

ORIGINAL

OFFICIAL TRANSCRIPT
PROCEEDINGS BEFORE

SUPREME COURT OF THE UNITED STATES

DKT/CASE NO. 81-1489

TITLE XEROX CORPORATION, Appellant
vs.

PLACE COUNTY OF HARRIS, TEXAS AND CITY OF HOUSTON, TEXAS
Washington, D.C.

DATE November 10, 1982

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1 P R O C E E D I N G S

2 CHIEF JUSTICE BURGER: We will hear arguments
3 next in Xerox Corporation against Harris County, Texas,
4 and Houston.

5 Mr. Hoddinott, I think you may proceed
6 whenever you are ready.

7 ORAL ARGUMENT OF ALFRED H. HODDINOTT, JR., ESQ.,
8 ON BEHALF OF THE APPELLANT

9 MR. HODDINOTT: Chief Justice, may it please
10 the Court, this case concerns Xerox copiers that were
11 always in foreign commerce, never in domestic commerce
12 or part of the common mass of property in the state of
13 Texas, paused only temporarily in Texas, and were stored
14 in a Customs bonded warehouse, always under the custody
15 and control of the United States Customs Service.

16 The issue is whether Texas can assert property
17 taxes without violating the commerce clause and the
18 import export clause on goods in that warehouse. The
19 Texas Court of Civil Appeals said that it could. It was
20 wrong.

21 The facts are essentially undisputed. Xerox
22 manufactures copiers domestically and assembles them
23 abroad. The Latin American Free Trade Association
24 requires the assembly of goods in member countries. As
25 a result, Xerox decided to build copiers in Mexico to

1 compete in Latin America.

2 Initially, it stored those copiers in the
3 Panama Canal Zone, but because of anti-American feeling
4 there, it sought to store them elsewhere. It decided to
5 switch to a Customs bonded warehouse in Houston.
6 Physically, these copiers were assembled in Mexico,
7 trucked by a bonded carrier to Houston, stored in a
8 Customs bonded warehouse in Houston, anywhere from a
9 few days to three years, but always less than the time
10 permitted by the Customs statutes.

11 As orders were received, the copiers were
12 trucked by a bonded carrier to the ship, and then to
13 Latin America. Because of the way the copiers were
14 packaged and built, they could not be used domestically.

15 QUESTION: Mr. Hoddinott, you used the term
16 "Customs bonded warehouse in Houston," and I know the
17 Court of Civil Appeals opinion certainly speaks in those
18 terms, too. Is there any generic description you can
19 give of a Customs bonded warehouse?

20 MR. HODDINOTT: It is a warehouse that is
21 maintained by a warehouseman. He supplies bonds to the
22 Customs Service that goods that are retained in there
23 will not go out into domestic commerce, and they are --
24 the goods are under the custody and control of a Customs
25 employee.

1 QUESTION: Is the warehouseman generally a
2 private individual?

3 MR. HODDINOTT: Yes.

4 QUESTION: And how about the building in which
5 it is stored? Is that generally a privately owned
6 building?

7 MR. HODDINOTT: Generally, I believe it is,
8 Your Honor. This one certainly was.

9 QUESTION: And what is the distinction between
10 the numbers? I notice in these cases they speak of
11 Number 3, Number 7, and this kind of thing.

12 MR. HODDINOTT: There are, I believe, eight
13 Customs bonded warehouses, Your Honor, and they are for
14 varying purposes. Some are just straight storage. Some
15 are manufacturing warehouses. I believe there are
16 smelting warehouses. They are broken up by their
17 purpose, Your Honor.

18 QUESTION: What is the nature of the bond?

19 MR. HODDINOTT: Money, I believe, Your Honor.

20 QUESTION: Is it? And to whom -- for the
21 benefit of whom? The United States?

22 MR. HODDINOTT: It's for the benefit of the
23 United States. They were to guarantee the payment of
24 the duties.

25 QUESTION: I take it if you break that bond,

1 you commit a federal offense. Am I right?

2 MR. HODDINOTT: Your Honor, I don't know.

3 QUESTION: Why didn't Xerox store this
4 property in Mexico?

5 MR. HODDINOTT: The record is silent on that,
6 Your Honor. I don't know that either.

7 Your Honor, it is conceded that not one of
8 these copiers ever entered domestic markets.

9 QUESTION: That is your basic point, I gather,
10 is it?

11 MR. HODDINOTT: It is, Your Honor.

12 QUESTION: Under the import and export clause,
13 that is unlike Michelin Tires, for example, which were
14 -- I gather, from the domestic market.

15 MR. HODDINOTT: That's correct, Your Honor.

16 QUESTION: These are not.

17 MR. HODDINOTT: These were not. It is
18 conceded that not one entered domestic markets, not one
19 was sold for domestic use --

20 QUESTION: Now, why do you say that makes a
21 difference?

22 MR. HODDINOTT: Because they are totally in
23 foreign commerce, and all of the interstate commerce
24 cases that have been cited by the Appellees, I submit,
25 are inapplicable, and this Court has said in Japan Line,

1 Your Honor, that the constitutional analysis will be
2 more extensive when it is foreign commerce.

3 QUESTION: Now, were there instructions,
4 printed instructions with these things, as there are so
5 often, that accompanied the machine?

6 MR. HODDINOTT: Yes, Your Honor.

7 QUESTION: And they were in Spanish?

8 MR. HODDINOTT: Spanish and Portuguese.

9 QUESTION: Portuguese for Brazil.

10 MR. HODDINOTT: And the copiers also were
11 electrically different than copiers that are
12 manufactured for the United States.

13 QUESTION: How about the symbols? Are there
14 any difference in the symbols on the board, or are the
15 letters the same?

16 MR. HODDINOTT: Since Xerox copiers generally
17 use little figure people, I would imagine that they
18 would be the same, but the descriptions and the manuals
19 would all be different.

20 It is conceded, Your Honor, that these copiers
21 were always segregated from domestic goods, and they
22 were always in the complete custody and control of the
23 U.S. Customs Service. We contend they were therefore
24 always in foreign commerce.

25 Parenthetically, Appellees paid approximately

1 \$2 million on copiers that were sold domestically. They
2 are not at issue in this case.

3 In 1976 and -- For 1976 and 1977, the
4 Appellees taxed Xerox with respect to these copiers
5 approximately \$280,000 on the full value of the goods.
6 Xerox sought a declaratory judgment and injunctive
7 relief in 1977, alleging that the taxes violated the
8 commerce clause and the import export clauses of the
9 Constitution because the goods were in transit.

