

Sec. 8—Powers of Congress

Cl. 3—Power to Regulate Commerce

dered to Congress, by the Constitution; unless we suppose, that, by some strange process, it has been merged or extinguished, and now exists nowhere.⁹⁴⁴

Banned Articles and Protective Tariffs.—The forerunners of more recent acts excluding objectionable commodities from interstate commerce are the laws forbidding the importation of like commodities from abroad. Congress has exercised this power since 1842, when it forbade the importation of obscene literature or pictures from abroad.⁹⁴⁵ Six years, later it passed an act “to prevent the importation of spurious and adulterated drugs” and to provide a system of inspection to make the prohibition effective.⁹⁴⁶ Such legislation guarding against the importation of noxiously adulterated foods, drugs, or liquor has been on the statute books ever since. In 1887, the importation by Chinese nationals of opium was prohibited,⁹⁴⁷ and subsequent statutes passed in 1909 and 1914 made it unlawful for anyone to import it.⁹⁴⁸ In 1897, Congress forbade the importation of any tea “inferior in purity, quality, and fitness for consumption” as compared with a legal standard.⁹⁴⁹ The act was sustained in 1904, in *Buttfield v. Stranahan*.⁹⁵⁰ In “*The Abby Dodge*” an act excluding sponges taken by means of diving or diving apparatus from the waters of the Gulf of Mexico or Straits of Florida was sustained but construed as not applying to sponges taken from the territorial water of a state.⁹⁵¹

In *Weber v. Freed*,⁹⁵² the Court upheld an act prohibiting the importation and interstate transportation of prize-fight films or of pictorial representation of prize fights. Chief Justice White grounded his opinion for a unanimous Court on the complete and total control over foreign commerce possessed by Congress, in contrast implicitly to its lesser power over interstate commerce.⁹⁵³ And, in *Brolan v. United States*,⁹⁵⁴ the Court rejected as wholly inappropriate the citation of cases dealing with interstate commerce on the question of Congress’ power to prohibit foreign commerce. It has been ear-

⁹⁴⁴ *United States v. The William*, 28 Fed. Cas. 614, 620–623 (No. 16,700) (D. Mass. 1808). See also *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1, 191 (1824); *United States v. Marigold*, 50 U.S. (9 How.) 560 (1850).

⁹⁴⁵ Ch. 270, § 28, 5 Stat. 566.

⁹⁴⁶ 9 Stat. 237 (1848).

⁹⁴⁷ 24 Stat. 409.

⁹⁴⁸ 35 Stat. 614; 38 Stat. 275.

⁹⁴⁹ 29 Stat. 605.

⁹⁵⁰ 192 U.S. 470 (1904).

⁹⁵¹ 223 U.S. 166 (1912); cf. *United States v. California*, 332 U.S. 19 (1947).

⁹⁵² 239 U.S. 325 (1915).

⁹⁵³ 239 U.S. at 329.

⁹⁵⁴ 236 U.S. 216 (1915).