In the

Supreme Court of the United States

MICHELIN TIRE CORPORATION,
Petitioner

vs. 74-1396

W. L. WAGES, TAX COMMISSIONER, ET AL,
Respondent

Washington, D. C.
October 15, 1975

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The above-entitled matter came on for argument at 1:51 o'clock p.m.

BEFORE:

WARREN E. BURGER, Chief Justice of the United States
WILLIAM O. DOUGLAS, Associate Justice
WILLIAM J. BRENNAN, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
THURGOOD MARSHALL, Associate Justice
HARRY A. BLACKMUN, Associate Justice
LEWIS F. POWELL, JR., Associate Justice
WILLIAM H. REHNQUIST, Associate Justice

APPEARANCES:

EARLE B. MAY, Jr., ESQ., Haas-Howell Building, 75 Poplar Street, Atlanta, Georgia 30303 For Petitioner

HOSEA ALEXANDER STEPHENS, ESQ., 2334 National Bank of Georgia Building, Atlanta, Georgia 30303 For Respondents

C O N T E N T S

P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will hear arguments next in NO. 74-1396, Michelin Tire Corporation versus W. L. Wages, Tax Commissioner.

Mr. May, you may proceed whenever you are ready.

ORAL ARGUMENT OF EARLE B. MAY, JR., ESQ.

ON BEHALF OF PETITIONER

MR. MAY: Mr. Chief Justice, and may it Please the Court:

This is a case which involves the import clause of the Federal Constitution and the proper interpretation and application of that clause to imported tires and tubes.

The sole issue is whether tires imported without packaging and held for the sale by the importer in his warehouse in the original form in which imported or immune from local ad valorem taxes by reason of the import clause.

The trial court upheld the importer's claim of immunity with respect to both tires and tubes.

The Supreme Court of Georgia affirmed with respect to the tubes but reversed with respect to the tires, notwithstanding the fact that both the tires and the tubes are handled precisely in the same manner while in the importer's warehouse.

QUESTION: The state has taken no cross-petition from the decision adverse to it in the Supreme Court of

Georgia.

MR. MAY: That is correct, Mr. Justice Rehnquist, except the state is not actually the party. It is the local Gwinnett County tax officials --

QUESTION: The tax officials of Gwinnett County.

MR. MAY: -- who impose the taxes, of course, pursuant to Georgia Constitutional provisions but the State of Georgia as such is not a party to this case.

QUESTION: Well, I suppose your argument that you suggested a moment ago that the Supreme Court of Georgia's decision is wrong because it has treated differently two things that are alike wouldn't necessarily win for you here.

Maybe it was wrong in ruling that the tool boxes were not taxable.

MR. MAY: That could well be, your Honor, but it is our position, contrary to what you just said, that we do think that if the result of the Georgia Supreme Court decision is to accord less immunity to an unpackaged import than that accorded to a packaged import, that it is wrong because the constitutional prohibition is to command immunity for all imports, whether packaged or unpackaged.

QUESTION: But you have got to make your comparison with some authoritative decision on the liability for a packaged import. I mean, the Supreme Court of Georgia may have been wrong --

MR. MAY: Yes, sir.

QUESTION: -- to the extent it decided against the assessor.

MR. MAY: Well, we submit there are numerous decisions of this Court which clearly recognize tax immunity for packaged imports, if the Court please.

The facts are very brief, may it please the Court.

The importer is a New York corporation engaged in the business of importing and distributing wholesale tires and tubes that are manufactured outside the United States and as a part of its business it operates a distribution warehouse in Gwinett County, Georgia. The tires are --

QUESTION: Do these tubes fit any other tires than Michelin tires?

MR. MAY: If your Honor please, I don't believe that answer is in the record and I don't honestly know. I believe the answer would be no, Mr. Chief Justice, but I cannot answer that precisely.

QUESTION: Well, I take it we are not concerned with the tubes in this case, are we?

MR. MAY: That is correct, Mr. Justice Blackmun, except to the extent that our argument that the decision of the Georgia court accords unequal treatment to packaged and unpackaged imports. To that extent the Court might be concerned with it, but there was no cross-petition filed by

the tax officials.

QUESTION: I suppose if you lose, your client can start packaging its tires and then you have something in parallel.

MR. MAY: Well, that would be one way under the present decision of the Georgia Supreme Court that our client could avoid taxation by putting each tire in a separate package so long as the package was not broken and the tire would -- if the Georgia Supreme Court is to be consistent, would be immune from taxation.