10 The trial court agreed. It said, "Given the
11 peculiar status of the copiers in the factual context of
12 foreign commerce, they are not taxable because they do
13 not have a substantial nexus with Houston and have not
14 left the palpable flow of foreign commerce. In short,
15 they were still in transit and in foreign commerce."

16 That finding is controlling under Texas law
17 unless it is manifestly erroneous.

18 QUESTION: Does the record show how long some
19 of these machines remained in the warehouse?

20 MR. HODDINOTT: Yes, Your Honor. The record
21 shows that they were there anywhere from eight days to
22 approximately three years, as was permitted by the
23 Customs statute.

24 The Texas Court of Civil Appeals reversed on
25 appeal, and decided that taxes were constitutional, and

1 entered a judgment against Xerox on the Appellee's
2 counterclaims, and the Supreme Court of Texas found no
3 reversible error.

4 Two key facts permeate this case, we submit.
5 First, under the commerce clause, only Congress
6 regulates foreign commerce, and this is foreign
7 commerce. We can -- There is no serious dispute that
8 factually the goods are in foreign commerce. They start
9 in Mexico. They pass through Texas, and they went on to
10 Latin America on a continuous journey. They were never
11 legally imported.

12 QUESTION: Well, how about the ones that were
13 three three years? Is it really accurate to talk about
14 them as being on a continuous journey if they spent
15 three years in Houston?

16 MR. HODDINOTT: I submit they are, Your Honor,
17 because the law is that until they pass the barrier of
18 paying the customs duty, it is as, as this Court said,
19 it is as they -- as if they never came into the country,
20 they were detained at the border, Your Honor.

21 QUESTION: During that time, I presume that
22 the Houston Fire Department and the Houston Police
23 Department would have to come to the aid of the owner of
24 the private warehouse in the event there was a breakin
25 and Xerox's goods were going to be stolen, or in the

1 event there was a fire that would have destroyed Xerox's
2 goods.

3 MR. HODDINOTT: There is no doubt about that,
4 Your Honor, but the owner of that warehouse is also
5 taxed, and we submit that Houston's services are
6 supported by the common carrier that was used, by the
7 warehouseman, by the stevedores, all of whom, we submit,
8 are undoubtedly taxed by Houston.

9 QUESTION: But you say that this is different
10 even though Xerox's stuff, if it had been destined for
11 domestic use, you have paid taxes on it and it would be
12 taxable.

13 MR. HODDINOTT: I am sorry, I didn't follow
14 the question, Your Honor.

15 QUESTION: If the same amount of Xerox
16 computers had been stored in exactly the same warehouse
17 but destined for domestic use, you, of course, have paid
18 taxes on them.

19 MR. HODDINOTT: When you say destined, Your
20 Honor, if they had already passed the Customs barrier,
21 and the duties had been paid, then I would agree, but
22 until the Customs duties are paid, I submit they are not
23 taxable.

24 QUESTION: But it makes no difference to your
25 case even if they were in the Houston warehouse for 20

1 years, I take it.

2 MR. HODDINOTT: No. But it -- the Customs
3 statutes permit storage for three years, and it makes a
4 difference as long as they were there for the three
5 years permitted by Congress.

6 QUESTION: Are you suggesting that in terms of
7 the local protection, the local tax problem that Justice
8 Rehnquist referred to, that all of that cost of
9 protection, fire and police and others, are reflected in
10 the rent that you're paying and is passed on to Xerox?

11 MR. HODDINOTT: I submit that is so, Your
12 Honor, and I also submit that as this Court said in
13 Japan Line, where you are talking about foreign
14 commerce, where there is a need for federal uniformity,
15 that Texas's remedy is with Congress, because we are
16 talking about foreign commerce.

17 QUESTION: From your point of view, I take
18 your argument to be that this is just legally and
19 constitutionally the same as though these machines were
20 in a big cargo airplane and happened to fly over the
21 lower part of Florida.

22 MR. HODDINOTT: Precisely, Your Honor. As far
23 as I am concerned, they might as well be on a ship in
24 the middle of the ocean, and that's what the cases have
25 held, that until --

1 QUESTION: Well, in the middle of the ocean it
2 wouldn't have much contact with the continental United
3 States, but in an airplane they would at least have some
4 semblance of contact by flying over Key West.

5 MR. HODDINOTT: Absolutely, Your Honor.
6 Absolutely.

7 QUESTION: Mr. Hoddinott, in Japan Lines, the
8 Court said that California's tax on cargo containers
9 that were only in the state less than three weeks would
10 pass muster under the commerce clause, and were not in
11 transit. How can you argue that absent the regulatory
12 scheme here, these things would be in transit under the
13 commerce clause?

14 MR. HODDINOTT: Because I submit, Your Honor,
15 that pursuant to the Warehousing Act of 1846, Congress
16 has said, we want to encourage foreign commerce, and in
17 order to encourage that foreign commerce, we want to
18 have transshipment of goods through our ports, and to
19 encourage that transshipment, they said, you may keep
20 those goods there for three years.

21 QUESTION: You are resting your argument on
22 the possible interference with national foreign policy
23 then?

24 MR. HODDINOTT: That is certainly one of our
25 arguments, Your Honor.

1 The second important point besides the fact
2 that this is foreign commerce is the very nature of the
3 Customs bonded warehouse, some of which we have referred
4 to. As the Court is aware, there are detailed statutes
5 and regulations concerning Customs. The Court has held
6 in Board of Trustees versus United States and in
7 McGoldrick that Customs is a subject of complete federal
8 regulation, and it seems to me it's hard to imagine more
9 complete regulation than when the United States
10 government has physical custody and control of your
11 goods.

12 The legislative history establishes that
13 Customs bonded warehouses have a unique place in foreign
14 commerce and are part of the total regulation of
15 Customs. The warehouses were established by the 1846
16 Warehousing Act to, as Congress said, unfetter
17 commerce. It had several purposes. One, is was to
18 alleviate the burden of the then current requirement
19 that all duties on shipments be paid at one time, but
20 second, as I referred to, Justice O'Connor, it was to
21 encourage the use of U.S. ports and ships, and that was
22 to be accomplished by permitting storage of cargoes in
23 warehouses for up to three years, and then transshipment
24 of the goods without the imposition of any duty.

25 QUESTION: Mr. Hoddinott, I see in a footnote

1 to your brief on Page 12 you mention that in 1978
2 Congress extended the period from three years to five
3 years.

