FEDERAL RESERVE BOARD

WASHINGTON

March 1, 1915.

SUBJECT: Interpretation of the language "based on the importation or exportation of goods" as used in Section 13 of the Federal Reserve Act.

My dear Governor:-

I have been asked for an opinion on the proper interpretation of that part of Section 13 of the Federal Reserve Act which reads: "Any Federal reserve bank may discount acceptances which are based on the importation or exportation of goods", with a view to determining whether the words "importation or exportation of goods " include (1) shipments between countries other than the United States, and (2) shipments between the continental United States and possessions of the United States.

Rules of Construction.

The first principles of statutory construction require that language which is clear and unambiguous be given its ordinary and natural significance. The legislative meaning is first to be sought in the words used and if they are clear, the letter of the law controls, unless in extraordinary cases such a natural construction would result in an obvious or absurd error. United States v. Goldenberg, 168 U. S. 95,102; United States v. Union Pacific Railroad Co., 91 U. S. 72,79; Lake County v. Rollins, 130 U. S. 662. "The legislature must be presumed to use words in the known and ordinary signification, unless that sense be repelled by the context", Levy v. McCartee, 6 Peters, 102,110. In Martin v. Hunter, 1 Wheat. 304,326, it is said that "where a power is expressly given, in general terms, it is not to be restrained to particular cases, unless that construction grow out of the context, expressly, or by necessary implication. The words are to be taken in their natural and obvious sense, and not in a sense unreasonably restricted or enlarged".

In accordance with the decisions in these and other cases, unless such a result is absurd or obviously contrary to the intent of Congress as shown by other parts of the Act, the natural and usual significance must be attached to the words "importation" and "exportation". The question, therefore arises, what is their ordinary and popular meaning ?

In discussing this subject the co-relative terms, "export", "exportation","import", "importation", and the like will be treated as synonymous.

General Definition.

The Century Dictionary and Cyclopedia defines "export" as, "That which is exported, a commodity carried from one place or country to another", and "exportation" as, "The act of conveying or sending to a distance, especially to another state or country commodities in the course of commerce". The same authority defines "exporter" as, "One who ships goods, wares and merchandise of any kind to a foreign country or distant place for sale". The New Standard Dictionary defines "export" as, "That which is exported: in general, goods or any article of trade or merchandise sent from one country to another : properly, as used in the United States Constitution, goods sent to a foreign country".

If these broad definitions are applied, it is manifest that the words "importation" and"exportation" will include shipments between countries other than the United States. It therefore becomes necessary to determine whether these terms have become limited in their significance by judicial construction in those cases where the courts have been called upon to interpret this language as used in the Federal Constitution and in the several Acts of Congress.

Judicial Construction of Language as used in Federal Constitution and Statutes .

The word "import" as used in tariff statutes of the United States invariably refers to imports to the United States from a foreign country, and it might be argued that when the words "exportation" and "importation" are used in the Federal Reserve Act they must be given a corresponding significance - that is, they must be held to refer to exports from and imports into the United States from a foreign country.

This argument, however, is not convincing, because of the fact that the word "import" as used in tariff laws must necessarily refer to shipments into the United States. "The power of Congress to levy and collect taxes, duties and excises is co-extensive with the United States", Loughborough v. Blake, 5 Wheat. 317. To levy a duty or tax of any sort, a sovereign must have jurisdiction over the article taxed. This narrower construction of the word "import" was, therefore, necessary, in order to give the tariff laws any effective operation. The United States could have no possible jurisdiction over a transaction between Buenos Aires and London, for instance, and to attempt to tax such an import would be ineffectual.

But even in these tariff laws where the meaning of "import" must necessarily be limited to imports into the United States, Congress has almost invariably provided in terms that the imports be from a foreign country into the United States. In the first tariff act, passed by Congress on July 4, 1789, it was enacted - "That *** duties *** be levied on the following goods, wares and merchandise imported into the United States from any foreign port or place", and it is to be noted that practically every tariff law passed by Congress since that time has contained some similar provision.

