rations, which it was empowered to do, and that no matter how many other states adopted such laws there would be no conflict. The burdens on interstate commerce, and the Court was not that clear that the effects of the law were burdensome in the appropriate context, were justified by the state's interests in regulating its corporations and resident shareholders.[1173]

In other areas, although the Court repeats balancing language, it has not applied it with any appreciable bite,[1174] but in most respects the state regulations involved are at most problematic in the context of the concerns of the Commerce Clause.

Foreign Commerce and State Powers

State taxation and regulation of commerce from abroad are also subject to negative commerce clause constraints. In the seminal case of *Brown v. Maryland*,[1175] which struck down a state statute requiring "all importers of foreign articles or commodities," preparatory to selling the goods, to take out a license, Chief Justice Marshall developed a lengthy exegesis explaining why the law was void under both the Import-Export Clause[1176] and the Commerce Clause. According to the Chief Justice, an inseparable part of the right to import was the right to sell, and a tax on the sale of an article is a tax on the article itself. Thus, the taxing power of the states did not extend in any form to imports from abroad so long as they remain "the property of the importer, in his warehouse, in the original form or package" in which they were imported. This is the famous "original package" doctrine. Only when the importer parts with his importations or mixes them into his general property by breaking up the packages may the state treat them as taxable property.

Obviously, to the extent that the Import-Export Clause was construed to impose a complete ban on taxation of imports so long as they were in their original packages, there was little occasion to develop a Commerce Clause analysis that would have reached only discriminatory taxes or taxes upon goods in tran-

---

[1173] CTS Corp. v. Dynamics Corp. of America, 481 U.S. 69 (1987).

[1174] *E.g.*, Northwest Central Pipeline Corp. v. Kansas Corp. Comm'n, 489 U.S. 493, 525–26 (1989); Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456, 472–74 (1981); Exxon Corp. v. Governor of Maryland, 437 U.S. 117, 127–28 (1978). *But see* Bendix Autolite Corp. v. Midwesco Enterprises, Inc., 486 U.S. 888 (1988).

[1175] 25 U.S. (12 Wheat.) 419 (1827).

[1176] Article I, § 10, cl. 2. This aspect of the doctrine of the case was considerably expanded in Low v. Austin, 80 U.S. (13 Wall.) 29 (1872), and subsequent cases, to bar states from levying nondiscriminatory, *ad valorem* property taxes upon goods that are no longer in import transit. This line of cases was overruled in Michelin Tire Corp. v. Wages, 423 U.S. 276 (1976).