UNITED STATES TARIFF COMMISSION

CERTAIN COTTON PRODUCTS

(COTTON PICKER LAPS, ETC.)

Report to the President

on

Investigation No. 22 - 24 Under Section 22

of the

Agricultural Adjustment Act, as Amended

TC Publication 31

Washington
September 1961

U. S. TARIFF COMMISSION

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(TC29065)

REPORT TO THE PRESIDENT

United States Tariff Commission
Washington

September 1, 1961

To the President:

In response to the request of former President Eisenhower dated January 18, 1961, the United States Tariff Commission, on January 23, 1961, instituted an investigation under the provisions of section 22(a) of the Agricultural Adjustment Act, as amended, and Executive Order No. 7233 of November 23, 1935, for the purposes of determining whether cotton products produced in any stage preceding the spinning into yarn are being or are practically certain to be imported into the United States under such conditions and in such quantities as to render or tend to render ineffective, or materially interfere with, the price support program and other programs or operations undertaken by the Department of Agriculture with respect to cotton or products thereof.

Public notice of the institution of the investigation and of a public hearing to be held in connection therewith was posted at the office of the Commission in Washington, D.C., and at its New York office, and was published in the Federal Register on January 27, 1961 (26 F.R. 859), and in the January 26, 1961 issue of Treasury Decisions.

On March 6, 1961 public notice was given that imports of cotton wastes were not within the scope of the investigation.[1/]

1/ 26 F.R. 2064; Treasury Decisions, March 9, 1961.

On April 18, 1961 public notice was given that the hearing, originally scheduled for April 25, 1961, was being postponed until further notice.[1/]

On July 18, 1961, public notice was given that the hearing would be held on August 8, 1961. This notice was posted at the office of the Commission in Washington, D.C., and at its New York office, and was published in the Federal Register on July 20, 1961 (26 F.R. 6537), and in the July 20, 1961 issue of Treasury Decisions.

The hearing was duly held on August 8 and 9, 1961, and interested parties were given opportunity to be present, to produce evidence, and to be heard.

In addition to the information obtained at the hearing, the Commission, in this investigation, utilized information obtained from its files, through independent inquiry, from official United States Government sources, including the United States Department of Agriculture, from briefs of interested parties, and from other appropriate sources. A transcript of the evidence submitted at the hearing accompanies this report.

Finding of the Commission

On the basis of its investigation, the Commission finds that cotton products produced in any stage preceding the spinning into yarn[2/] are being, or are practically certain to be, imported into the United States under such conditions and in such quantities as to render or tend to

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1/ 26 F.R. 3448; Treasury Decisions, April 20, 1961.

2/ Other than cotton wastes, which are not within the scope of this investigation.

render ineffective, or materially interfere with, the price-support program and other programs or operations undertaken by the Department of Agriculture with respect to cotton or products thereof.

Recommendation

The Tariff Commission respectfully recommends that the President issue a proclamation pursuant to section 22(b) of the Agricultural Adjustment Act, as amended, providing that the aggregate total quantity of cotton products produced in any stage preceding the spinning into yarn, except cotton wastes, which may be entered, or withdrawn from warehouse, for consumption in any 12-month period shall not exceed 1,000 pounds.

Products Covered by the Investigation

Although the investigation covers the field of intermediate products into which the cotton is formed at the various mechanical processes after the raw cotton leaves the baled or bulk state and before the actual process of spinning into yarn, the main concern of the Department of Agriculture is the increase since early in 1959 of imports of cotton card laps (also known as picker laps). Other products involved in the scope of this investigation are sliver in its various stages (card, comber, and drawing), sliver lap, ribbon lap, comber lap, and roving.

The principal products involved in this investigation have been described in a Tariff Commission Summary published in 1948. The entire operation in the mill between the opening of the bales of raw cotton and the actual spinning process is set forth in that publication as follows:

> Laps, sliver, and roving are the successive products of producers preliminary to cotton spinning. At the mill, the cotton from the bale is subjected to opening and cleaning processes which remove most of the heavier impurities and deliver it as a lap, a compressed sheet of fibers rolled up in the form of a cylinder about 40 inches wide and 18 inches in diameter. This card lap from the lapper goes to the card, where the cotton is further opened up and cleaned and the fibers partly paralleled by passage between wire-covered surfaces. The carded cotton comes from the doffer as a wide, thin web which is condensed by the delivery rolls into a sliver, a round loosely compressed strand without twist. After passing through a drawing process to secure better parallelization and unification of the fibers, the sliver goes to the first fly frame (a slubber), where it is attenuated and given a slight twist; the slightly twisted strand is known as roving. Roving from a long-draft slubber or from the last of a series of fly frames goes to the spinning frame, where it is further attenuated and finally twisted into yarn.1/

For import purposes, the Bureau of Customs has determined that the terms "cotton card lap" and "cotton picker lap" are synonomous. Everywhere in the cotton trade and the textile industry today the terms refer to the same article, although "picker lap" is more commonly used than "card lap." Over 30 years ago card laps were produced on a series of two or three machines (pickers) with the intermediate product probably being referred to as a "picker lap" and the final product as a "card lap." Today, however, the lap is produced on tandem units referred to as a one-process picker--hence the name "picker lap." For purposes of this report, the terms "picker lap" and card lap" are used synonomously.

1/ Summaries of Tariff Information, Volume 9, Cotton Manufactures, Page 9, 1948.

Jurisdictional Issues Presented

Before discussing the principal considerations bearing on the foregoing finding and recommendation, the Commission wishes to address itself to certain jurisdictional issues which were raised by counsel for one of the interested parties at the public hearing.

Counsel presented a motion to dismiss the investigation insofar as it concerns the product of his client's subsidiary, which manufactures cotton picker (card) laps in the Foreign-Trade Zone in New Orleans for shipment to the parent company's plant at Trion, Georgia. This motion was predicated upon the following two allegations: (1) cotton picker laps manufactured in the New Orleans Foreign-Trade Zone are not imported when brought into the customs territory of the United States and therefore are not subject to the reach of section 22, which is addressed in terms to "imported" products; and (2) the Commission, under the authority vested in it by section 22, does not have jurisdiction to interpret, nullify, or restrict the provisions of the Foreign-Trade Zones Act pursuant to which the manufacture of the picker laps in question and their transfer into customs territory are being conducted.

This motion was taken under advisement. The Commission, after due deliberation, has concluded that the motion should be, and it hereby is, overruled, for the reasons set forth below.

The Commission Has Jurisdiction To Interpret the Foreign-Trade Zones Act in This Proceeding

No merit is seen in the claim that the Commission lacks authority to interpret and apply the Foreign-Trade Zones Act, insofar as necessary to

resolve the question of whether picker laps manufactured in a Foreign-Trade Zone are "imported," within the meaning of that term as used in section 22 of the Agricultural Adjustment Act, as amended, when brought into the customs territory of the United States. This question is of fundamental importance in delineating the jurisdiction of the Commission in the instant proceeding, and it is well established that an administrative body has the power and the duty to determine its own jurisdiction. Mc Devitt v. Gunn, 182 F. Supp. 335 (D.C. Pa. 1960). This being the case, it necessarily follows that it is within the competence of the Commission to interpret and apply any statute, including the Foreign-Trade Zones Act, which affects, or is alleged to affect, its jurisdiction in a proceeding before it.