4 MR. HODDINOTT: That's correct, Your Honor.

5 QUESTION: Would that cover your case if it
6 had been in effect when this situation arose?

7 MR. HODDINOTT: I believe it would, sir.

8 QUESTION: So that you could then store goods
9 in Houston for five years, at least five years under
10 your theory.

11 MR. HODDINOTT: Yes, sir.

12 QUESTION: Well, I gather, Mr. Hoddinott, you
13 would regard that as simply a regulation by Congress to
14 that extent of foreign commerce.

15 MR. HODDINOTT: Yes, I would, sir.

16 The cases are clear --

17 QUESTION: Mr. Hoddinott, is there any risk of
18 foreign retaliation against the United States for a tax
19 policy of local government like this if there are
20 American goods stored in some foreign country?

21 MR. HODDINOTT: I think there is a risk, Your
22 Honor, perhaps not with respect to Xerox, because Xerox
23 is a domestic corporation. Had Xerox been a Japanese
24 corporation, I submit there would be substantial risks
25 of multiple taxation that would be applicable.

1 The Warehousing Act and all of its subsequent
2 legislation delegated to the Secretary of the Treasury
3 the duty to formulate regulations to carry out
4 Congress's intent. Starting in 1915, the Treasury
5 regulations prohibited state taxation of goods in
6 Customs bonded warehouses.

7 Your Honor, last Friday it came to my
8 attention that on a week ago Monday, November 1st, the
9 relevant Customs statutes -- regulations were amended.
10 That appears at 19 CFR -- 47 Federal Register, Page
11 49,370. In that amendment, the footnote to 19 CFR 19.6,
12 which granted a state tax immunity, was deleted.

13 The background information about the amendment
14 published by the Treasury Department is silent as to why
15 the footnote is no longer there. We believe --

16 QUESTION: It shows what a big state Texas is.

17 (General laughter.)

18 MR. HOODINOTT: We believe that for the
19 reasons set forth in our brief, however, the regulation
20 was still controlling during the relevant time period,
21 and as this Court said in McGoldrick, there is no doubt
22 that the Treasury regulation merely reflects Congress's
23 intent to free the warehouses from state tax.

24 In 1940, this Court examined the entire
25 structure of Customs bonded warehouses in the McGoldrick

1 case.

2 QUESTION: Mr. Hoddinott, may I interrupt
3 you? What was the date of the deletion of that
4 footnote? I missed it as you explained it.

5 MR. HODDINOTT: The date was November 1st,
6 Your Honor. The citation is 47 Federal Register
7 49,370.

8 QUESTION: November 1st of this year?

9 MR. HODDINOTT: Of this year. It becomes
10 effective December 1.

11 QUESTION: I see. Thank you.

12 QUESTION: Oh, so the footnote is still in
13 effect today.

14 MR. HODDINOTT: Yes, it is, sir. We just felt
15 it was our duty to call this to the Court's attention.

16 QUESTION: You just thought it was surplusage
17 anyway.

18 MR. HODDINOTT: Pardon me, sir?

19 QUESTION: You thought the footnote was
20 surplusage anyway. It just was a reflection of what the
21 regulation would effect.

22 MR. HODDINOTT: We believe at the least it is
23 that, Your Honor. I think it could be controlling in
24 its own -- in its -- by its own force, but I don't think
25 its deletion is in any way fatal to our case.

1 QUESTION: Do you think it is in any way
2 related to the case?

3 MR. HODDINOTT: Since the Treasury Department
4 did not say why they were deleting it, it may be an
5 oversight for all I know, so I can't say that it is
6 relevant, Your Honor.

7 QUESTION: Counsel, I take it we have only one
8 year's taxes involved here, do we not?

9 MR. HODDINOTT: No. As to one appellee, it
10 was one year; as to the other appellee, it was two
11 years.

12 QUESTION: Two. And they have driven the
13 Xerox out of Texas.

14 MR. HODDINOTT: They have, sir.

15 QUESTION: Are you still using Buffalo, New
16 York?

17 MR. HODDINOTT: I don't believe so. I don't
18 know where they have gone now, sir. The record is
19 silent on that.

20 QUESTION: They or we?

21 (General laughter.)

22 MR. HODDINOTT: I'd rather not answer that
23 one, sir.

24 We believe that Congress's intent in 1977 was
25 no different than it was in the McGoldrick case in

1 1940. As in 1940, Congress intended that goods in
2 foreign commerce and in these warehouses should be free
3 from state taxation. We believe McGoldrick should be
4 adhered to not just because it's there, but because it's
5 reasonable and it's right.

6 Congress can hardly administer the Customs
7 laws where it is obviously regulating foreign commerce
8 if every state can have its say, have its tax along the
9 way. The Customs law are a national concern requiring
10 national administration. The system cannot survive with
11 unilateral state interference. Therefore, these taxes
12 violate the commerce clause.

13 But if the taxes somehow pass muster under the
14 commerce clause, they still violate the import export
15 clause where the Constitution prohibits imposts or
16 duties on imports or exports. The Court has recently
17 examined state property taxes under this provision, and
18 in Michelin it said state taxes would be prohibited if
19 goods are in transit, and in Japan Line it said, state
20 taxes are prohibited where it destroys the federal
21 government's one voice on foreign commerce.

22 The first issue under this clause has been
23 conceded. The city concedes that state taxes on goods
24 in transit violate the commerce and import export
25 clauses at its brief, Page 14, and that just makes

1 sense. The goods do not have a substantial nexus with
2 the state for taxation, and it would hinder the free
3 flow of foreign commerce.

4 QUESTION: Mr. Hoddinott, if we adopted your
5 view of the meaning of in transit under the import
6 export clause, wouldn't we be resurrecting Low against
7 Austin?

8 MR. HODDINOTT: I don't believe so, Your
9 Honor.

10 QUESTION: Why not?

11 MR. HODDINOTT: As applicable to this case,
12 these goods are in foreign commerce, and irrespective of
13 what the Court said in Michelin, always there is some
14 nexus. There is always some connection with the state,
15 and we submit that goods in a bonded warehouse don't
16 have that connection.

17 We submit that Xerox's copiers are in transit
18 for the purposes of this case. The trial court so held,
19 but the Texas Court of Civil Appeals held to the
20 contrary without finding the trial court's findings
21 manifestly erroneous.

22 It seems clear to us that by operation of law,
23 goods in a bonded warehouse have no taxable nexus. They
24 are still in foreign commerce.

25 QUESTION: Mr. Hoddinott, may I ask one other

1 question about what happened when -- after you found you
2 had to pay this tax, or at least they were assessing
3 it? You emptied the warehouses, and does the record
4 tell us where the material went when it came out of the
5 warehouses?