It might be contended that this restriction limiting dutiable imports to articles brought from a foreign country to the United States was intended to preclude any consideration of articles imported into one State from another State of the Union. But such intention is rebutted by the fact that the Constitution as construed by the Supreme Court of the United States, does not give Congress the power to lay an impost on goods imported from another State. The Constitution gives to Congress the general power "to levy and collect taxes, duties, imposts, and excises", but "imposts" has been construed in Woodruff v. Parham, 8 Wall. 123, to mean a duty, custom, or tax levied on articles brought into the United States, and the words "imports" and "exports" as used in the Constitution, are uniformly held to refer only to goods imported from foreign countries into the United States, and not to articles carried from one State to another. Pittsburgh Coal Co. v. Louisiana, 156, U. S. 590, 600; Brown v. Houston, 114 U. S. 622, 628.

It seems clear, therefore, that "import" or "export" as used in Federal tariff statutes must of necessity refer to transactions to or from the United States.

Federal Reserve Act and Other Federal Statutes Distinguished.

On the other hand, in the Federal Reserve Act - which is not a tariff measure, but which is, on the contrary, a law in which the words "importation" and "exportation" could consistently refer to transactions between two foreign countries other than the United States, - Congress has failed to put any restrictive limitation, evidently intending that the words used be given their normal and natural significance, the meaning generally understood when used in ordinary commercial parlance. The lexicons all agree in defining "export" as an article or commodity carried from one country to another, and nowhere except in cases construing the Constitution and the tariff laws is there any suggestion that "import" necessarily means an article shipped from a foreign country to the country or jurisdiction of the person or legislature using the word.

When used in the Federal Constitution or in the tariff laws made in pursuance thereof, the words "import" and "export" must necessarily be given the narrower construction, for the reason already stated - that is, the United States has no jurisdiction to impose a tax or impost on any article not within the confines of the United States. But in the case of a Federal banking law, where there is nothing in the context nor in the spirit of the Act to demand a narrower or limited interpretation, the words should be given their full significance. All the cases previously cited on the laws of statutory construction demand this result.

Significance as used in Federal Reserve Act.

But even if the literal meaning of the phrase "importation or exportation" be considered doubtful, a liberal construction in accordance with the general intent of Congress would necessitate this same result. It must be remembered that the Federal Reserve Act is remedial and constructive legislation by which Congress clearly intended to eliminate certain patent evils in conditions as they existed at the time of enactment, and to establish on a broad, comprehensive, and firm basis a unifying system of banking. The language "to

furnish an elastic currency, to afford means of rediscounting commercial paper, to establish a more effective supervision of banking in the United States, and for other purposes", contained in the title of the Act, shows that it is remedial, and as such should be broadly and liberally construed in order to accomplish the advancement of the remedies contemplated. 24 Am. and Eng. Encl. 887, and cases cited.

It may be reasonably assumed that Congress not only wanted to create a discount market for acceptances, but at the same time intended to establish a system which would facilitate the trade and commerce of the people of the United States, no matter where that trade or commerce originated or what its destination. Acceptances having become a recognized incident of trade, as between nations the establishment of a wider market in this country for such paper was apparently one of the objects of the Act.

Both the Senate bill and the conference agreement permitted the discount of acceptances, based not only on foreign but also on domestic shipments. The latter, however, were struck out on the floor, probably because of the fear that a general domestic acceptance business might be abused by the smaller banks which were unfamiliar with this class of investment and that for the present at least, such investments might prove a detriment not only to such banks but to the entire system. The elimination, however, of acceptances based on domestic shipments could not have been intended to restrict or limit the field of acceptances based on the "importation or exportation of goods", that phrase remaining precisely the same as it was prior to the elimination of domestic acceptances and just as it read when the intent was to include acceptances based on shipments of any kind.