Picker Lap Manufactured in the New Orleans Foreign-Trade Zone is "Imported," within the Meaning of Section 22, When Brought into the Customs Territory of the United States

The company whose operations occasioned the Motion to Dismiss purchases raw cotton in Mexico and Central America which is (1) admitted under bond at Brownsville, Texas, for transportation to Foreign-Trade Zone No. 2 at New Orleans, Louisiana, (2) entered into and stored in the Zone as "non-privileged" foreign merchandise, (3) subsequently accorded the status of "privileged" foreign merchandise, pursuant to applicable regulations of the Bureau of Customs, and (4) manufactured into picker laps. The picker laps are then shipped from the Zone to the parent company's plant in Trion, Georgia, for use in the manufacture of finished cotton goods.

The question to be resolved is whether this shipment of picker laps from the Foreign-Trade Zone to the customs territory of the United States constitutes an "importation" for purposes of section 22.

At the outset it must be recognized that there is an established line of cases holding that the concept of "importation" in its ordinary sense means bringing merchandise within the limits of a port of entry from a foreign country with intent to unlade. See Headley Asphalt Division v. United States, 24 C.C.P.A. (Customs) 427, T.D. 48873; Porto Rico Brokerage Co. v. United States, 23 C.C.P.A. (Customs) 16, T.D. 47672; Procter & Gamble Mfg. Co. v. United States, 19 C.C.P.A. (Customs) 415, T.D. 45578; United States v. Estate of Boshell, 14 Ct. Cust. Appls. 273, T.D. 41884; Diana v. United States, 12 Ct. Cust. Appls. 290, T.D. 40295; Sterling Bronze Co. v. United States, 12 Ct. Cust. Appls. 338, T.D. 40487. As applied to the case here under consideration, these holdings could be cited to support the argument that no "importation" occurs when picker laps are transferred from a Foreign-Trade Zone into customs territory because a Zone, being within the sovereign limits of the United States, is not a "foreign country." Under this theory, the manufacture of picker laps in a Foreign-Trade Zone would be tantamount to domestic manufacture so that its transfer into customs territory would be considered a purely domestic transaction.

On the other hand, there is an equally imposing line of cases which hold that "importation" occurs when goods enter the commerce of the country. See Casazza & Bro. v. United States, 13 Ct. Cust. Appls. 627, T.D. 41418; May Co. v. United States, 12 Ct. Cust. Appls. 266, T.D. 40270.

See also Hartranft v. Oliver, 125 U.S. 525; United States v. Goodsell, 84 Fed. 439; Constance v. United States, 11 Ct. Cust. Appls. 435, T.D. 39436; United States v. Cronkhite, 9 Ct. Cust. Appls. 129, T.D. 39780; Five Per Cent Cases, 6 Ct. Cust. Appls. 291, T.D. 35508. Based on this line of cases, the transfer of cotton picker lap from the Foreign-Trade Zone into customs territory constitutes an "importation," since this is the point at which the product enters the commerce of the country.

This divergence in judicial interpretation of the meaning to be ascribed to the word "imported" as used in tariff legislation is not the result of caprice or arbitrary construction. Rather, it is predicated upon the established principle that the essential consideration in statutory construction is to ascertain the intent of Congress. As stated in Washington State Liquor Control Board v. United States, 20 Cust. Ct. 173, 174-75, C.D. 1104:

> The meanings to be given to the terms "import" and "importation" as used by Congress often differ, the variations in meanings depending upon the context and the object to be attained by the use of the words.

Thus, the meaning of the term "imported" as used in section 22 cannot be determined by a reading in vacuo; rather, its meaning must be developed from an evaluation of the statutory context and the particular object sought to be attained.

So far as section 22 is concerned, the obvious legislative intent was to provide a vehicle for regulation of "imports" which, by impinging upon the domestic supply-demand equation, materially interfere with or tend to render ineffective government agricultural programs. This was made clear

by Secretary of Agriculture Benson in his testimony before the Senate Committee on Agriculture and Forestry in 1953 (United States Senate, Committee on Agriculture and Forestry, Hearings on Foreign Trade in Agricultural Products, 83d Cong., 1st Sess. (1953), p. 10):

> PRICE SUPPORTS AND IMPORTS
> OF FARM PRODUCTS
>
> . . . . . .
>
> Many of the commodities included in these price support and marketing-order programs are subject to substantial import competition. In many cases the price-support level is substantially above the world market price, even after allowance for the customs duties assessed against imports. When that happens, imports are attracted to this country from all over the world, including areas whose products would normally be exported in whole or in part to other countries where they may be badly needed. But the price-support level in this country acts like a powerful magnet to draw these commodities out of their normal flow in international trade. When we seek to limit the effect of this influence, we are simply seeking to diminish or avoid the distortion of trade by the stimulus of an artificial influence such as a price-support program.
>
> I am sure the Congress would not enact a statute making mandatory the support of the world price of agricultural commodities at 90 percent of American parity. Yet that is what the present mandatory supports mean if we do not have a readily available and effective method of controlling imports of those commodities or products whose prices are maintained here above world levels by price support or marketing-order programs.
>
> LEGISLATIVE REMEDIES FOR EXCESSIVE IMPORTS
> ATTRACTED BY PRICE SUPPORTS
>
> In recognition of the fact that a stimulation of imports can impose an intolerable burden on a price-support program, the Congress enacted section 22 of the Agricultural Adjustment Act. This section

> provides for the imposition of import quotas or import fees whenever imports of any agricultural commodity or product thereof render or tend to render ineffective or materially interfere with any price support or marketing order (and certain other) program. * * *

Thus, it is the entry of products into the stream of domestic commerce which is the object of the regulatory scheme of section 22. In light of this, the rule of reason dictates the conclusion that the cotton picker laps manufactured in the New Orleans Foreign-Trade Zone are "imported," within the meaning of section 22, when brought from the Zone into customs territory, since material interference with the Department of Agriculture's cotton programs can result from the displacement of demand for domestically produced picker laps (and the domestic raw cotton which would be used in their manufacture) occasioned by the introduction into the commerce of the United States of picker laps made from foreign cotton in the Foreign-Trade Zone.

Beyond this, however, there is an even more persuasive basis in law for concluding that the transfer of cotton picker lap from the Foreign-Trade Zone into customs territory constitutes an "importation."

A review of the cases which have held that "importation" means the entry of goods into the commerce of the country reveals that the goods involved were invariably under customs control, usually in a bonded warehouse. As pointed out by the Court of Customs and Patent Appeals in Stone & Downer et al. v. United States, 19 C.C.P.A. (Customs) 261, T.D. 44460:

> No principle is better settled in this court than the one that goods in bonded warehouses are not to be considered as imported until a permit of delivery has been issued and they enter into the commerce of the country. * * * 19 C.C.P.A. (Customs) at p. 264.

Turning to the legislative history of the Foreign-Trade Zones Act, it is clear that Foreign-Trade Zones are, conceptually, an extension of the customs bonded warehouse system. Congressman Celler, the sponsor of the Foreign-Trade Zones Act, testified as follows during hearings before a subcommittee of the House Committee on Ways and Means at the time the Act was under Congressional consideration (Hearings before a subcommittee of the Committee on Ways and Means of the House of Representatives on Foreign-Trade Zones, 73d Cong., 2d Sess. (1934), p. 9):

> Mr. VINSON. You have a bonded warehouse in order that the goods may be deposited there and may stay there and the importer will not be compelled to take the money out of his pocket to pay the tariff duty on them at that time; is that correct?
>
> Mr. CELLER. That is right.
>
> Mr. VINSON. And then if the goods are reexported, no tariff is paid. Consequently, the operation is for the benefit of the importer?
>
> Mr. CELLER. That is right. We want to go one step further. We want to go beyond that. The present regulations have insufficient utility. We want to extend the principle involved in your bonded warehouse provision --
>
> Mr. McCORMACK. What you want is an alternative or a supplementary situation?
>
> Mr. CELLER. That is correct. [Emphasis added.]