6 MR. HODDINOTT: They went to a free trade zone
7 in Buffalo, New York.

8 QUESTION: What do you mean by a free trade
9 zone?

10 MR. HODDINOTT: A free trade zone is a
11 creature of the United States Congress that were set up
12 by an Act of Congress in 1934. They are set aside --
13 it's an area of land set aside, fenced off, that --

14 QUESTION: Federally owned?

15 MR. HODDINOTT: No, not necessarily, Your
16 Honor. Quite often they are owned by cities and
17 counties and that sort. As we point out in the footnote
18 in our reply brief, the legislative history reveals that
19 they are substantially the same as Customs bonded
20 warehouses.

21 QUESTION: Do you have to put up any kind of a
22 bond when they are in a free trade zone?

23 MR. HODDINOTT: I don't know, Your Honor. I
24 assume that a person who operates the free trade zone
25 may have to do so, but I don't know.

1 QUESTION: Justice Brennan touched on this
2 earlier, but I want to be clear in my own mind. What is
3 the condition of the bond when it is put up when it is
4 in a bonded warehouse? What does the bond in effect
5 say?

6 MR. HODDINOTT: The bond in effect says I will
7 pay the Customs duties if these goods are brought into
8 the United States.

9 QUESTION: Not if they are removed from the
10 warehouse. It is just if they are brought into the
11 United States.

12 MR. HODDINOTT: That's right. If they are
13 removed from the warehouse back into foreign commerce,
14 there is no duty payable.

15 QUESTION: I see. And there is no mention of
16 any possible state tax liability in the --

17 MR. HODDINOTT: In the bond?

18 QUESTION: -- in the bond or the warehousing
19 documents? There wouldn't be, would there?

20 MR. HODDINOTT: Not that I'm aware of, sir.

21 QUESTION: No.

22 MR. HODDINOTT: We believe that Xerox's
23 copiers were in transit. The courts have consistently
24 held that when they are in a Customs bonded warehouse,
25 it is as if they were detained at the border. The cases

1 cited by appellees and by the court below all related to
2 interstate commerce, where the goods fell into some
3 state when the journey ended or where it was -- or it
4 was there before the journey started.

5 Those cases would be applicable to Xerox only
6 if the goods cleared Customs and entered interstate
7 commerce. The state can stand at the warehouse door,
8 and the moment the goods pass through, it can assert its
9 tax, but those cases involving interstate commerce are
10 not applicable until then, and our goods were still
11 passing in foreign commerce.

12 The county reads the Michelin case to permit
13 virtually all property taxes. We submit it is just not
14 that broad. It holds taxes not per se illegal, but it
15 doesn't say they are per se legal either. Therefore,
16 whether Xerox's copiers were in transit or not, the
17 taxes must pass the Michelin three-part test, especially
18 the one concerning one voice.

19 The Court said a tax is unconstitutional if it
20 obstructs the federal government from speaking with one
21 voice on foreign commercial affairs. These taxes fail
22 that test. Since 1846 in its control of foreign
23 commerce Congress promoted that commerce by encouraging
24 transshipment of goods through our ports, with the goods
25 being stored temporarily in the Customs bonded

1 warehouses. In essence, it said to the world, come use
2 our ports, we will not tax you, we will not charge you
3 customs duties if you will.

4 But now Texas wants to assert a tax, Y
5 percent, California perhaps Z percent, New York perhaps
6 no tax. Each state wants to have its own say. But how
7 can the nation speak with one voice under these
8 circumstances? That clamor is not one voice.

9 In Japan Line, this Court held that the states
10 cannot frustrate federal uniformity, but if every state
11 can make its own unilateral decision, it would obviously
12 make speaking with one voice impossible. That just
13 can't be. These taxes fall on that ground alone.

14 Finally, the appellees complain they are being
15 forced to offer services without revenue, that they just
16 want Xerox to pay its fair share. Well, again, the
17 appellees are confusing interstate commerce and foreign
18 commerce, and as the Court pointed out in Japan Line,
19 the fair share cases involved interstate commerce, not
20 foreign commerce. While the burdens of state government
21 are a concern, this Court specifically rejected those
22 arguments when they were asserted in Japan Line, and the
23 Court concluded that where foreign commerce and the
24 national interests are burdened, Congress and not the
25 individual states must control.

1 This is just such a case. The state's remedy
2 is in Congress, and not through unilateral self-help.
3 We submit, Your Honor, that when you look at this case
4 and boil it all down, certain principles control its
5 disposition.

6 One, Congress intended goods in a Customs
7 bonded warehouse to be free from state taxation. Two,
8 the McGoldrick case is both right and applicable.
9 Three, state taxation of goods in transit is prohibited,
10 and Xerox's copiers were in transit. And four, these
11 taxes prevent Congress from speaking with one voice.

12 To prevail, the appellees must convince you
13 that every one of those principles is wrong. If they
14 fail as to even one, the case should be reversed. We
15 submit they fail as to them all.

16 CHIEF JUSTICE BURGER: Ms. Chapman?

17 ORAL ARGUMENT OF CHERYL HELENA CHAPMAN, ESQ.,
18 ON BEHALF OF THE APPELLEES

19 MS. CHAPMAN: Mr. Chief Justice, and may it
20 please the Court, the crucial question for consideration
21 is, does the State of Texas have the power to tax goods
22 in Customs bonded warehouses. We submit that the power
23 to tax resides in and is reserved to the State of Texas
24 unless Congress has acted to pre-empt the taxation of
25 goods in Customs bonded warehouses.

1 QUESTION: If that is so, Ms. Chapman, then
2 what is the purpose of the bonded warehouse in relation
3 to the operation of the Customs Service?

4 MS. CHAPMAN: The purpose of the bonded
5 warehouse is to ensure that the government will collect
6 its revenue duties. The bond is --

7 QUESTION: The federal government.

8 MS. CHAPMAN: The federal government.

9 QUESTION: The federal government will.

10 MS. CHAPMAN: The importer posts the bond as
11 liquidated damages if it should fail to pay Customs
12 duties or if the imports for some reason enter into
13 domestic commerce.

14 QUESTION: Could Texas have levied a duty,
15 assessed a duty on this property when it came in from
16 Mexico?

17 MS. CHAPMAN: The State of Texas has no power
18 under the Constitution to assess a duty.

19 The state has the power to tax --

20 QUESTION: Ms. Chapman, somewhere would you
21 touch upon the issuance of the exemption letter by the
22 county? I realize you represent the city, but in a
23 sense you are representing both here.

24 MS. CHAPMAN: Yes.

25 QUESTION: Somewhere, would you touch on

1 that? Why it was issued, and why now the county's
2 position has so drastically changed?