QUESTION: Or another way would be to separate them by style and size at the point of origin.

MR. MAY: Yes, sir.

QUESTION: In Nova Scotia or France.

MR. MAY: Or France, yes, sir.

The facts show that no sales are made to retail customers. All sales are made at wholesale and on all such imported tires and tubes the importer has paid to the United States the four percent import duty.

The tires are imported without packaging and are never altered or modified in any way from the original form in which they were imported.

Now, the Supreme Court of Georgia, may it please the Court, expressly recognized at page A-7 of the Appendix to the Petition for Certiorari that the individual tires are

not treated or altered in any manner but they nevertheless denied immunity upon the ground -- as shown at page A-18 of the Appendix to the Petition for Certiorari -- that the tires had lost their status as imports when they were segregated by size and style and stacked in the importer's warehouse with other similar imported tires of the same size and style and it is this decision, may it please the Court, which is presently here for review.

And we believe the decision is erroneous and our contentions are based primarily upon four factors:

Number one, the original form had not been changed.

Number two, the tires were still in the form of import distribution and had not reached the point of final destination, as they had in Youngstown, Mr. Justice Stewart.

The right to sell, which has never been seriously challenged until now, the importer's right to sell and,

Fourth, the unequal treatment accorded unpackaged imports as compared with packaged imports -- as we were just discussing with Mr. Justice Rehnquist.

First, it is undisputed, your Honors, that the tires were imported without packaging and at all times remained the property of the importer in his warehouse in the original form in which imported.

And in 1827 this Court held in Brown versus

Maryland, in Chief Justice Marshall's landmark decision, that where the thing imported, if it please the Court, remains the property of the importer in his warehouse in the original form or package in which it was imported -- and I quote, "A tax upon it is too plainly a duty on imports to escape the prohibition in the Constitution."

References to the term, "original form" are found in many subsequent decisions of this Court and we suggest that the plain and natural meaning of those words is that where an article is imported without packaging, holding such an article in its unaltered, original form in which imported is equivalent to holding packaged import in the original package in which it was imported and that is the meaning which has been given these words by the courts of New York, Florida and North Carolina and in our judgment was the meaning intended by Chief Justice Marshall.

Here, the Georgia court ignored and disregarded the words "original form" completely. They treated them as being completely meaningless and that is precisely what the tax officials in this case are asking this Court to do and we suggest respectfully that the Court has not done so for nearly 150 years and no persuasive reason has been or can be advanced for doing so at this time.

The second factor that we rely upon is what we call the final destination factor. It is undisputed that

the tires are still in the flow of import distribution, have not reached their final destination. The importation journey has not definitely ended nor have the tires been irrevocably committed to the use for which they imported.

QUESTION: You are not suggesting that the journey wouldn't be ended until they were put on an automobile, are you?

MR. MAY: No, Mr. Chief Justice.

QUESTION: Where do you think the journey would end?

MR. MAY: The journey would end, Mr. Chief Justice, in my opinion, at the point at which the tires had reached a retail selling-type operation where they were to be sold at retail for local consumption at the point of final destination.

QUESTION: Maybe that is another way that your client can avoid the taxes, to ship directly to the retailer, from France or Nova Scotia. It might take a little doing but I suppose it could be done.

MR. MAY: I suppose it could, Mr. Justice Blackmun. We haven't explored that possibility at this point.

But I say that, Mr. Chief Justice, because one -- as we all know, one of the important reasons for the inclusion of the import clause in the Federal Constitution was the desire of the framers to prevent taxation by seaboard

states with their great ports of entry, of imported goods flowing through to inland states and that was plainly stated in Brown versus Maryland and this Court reaffirmed it in the 1959 Youngstown decision where the Court said, the Constitutional design was to immunize imports from taxation by the importing states and all others.

QUESTION: Of course, Brown against Maryland was a tax on the requirement of a license on someone who sold imports. It wasn't a general ad valorem property.

MR. MAY: That is correct, your Honor, but the arguments that a general ad valorem nondiscriminatory ad valorem tax is not prohibited by the import clause have been consistently rejected by this Court for more than 100 years.

QUESTION: What do you make of the case of May against New Orleans?