In reporting favorably to the whole Committee the proposal for establishment of Foreign-Trade Zones, the subcommittee before which Mr. Celler had explained his bill stated as follows (Report of a Subcommittee to the House Committee on Ways and Means, 73d Cong., 2d Sess. (1934), p. 3):

> The principle of establishing facilities for storing, manipulating, smelting, foreign products in bond for re-shipment, and of providing for drawback or return of duties paid on materials used in manufacture for reexport have been recognized in the Tariff Act of 1930 in section 555, 557, etc. (dealing with "Bonded Warehouses" and "Entry for Warehouse - Warehouse period - Drawback", respectively). The extension of this principle by providing for specific zones in which these functions could be carried on without interference involves adoption of no new principle. It would simply do away with the present disadvantages of using the warehouse and drawback system and concentrate these operations in a specific area to the advantage both of the ship, merchant, and customs supervision. (Emphasis added.)

In view of the fact that there is this conceptual equivalence between bonded warehouses and Foreign-Trade Zones, the principle announced in the Stone & Downer case, supra, must be regarded as applying with equal force to the status of goods in Foreign-Trade Zones; viz., goods in a Foreign-Trade Zone are to be considered as imported when a permit of delivery into customs territory has been issued and they enter the commerce of the country.

In this connection, it is significant to note that in the transfer of "privileged foreign merchandise" or manufactures wholly or in part thereof into customs territory (other than for exportation), the zone withdrawal is accomplished by filing Customs Form 7505 or 7519, which are forms used for withdrawals for consumption of merchandise in a bonded warehouse. (This is provided for in the regulations of the Bureau of Customs, 19 C.F.R. §§ 30.14(b) and (c). See 19 C.F.R. §§ 8.35 and 8.37 for a description of the nature of Customs Forms 7519 and 7505, respectively.) Thus, the withdrawal of the picker lap in question from the Foreign-Trade Zone

is tantamount to a withdrawal from warehouse for consumption, a transaction which, as noted before, has been judicially declared on numerous occasions to be an "importation."

It should also be noted in connection with the fact that the transfer of the product in question from the Zone into customs territory is accomplished on a warehouse-withdrawal form, that the remedial action which section 22 authorizes the President to take is the regulation of articles "which may be entered, or withdrawn from warehouse, for consumption." Therefore, not only is the transfer into customs territory from the Zone precisely the type of transaction to which section 22 is addressed, since it is an "import," but the said transfer into customs territory falls explicitly within the purview of the transactions which the President is authorized to regulate because it is, to all intents and purposes, a "withdrawal from warehouse for consumption."

By the same token, it is instructive to consider the provision in the Tariff Act of 1930, as amended, relating to bonded manufacturing warehouses (19 U.S.C. § 1311), wherein it is provided that products may be manufactured from foreign materials in such an establishment for export and that --

> the by-products incident to the processes of manufacture * * * in said bonded warehouses may be withdrawn for domestic consumption on the payment of duty equal to the duty which would be assessed and collected by law if such * * * by-products were imported from a foreign country * * *.

Thus, such by-products of the manufacture of foreign materials, notwithstanding the fact that they are produced within the sovereign limits of the United States, are, upon withdrawal for consumption, treated as though they were of foreign origin in the first instance. This necessarily follows from the fact that section 1 of the Tariff Act of 1930 provides that duty shall be levied, collected and paid upon articles provided for in Title I of the Act "when imported from any foreign country into the United States," and unless the by-products of processing in a bonded manufacturing warehouse are considered as being imported from a foreign country they could not, by definition, be liable for duty.

By a parity of reasoning, if a bonded manufacturing warehouse is regarded as equivalent to a foreign country for purposes of the tariff laws of the United States, so that the bringing of products into domestic commerce therefrom is treated as an importation, a Foreign-Trade Zone must be viewed in the same light.

Completely apart from the foregoing, persuasive support for the argument that section 22 is applicable to the picker lap in question is to be found in the Foreign-Trade Zones Act itself. Section 3 of that statute reads, in pertinent part, as follows:

> Foreign and domestic merchandise of every description, except such as is prohibited by law, may, without being subject to the customs laws of the United States, except as otherwise provided in this Act, be brought into a zone and sorted, graded, cleaned, mixed with foreign or domestic merchandise, or otherwise manipulated, or be manufactured except as otherwise provided in this Act, and be exported, destroyed or sent into customs territory of the United States therefrom, in the original package or otherwise;

> but when foreign merchandise is so sent from a zone into customs territory of the United States it shall be subject to the laws and regulations of the United States affecting imported merchandise * * *. [Emphasis added.]

Thus, the statute provides that foreign merchandise which has been manufactured in a Foreign-Trade Zone shall be subject to the laws and regulations of the United States affecting imported merchandise when sent into customs territory. The foreign cotton brought into the Zone is manufactured into picker lap and sent into customs territory. Section 22 is a law of the United States affecting imported merchandise. A fortiori, the picker lap must, according to the express terms of the statute, be subject to section 22.

It is argued, however, that since a Foreign-Trade Zone is within the sovereign confines of the United States (albeit without the customs territory) the manufacture of foreign merchandise in the Zone results in a domestic product, which, under the statute, would not be subject to the laws and regulations of the United States affecting imports because it is not foreign merchandise as required by the statute.

This argument cannot be sustained. It must be borne in mind that the Foreign-Trade Zones Act recognizes only two classes of merchandise--"foreign" and "domestic." Since there is no separate category for "zone-manufactured" merchandise, it follows that such manufactured merchandise must, perforce, be regarded as either foreign or domestic merchandise on the same basis as unmanufactured merchandise. The fundamental substantive distinction between foreign and domestic merchandise is that, according to the explicit provisions of the Act, foreign merchandise is subject

to the laws and regulations of the United States affecting imported merchandise when sent into customs territory, whereas domestic merchandise which has not lost its identity in the Zone is not. (Section 3 of the act provides that domestic merchandise which has lost its identity shall be treated as foreign merchandise.)

One of the laws of the United States affecting imported merchandise is the Tariff Act of 1930, as amended and modified. Thus, when foreign merchandise is brought into customs territory from a Foreign-Trade Zone, it is subject to the applicable duty provisions of that statute; and conversely, if merchandise brought into customs territory from a Foreign-Trade Zone is subject to such duty provisions, it can only be foreign merchandise.

If picker laps were to be manufactured in a Foreign-Trade Zone from "non-privileged" foreign cotton, they would be dutiable at 5 percent ad valorem under paragraph 901(c) of the Tariff Act of 1930, as amended and modified, (plus 5 cents per pound if made from cotton having a staple length of 1-1/8" or more, pursuant to paragraph 924 of the said act) when brought into customs territory. Therefore, this zone-manufactured product must, by definition, be "foreign," rather than "domestic." Although the picker laps which are the subject of this investigation are admitted free of duty when brought into customs territory, that is not because the duty provisions of the Tariff Act of 1930 are inapplicable. On the contrary, it is because the "privilege clause" of the Foreign-Trade Zones Act expressly provides that the duty liability of a product manufactured in a Zone from "privileged foreign merchandise" shall be deter-

mined by reference to the duty status of the "privileged" raw material rather than of the resultant product, and in this case the component raw material is cotton which is on the free list of the Tariff Act of 1930.

The view that these picker laps are foreign merchandise is consistent with the Customs Regulations relating to foreign merchandise which has been accorded privileged status in a Zone. Section 30.6(c) thereof provides as follows:

> A status as privileged foreign merchandise and the consequent determination of taxes and liquidation of duties cannot be abandoned but remain applicable to the merchandise even if changed in form by manipulation or manufacture * * * as long as the merchandise remains within the purview of the act.

