

Sec. 9—Powers Denied to Congress

Cl. 5—Export Duties

port cargo did not correspond reliably with the federal harbor services used or usable by the exporter. Instead, the extent and manner of port use depended on such factors as size and tonnage of a vessel and the length of time it spent in port.¹⁸⁷⁰ The HMT was thus a tax, and therefore invalid.

Where the sale to a commission merchant for a foreign consignee was consummated by delivery of the goods to an exporting carrier, the sale was held to be a step in the exportation and hence exempt from a general tax on sales of such commodity.¹⁸⁷¹ The giving of a bond for exportation of distilled liquor was not the commencement of exportation so as to exempt from an excise tax spirits that were not exported pursuant to such bond.¹⁸⁷² A tax on the income of a corporation derived from its export trade was not a tax on “articles exported” within the meaning of the Constitution.¹⁸⁷³

In *United States v. IBM Corp.*,¹⁸⁷⁴ the Court rejected the government’s argument that it should refine its export-tax-clause jurisprudence. Rather than read the clause as a bar on any tax that applies to a good in the export stream, the government contended that the Court should bring this clause in line with the Import-Export Clause¹⁸⁷⁵ and with dormant-commerce-clause doctrine. In that view, the Court should distinguish between discriminatory and nondiscriminatory taxes on exports. But the Court held that sufficient differences existed between the export clause and the other two clauses, so that its bar should continue to apply to any and all taxes on goods in the course of exportation.

Stamp Taxes

A stamp tax imposed on foreign bills of lading,¹⁸⁷⁶ charter parties,¹⁸⁷⁷ or marine insurance policies,¹⁸⁷⁸ was in effect a tax or duty upon exports, and so void; but an act requiring the stamping of all

¹⁸⁷⁰ 523 U.S. at 367–69.

¹⁸⁷¹ *Spalding & Bros. v. Edwards*, 262 U.S. 66 (1923).

¹⁸⁷² *Thompson v. United States*, 142 U.S. 471 (1892).

¹⁸⁷³ *Peck & Co. v. Lowe*, 247 U.S. 165 (1918); *National Paper Co. v. Bowers*, 266 U.S. 373 (1924).

¹⁸⁷⁴ 517 U.S. 843 (1996).

¹⁸⁷⁵ Article I, § 10, cl. 2, applying to the states.

¹⁸⁷⁶ *Fairbank v. United States*, 181 U.S. 283 (1901).

¹⁸⁷⁷ *United States v. Hvoslef*, 237 U.S. 1 (1915).

¹⁸⁷⁸ *Thames & Mersey Inc. v. United States*, 237 U.S. 19 (1915). In *United States v. IBM Corp.*, 517 U.S. 843 (1996), the Court adhered to *Thames & Mersey*, and held unconstitutional a federal excise tax upon insurance policies issued by foreign countries as applied to coverage for exported products. The Court admitted that one could question the earlier case’s equating of a tax on the insurance of exported goods with a tax on the goods themselves, but it observed that the government had cho-