3 MS. CHAPMAN: The county's position did not --
4 the county in 1976, prior to this Court's ruling in the
5 Michelin decision, initially determined through a tax
6 agent, initially determined that those goods were
7 subject to tax immunity under Michelin -- under Low v.
8 Austin doctrine of governmental --

9 QUESTION: You mean original package, Ms.
10 Chapman?

11 MS. CHAPMAN: Yes. As a result of this
12 Court's holding in Michelin, the county re-examined the
13 taxability of those goods, and back assessed those goods
14 for the year 1976. Xerox admits that those goods had
15 been operating in Texas since -- had been stored in
16 Texas since 1974, and the goods continued to remain in
17 Texas until the end of 1977. As a matter of fact, I
18 believe Xerox removed their copiers to the State of New
19 York in December of 1977.

20 QUESTION: What would you say if these copiers
21 had been taken on board ships out of some eastern port
22 of Mexico, placed on the ships, destined for either this
23 enclave in New York or for Argentina, but stopped for
24 repairs or fuel in one of the Texas ports? While it was
25 in the Texas port, could it be taxed?

1 MS. CHAPMAN: We do not believe it can be
2 taxed. Those goods are in fact in transit, and are not
3 here by any reason but for any purposes of the owner or
4 the convenience of the owner.

5 QUESTION: Do you have a free trade enclave in
6 Texas?

7 MS. CHAPMAN: We have two, I believe, one in
8 Galveston and one somewhere else.

9 QUESTION: And your brief concedes that if
10 these goods had been in such an enclave, that they would
11 not be taxable.

12 MS. CHAPMAN: No, we have re-examined the
13 Foreign Trade Zone Act, and we do not know whether or
14 not those goods would be subject to tax. We do
15 distinguish the Foreign Trade Zone Act from the Customs
16 bonded regulatory scheme by virtue of the fact that the
17 taxing jurisdiction may opt for the presence of that
18 free trade zone, foreign trade zone. We have no -- We
19 had no choice about who utilizes the services of
20 Houston, Texas, in storing goods in Customs bonded
21 warehouses.

22 QUESTION: What is the purpose of the free
23 trade zone?

24 MS. CHAPMAN: The purpose of the free trade
25 zone is to ameliorate or to compensate for the problems

1 that we're having now. Many countries -- many companies
2 such as Xerox are taking a lot of their businesses
3 outside of the United States, producing a lot of their
4 goods outside of the United States, and the purpose of
5 the free trade zone is to attract business back into the
6 United States. We have lost a considerable amount of
7 business. Assembly, for example, is taking place in
8 Mexico because of the cheaper cost of labor. The very
9 reason --

10 QUESTION: Well, what concessions does Texas
11 give those who use the free trade zones in Texas?

12 MS. CHAPMAN: The concessions are determined
13 by the federal government, and we will -- they are
14 determined by the federal government.

15 QUESTION: Yes.

16 QUESTION: But you are not sure whether that
17 -- your policy today would be to tax goods in the free
18 trade zone or not. Is that right?

19 MS. CHAPMAN: No, we are not. The legislation
20 does not prohibit state taxation of goods in a free
21 trade zone.

22 QUESTION: Could you tell me, if you know, why
23 the federal government provides for free trade zones in
24 addition to bonded warehouses? Was there some reason
25 for providing free trade zones? Why wouldn't the bonded

1 warehouse serve the purpose?

2 MS. CHAPMAN: Under the bonded warehouse --
3 under our Customs bonded scheme, manufacturers cannot,
4 under the -- the word is manipulate. Cannot affect
5 those bonded goods in any ways, except under --

6 QUESTION: I see. I see.

7 MS. CHAPMAN: And in a free trade zone --

8 QUESTION: So they can't really work on them.

9 MS. CHAPMAN: Yes.

10 QUESTION: I see.

11 QUESTION: I gather they even build factories,
12 perhaps, in free trade zones, do they?

13 MS. CHAPMAN: Yes, they do.

14 QUESTION: I see.

15 QUESTION: I get from your remarks with the
16 free trade zones you are hoping to attract business to
17 Texas, and yet I suppose the imposition of your tax here
18 has driven business away. The goods are now out of
19 Texas. They went to New York, and your opposition said
20 he didn't know whether they were still there or not. It
21 seems to me that you are meeting yourself coming back.
22 You are not entirely consistent in that respect.

23 MS. CHAPMAN: The Texas Constitution mandates
24 that all property be taxed in a uniform and equal
25 manner. The City of Houston is under that

1 constitutional mandate when it assesses property. We
2 cannot make a decision as to what property gets taxed.
3 That is a matter for our state legislature to decide.

4 We submit that the power to tax resides in and
5 is reserved to the State of Texas unless Congress has
6 acted to pre-empt the taxation of Customs bonded
7 property, or two, unless the tax is prohibited by the
8 provisions of the United States Constitution, or three,
9 unless the tax interferes with the federal government's
10 exclusive power to regulate foreign commerce or prevents
11 it from speaking with one voice.

12 In this case, Congress has enacted no law to
13 prohibit state taxation of Customs bonded goods. This
14 tax --

15 QUESTION: In the McGoldrick case, it seemed
16 to me that the Court relied on the footnote to the
17 regulation that Mr. Hoddinott indicated is now being
18 dropped, in saying that there was in effect
19 pre-emption. How do you deal with that, and how is this
20 different?

21 MS. CHAPMAN: McGoldrick in our opinion is an
22 entirely different case. It involves an entirely
23 different regulatory scheme.

24 QUESTION: How has the regulation changed the
25 footnote to the regulation since McGoldrick other than

1 the numbering?

2 MS. CHAPMAN: The Secretary --

3 QUESTION: Is there any language change
4 whatever since McGoldrick?

5 MS. CHAPMAN: Yes, the Secretary of Treasury
6 deleted the provision from the Customs regulations some
7 time after the McGoldrick decision, and it is now an
8 appendage to the regulations in the form of a footnote.

9 QUESTION: But it's the same language.

10 MS. CHAPMAN: It's the same language, and
11 we --

12 QUESTION: It has been renumbered, in effect,
13 relocated.

14 MS. CHAPMAN: Yes. It is our opinion that
15 that Customs regulation in the McGoldrick case amounted
16 to nothing more than a restatement of the law at that
17 time, a restatement of the Low v. Austin doctrine that
18 imports are immune from state taxation. This is the
19 same conclusion that the Court in American Smelting, a
20 decision out of California, arrived at.

21 But the McGoldrick decision does not express a
22 rule of law for all property in all Customs bonded
23 warehouses. The Court was careful to limit its holding
24 to the particular facts before it and the particular
25 regulatory scheme.

