

MAINE STATE LEGISLATURE

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JOSEPH E. BRENNAN
ATTORNEY GENERAL



RICHARD S. COHEN
JOHN M. R. PATERSON
DONALD G. ALEXANDER
DEPUTY ATTORNEYS GENERAL

STATE OF MAINE

DEPARTMENT OF THE ATTORNEY GENERAL

AUGUSTA, MAINE 04333

May 13, 1977

The Honorable Stephen T. Hughes
House of Representatives
State House
Augusta, Maine 04333

Dear Representative Hughes:

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,

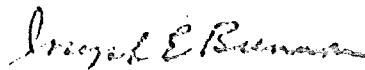
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the Court retreated somewhat from this position, sustaining a non-discriminatory ad valorem property tax which was similar to the tax invalidated in Low. Michelin Tire Corp. v. Wages, 423 U.S. 276 (1976). In so holding, however, the court made clear 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 very happy to advise you further as to whether such would violate the Constitution.

You have also asked whether it is true that the importation of a certain kind of crab or lobster from South America is prohibited by Maine law. My research does not disclose the existence of any such prohibition. 12 M.R.S.A. §4452(6), however, does make it unlawful to sell "crawfish" as "lobster" or imitation lobster unless the country of origin is clearly disclosed. Perhaps this is the legislation in question. If so, it would certainly be considered constitutional, as it is reasonably related to the protection of the public health, safety, and welfare and is not a prohibition on a foreign import.

Sincerely,


JOSEPH E. BRENNAN
Attorney General

JEB/bls