MR. MAY: I think May versus New Orleans, Mr. Justice Rehnquist, was purely an original package case. I think it is premised totally upon original package. The court held that the wooden crates in which the boxes were contained were the original package and when they were broken the importer lost his immunity.

QUESTION: You don't think, then, that -- do you pronounce it Gwin-nett or Gwinet?

MR. MAY: Gwin-nett, your Honor.

QUESTION: You don't think that Gwinnett County

is entitled to any sort of pro rata contribution from your client for the fire protection or the police protection that it provides for your client's warehouse, even though it gets pro rata contributions from other people who get exactly the same services?

MR. MAY: May I answer that in two ways, Mr. Justice Rehnquist.

QUESTION: In as many ways as you want.

MR. MAY: I would point out, number one, that Gwinnett County does receive taxation from the Michelin property, which is the land and the building and the typewriters, the desks, that type of property. Ad valorem taxes is paid by my client to the county. No exemption is claimed.

With respect to the other aspect of the question, my answer is no, I do not think that Gwinnett County is entitled to tax my property, which is an import, so long as it remains an import and the reason I say that is because the Constitution prohibits it and it is an absolute prohibition contained in the Constitution and there is but one exception and that is,"No state shall, without the consent of Congress, lay any tax upon an import except what may be absolutely necessary to inspect --"

QUESTION: I thought it said, "Impose duties."

MR. MAY: Well, it does, but that has been construed to include a general ad valorem tax.

Low versus Austin, in 1872, the Court held that. California made that argument.

California made the same argument again in 1946 in Richfield Oil and the Court again rejected it in an opinion by Mr. Justice Douglas where he said that it would entail substantial revisions of the language of the import clause to substitute for the prohibition against any tax the words "Any discriminatory tax."

And so for those reasons, I respectfully answer your Honor's question by saying that, no, I do not think my goods should be required to bear a part of that protection -- the expense of protecting the property.

Coming back now, if I may for a moment, to the final destination factor, we submit that that is essential and vital to a determination of whether the tires are still in the flow of import distribution and are therefore still imports. The Georgia court disregarded this fact and to do so is to lose sight of the underlying -- one of the underlying purposes of the import clause and the issue which really lies at the very heart of this case and that is, if it please the Court, whether the tires have retained their distinctive character as imports and I can't think of a better case to demonstrate this than this Court's decision in Youngstown, where the Court held that the ore and lumber there involved had lost their distinctive character as imports and

in so doing, the Court gave major weight to two factors, one, the importation journey definitely had ended and two, the articles had been irrevocably committed to use in manufacturing at the point of final destination.

We respectfully suggest to the Court that the same consideration should be given the final destination factor here because here, in sharp contrast, if the Court please, to the facts in Youngstown, we have undisputed evidence which shows, first, the tires are imported for sale and sold only at wholesale.

Two, they flow out from the importer's warehouse to franchised dealers in six states in the original form in which imported and,

Three, it is such dealers who sell the tires at retail for local consumption at the point of final destination and we respectfully submit that under those circumstances, while the tires are in the improter's warehouse, they have neither completed their import journeynor have they been irrevocalby committed to use at the point of final destination.

On the contrary, they are, in the language of Cheif Justice Tarney, if I may be permitted to quote a brief statement of the Chief Justice, "Merely in transitu and on their way to the distant cities, villages and country for which they are destined and where they are expected to be

used and consumed and for the supply of which they were, in truth, imported."

That precise language from the license cases was quoted in the Youngstown decision in 1959 and we submit it is clearly applicable here and as, under these circumstances, the tires fall squarely within the underlying purposes of the import clause and clearly retain their status as imports.

Moving along, our third factor, may it please the Court, is the importer's right to sell its goods free from local taxation. Again, referring to Brown versus Maryland, it plainly held that one who had imported goods for the purpose of selling them had, by payment of the import duty to the United States, acquired not only the right to bring the goods into the country, but also the right to sell the goods free from local taxation in their original form of package.

QUESTION: It didn't hold that, because what it was dealing with was a license tax on one who sought to sell imports.

I mean, you can say that Justice Marshall said it in the opinion, but I don't believe it was a holding.

MR. MAY: Well, I wouldn't argue, your Honor, that that may not have been the specific holding of Brown versus Maryland, but that certainly is the interpretation which has been placed upon that decision by this Court for

almost 150 years.

QUESTION: Would you say that once the man -- once an importer pays a duty exacted by the Federal Government, no further tax burden of any sort may be placed on his sale of those goods that are imported? You wouldn't go that far, would you?