Implicit in this provision is, of course, the concept that when the form of privileged foreign merchandise is changed by manipulation or manufacture, the resultant product retains the status of privileged foreign merchandise pro tanto. This follows from the fact that after manufacture the "privileged" merchandise is no longer in its original form, and the only product to which the privileged status can attach is the new product.

Therefore, it must be concluded that the picker laps in question are, for purposes of the Foreign-Trade Zones Act, "foreign merchandise," and accordingly are subject to the laws and regulations of the United States affecting imported merchandise, including section 22 of the Agricultural Adjustment Act, as amended, when brought into customs territory.

In light of the foregoing, the argument that manufacturing activities within a Foreign-Trade Zone are not within the scope of the investigation or the purview of section 22 must be regarded as fallacious.

The Adverse Effect which the Commission's Recommendation Would Have Upon Operations in the Foreign-Trade Zones Does Not Compromise Its Validity

It is contended, in the Motion to Dismiss, that the Commission has no jurisdiction to nullify or restrict the provisions of the Foreign-Trade Zones Act, pursuant to which the subject manufacture of picker laps and their transfer into customs territory are being conducted.

The Commission is not unmindful that its recommendation would, if proclaimed, visit considerable economic distress upon the producers who have established facilities for the manufacture of picker laps from foreign cotton in Foreign-Trade Zones. Nevertheless, the Commission is obliged to recommend remedial measures under section 22 where, as here, its investigation shows that imports are materially interfering or are practically certain to interfere materially with the agricultural programs of the United States. Inevitably, such restrictions upon import trade will be unpalatable, and perhaps even injurious, to those who previously had trafficked freely in the affected product. It is true that the manufacture of picker laps in Foreign-Trade Zones, and their importation into the customs territory of the United States, are completely within the letter and spirit of the Foreign-Trade Zones Act, and no illegality or "sharp practice" is involved. However, the fact that the Foreign-Trade Zones Act may have permitted the establishment of such an operation does not constitute a guarantee that supervening circumstances may not dictate subsequent governmental regulation thereof. That restrictions, including an embargo, may be placed upon the conduct of import trade

is one of the calculated risks, lying within the realm of business judgment, which those who engage in such business must recognize and accept. In this connection, it is instructive to refer to the observations of the court in Texas American Asphalt Corporation v. Walker, 177 F. Supp. 315 (D.C. Tex.1959), which case involved a complaint that the plaintiff had been deprived of due process by the failure of the government to allocate to him an import quota under the Mandatory Oil Import Program. The court said that neither plaintiff nor anyone else could be said to have a vested right to carry on foreign commerce with the United States, and went on to comment as follows (177 F. Supp. at p. 327):

> Plaintiff's unfortunate predicament may be laid largely to its own lack of sound business judgment in constructing its Lacoste refinery without an assured supply of nearby domestic crude and in failing to appreciate the risk involved in assuming that it would be able to import as much crude as it might desire. But even if plaintiff were wholly blameless for its plight, the due process clause would not guarantee it against injury to, or even loss of, its business as a result of governmental controls of oil imports. Everyone is subject to the risk of injury from the exercise of governmental authority. As stated in Norman v. Baltimore & Ohio R. Co., 294 U.S. 240, 305, 55 S. Ct. 407, 415, 79 L. Ed. 885: "A new tariff, an embargo, or a war, might bring upon individuals great losses; might, indeed, render valuable property almost valueless--might destroy the worth of contracts, 'But whoever supposed' asked the Court, 'that, because of this, a tariff could not be changed or a nonintercourse act, or embargo be enacted, or a war declared.'" * * *
>
> Many companies, indeed whole industries, have been forced out of business by governmental regulation. That regrettable consequence does not, however, establish a denial of due process. * * * [Emphasis added.]

Accordingly, whatever advantage the manufacturers of picker laps in Foreign-Trade Zones may have enjoyed from the introduction into the United States market of the product of their ingenuity, it must be regarded

as subordinate to the right of the government to regulate imports under section 22.

Both the Foreign-Trade Zones Act and section 22 are an outgrowth of the power given to the Congress by the Constitution to regulate foreign commerce. It is true that the Foreign-Trade Zones Act has as its express object the encouragement of foreign trade, and the application of import restrictions under section 22 with respect to the products of manufacturing operations conducted within the Zones would be in derogation of this legislative purpose. However, importing is a privilege and not a right. See Norwegian Nitrogen Co. v. United States, 288 U.S. 294 (1933). Section 22 has as its express object a limitation on foreign trade, for a special and important domestic purpose. This being the case, it is manifest that the Congress must have intended that this limitation, when the domestic end sought to be attained would be served, be applicable to all exercises of the privilege of importing, whatever the origin of that privilege.

Principal Considerations Bearing on the Finding and Recommendation of the Commission

The Problem

In order to guarantee the cotton farmer a higher income and at the same time to retain an export market for its cotton, the United States has developed a two-price system. There is the higher domestically supported price, and the lower competitive price for export as determined by the Secretary of Agriculture to be "not in excess of the level of prices at which cottons of comparable qualities are being offered in substantial quantity by other exporting countries." 1/ A payment-in-kind subsidy on raw-cotton exports has recently been the means of enabling domestically produced cotton to be sold at a lower price on the world market than in the United States. During the 1959-60 marketing season (ending July 31, 1960) the subsidy rate was 8 cents per pound. The rate paid during the season which ended July 31, 1961, was 6 cents a pound and currently it is 8-1/2 cents a pound. 2/

In 1939, as a result of an investigation under Section 22(a) of the Agricultural Adjustment Act (AAA), and of a recommendation by the Tariff Commission, the President proclaimed annual import

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1/ Section 203, Agricultural Adjustment Act of 1956.

2/ Effective August 1, 1961. Because of a shortage of cotton in the hands of the Commodity Credit Corporation, the Department of Agriculture broadened the provisions of the current program to include, in addition to a choice for payment-in-kind, two other options, which are: repayment of loans on 1961 Upland cotton, or cash payment.

quotas on cotton as follows: 1/

		Pounds
Upland cotton with staple length under 1-1/8 inches (country quota)		14,516,882
Long staple cotton 1-1/8 inches and longer (global quota) 2/	3/	45,656,420
The principal types of spinnable cotton wastes, whether or not manufactured or otherwise advanced in value (country quota)		5,482,509
Total		65,655,811

At the time (1939) of the original quota recommendation by the Tariff Commission, the Department of Agriculture's cotton program was very similar to the one currently in operation. The domestic price in 1939 was being supported by controlling the supply (production) and a subsidy of 1-1/2 cents per pound was being paid on exports of raw cotton. In its 1939 Report to the President 4/ the Commission analyzed conditions at that time in support of its recommendation for the establishment of import quotas on cotton.

1/ Proclamation No. 2351, September 5, 1939, published in the Federal Register of September 7, 1939, and in Treasury Decision number 49956.

2/ Originally established as a country quota, it was changed to a global quota in 1942.

3/ In 1958, the quota was subdivided as follows:

	Pounds
Cotton with staple 1-3/8 inches or longer	39,590,778
Harsh or rough cotton (except cotton of perished staple, grabbots and cotton pickings), white in color and 1-5/32 inches or more but less than 1-3/8 inches in length of staple	1,500,000
Other cotton with staple 1-1/8 inches or more but less than 1-3/8 inches	4,565,642

4/ United States Tariff Commission, Cotton and Cotton Waste: Report to the President under Section 22 of the Agricultural Adjustment Act of 1933, as amended, Report No. 137, Second series (1939).