1 McGoldrick does not control this case because
2 it involved an entirely different regulatory scheme, and
3 was affected by an entirely different tax. We have
4 before us the laws governing Customs bonded warehouses,
5 which is an intricate part of the tariff laws. In
6 McGoldrick, the Court addressed the problems of a
7 specific industry and in that case the Court had before
8 it the Revenue Act of 1932. Congress had amended that
9 Revenue Act for the reason that it wanted to restore to
10 American fuel oil manufacturers their competitive
11 footing in foreign markets which had been lost when the
12 original tax had been imposed under the Revenue Act.

13 Congress did this by exempting imported oil
14 sold into foreign commerce from the revenue tax, and by
15 the operation of that particular regulatory scheme, that
16 tax was in effect a duty. It was imposed on the
17 importation of oil.

18 The New York tax in the McGoldrick case in its
19 practical effect and as applied to the oil that was in
20 bond was nothing more than a tax on the privilege of
21 exporting oil out of the State of New York. The tax
22 fell on the purchaser at the time the oil was being
23 transferred to the vessels which were destined, bound
24 for foreign commerce. By operation of the regulatory
25 scheme, the Customs regulatory scheme at that time, the

1 oil -- and that same scheme exists today -- the oil was
2 irrevocably committed to the export stream.

3 The tax asserted in McGoldrick was in direct
4 contravention of Congress's expressed intent to relieve
5 imported oil destined for foreign commerce from import
6 duties. Moreover, the tax in McGoldrick constituted a
7 prohibited regulation of commerce.

8 QUESTION: If Gulf Oil had withdrawn some of
9 that oil for domestic consumption on payment of duties,
10 just like Xerox could have done theoretically --

11 MS. CHAPMAN: In that case, it could not
12 have. It was bound once it entered that oil into the
13 manufacturing warehouse to export the oil. So it was
14 legally unable to do so, as is not the case here.

15 There is no law before this Court which is
16 designed to give Xerox or any copier manufacturing
17 industry a special competitive advantage. There has
18 been no commitment to the export stream of commerce
19 here. Xerox has at all times -- had at all times full
20 powers to dispose of its copiers, and it in fact did so
21 in a limited instance when it sold some copiers to an
22 agency of the United States government.

23 Xerox maintains that its copiers are designed
24 for foreign use only. That they are -- there is no
25 doubt that those copiers were intended for distribution

1 in foreign markets. However, the record reflects that
2 those copiers could have been converted for domestic use
3 by the additional cost of \$100 plus the payment of
4 Customs duties.

5 QUESTION: You say the record is what?

6 MS. CHAPMAN: The record reflects -- Xerox
7 admits in its deposition, the deposition of its witness
8 Ricarlo Perez, as well as in their answers to
9 interrogatories, that the copiers could have been
10 converted for domestic --

11 QUESTION: I will be interested in what your
12 opponent says about that, because as I read the briefs,
13 I thought there was a flat dispute on this one.

14 MS. CHAPMAN: No, this is in the -- It is
15 contained in the deposition of Ricarlo Perez and --

16 QUESTION: Well, he can answer. Don't waste
17 any time on that.

18 MS. CHAPMAN: Okay.

19 QUESTION: But in any event, none were
20 converted.

21 MS. CHAPMAN: No.

22 QUESTION: Well, suppose you had automobiles
23 manufactured in the same setting as this, destined for
24 England or Sweden or some other country where they have
25 the righthand drive. They could be sold in the United

1 States, too, because a great many people, or at least
2 some people use a righthand drive car in this country,
3 but because it was adaptable, if they had been in bonded
4 warehouses, would that adaptability have any impact on
5 the legal issues in this case?

6 MS. CHAPMAN: Yes. The adaptability has no
7 impact on the legal issues. Our position is that as
8 long as those goods are stored in Houston for the
9 business convenience of Xerox, and there is no question
10 about that, and the State of Texas has acquired a
11 taxable situs, then we are entitled to tax those
12 copiers.

13 QUESTION: But that would be independent of
14 whether they could be modified for domestic use or not,
15 in your view.

16 MS. CHAPMAN: Yes, and this Court has
17 addressed that issue in the case of Kosydar versus --
18 National Cash Register versus Kosydar, where the goods
19 were only designed for foreign use.

20 QUESTION: Well, a bonded warehouse isn't
21 available, is it, for an importer who simply wants to
22 store his goods in a bonded warehouse pending domestic
23 distribution?

24 MS. CHAPMAN: Yes, it is.

25 QUESTION: So you can bring your goods in and

1 delay the payment of duty until you get a market for it
2 in the United States?

3 MS. CHAPMAN: And that was the original
4 purpose of the Customs bonded warehousing scheme.

5 QUESTION: Does that have any other
6 consequence than deferring the payment of the duty?

7 MS. CHAPMAN: No.

8 QUESTION: When it enters the country, instead
9 of paying the duty immediately on entry if it goes into
10 a bonded warehouse, the duty is deferred until it is
11 taken out of the bonded warehouse for sale in the United
12 States. Is that not so?

13 MS. CHAPMAN: That's correct.

14 QUESTION: So a company can just get cheaper
15 warehousing by using a bonded warehouse. It just
16 depends on what the cost of the bond is as compared to
17 the domestic taxes.

18 MS. CHAPMAN: That's correct, and that is the
19 likely result if Xerox obtains immunity under the
20 Customs bond theory.

21 QUESTION: So it really doesn't make any
22 difference in this case as to whether they were destined
23 for a foreign market.

24 MS. CHAPMAN: Absolutely not.

25 QUESTION: Except do you contend that the

1 state could levy the tax, though, before the federal
2 government could collect the duty?

3 MS. CHAPMAN: No, we do not, and this
4 particular regulatory -- the laws governing goods
5 detained under revenue laws prevent us from affecting
6 the federal government's rights to Customs duties.

7 QUESTION: Well, if you say you'd have to wait
8 until the federal government collected a duty, supposing
9 the goods were still under a bond, within the three year
10 period. When would you collect the tax?

11 MS. CHAPMAN: In a --

12 QUESTION: I thought all the copiers were
13 still in Texas at the time you levied the tax.

14 MS. CHAPMAN: That's correct.

15 QUESTION: Well, then, you did seek to collect
16 the tax before the federal government was free to
17 collect any duty. Assuming these goods were going to go
18 for domestic distribution.