It seems, therefore, that by all the ordinary rules of statutory construction, giving to the words the natural and ordinary import, which is strongly corroborated by the purposes, spirit and history of the Act, this portion of Section 13 was intended to, and actually does, permit the discount of acceptances based on the importation and exportation of goods, not only to and from the United States, but also as between other countries, separate and apart therefrom.

Shipments to and from Island

Possessions of the United States.

The second question raised is whether the clause "acceptances which are based on the importation or exportation of goods", should include acceptances based on shipments between the continental United States and its possessions; viz., Porto Rico, Hawaii, Canal Zone and the Philippines.

It is, of course, not to be disputed that if, as contended above, imports and exports to and from countries other than the United States are a satisfactory basis for acceptances, then acceptances based on shipments between any of these possessions and another country, other than the United States are eligible, a fortiori.

This leaves to be considered the one question just stated.

The definitions given in the standard dictionaries refer to shipments from one country to another country or to a "distant place", and such a general understanding of the words in question would certainly seem to be sufficiently comprehensive to include transactions between the United States and any of its island possessions, though they are not foreign territory in a political sense.

To permit the discount of acceptances based on the importation or exportation of goods from and to the possessions of the United States, it must be shown (1) that these words, as generally known and understood and as intended by the Federal Reserve Act, do not necessarily refer to shipments to and from a foreign country, and (2) that shipments to and from these possessions are not domestic shipments.

As already shown, the word "import" as used in the Constitution and tariff laws, has been construed by the Supreme Court to refer to imports from foreign countries. In the tariff laws this has necessarily been so because these laws specifically require that the import be from a foreign country. The words as used in the Constitution, however, not being expressly limited, has been construed to refer to imports from a foreign country and not to articles shipped from one state to another, for various reasons. A study of the discussions in the Constitutional Conventions and of the history of the formation of the Constitution showed that there was no intention in the minds of the framers of that instrument to refer to anything but foreign imports and exports, and the Supreme Court has, in various decisions reciting the history and development of the Constitution and the evils to be obviated by it, decided that "export" and "import" mean exports and imports to and from foreign countries and not between states. But in all those cases the particular circumstances under which the words were

used were stated at length to show why this narrower interpretation was necessary in each instance. Woodruff V.Parham 8 Wall. 123; Brown V. Houston, 114 U. S. 622. In other words the burden of limiting the natural meaning of the words was clearly recognized by the Court. Justice Brown in referring to this well-settled construction of the words as used in the Constitution, said, in Dooley V. United States, 183 U. S. 151, 153, -

> "While the words 'import' and 'export' are sometimes used to denote goods passing from one State to another, the word 'import', in connection with the provision of the Constitution that 'no State shall levy any imposts or duties on imports or exports', was held in Woodruff V. Parham, 8 Wall.123, to apply only to articles imported from foreign countries into the United States".

thus implying that they are used in other than the Constitutional sense. But as previously explained, there is no necessity for forcing a restricted construction on this phrase as used in the Federal Reserve Act, and in consequence there would seem to be no justification for reading the word "foreign" into its definition as applied to this Act.

It might be contended that to follow out this argument logically would lead to the conclusion that a shipment of goods from one state of the United States to another state of the United States would be an "importation or exportation of goods",a result clearly not contemplated by Congress. The answer is found in the history and development of the Act before its passage.

The House bill provided for the discount of acceptances based on the "exportation or importation of goods". The Senate bill amended this provision to read "importation or exportation or domestic shipment of goods", evidently intending to cover shipments to and from any points wherever located. As the Act read when finally passed, "domestic shipments" were eliminated. It is evident, therefore, that Congress intended to make eligible acceptances based on all except domestic shipment of goods.

Status of Insular Possessions.