Pertinent sections of the report were as follows:

> The principal purpose of the program regarding cotton under the Soil Conservation and Domestic Allotment Act . . . has been and is to adjust cotton production to effective demand and to bring cotton prices and the incomes of cotton farmers to higher levels. In view of the large stocks of American cotton on hand and the low level to which exports of American cotton had fallen, the Secretary of Agriculture on July 22, 1939, announced that as part of the cotton program an export subsidy of 1-1/2 cents per pound would be paid on lint cotton . . . effective July 27, 1939. This has created entirely new conditions affecting the importation of cotton . . . into the United States.
>
> Under the conditions which prevailed before the subsidy on exports, prices of American cotton and of foreign cotton competitive with it . . . were normally higher in the large foreign consuming markets . . . than in the American market by approximately the costs incident to transporting American cotton . . . to such markets . . . The effect of the subsidy has been to alter this relationship so that prices on foreign markets no longer exceed those in the American market by as much as the costs of transporting American cotton. In fact, the prices of most grades of cotton . . . are now actually higher in the United States than in foreign markets . . .
>
> In view of the changed price situation resulting from the subsidy on exports . . . the Commission finds that imports of cotton . . . are entering the United States under such conditions and in sufficient quantities as to tend to render the program ineffective. The tendency of these imports is to displace American cotton in United States consuming markets, thus replacing cotton exported under benefit of the subsidy, and at the same time bringing down prices in the United States market and defeating the program which section 22 is designed to protect.

This analysis by the Commission is as applicable to the cotton program today as it was in 1939, except, of course, for the protection afforded by the import quota. In fact, with the current 8-1/2 cents-per-pound export subsidy reflecting a difference between the domestic and world prices of approximately that amount, there would seem to be an even greater incentive today to import foreign produced raw cotton.

This fact is the basis for the problem which has been the subject of this investigation. There doubtless is an attractive profit incentive in subjecting foreign produced raw cotton (or domestically produced cotton which has been exported under the export-subsidy program) to an initial processing stage at nominal cost and importing it into the United States in a semimanufactured form not limited by import quota.

Tariff Provisions

Paragraph 901(c) of the Tariff Act of 1930 covers "Cotton waste, manufactured or otherwise advanced in value, cotton card laps, roving, and sliver." 1/ In the Tariff Acts of 1897, 1909, and 1913, the classification "cotton card laps, sliver and roving" appeared as a separate paragraph from "cotton waste, manufactured or otherwise advanced in value." Beginning with the Tariff Act of 1922 the two categories were combined in a single paragraph. The ad valorem rates of duty on the two classifications since 1897 have been as follows:

Classification	Tariff Acts of--				
	1897	1909	1913	1922	1930
Cotton card laps, sliver, roving	45%	35%	5%	5%	5%
Cotton waste, manufactured or otherwise advanced in value	Free	20%	5%		

The 5-percent ad valorem duty specified in the Tariff Act of 1930 has not been the subject of any trade-agreement concession. Some types of cotton waste, manufactured or otherwise advanced in

1/ As will be pointed out later, legal technicalities permit card laps manufactured in the Foreign-Trade Zone in New Orleans to be treated for duty purposes as raw cotton under paragraph 1662 when brought out of the Zone into the customs territory of the United States.

value, imported under the provisions of Paragraph 901(c) are subject to a quantitative import quota on a country basis. There are no quota limitations on imports of cotton card laps, roving, or sliver made from raw cotton.

Imports of Card Laps

In 1929, the Tariff Commission published a statistical tabulation entitled Textile Imports and Exports 1891-1927. Statistics are shown of imports for consumption of cotton card laps, sliver, and roving for the period 1898 through 1922. The annual average of the value of such imports during this period was less than two thousand dollars. Beginning in 1923, imports of card laps, sliver, and roving, if any, were combined for statistical purposes with imports of manufactured waste and were not reported separately again until 1940. Average unit value of imports, and countries of origin, indicate that imports during these years (1923-39) were chiefly, if not entirely, of waste.

Imports of card laps, sliver, and roving as a group were separately reported from January 1940 through the end of 1953. No imports were reported during this period except in the years 1940 (five dollars), 1941 (two hundred ninety-two dollars), 1945 (three dollars), and 1948 (sixty-six dollars). Import statistics were again combined with those of manufactured waste beginning in 1954 and have continued to be reported in this manner since that year.

In the absence of separate statistics on imports of cotton card laps. sliver, and roving, invoice analyses were made of imports under paragraph 901(c) for several months during the period July 1959 through December 1960. These analyses indicate that such imports from Canada and Mexico consisted largely of cotton card laps. The foreign

unit values, plus descriptive information derived from the invoices, indicate that the imports from countries other than Mexico and Canada were largely or solely of "Cotton waste, manufactured or otherwise advanced in value," commodities which are not within the scope of this investigation. In addition, the analyses disclosed no entry of roving, and only one entry of sliver (of 300 pounds).

During the calendar year 1960, imports under paragraph 901(c) from Canada and Mexico reached 20,361,836 pounds as compared with 3,354,126 pounds during 1959 and none in 1958. During the first six months of 1961, imports from Canada and Mexico were 2,316,621 pounds. This is a marked decline from imports under 901(c) during the first six months of the previous year, when they amounted to 9,185,515 pounds. As previously pointed out, imports from Canada and Mexico under paragraph 901(c) have been determined to consist largely of cotton card laps.

Official statistics on the operation of foreign-trade zones are reported in terms of raw materials in certain cases. In accordance with the provisions of the Foreign-Trade Zones Act, raw materials may be granted a special "privileged" status prior to manufacturing, and at this point they become subject to appraisement and liquidation by Customs. 1/ In order to simplify its reporting procedures, the Census Bureau has adopted the policy of reporting the raw cotton as imports for consumption at the time it is declared to be "privileged Foreign Merchandise." 2/ This practice results in the statistical

1/ This will be explained in greater detail in a later section.
2/ A detailed account of the reasons for this procedure is given in Foreign Trade Statistics Notes, March-April 1956, published by the Bureau of the Census.

classification of card laps manufactured in the zone as raw cotton under paragraph 1662, rather than as card laps under paragraph 901(c). Imports of such cotton reported since the fall of 1960, when the foreign-trade zone operation began, through June 30, 1961, amounted to 14,286,031 pounds.

Imports from Canada.--Imports under paragraph 901(c) from Canada amounted to 11,853,214 pounds in 1960. This compares with 22,286 pounds imported from Canada during the preceding year and with no imports in 1958 (see appendix, table 1). The unit values for imports from Canada indicate that card laps did not begin to enter the United States in sizeable quantities until February 1960.

There have been no reports of any card laps imported from Canada containing cotton having a staple of 1-1/8 inches or longer. Therefore, it can be assumed that the cotton from which these card laps were produced stapled less than 1-1/8 inches and, as previously stated, imports of raw cotton of this type are free of duty but are limited by country quotas totalling 14,516,882 pounds. Canada, a non-cotton producer, has no allocation under this quota; hence, no Upland-type raw cotton under 1-1/8 inches can be imported from Canada.

The Department of Agriculture claims that all card laps imported from Canada were produced from cotton grown in the United States. Cotton grown in the United States and exported to Canada qualifies for payment under the export-subsidy program. As stated before, during the period from August 1, 1959, through July 31, 1960, the payment-in-kind credit amounted to 8 cents per pound on purchases of other cotton from the CCC. From August 1, 1960, to July 31, 1961, the subsidy allowance was 6 cents per pound, and during the current

season beginning on August 1, it is 8-1/2 cents. It is alleged by the Department of Agriculture that the American cotton from which the card laps imported from Canada were produced had all been exported to Canada under the export-subsidy program.

