the exemption was placed in the Constitution only because of the federal doctrine against state taxation of imports. *Supra* note 47.

49. *Supra* note 47.

50. In 1976, the Maryland legislature amended the state law on personal property exemptions from taxation, by adding:

> The governing body of any County or Baltimore City may by ordinance or resolution grant an exemption from ordinary taxation to the inventory of foreign imports of businesses engaged in importing if the imported property is in the hands of the importer and is in the original package.

MD. ANN. CODE art. 81, § 9A(e)(7) (1976 Cum. Supp.). The City of Baltimore, pursuant to the power granted it by the above, enacted an ordinance which effectuated the General Assembly's mandate. In pertinent part, it reads:

> The inventories of foreign imports of importers located within Baltimore City shall be exempt from ordinary municipal taxation, provided the imported property is in the hands of the importer and is in the original package.

BALT. CITY CODE art. 28, § 84A.

inventories, the *Michelin* ruling will not have an adverse effect on the large volume of commerce carried on in those major port states.[51] Finally, most imported products are not held in inventory on a temporary basis but are shipped directly to the consignee thus escaping taxes enroute.[52]

At first glance, it would appear that the retroactive application of the *Michelin* decision implicitly countenanced in the Court's denial of review in the *Matsushita* and *American Honda* cases will have little effect on trade patterns, for any alteration in commercial plans of a foreign importer now could not stop the retroactive application of ad valorem property taxes on inventories already landed. However, if states apply the taxes retroactively, many importers and exporters could face financial hardship; for some it might spell financial disaster.[53]

Finally, it should be emphasized that in overturning *Low v. Austin*, the *Michelin* Court did not authorize states to burden the importation of foreign goods by imposing a *discriminatory* levy, under the guise of a *non-discriminatory* ad valorem property tax. The decision is clearly limited to property taxes which equitably apportion the cost of state services among citizens, including importers, and from which importers have previously been exempt.

Leslie D. Gradet

---

51. *Supra* note 47.

52. For example, retailers receive direct shipments of most of their imports; imported automobiles are shipped directly to individual dealers. *Id.*

53. This comment was made by E. A. Dominianni, an attorney with the law firm representing Michelin Tire Corp. *See* The Journal of Commerce, April 20, 1976, at 1, col. 1. For other discussions of the retroactivity issue, *see id.*, Feb. 20, 1976, at 1, col. 3, and *id.*, April 2, 1976, at 28, col. 3.