MR. MAY: I would, with one exception, Mr. Justice Rehnquist. If the article which has been imported is still held by the importer in its original form or package in which imported but if the importation process has ended and the article is being exposed for sale at retail for local consumption at the point of final destination, it may well be that when such a case comes before this Court, that the Court would hold that it, irrespective of the fact that it is still in the original form, that it has lost its distinctive character as an import and become subject to taxes.

QUESTION: When you distinguish between wholesale and retail, what is there in the import clause that leads to that conclusion?

MR. MAY: Well, the import clause prohibits taxation upon any import. The way the wholesale factor comes into it is that in a wholesale distribution process, the goods are still flowing through. They have not reached the point, as Youngstown said, the importation journey has not definitely ended.

QUESTION: Well, can't you say the same with retail goods? They are still flowing and you don't know who the ultimate purchaser is going to be.

MR. MAY: Yes, sir, that argument can be made but I think it is logical to assume that there is no further flow-through once a tire or any other imported article reaches a retail outlet which is selling to local customers.

I concede there may be an instance where somebody from Alabama could come into Georgia at a retail tire store and buy a set of tires and they may wind up in Alabama but I submit to your Honor that that would be the exception rather than the rule.

QUESTION: Mr. May, it is of no import, I suppose, I don't mean that as a pun, either, but how much tax are we talking about here annually, roughly?

MR. MAY: Your Honor, I will give my guestimate. I think it is in the neighborhood of $10,000 per year. The counsel for the county could probably give a more accurate answer.

QUESTION: It is the same principal, whether it is $300 or a million, I suppose.

MR. MAY: Yes, sir.

QUESTION: Mr. May?

MR. MAY: Yes, sir, Mr. Justice Powell.

QUESTION: You are arguing your third point which

as I understand it, is that the importer has a right to sell in this country. Does that suggest that if the wholesaler in Atlanta had been an American wholesaler, an American corporation and Michelin had sold these tires to it, that the clause would not apply?

MR. MAY: If Michelin were the importer -- do I understand you correctly?

QUESTION: No, Michelin is exporter, Michelin in France.

MR. MAY: Yes, sir.

QUESTION: Makes a contract to sell to a Georgia wholesaler. Let's take this warehouse. Assume that it were owned by a Georgia corporation --

MR. MAY: Right.

QUESTION: -- and everything else were the same, would the clause apply?

MR. MAY: It would, in my judgment, Mr. Justice Powell, if the Georgia corporation is deemed to be the importer because Chief Justice Marshall said the property -- the thing imported, while remaining the property of the importer, in his warehouse in the original form of packaging, so if your question includes the Georgia corporation which you suggest as the importer --

QUESTION: Right.

MR. MAY: -- and it is his warehouse and everything

else is the same, yes, sir, then my answer would be, the clause would apply.

QUESTION: Then you are saying there must be, in those circumstances, two sales, one from the manufacturer in France to the Georgia importer and then a second sale by the Georgia importer sent to an American retailer.

MR. MAY: Yes, sir.

QUESTION: While I have you interrupted, may I put this question? It may not be entirely relevant but I would be interested in your answer.

Suppose these tires had been manufactured in Michigan by U. S. Rubber Company, for example, and shipped to a Georgia warehouse and handled precisely as these tires were handled?

Under the Commerce Clause could Georgia validly have imposed a property tax?

MR. MAY: I think they could, Mr. Justice Powell, provided the goods were -- the transit had stopped and they were exactly the same?

QUESTION: Exactly the same.

MR. MAY: Yes, sir, but as you are obviously aware, this Court has -- again, for 100 years -- made distinctions in the cases involving interstate commerce --

QUESTION: I understand.

MR. MAY: -- and imports and of course, we all

know the reason for that because the import clause has an absolute prohibition whereas the Commerce clause is nothing but --

QUESTION: Mr. May, you put so much emphasis on retail. It doesn't really mean that much, does it? Wouldn't the wholesaler be in the same -- I mean, you transport them from here to the wholesaler in Michigan, say, 100 tires.

When they get there, it is over, isn't it?

MR. MAY: No, sir, not under the facts in this record, Mr. Justice Marshall.

QUESTION: Well, there are wholesalers that -- for example, you and I know that fleets of cabs and fleets of trucks buy tires wholesale. Right?

