

Sec. 8—Powers of Congress

Cl. 3—Power to Regulate Commerce

dated the state law.¹¹⁴¹ State actions to promote local products and producers, of everything from milk¹¹⁴² to alcohol,¹¹⁴³ may not be achieved through protectionism.

Even garbage transportation and disposition are covered by the negative commerce clause. A New Jersey statute that banned the importation of most solid or liquid wastes that originated outside the state was struck down as “an obvious effort to saddle those outside the State with the entire burden of slowing the flow of refuse into New Jersey’s remaining landfill sites”; the state could not justify the statute as a quarantine law designed to protect the public health because New Jersey left its landfills open to domestic waste.¹¹⁴⁴ Further extending the application of the negative commerce clause to waste disposal,¹¹⁴⁵ the Court, in *C & A Carbone, Inc. v. Town of Clarkstown*,¹¹⁴⁶ invalidated as discriminating against interstate commerce a local “flow control” ordinance that required all solid waste within the town to be processed at a designated transfer station before leaving the municipality. Underlying the restriction was the town’s decision to have a solid waste transfer station built by a private contractor, rather than with public funds. To make the arrangement appealing to the contractor, the town guaranteed it a minimum waste flow, which the town ensured by requiring that all solid waste generated within the town be processed at the contractor’s station.

¹¹⁴¹ That discriminatory effects will result in invalidation, as well as purposeful discrimination, is also drawn from *Dean Milk Co. v. City of Madison*, 340 U.S. 349 (1951).

¹¹⁴² *E.g.*, *H. P. Hood & Sons, Inc. v. Du Mond*, 336 U.S. 525 (1949). *See also* *Great Atlantic & Pacific Tea Co. v. Cottrell*, 424 U.S. 366 (1976) (state effort to combat discrimination by other states against its milk through reciprocity provisions). In *West Lynn Creamery, Inc. v. Healy*, 512 U.S. 186 (1994), the Court held invalidly discriminatory against interstate commerce a state milk pricing order, which imposed an assessment on all milk sold by dealers to in-state retailers, the entire assessment being distributed to in-state dairy farmers despite the fact that about two-thirds of the assessed milk was produced out of state. The avowed purpose and undisputed effect of the provision was to enable higher-cost in-state dairy farmers to compete with lower-cost dairy farmers in other states.

¹¹⁴³ *Healy v. Beer Institute, Inc.*, 491 U.S. 324 (1989); *Brown-Forman Distillers Corp. v. New York State Liquor Auth.*, 476 U.S. 573 (1986). *See also* *Bacchus Imports, Ltd. v. Dias*, 468 U.S. 263 (1984) (a tax case). *But cf.* *Pharmaceutical Research and Mfrs. of America v. Walsh*, 538 U.S. 644 (2003) (state prescription drug program providing rebates to participating companies does not regulate prices of out-of-state transactions and does not favor in-state over out-of-state companies).

¹¹⁴⁴ *City of Philadelphia v. New Jersey*, 437 U.S. 617, 629 (1978), *reaffirmed and applied* in *Chemical Waste Management, Inc. v. Hunt*, 504 U.S. 334 (1992), and *Fort Gratiot Sanitary Landfill v. Michigan Natural Resources Dept.*, 504 U.S. 353 (1992).

¹¹⁴⁵ *See also* *Oregon Waste Systems, Inc. v. Department of Env'tl. Quality*, 511 U.S. 93 (1994) (discriminatory tax).

¹¹⁴⁶ 511 U.S. 383 (1994).