According to a survey conducted by representatives of the Department of Agriculture during November 1960, eleven domestic mills had used cotton card laps produced in Canada. Ten of the mills stated to the Department of Agriculture representatives that they selected the American cotton to be used from actual samples submitted by suppliers. The American supplier would then sell the specified type of cotton to a cotton mill in Montreal, Canada, where it would be processed into card laps. The cotton card laps would in turn be sold to an importer in Boston, Massachusetts, who would then sell them to the American mills. Members of the Tariff Commission's staff visited one of the mills which had used card laps from Canada. They were there informed that the mill had stopped buying Canadian card laps when the export-subsidy payment dropped from 8 cents to 6 cents on August 1, 1960. Over a period of about a year during which this mill was using them, the imported card laps comprised about one-fourth of the mill's raw-material needs. They were delivered by truck (some Canadian) directly from the Canadian manufacturer. The freight cost from Canada to the mill averaged 2.1 cents per pound. Officials said that the laps arrived in excellent condition and could have been used directly on the card for the production of the coarser yarns. Most of them, however, were actually used as raw cotton. This concern is reported to have recently begun producing card laps in the New Orleans Foreign-Trade Zone.

Nine of the eleven mills interviewed by representatives of the Department of Agriculture reported raw-material-cost savings of from 1 cent to 2-1/2 cents per pound. The remaining two mills reported savings of 1/2 cent in one case and no saving in the other.

Imports from Mexico.--Imports under Paragraph 901(c) from Mexico amounted to 8,508,622 pounds in 1960 and 3,331,840 pounds in 1959. There were no imports from Mexico in 1958 (see appendix, table 1). The unit values for imports from Mexico indicate that imports of card laps began in September 1959.

Most of the card laps imported from Mexico were produced from Upland-type cotton having a staple of less than 1-1/8 inches in length. 1/ As stated before, this is the type of cotton which, although free of duty, is subject to an annual import quota of 14,516,882 pounds.

It can be assumed that all card laps imported from Mexico were produced from foreign grown (Mexican) cotton, since no cotton is imported by Mexico from the United States. Therefore, unlike the card laps imported from Canada, none of the cotton in the Mexican card laps has benefitted under the United States export-subsidy program.

None of the card laps imported directly from Mexico (i.e., manufactured in Mexico) were reported to be of a quality suitable for direct use on the carding machine. They were reported to lack uniformity of thickness, which condition caused them to split as they unrolled

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1/ Only one firm has been reported to have been assessed an additional 5 cents-per-pound duty as a result of cotton contained in the lap having a staple of 1-1/8 inches or more. (Par. 924, Tariff Act of 1930). This is in addition to the 5 percent ad valorem rate assessed on the lap itself in accordance with par. 901(c).

into the carding machine and produce a product (card sliver) too variable for further processing into a specified normal yarn. One mill advised that the weight per square yard of the Mexican laps was almost double that of the mills standard-weight lap, and that this created difficulties in processing on machines adjusted for standard laps.

The November survey made by the Department of Agriculture revealed that a total of 18 mills in the United States had by the time of the investigation used card laps imported from Mexico. Only two of the mills made any attempt to use the laps on the carding machine, and these two mills, after an unsuccessful trial period, had to discontinue the practice. Most of the card laps imported directly from Mexico were treated essentially as raw cotton, being reprocessed in the mill "opening room" in much the same manner as an ordinary bale of raw cotton. One mill visited by Tariff Commission staff members used a special device to aid in unrolling the lap onto the floor so that the cotton could be hand-fed into the hopper feeders just as is raw cotton. In a line of 10 hopper feeders supplying a mixture of cotton to a conveyor belt, two were fed entirely with cotton from unrolled laps from Mexico, and the others with domestic cotton.

In transporting the Mexican laps from the port of entry to the mill destinations no attempt was made to preserve the quality of the laps for use on the carding machinery. All shipments were received in freight cars or trucks with card laps packed flat and stacked to the top of the conveyance. It would seem impossible to use the laps packed on the bottom of such a load directly on a carding machine and still maintain the quality of the end product.

Four of the most important importers of cotton laps from Mexico were visited by members of the Tariff Commission's staff during March 1961. Each of these firms had at that time stopped importing laps, and only one importing mill had any of the imported laps remaining in stock. Laps were seen in the mill opening room being fed to the hopper and blended with raw cotton from the bale.

Ten of the mills using Mexican card laps reported savings in cost ranging from 1 to 3 cents a pound. Most of the mills, moreover, asserted that a strong secondary incentive for using such laps had been based on quality considerations. It is a well established belief in the U.S. cotton-textile industry that Mexican cotton has superior spinning qualities and is generally preferred to many types of U.S. cotton. Most of the Mexican cotton crop is picked by hand and processed through old-type gins. On the other hand, almost half of the domestic crop is mechanically harvested, which results in a larger quantity of leaf and stem than in handpicked cotton. Also, since a field of cotton must all be harvested at the same time when mechanical means are used, there is a larger quantity of immature and weather-damaged fiber in the harvest. Mechanical harvesting has forced domestic gins to install cleaning and drying equipment, and although cotton processed on such equipment is improved in appearance, it is usually inferior to handpicked cotton in the spinning quality of its fiber. This is a matter of considerable importance to the domestic mills and is an important reason for the interest in imported card laps.

Operation in Foreign-Trade Zone No. 2 in New Orleans.--Late in the summer of 1960, a concern producing cotton carded yarn in the Southeastern United States decided to move part of its opening-room machinery to New Orleans and set up operation in Foreign-Trade Zone No. 2. In October 1960 they began operating in the Zone with three pickers. Later, they tripled the installation--having 3 opening-room units, each feeding three pickers.

This was the only mill operating in the New Orleans Foreign-Trade Zone until June 19, 1961, when an additional concern began operating a single line of opening equipment with three pickers. A third mill began operating on August 4, 1961, utilizing four pickers. This company also plans to begin operations in the Puerto Rican Foreign Trade Zone sometime during September.

In these operations, Mexican raw cotton 1/ is transported in bond from Brownsville, Texas, to the Foreign-Trade Zone in New Orleans, where it is stored. When a certain amount of cotton is required for the production of laps, application is made to Customs authorities for a declaration that such an amount of cotton be declared to be "privileged foreign merchandise." By virtue of section 3 of the Foreign Trade Zones Act, when the privileged status is granted the raw cotton is subject to appraisement and liquidation by Customs, and the tariff classification and resulting rate of duty become fixed for customs purposes at that point, regardless of how the product is later changed, manipulated, or

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1/ An insignificant quantity of Nicaraguan cotton has also been processed through the Zone.

manufactured within the Zone. The pertinent language of section 3 follows:

> [W]henever the privilege shall be requested and there has been no manipulation or manufacture effecting a change in tariff classification, the collector of customs shall take under supervision any lot or part of a lot of foreign merchandise in a zone, cause it to be appraised and taxes determined and duties liquidated thereon. Merchandise so taken under supervision may be stored, manipulated, or manufactured . . . and . . . may be sent into customs territory upon the payment of such liquidated duties and determined taxes thereon. If merchandise so taken under supervision has been manipulated or manufactured, such duties and taxes shall be payable on the quantity of such foreign merchandise used in the manipulation or manufacture of the entered article.

Thus the rate of duty payable upon entry into the customs territory of the United States of a product manufactured in a foreign-trade zone from privileged foreign merchandise is determined by reference to the rate of duty assessed and liquidated on the privileged merchandise at the time that status was granted. In this particular case, the "privileged" raw cotton (under 1-1/8 inches staple length) assumes a tariff classification under paragraph 1662 of the Tariff Act of 1930 and is free of duty. 1/ The card lap manufactured from this cotton in the Foreign-Trade Zone is therefore entitled to duty-free treatment upon its importation into the customs territory of the United States, rather than being assessed with a duty of 5 percent ad valorem under paragraph 901(c) of the Tariff Act of 1930, as would normally be the case with respect to imports of card lap.