MR. MAY: Yes, sir.

QUESTION: So that they wouldn't be covered.

MR. MAY: Well, if they --

QUESTION: I mean, what's the magic of it?

MR. MAY: -- were bought from that warehouse, Mr. Justice Marshall, but there is no evidence in this record that anything --

QUESTION: I am not talking about this. But you keep emphasizing that they are not liable until they go retail and I am saying, could there be a place where they could go larger and be a wholesaler?

MR. MAY: If they were --

QUESTION: I don't think it hurts your case.

MR. MAY: I guess it is conceivable, Mr. Justice Marshall, that that could be true, if the correct facts existed, yes.

QUESTION: Right. That's right.

QUESTION: In other words, if they were sent out from the Gwinnett County warehouse to wholesalers in six states, your case would be the same as if they had been sent to retailers. That was my brother Justice's question.

MR. MAY: Because they are still in the flow. Well, maybe I misunderstood Justice Marshall's question but I think I have answered it, that I agree with you.

My final point, if the Court please, I think I didn't finish the right to sell. It is unquestioned here that we paid the four percent import duty and we say that by so doing we acquired the right not only to import the tires but to sell them and until they are sold, they retain their statues as imports.

And the final factor is that unpackaged imports, in our judgment, should not be accorded a lesser degree of immunity than that which is generally recognized for package imports and that is precisely the result which the Georgia Supreme Court arrived at and in so doing, we think that it violated longstanding and fundamental constitutional prohibitions because the intent and purpose of the import

clause was to command a uniform degree of immunity for all imports, whether packaged or unpackaged and unless we are to ignore that constitutional command, it cannot be successfully argued that unpackaged imports are entitled to less immunity than packaged imports.

Mr. Chief Justice, I'll reserve the balance of my time to respond to my opponents. Thank you.

MR. CHIEF JUSTICE BURGER: Very well.

Mr. Stephens.

ORAL ARGUMENT OF H. A. STEPHENS, JR.,

ON BEHALF OF RESPONDENTS

MR. STEPHENS: Mr. Chief Justice, and may it please the Court:

Argument in behalf of the Respondents, I respectfully submit, should begin by noting that the right of a state and its political subdivisions to levy nondiscriminatory ad valorem taxes on property located within its boundaries is an inherent attribute of sovereignty.

The Constitution of Georgia so declares. Its taxation scheme expressly states that the property of nonresidents shall not be taxed higher than that of residents.

So there is no contention here on the part of the Petitioner that there has been any discrimination against Petitioner on the ground that it is a nonresident of Georgia rather than a resident.

Now, at the last term, as is fully known to the members of the Court, in the National Cash Register case, there was a determination as to when American-made goods possessing very unique qualities unsuited for use except by some foreign nation when they become exports and in this particular case, to some extent the reverse side of the coin is before the Court and that is, when foreign-made goods actually cease to be imports.

Now, the Georgia Supreme Court, after cataloguing numerous cases, concluded that the -- in the language of Mr. Justice Goddard, that the cases established a sort of two hat approach to the import process and it depends on which hat the particular concern is wearing, whether that of an importer or that of a wholesaler and, certainly, the Supreme Court of Georgia spent some time analyzing Brown against Maryland and it is obvious that the Supreme Court in Georgia had no desire to ignore the holdings of that court, that particular decision.

But it did lay emphasis upon the factual aspect of this particular situation and while it is not a lengthy record, you begin with the first specific matter, which is that Michelin owns a warehouse in Gwinnett County, Georgia on the north side of Atlanta and utilizes a bonded warehouse in Clayton County, Georgia, on the south side of Atlanta; thereby, a permanent distribution center has been set up in

the Atlanta area.

Bulk shipments of tires enclosed in C vans and over-the-road containers, arrive at these warehouses at recurring intervals.

The C vans and over-the-road containers are opened, entry is made into them and the tires are placed on pallets.

Each pallet, with tires loaded on it, is then moved into the warehouse. The tires are segregated by size and style, as was mentioned by Mr. Justice Blackmun. They are then stacked -- four stacks of five tires each on a pallet with a heavy cardboard core put down between it and another pallet of three tires placed over it.

There is no question but a new shipment is introduced into that warehouse with a residue of what has been left from previous shipments and, furthermore, that shipments arriving from France and shipments arriving from Nova Scotia are distinguishable only by the words "Made in France" or "Made in Canada" appearing on it.

