

# MAINE STATE LEGISLATURE

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Imports State Regulation  
Foreign Goods State Regulation

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May 13, 1977

The Honorable Ross A. Green  
House of Representatives  
State House  
Augusta, Maine 04333

Dear Representative Green:

You have asked whether the State may take any action restricting the importation and sale of foreign shoes in Maine. In the absence of any specific proposal, it is somewhat difficult to answer this question, but the general answer is that the State may not take such action, since the power to impose restrictions on imports is vested by the United States Constitution in the federal government alone.

Article I, §19, cl. 2 of the federal Constitution provides:

"No State shall, without the Consent of Congress, lay any imports or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws . . ."

It is thus clear that the states cannot impose direct restrictions on imports. A major question which has been litigated under this clause concerns defining the kind of restriction which might be imposed while the goods retained their character as imports. For many years, the Supreme Court took a doctrinaire view of the matter, holding that "whilst retaining their character as imports, a tax upon them, in any shape, is within the constitutional prohibition." Low v. Austin, 13 Wall. 29, 34 (U.S. 1872), citing Brown v. Maryland, 12 Wheat. 419 (U.S. 1827). (Emphasis added). Last year, however, the Court retreated somewhat from this position, sustaining a non-discriminatory ad valorem property tax which was

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similar to the tax invalidated in Low. Michelin Tire Corp. v. Wages, 423 U.S. 276 (1976). In so holding, however, the court made clear that "discriminatory state taxation against imported goods as imports" was exactly the kind of tax which the framers of the Constitution intended to prohibit. Id. at 286. The key, therefore, is the element of discrimination; if the tax (or other restriction) is aimed at a particular kind of import, it is unconstitutional.

In view of this, the general answer to your question must be as stated above, since an attempt to restrict the free flow of foreign shoes into the State would undoubtedly be invalidated under the Import-Export Clause. If you had some particular proposal in mind, however, I would be happy to advise you further as to whether such would violate the Constitution.

Sincerely,



JOSEPH E. BRENNAN  
Attorney General

JEB/bls