This raises the second point : Is a shipment from the continental United States to one of the island possessions of the United States a domestic shipment ? The Century Dictionary and Cyclopedia defines "domestic commerce" as, " commercial

transactions within the limits of one nation or state", and in 14 Cyc. 829, quoting In re Roofing Contractors Association, 9 Pa. Dist. 569, 570, domestic trade is referred to as, "the exchange or buying or selling of goods within a country". But the difficulty is that the term "United States" has various different meanings dependent upon whether it is used in a geographical, commercial or governmental sense, or whether it is intended to describe the States of the Union as such.

The term "United States" as used in the uniformity clause of the Constitution has been held in the Insular cases not to extend to the unorganized territorial possessions of the United States. On the other hand, in dealing with foreign sovereignties, it is generally understood to have a broader meaning than when used in the Constitution. It then includes all territories subject to the jurisdiction of the Federal government, whether it is merely territory appurtenant to the United States, or whether it is an incorporated part of the United States.

This question of the status of our territorial possessions has been the subject of extended discussions before the Supreme Court and though it is now generally admitted that these possessions are not foreign in an international sense, nevertheless they may be foreign to the United States in a domestic sense. Downes v. Bidwell, 182 U. S. 244. In the case of Dorr v. United States, 195 U. S. 138, 143, the Supreme Court, in speaking of the extent and limitations of the Constitution as applied to our possessions said:

> "The limitations which are to be applied in any given case involving territorial government must depend upon the relation of the particular territory to the united States, concerning which Congress is exercising the power conferred by the Constitution. That the United States may have territory, which is not incorporated into the United States as a body politic, we think was recognized by the framers of the Constitution in enacting the article already considered, giving power over the territories, and is sanctioned by the opinions of the justices concurring in the judgment in Downes v. Bidwell, supra."

In other words, the United States may own territory which is subject to the control of Congress under the territorial

clause of the Constitution, but which is not an integral part of the United States until Congress sees fit to make it such and to extend to it the operation of the Constitution and laws of the United States. The doctrine that the Constitution does not follow the flag, ipso facto, seems well settled now by numerous cases of the Supreme Court. See Downes v. Bidwell, supra; Hawaii v. Mankichi, 190 U. S. 197. It is, of course, admitted in all these cases that Congress may, if it chooses, incorporate into the Union any territories belonging to the United States. Until it does so, however, it seems, from the cases cited, that unorganized territories, though subject to the jurisdiction of Congress, are not domestic in a national sense, and that shipments to and from such territories are not to be considered domestic shipments within the meaning of the Federal Reserve Act.

It may be well to consider, separately and briefly, the cases of Porto Rico, the Philippines, Canal Zone, and Hawaii, to determine whether Congress has so acted as to make them an integral part of the United States.

PORTO RICO. Porto Rico is not foreign territory within the meaning of the Dingley Tariff Act, approved July 24, 1897, taxing articles imported into the United States from "foreign countries". DeLima v. Bidwell, 182 U. S. 1, decided May 27, 1901. In another case - Downes v. Bidwell - decided the same day, the Supreme Court held that the Foraker Act of April 12, 1900, which levied certain duties on articles coming into the United States from Porto Rico, and on goods shipped from the United States to Porto Rico, was valid, even though a tax or burden on shipments between different parts of the United States, is unconstitutional, because "Porto Rico is a territory appurtenant and belonging to the United States but not a part of the United States within the revenue clauses of the Constitution".

The duties in question are no longer levied, they were only a temporary assessment, but the status of Porto Rico remains the same, no Act of Congress having been passed to make it an integral part of the Union. Not being a part of the United States, and not being subject to the general laws of Congress unless specifically referred to in those laws, it cannot be contended that a shipment between Porto Rico and the United States is a domestic shipment in the generally accepted meaning of that term, a shipment from one part of the country to another.

