

Sec. 10—Powers Denied to the States

Cl. 2—Duties on Exports and Imports

the time of its formation. The repeal of the covenant in issue was found to fail both prongs of the test.²¹⁰⁹

In *Spannaus*, the Court drew from its prior cases four standards: did the law deal with a broad generalized economic or social problem, did it operate in an area already subject to state regulation at the time the contractual obligations were entered into, did it effect simply a temporary alteration of the contractual relationship, and did the law operate upon a broad class of affected individuals or concerns. The Court found that the challenged law did not possess any of these attributes and thus struck it down.²¹¹⁰

Whether these two cases portend an active judicial review of economic regulatory activities, in contrast to the extreme deference shown such legislation under the due process and equal protection clauses, is problematical. Both cases contain language emphasizing the breadth of the police powers of government that may be used to further the public interest and admitting limited judicial scrutiny. Nevertheless, “[i]f the Contract Clause is to retain any meaning at all . . . it must be understood to impose *some* limits upon the power of a State to abridge existing contractual relationships, even in the exercise of its otherwise legitimate police power.”²¹¹¹

Clause 2. No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it’s inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Control of the Congress.

DUTIES ON EXPORTS OR IMPORTS

Scope

Only articles imported from or exported to a foreign country, or “a place over which the Constitution has not extended its com-

²¹⁰⁹ 431 U.S. at 25–32 (state could have modified the impairment to achieve its purposes without totally abandoning the covenant, though the Court reserved judgment whether lesser impairments would have been constitutional, *id.* at 30 n.28, and it had alternate means to achieve its purposes; the need for mass transportation was obvious when covenant was enacted and state could not claim that unforeseen circumstances had arisen.)

²¹¹⁰ 438 U.S. at 244–51. *See also* *Exxon Corp. v. Eagerton*, 462 U.S. 176 (1983) (emphasizing the first but relying on all but the third of these tests in upholding a prohibition on pass-through of an oil and gas severance tax).

²¹¹¹ 438 U.S. at 242 (emphasis by Court).