Then the process of getting them out of the warehouse was developed. Orders received by Micheline in Gwinnett County, Georgia, at its facility there on HIghway 85 are filled from this -- I am going to use the words "commingled inventory" because I submit that is what it shows has occurred. They are shipped by common carrier,

United Parcel Service, or a dealer.

QUESTION: Does this record show whether the tires that were resting in the warehouse at the time of the arrival of the shipment were subjected to a tax?

I am speaking now of this record.

MR. STEPHENS: [No response.]

QUESTION: Now, did you say they comingled, they had to comingle with something.

MR. STEPHENS: Yes, sir.

QUESTION: Now, are those tires to which the current "imports" were added, were those tires subjected to a state tax?

MR. STEPHENS: No, sir, those were imports.

One thing developed in the course of the trial before Judge Pittard in Gwinnett Superior Court and it was discovered that a small quantity of domestic-made tubes were left over from a previous year and as I remember, they figured a small amount of tax and paid it in the courtroom as part of the hearing. They realized that was not exempt. Previous imports were --

QUESTION: What I am trying to get at is, has your client just begun to levy tax on these tires for the first time?

MR. STEPHENS: Yes, sir, they were what is known as NOD assessments and of course, as the record indicates

at one point, there are approximately five other import firms located in the county. That is a by-product of interstate highways, your Honor, in North Atlanta, four-lane highways on either side, warehousing, so there are other import firms in the county.

QUESTION: How does Gwinnett County mechanically go about levying its tax in this case? Does the assessor come around once a year to every place?

MR. STEPHENS: Well, theoretically, your Honor, all concerns are supposed to like, [be] paying income taxes voluntarily --

QUESTION: Self-assessment.

MR. STEPHENS: It is a self-assessment situation. If the investigator for the tax assessors concludes that maybe a return was due or not enough property was covered, he will go out and make an inspection on the premises then.

QUESTION: But as of a particular date each year?

MR. STEPHENS: Yes, sir, January one of each year is the critical date for ad valorem tax purposes in Georgia.

It is the position of the Respondents, may it please the Court, that this matter is, in reality, controlled by May against New Orleans, which has already been mentioned by Mr. Justice Rehnquist and discussed to some extent, by the philosophy of Burke against Wells.

That is the case in New York City in which an import firm established a wareroom and was vending in the original package, articles imported from Ireland and the State of New York, instead of issuing an ad valorem assessment on the property itself, issued an assessment on the capital of the company utilized in that particular process which was retained from the sales of the goods but much of the language in that opinion indicates that if it had been an ad valorem assessment, the result would have been the same because the court, in its opinion, went back to Brown against Maryland, discussed when the original package doctrine loses its force or validity and placed the two in exactly the same context.

Now, as to what an original package is, in our brief we have stressed a line of cases holding that if, as the Supreme Court of Georgia did, the C van or over-the-road container concept is rejected as the original package, that the aggregation of goods is a definition which emerged very early in jurisprudence, in the Austin case from Tennessee, and that the aggregation of goods where they are not individually wrapped constitutes the original package and we rely upon E. J. Stanton and Sons' case from California in which it was referred to as "invisible gossamer" and that is the language to which the Petitioner took strong exception in the Petition for Certiorari and in the briefs but it merely

illustrates the principle that an aggregation of goods or as the Supreme Court of Ohio termed it, the"commercial unit of impretation", when that is broken, the package is broken and in this particular case,when Michelin established a distribution center in Gwinnett County, Georgia and even in Clayton County, Georgia, although they are not a party here, and on a regular, sustained, recurring basis, just as in Burke against Wells in New York, on a week-to-week, day-to-day, month-to-month basis, had goods available for shipment, received goods to replace those shipped, we submit, if this Court please, that that really is the end of the importation process and that the Supreme Court of Georgia correctly so determined.

QUESTION: Mr. Stephens, is this -- I ask, as I always do, in ignorance -- is the fact situation here somewhat similar to what I have seen of photographs of ships coming in to Baltimore loaded with VW's on the decks. They aren't wrapped. I don't know whether you have something at Savannah comparable to that, but do you think the State of Maryland could impose an ad valorem tax on those automobiles as they are taken off the ship and warehoused there in Baltimore?

MR. STEPHENS: I believe that is --

QUESTION: I don't know whether they do. I am just -- it seems to me that this is somewhat comparable to

that.