PHILIPPINE ISLANDS. In the case of Fourteen Diamond Rings v. United States, 183, U. S. 176, it was held that the Philippines are not a "foreign country" in the meaning of the Tariff Act of 1897, imposing a duty on imports from foreign countries. The court went on to say that "In this respect there is no distinction between the Philippines and the Islands of Porto Rico. Neither of them is a foreign country within the terms of that Act".

In the later case of Dorr v. United States, supra, it was held that the Philippines were not incorporated into the United States by the mere treaty of cession and as the court said:

> "The legislation upon the subject shows that not only has Congress hitherto refrained from incorporating the Philippines into the United States, but in the act of 1902, providing for temporary civil government, 32 Stat. 691, there is express provision that section eighteen hundred and ninety-one of the Revised Statutes of 1878 shall not apply to the Philippine Islands. This is the section giving force and effect to the Constitution and laws of the United States, not locally inapplicable, within all the organized territories, and every territory thereafter organized, as elsewhere within the United States".

The Philippines, like Porto Rico, are therefore not a part of the United States, and as Justice White said in Downes v. Bidwell, supra, "it is foreign to the United States in a domestic sense because not incorporated into the United States". Being generally understood to be foreign to the United States in every sense except an international one, there is no justification for the conclusion that shipments to and from the Philippines are domestic.

HAWAII. Though the Hawaiian Islands were not made an integral part of the United States by the mere Act of Congress annexing them, 30 Stat. 750, Hawaii v. Mankichi, supra, nevertheless by the Act of Congress of June 14, 1900, 31 Stat. 141, they were formally incorporated. By this Act the Constitution and all Federal laws were given "the same force and effect in Hawaii as elsewhere in the United States", and Justice White, in the case cited, said that by this Act "the islands were undoubtedly made a part of the United States in the fullest sense".

This distinction between Hawaii and the Philippines and Porto Rico is recognized by all the branches of the Government. Porto Rico and the Philippines are under the jurisdiction of the Bureau of Insular Affairs in the War Department, but Hawaii is not. Hawaii, like Alaska, is represented in Congress by a territorial delegate, whereas the Philippines and Porto Rico merely send "resident commissioners" to Washington.

Under all the facts, therefore, Hawaii, must be considered as an integral part of the United States and practically and logically any shipment between Hawaii and the continental United States must be a domestic shipment. Congress having shown its intent to bar the discount of acceptances based on "domestic shipments", it would seem not possible to differentiate dealings with Hawaii from those with any part of the continental United States. Its relation to the United States seems precisely analagous to Alaska.

CANAL ZONE. The status of the Canal Zone is unique. The United States has, in effect, an easement ten miles wide across the Republic of Panama. It is foreign territory, subject to the control and supervision of this Government. The Tariff Act of 1913, imposing duties on imports "into the United States or into any of its possessions (except the Philippine Islands, and the islands of Guam and Tutuila)" does not apply to the Panama Canal, even though it is not expressly excepted from the term "possessions", as is the case with the Philippines. By an Act dated March 2, 1905, 33 Stat. 843, Congress specifically stated that "all laws affecting imports of articles, goods, wares and merchandise, and entry of persons into the United States from foreign countries, shall apply to articles, etc., coming from the Canal Zone and seeking entry into any State or Territory of the United States or the District of Columbia", showing that in no way is the Canal Zone considered an integral part of the United States. Indeed it is not even territory owned by the United States, but rather territory under its jurisdiction and control. Strictly speaking, it is a dependency. As such, it is far less a part of the United States than Porto Rico, and shipments to and from it could hardly be considered domestic shipments in the light of the previous discussion.

To summarize: it would seem that the Federal Reserve banks may, under Section 13, discount acceptances based on the shipment of goods.

(a) between the United States and any foreign country.

(b) between any two or more foreign countries, and

(c) between the continental United States and Porto Rico, the Philippines or the Canal Zone.

but not acceptances based on the shipment of goods between the continental United States and Hawaii.

Respectfully,

Counsel.

Honorable C. S. Hamlin,
Governor.