1/The Bureau of Customs reports that during April, a shipment of raw cotton from Nicaragua contained 24,752 pounds which stapled 1-1/8 inches or over (but less than 1-11/16 inches). In this case paragraph 783 was applicable and the duty was assessed at the rate of 3-1/2 cents per pound at the time that the cotton was granted the "Privileged Foreign Merchandise" status.

In addition, because it is not sent into the customs territory of the United States until it reaches the card-lap stage, the quota limitation on raw cotton does not apply. This follows from the fact that Presidential Proclamation No. 2351 of September 5, 1939, makes the quota applicable only to cotton and cotton waste which is entered, or withdrawn from warehouse, for consumption. Since the withdrawal from the Zone for consumption is in the form of card lap, the quota cannot apply.

There are facilities in the New Orleans Zone to store at least from 5,000 to 7,000 bales of cotton, and it is reported that the cost of storing cotton in the Zone is actually less than it would be to store it in Mexico. However, it is unlikely that concerns will store such large quantities in the future if the operation is allowed to continue because the sources of supply are being broadened. Some cotton has already been purchased from Nicaragua and there is interest in the crops of other Latin American producer countries, such as Brazil. Purchases of raw cotton can thus be spread over the entire season instead of being concentrated on the Mexican crop.

Production of laps in the Foreign-Trade Zone is unique in that operating concerns have complete control over the production of their card laps while other users have had very little control over the production of the laps which they have imported directly. The Zone-produced laps are carefully checked for weight and uniformity before they are shipped from the Zone and all poor-quality laps are reprocessed. The laps are also carefully packed for shipment to the mills and therefore arrive in condition to be used directly on the carding machines. So far as it is known, the laps produced in the Foreign-Trade Zone were the only imported ones being used directly on the carding machinery as a regular practice.

Although the cost advantages realized from using laps produced in the Foreign-Trade Zone are reported to have been substantial, they have not reflected the entire difference between the prices for domestic and foreign cotton because of the additional freight costs in transporting the card laps, increased taxes, and administrative costs incurred in conducting two separate operations.

Previous Actions Taken to Curtail Imports of Card Laps

The instant investigation is not the first occasion upon which the importation of cotton card lap has come under scrutiny with a view to regulation. In late 1960 the Department of Agriculture became concerned about the possible impact on its domestic cotton programs of a sharp increase in imports of this product from Canada and Mexico. This concern was occasioned largely by two facts, alluded to previously. First, although card lap is not subject to the import quota on cotton, most of the imports in question were utilized in the manufacturing process in precisely the same manner as raw cotton. Therefore, imports of these card laps presented a vehicle for avoiding the strictures of the cotton quota, thereby (in the opinion of USDA) detracting from the effectiveness of the quota in stabilizing the domestic cotton situation. The second area of concern arose from the fact that investigation showed that the Canadian card lap was processed almost invariably from United States raw cotton which had been exported under the Cotton-Export Program. This placed the CCC in the position, in effect, of subsidizing a portion of the cost of domestically produced raw cotton for the few United States mills using Canadian card laps.

Accordingly, on October 24, 1960, the Department of Agriculture issued an amendment 1/ to the Raw-Cotton-Export Program to provide that--

(1) an exporter of raw cotton shall not be entitled to payment under the program on any such cotton which subsequently enters the customs territory of the United States in the form of card lap or picker lap;

(2) the exporter of any raw cotton upon which a payment has been made under the program shall be liable for liquidated damages in the amount of 110 per centum of the subsidy rate if such cotton subsequently enters the customs territory of the United States in the form of card or picker lap;

(3) if the entry of such card lap or picker lap occurs with the knowledge of the exporter of the raw cotton and he fails to notify the CCC such exporter and its subsidiaries and affiliates may be denied the privilege of further participation in the program until he meets such requirements for reinstatement as are laid down by the CCC; and

(4) if an exporter of raw cotton participates directly or indirectly in the entry into the customs territory of the United States of card lap or picker lap made from foreign cotton or from domestic cotton other than that on which the importer has claimed payment under the program the exporter and its subsidiaries and affiliates may be denied the privilege of further participation in the program.

Subsequently, on November 21, 1960, the Department issued an amendment 2/ to its Cotton-Products Export Program which provides that if any exporter of cotton products participates directly or indirectly in the importation into the customs territory of the United States of cotton card or picker laps, the exporters and its subsidiaries and affiliates may be denied the privilege of further participation in the program.

Since April 1961, the Bureau of Customs has followed a policy, for customs purposes, of treating as raw cotton any imported picker laps

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1/ Amendment 1 to United States Department of Agriculture Announcement CN-EX-9; 25 F.R. 10307 (October 27, 1960).

2/ Amendment 2 to United States Department of Agriculture Announcement CN-EX-10; 25 F.R. 11203 (November 26, 1960).

which are not suitable for direct processing on carding machinery. The Department of Agriculture is furnishing technicians to assist the Customs Bureau in determining whether or not card laps being offered for entry are of a quality suitable for being fed directly to the carding machine.

There have been numerous reports of Mexican laps being turned down at various ports of entry for failure to meet quality standards. It has been reported that on one occasion, when over 900 laps were refused the privilege of entry under 901(c), the importer inquired of Customs officials what had to be done to make these laps and future laps acceptable for entry. This indicates that there may be some interest in producing laps in Mexico for entry into the United States which are of a quality suitable for use directly on the card.

The effect on direct imports from Canada and Mexico.--Since the issuance of amendments to the Export-Subsidy Regulations by the Department of Agriculture, imports of cotton card lap from Mexico and Canada have declined sharply. During November 1960 (immediately before the regulations went into effect) total imports from both countries amounted to 3,840,299 pounds (see appendix, table 2). They declined steadily during each succeeding month until March, when they amounted to only 9,268 pounds (all from Mexico).

Imports from Canada were nil during the three months of January, February, and March 1961. However, several domestic manufacturers still had quantities of cotton and card laps remaining in Canada, representing unfilled portions of contracts entered into before the issuance of the Department of Agriculture regulations. The Commodity Credit Corporation of the Department of Agriculture granted permission for these quantities of cotton to be manufactured into card laps and all the card laps to be

entered by the domestic firms without jeopardizing their future participation in the export program. As a result, imports from Canada were 38,090 pounds in April, 181,978 pounds in May, and 1,789,887 pounds in June. Imports from Mexico were nil in April, 2,094 pounds in May, and only 998 pounds in June.

Statistics available to date indicate that the regulations have been effective in practically stopping imports directly from Mexico and Canada. So far as the Canadian operation is concerned, it was wholly dependent on cotton grown in the United States which had been exported under subsidy. Because of that fact, it seems that this operation could be permanently prevented by simply shutting off or threatening to shut off the subsidy to the domestic cotton merchants participating in the operation.

The Mexican situation would be a different problem, however, if domestic mills which are not interested in the export market (and there are many) decide to import card laps. It appears that it would be relatively simple to produce good-quality card laps in Mexico and export them to the United States under the 5 percent rate of duty provided for in paragraph 901(c). The feasibility of this development is increased by the increase in the export subsidy effective August 1, 1961, since such increased subsidy reflects an increase in the difference in prices for cotton in the United States and in the free cotton markets of the world.

