

## Decision Excerpts

To accompany *How Interpretation of the Commerce Power Has Changed Over Time*

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### ***United States v. Darby (1941)***

While manufacture is not of itself interstate commerce, the shipment of manufactured goods interstate is such commerce and the prohibition of such shipment by Congress is indubitably a regulation of the commerce. The power to regulate commerce is the power “to prescribe the rule by which commerce is governed” [*Gibbons v. Ogden*].

But it is said that . . . under the guise of a regulation of interstate commerce, it [the Act] undertakes to regulate wages and hours within the state [of Georgia] . . . which has elected to leave them unregulated.

The motive and purpose of the present regulation are plainly to make effective the Congressional conception of public policy that interstate commerce should not be made the instrument of competition in the distribution of goods produced under substandard labor conditions. . . . [W]e conclude that the prohibition of the shipment interstate of goods produced under the forbidden substandard labor conditions is within the constitutional authority of Congress.

In the more than a century which has elapsed since the decision of *Gibbons v. Ogden*, these principles of constitutional interpretation have been so long and repeatedly recognized by this Court as applicable to the Commerce Clause, that there would be little occasion for repeating them now were it not for the decision of this Court twenty-two years ago in *Hammer v. Dagenhart*. . . . In that case it was held by a bare majority of the Court over the powerful and now classic dissent of Mr. Justice Holmes setting forth the fundamental issues involved, that Congress was without power to exclude the products of child labor from interstate commerce. The reasoning and conclusion of the Court’s opinion there cannot be reconciled with the conclusion which we have reached, that the power of Congress under the Commerce Clause is plenary to exclude any article from interstate commerce subject only to the specific prohibitions of the Constitution.

The conclusion is inescapable that *Hammer v. Dagenhart*, was a departure from the principles which have prevailed in the interpretation of the Commerce Clause both before and since the decision. . . . It should be and now is overruled.

**Has the Court’s decision in this case increased Congress’s power or held it in check?**