MR. STEPHENS: I believe that was the holding of the Volkswagen Pacific case from California, your Honor, that is referred to in the briefs.

In that particular case, the facts were packaged automobile parts and completed VW and Porsche automobiles were being brought in by seagoing vessels and as I remember, the -- and don't hold me to this because I haven't read this case to date -- as I remember, the packaged auto parts were held exempt, but the automobiles had to have things done to them to get them ready and while the outward form or shape of the vehicle was not changed, it could no longer be in the original form because of the difference between being able to crank it up and drive it away and not crank it up and drive it away.

I believe the California case has ruled on that and as I remember, this Court declined to grant certiorari in that particular case which, I fully appreciate, is not very decisive.

Now, as to the statement in Brown against Maryland, which has been urged by Petitioner's counsel here, in a footnote to our brief, we invited attention to an article by Professor Thomas Reid Powell. I was never so fortunate as to attend that university or be one of his students but I always regarded him as a very outstanding writer and his

comment was that the language of Mr. Marshall certainly was broad enough to call sale or use or breaking book and we submit that when an import firm gets into the distribution business, such as is shown by the record in this case, that the maintaining of the tires for inventory to meet the test of use as referred to in Youngstown and it certainly meets the test of Burke against Wells where they had a permanent wareroom in New York City and were vending from the original package.

QUESTION: The --

MR. STEPHENS: If Court will bear with me, I'd like to conclude with just one quote from May against New Orleans: "The goods imported lost their distinctive character as imports and became a part of the general mass of property of Louisiana and subject to local taxation as other property in that state. The mope, the boxes, cases or bales in which they were shipped reached their destination for use or trade and were opened into separate packages there and exposed for sale."

Now, we submit that the breaking of a bulk shipment of tires, the aggregation of goods, the commercial meaning of impretation or whatever it is and the exposing of the individual tires for sales, when that occurs, the import process has terminated and just as the Supreme Court of Georgia said, "Then the concern doffs the hat -- dons the

hat, I'm sorry, of a wholesaler."

Thank you, your Honors.

MR. CHIEF JUSTICE BURGER: Do you have anything further, Mr. May?

REBUTTAL ARGUMENT OF EARLE B. MAY, JR., ESQ.

MR. MAY: Very briefly, Mr. Chief Justice, I'd like to make three quick comments.

Number one, in answer to your question that you posed to Mr. Stephens, the record shows that all tires in the warehouse were imported and none had sought to be taxed prior to the first taxable year here involved.

QUESTION: I suppose that means no more than, there is always a first time to levy a tax.

MR. MAY: Mr. Justice Blackmun, in answer to your question, there are photographs which are a part of the original record in this case, color photographs showing the form in which the tires are, in fact, delivered to the importer's warehouse in Gwinnett County, Georgia.

Exhibits P 2, 3 and 4 to the record are those photographs.

And, finally, I'd like to mention Burke versus Wells, which Mr. Stevens mentioned is, as we read it, an income tax case. It was not a tax on imports and clearly is not applicable here.

I'd like to conclude, if I may, Mr. Chief Justice,

by saying that when you carefully consider all of the arguments raised by the tax officials, they would require, the results sought would require a substantial revision of the language of the import clause as well as the overruling of the entire Brown versus Maryland line of decisions and we respectfully submit to the Court that it has consistently rejected all efforts to overrule Brown versus Maryland and expressly refused to undertake revision of the import clause in Richfield Oil in 1946 and for this reason we suggest that these arguments should not be urged before this Court but before the only branch of government which has the power to consent to the state taxation of imports, which is the Congress.

As the Court recognized in Hooven and Ellison, Congress has the power to lay down its own test for determining when immunity ends and unless and until that body sees fit to do so, we respectfully urge the Court to continue to follow the test which it has consistently applied for almost 150 years. That test, in our judgment, is contained in the Brown versus Maryland line of decisions.

Those decisions reflect what we believe are a most thorough and careful consideration of what the framers intended when they originally adopted the import clause and we believe they are as sound today as they were when originally written.

Accordingly, we respectfully urge, Mr. Chief Justice, that such decisions be followed in this case and the decision of the Georgia Court reversed.

Thank you very much.

MR. CHIEF JUSTICE BURGER: Thank you, gentlemen, the case is submitted.

[Whereupon, at 2:36 o'clock p.m., the case was submitted.]