19 QUESTION: We assessed those goods for
20 taxation. We have not -- We did not attempt to enforce
21 our lien for taxes, and we do not believe under federal
22 law we can unless the federal government's right to
23 revenues are assured, are protected, and unless -- as a
24 matter of fact, in one of the cases cited --

25 QUESTION: Assume they had no other property

1 in Texas. Now, I understand in fact they did keep other
2 property there, but would you in effect have a second
3 mortgage on all the goods while they were being stored
4 in Texas?

5 MS. CHAPMAN: We would have a lien, as does
6 the warehouseman have a lien, as does the carrier have a
7 lien.

8 QUESTION: And this would be true even if
9 these were goods -- if it were not an American company,
10 but a Japanese company, for example, that shipped in
11 some product which it then intended to transship to
12 Mexico, and it was -- you would say you could impose a
13 lien on those shipments.

14 MS. CHAPMAN: If that property had acquired a
15 taxable situs under the -- if they had been there under
16 the same circumstances, yes, as Xerox.

17 QUESTION: How long, in your view, would it
18 take for the goods to acquire a taxable situs?

19 MS. CHAPMAN: Well, those are not -- the facts
20 of this case, Xerox at all times had maintained an
21 average inventory on a daily basis of over 4,000
22 copiers, which we did assess. We believe that under the
23 decision of this Court in Brown versus Houston, that
24 once property is put on the market for sale, it has been
25 -- it has become a part of a general mass of property

1 and is subject to state taxation.

2 We also believe that the Complete Auto Transit
3 case, the test enunciated in that would permit a tax in
4 those circumstances. We don't know, and we haven't
5 considered -- we -- our state would not -- our state
6 presently has a provision that would require that the
7 property be stored for 175 days before the presumption
8 -- before there is a presumption that they are not in
9 interstate commerce. However, without that statutory
10 provision, we would require that the property be here
11 indefinitely.

12 QUESTION: Ms. Chapman, for what year -- I
13 gather -- Is it the city's tax or the county's that is
14 for one year? Which is it?

15 MS. CHAPMAN: The city's tax is for one year.

16 QUESTION: And what year is that?

17 MS. CHAPMAN: Seventy-seven.

18 QUESTION: Seventy-seven.

19 MS. CHAPMAN: Yes.

20 QUESTION: And these are copiers that were
21 there from '74 until '77?

22 MS. CHAPMAN: Yes.

23 QUESTION: And what happened in '77 that
24 caused you to impose the tax that year and not in '76 or
25 '75?

1 MS. CHAPMAN: In '76, this Court decided that
2 goods in Customs bonded -- I mean, that imports were not
3 immune from taxation.

4 QUESTION: Oh, that's Michelin.

5 MS. CHAPMAN: Michelin.

6 QUESTION: I see.

7 MS. CHAPMAN: Yes.

8 QUESTION: That decision that year. Now, in
9 '77, as of what date did you impose the tax?

10 MS. CHAPMAN: January 1, 1977.

11 QUESTION: 1977. And the copiers were still
12 there on that date.

13 MS. CHAPMAN: The copiers -- Xerox -- during
14 each of the taxing years at issue, Xerox maintained an
15 average daily inventory --

16 QUESTION: Of 4,000.

17 MS. CHAPMAN: Yes.

18 QUESTION: Now, you imposed the tax then as of
19 January 1, 1977. What did you do about trying to
20 collect the tax assessed?

21 MS. CHAPMAN: We did nothing. Xerox sued for
22 declaratory relief.

23 QUESTION: Oh, and so you have never actually
24 tried to collect.

25 MS. CHAPMAN: No, we have not.

1 QUESTION: I see.

2 QUESTION: Well, presumably you have levied

3 the tax. The tax levy was made on January 1. Is that

4 right?

5 MS. CHAPMAN: That's correct.

6 QUESTION: And you sent out a paper notice

7 that this is the amount of the tax?

8 MS. CHAPMAN: Yes.

9 QUESTION: You simply didn't try to enforce

10 it --

11 MS. CHAPMAN: No, we did not.

12 QUESTION: -- because there was an intervening

13 suit for declaratory judgment.

14 MS. CHAPMAN: Yes.

15 QUESTION: And also because you wouldn't try

16 to enforce if someone didn't pay until the federal

17 government permitted you to do so.

18 MS. CHAPMAN: That's correct. We believe we

19 are -- We are bound by --

20 QUESTION: Yes.

21 QUESTION: Ms. Chapman, do you in effect agree

22 that your right to assess the tax and ultimately collect

23 it may be different under the Customs Act than your

24 right to enforce a lien and to sell that property for

25 defaulted taxes while it is still within the Customs

1 warehouse?

2 MS. CHAPMAN: We agree that our -- We cannot
3 exercise summary seizure and -- summary sale and seizure
4 of that property. We cannot affect the federal
5 government's custody to that property. Title 28 of the
6 United States Code, Section 2463, provides that goods in
7 Customs' custody or goods detained under Customs law are
8 considered in the custody of law. They are not
9 recoverable, and they are subject only to the orders of
10 United States federal courts.

11 QUESTION: Ms. Chapman, maybe this isn't
12 relevant and I shouldn't take your time with it, but
13 suppose then Xerox, come December 31, 1977, you have not
14 yet tried to enforce payment of the tax, and they move
15 the copiers up to New York, as I gather they did. How
16 do you collect your tax?

17 QUESTION: You sue them.

18 MS. CHAPMAN: Sue them for --

19 QUESTION: Well, suppose you can't get them in
20 the state.

21 MS. CHAPMAN: We would --

22 QUESTION: You could sue them in another
23 state. You could chase them down.

24 MS. CHAPMAN: Yes, we could.

25 QUESTION: Xerox is pretty much everywhere.

1 MS. CHAPMAN: Yes.
2 (General laughter.)
3 QUESTION: They have other property in the
4 state.
5 MS. CHAPMAN: They did have other property in
6 the state.
7 QUESTION: Well, what I have been thinking
8 about, Ms. Chapman, Justice Stevens mentioned, suppose
9 it was a Japanese company that had done this?
10 MS. CHAPMAN: That's a problem that we face on
11 a continuing basis. If it is a foreign --
12 QUESTION: Yes.
13 QUESTION: Is the county tax separate, a
14 different tax?
15 MS. CHAPMAN: Yes.
16 QUESTION: And does the state impose a tax,
17 too?
18 MS. CHAPMAN: Yes.
19 QUESTION: So there are three taxes involved.
20 MS. CHAPMAN: No, there is a --
21 QUESTION: Just one?
22 MS. CHAPMAN: No, there are several taxes
23 involved here for several taxing jurisdictions,
24 including for the State of Texas.
25 QUESTION: I see. So there are at least

1 three.

2 MS. CHAPMAN: Yes.

3 The regulatory scheme involved here are the
4 laws governing Customs bonded warehouses, Title 19 of
5 the United States Code, Section 1555, 1556, and 1557.
6 These statutes and authorized regulations operate to
7 defer import duties. They serve merely as a convenience
8 to the importer by relieving the importer of immediate
9 cash payment of Customs duties.

10 Congress under these provisions has enacted no
11 law to exempt state taxation of goods in bonded
12 warehouses, nor can the intent be inferred from this
13 particular legislative scheme without an explicit
14 declaration by Congress. It cannot -- We cannot infer
15 that Congress intended to give these copiers -- these
16 imports a discriminatory tax advantage against domestic
17 commerce.

18 These copiers were not in transit on tax day.
19 As we know from Michelin, no -- a non-discriminatory tax
20 on imports not in transit is not prohibited. These
21 goods were on the market for sale. They had come to
22 rest within the jurisdiction, and by all applicable
23 traditional principles, these goods are subject to state
24 and local taxation.

25 To avoid -- Xerox cannot avoid the inevitable

1 conclusion that these copiers have acquired a situs in
2 Texas. By the use or the employment of a fiction, Xerox
3 argues that its goods are not in the State of Texas, but
4 in a state of transiency. It has provided this Court
5 with no authority for that proposition. The -- cases
6 that Xerox has cited involve straight regulatory
7 powers. The -- cases cited by Xerox involve
8 construction of a tariff -- they involve neither state
9 regulatory powers nor state taxing powers.

10 To the contrary, where courts have examined
11 the right of the state to tax goods in Customs bonded
12 warehouses, they have determined that Customs bonded
13 status in and of itself does not confer in transit
14 immunity. The Court held this in State versus Hopper
15 out of Texas, American Smelting, and in the Trace
16 Retailers Ranch case out of New Mexico.

17 Even in the National Distillers case, which
18 Xerox relies so heavily on, the Court expressly rejected
19 the argument that bonded storage conferred in transit
20 immunity.

21 QUESTION: Ms. Chapman, you haven't mentioned
22 your jurisdictional arguments. Are you still asserting
23 those?

24 MS. CHAPMAN: We have raised those points in
25 our brief, Your Honor. We have nothing new to add. We

1 think that if the Court decides to assume cert, that
2 these -- the same issues are going to be controlling.
3 We think the tax is neither prohibitive under the import
4 export clause nor the commerce clause, and the tax does
5 not interfere with domestic -- with flow in commerce.

6 There is no -- Unlike Japan Lines, there are
7 no treaties involved in this case, no conventions or
8 trade agreements. There is no genuine conflict of law
9 problem as existed in Japan Lines, which resulted in a
10 multiple taxation of property on an international
11 level. We know of no rule of law which would permit
12 another sovereignty to tax property -- to tax Xerox's
13 copiers, impose a property tax on Xerox's copiers while
14 under the exclusive protection of the State of Texas.

15 The tax has no effect on the government's need
16 to speak with one voice, which is an import export
17 concern, and speaking with one voice under the import
18 export clause is assured when the federal government and
19 the federal government alone imposes Customs duties.

20 Xerox is well aware of the benefits, and can
21 well appreciate the benefits provided by the State of
22 Texas. The reason that Xerox removed its distribution
23 operation from Panama to Houston was that
24 riot-threatened Panama could no longer protect its
25 copiers.

1 We submit that since Congress has enacted no
2 law, and with regard to Footnote 11, Footnote 11 fails
3 for the reason that the Secretary of Treasury has no
4 power, the Secretary of Treasury has no power to
5 regulate -- to legislate, excuse me, the limits of state
6 taxing powers. Only Congress has that power, and
7 Congress has not addressed this issue, and Congress has
8 not spoken in this case.

9 CHIEF JUSTICE BURGER: Your time has expired.

10 MS. CHAPMAN: All right. Thank you.

11 CHIEF JUSTICE BURGER: Do you have anything
12 further, Mr. Hoddinott?

13 ORAL ARGUMENT OF ALFRED H. HODDINOTT, JR., ESQ.,

14 ON BEHALF OF THE APPELLANT

15 MR. HODDINOTT: I would be happy to try and
16 answer Justice Blackmun's question. The copiers could
17 be worked over at a cost of over \$100. It is not
18 impossible for them to be used domestically, but it
19 would be somewhat like Justice Berger's automobile.
20 Presumably there is some way to switch the steering
21 wheel from the right hand to the left hand.

22 QUESTION: Or you can use it just the way it
23 is.

24 MR. HODDINOTT: You couldn't use the Xerox
25 copier just the way it was --

1 QUESTION: No, but the automobile.

2 MR. HODDINOTT: -- because of the
3 electricity.

4 QUESTION: Isn't it true that -- Is it true
5 that the bonded warehouse can be used by an importer who
6 wants to distribute domestically? Can he use the
7 bonding warehouse just to postpone the payment of his
8 duties until he gets a domestic market?

9 MR. HODDINOTT: Goods that come from abroad
10 coming into the United States may be held for up to
11 three years and then brought in. Indeed, that is --

12 QUESTION: No matter where they are destined.

13 MR. HODDINOTT: No matter where they are
14 destined. That is indeed the legislative purpose that
15 is set forth in the Warehousing Act, Your Honor.

16 QUESTION: Now, would you say that Texas could
17 levy its tax on the importer who is -- who intends to
18 take these goods into the United States?

19 MR. HODDINOTT: The minute it passes through
20 the warehouse door, Your Honor. Once they are into --
21 pass through the warehouse door --

22 QUESTION: You mean to be stored?

23 MR. HODDINOTT: No. While they are stored --

24 QUESTION: Well, is an importer who says, yes,
25 these are going to be sold in the United States, and he

1 puts them in a bonded warehouse, and holds them for two
2 years, may Texas levy a tax while they are in the
3 warehouse?

4 MR. HODDINOTT: No, sir, that is directly
5 opposed to the legislative purpose of the Warehousing
6 Act.

7 CHIEF JUSTICE BURGER: Thank you, counsel.
8 The case is submitted.

9 (Whereupon, at 12:00 p.m., the case in the
10 above-entitled matter was submitted.)

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CERTIFICATION

Alderson Reporting Company, Inc., hereby certifies that the attached pages represent an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of the United States in the Matter of: XEROX CORPORATION, Appellant v. COUNTY OF HARRIS, TEXAS AND city OF HOUSTON, TEXAS - No. 81-1489

and that these attached pages constitute the original transcript of the proceedings for the records of the court.

BY Pine Hammond
(REPORTER)