The effect on entries from the Foreign-Trade Zone.--The regulations of the Department of Agriculture denying participation in the Cotton-Products Export-Subsidy Program to those using imported card laps have

had no effect on operations in the Foreign-Trade Zone. At least one concern operating in the Zone, and perhaps others, either present or prospective, have little interest in the foreign market for cotton textile products.

Increased Price Incentive

Reference has already been made to the fact that, on February 21, 1961, the Department of Agriculture announced the price-support level for the 1961 crop year beginning August 1, 1961. This level is approximately 3 cents per pound above the effective support level and early-season market price during 1960/61 crop year. In addition, the Department announced that the export-subsidy rate would be increased from the 6 cents per pound paid during the 1960/61 season to 8-1/2 cents per pound for the 1961/62 season (beginning August 1, 1961). This means that in all probability the price differential between foreign and domestic cotton, recently about 6 cents per pound, would be expected to increase by as much as 2 to 3 cents per pound. There will obviously be a greater incentive for the concerns operating in foreign-trade zones to continue and even possibly to expand their operations.

Whether or not this increased differential will be enough to persuade the other mills which have now stopped importing card laps to get back into the business will depend to a great extent on their export interest. Those mills which have a large export market will obviously not want to jeopardize their participation in the Cotton-Products Export Program. To those mills which have no interest in exporting textiles, there seems to be an added attraction for using card laps made from foreign cotton.

Raw-cotton merchants have a heavy stake in the export market, having exported during the past five seasons (1956/57 through 1960/61--with the last year estimated) an average of 6 million bales per year. At the 8-1/2-cent-per-pound subsidy level, this represents a potential collection of over $250 million in annual subsidy payments. Therefore, it seems unlikely that merchants will take any part in Canadian card-lap operations which might jeopardize their future participation in the export-subsidy program for raw cotton.

Conclusion

On the basis of the foregoing considerations, the Commission concludes that the products described in its recommendation are being or are practically certain to be imported under such conditions and in such quantities as to render or tend to render ineffective, or materially interfere with, the price-support program and other programs or operations undertaken by the Department of Agriculture with respect to cotton or products thereof; and that to prevent such adverse consequences imports of such products should be restricted as recommended above.

Although the products covered by this investigation are currently being imported in the form of card laps only, it is the Commission's judgment that if import restrictions were to be imposed upon card laps alone it is practically certain that there would be a shift to imports of one or more of the other intermediate products which are within the scope of this investigation in order to avoid such restriction. Under these circumstances, the threat to the programs for raw cotton can be effectively met only by subjecting the entire description of products which are subject to this investigation to quota restriction.

In making this recommendation, the Commission is recognizing the fact that the restrictions which were placed on imports of raw cotton and designated cotton waste as a result of a previous section 22 proceeding in 1939 were aimed at preventing material interference with the domestic raw-cotton programs by limiting the amount of the principal (i.e., commercially significant) forms of spinnable cotton fiber of foreign origin competitive with domestic cotton which would be available

in the domestic market for spinning and processing into finished articles of cotton. This conclusion is self-evident so far as concerns the raw cotton which was subjected to quota restriction, and is substantiated with respect to the proclaimed restriction on cotton waste by the following comment in the Commission's report concerning the 1939 investigation:[1/]

> The wastes with which this report is primarily concerned are card strips, and comber lap, sliver, and roving wastes, which are the principal types of waste used for spinning * * *.

When the 1939 investigation was made, imports of the products which are the subject of the present investigation were negligible,[2/] and therefore the amount of the commercially significant forms of foreign spinnable cotton fiber which were to be allowed to enter the domestic market was established with reference only to the forms in which such cotton was then moving in international trade. It may fairly be stated, however, that the 1939 quotas represent a value judgment that no more than the stated levels of imports of foreign spinnable cotton fibers which are competitive with domestic cotton may be allowed access to the domestic market without causing material interference with the Department of Agriculture's raw cotton programs.

Imports of the spinnable cotton fibers which are the subject of this investigation continued to be insignificant until 1959, at which time import trade in card laps began burgeoning. Card lap is a processed form of cotton fiber only slightly removed from its raw state,

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1/ United States Tariff Commission, Report to the President on Cotton and Cotton Waste, Report No. 137, Second Series (1939), p. 24.
2/ Id. at p. 26.

and it is the view of the Commission that this surge in imports resulted from the ingenious discovery of a method of avoiding the existing quota restrictions on raw cotton, taking advantage of the aforementioned "loophole" in the coverage of the 1939 proclamation. 1/

In view of this "avoidance" feature of the subject imports, and taking into account the philosophy underlying the 1939 quota on raw cotton, the Commission is of the view that a complete embargo would be justified, if legally permissible. Such action was taken in the case of Exylone, a product with a high butterfat content, which was being imported in avoidance of the quota on butter. 2/ However, the Commission is mindful of the proviso in subsection (b) of section 22 which states that--

> no proclamation under this section shall impose any limitation on the total quantity of any article or articles which may be entered, or withdrawn from warehouse, for consumption which reduces such permissible total quantity to proportionately less than 50 per centum of the total quantity of such article or articles which was entered, or withdrawn from warehouse, for consumption during a representative period as determined by the President * * *.

1/ It should be stressed that there is nothing legally or morally wrong with this avoidance. Ingenious importers will always seek ways of avoiding restrictions on imports by fashioning their products in a manner which removes them in a legal sense from the purview of a restriction. Absent fraud or misrepresentation, this is a perfectly acceptable commercial practice. However, such avoidance is always undertaken with the attendant risk that the government may feel obliged to take action to counter such a move. Apart from the fact that importing is a privilege and not a right (cf. Norwegian Nitrogen Co. v. U. S., 288 U.S. 294 (1933)), the authorities responsible for the administration of our remedial statutes are duty-bound to take such action where the statutory conditions precedent thereto are found to exist, and in so doing are carrying out the express will of the Congress.

2/ See United States Tariff Commission, Report to the President on Certain Articles Containing 45 Percent or More of Butterfat or of Butterfat and Other Fat or Oil, July 1957.

In the Exylone case, the Commission took the position that the purpose of the above-quoted statutory limitation is to prevent a complete embargo on import trade of a product which has become established over a period of time, and that, in imposing quantitative limitations on imports of a product, at least 50 percent of the established normal import trade of the product in question should be left undisturbed even if this should materially interfere with an agricultural program. In light of this reading of the legislative intent, the "representative period" contemplated by the statute was regarded as being a prior period which is representative of imports of the product under normal trade conditions, as distinguished from a prior period during which imports are affected by abnormal or unusual conditions. Therefore, since the only import trade in Exylone had developed as a means of avoidance of the butter quota--an abnormal condition--there was found to be no prior period representative of import trade in this commodity within the meaning of section 22(b) and hence no disability to the imposition of an embargo.

The situation with respect to cotton card laps is, however, somewhat different. It cannot be said that imports of this product since 1959 are in any respect attributable to "normal" trade developments. It is clear from the testimony adduced at the hearing that the card laps imported from Canada were the result of a calculated exploitation of the export-subsidy program on domestic raw cotton. By the same token, the imports of card laps from Mexico and from the New Orleans Foreign-Trade Zone have manifestly been occasioned by a desire to avoid the

existing import quota on raw cotton. Therefore, in the sense that we interpret the term "representative period" as used in section 22, these imports are not "representative" of normal trade and must be excluded from the base period against which the permissible quota may be measured.

With the exception of the abnormal trade situation in the years 1959-1961, available trade statistics show that imports of cotton card laps, as well as of the other products subject to this investigation, have been negligible for the preceding thirty years. Nevertheless, in view of the fact that there has been some trade in certain of these products, the Commission is of the opinion that a nominal quota such as has been recommended is necessary as a safeguard against possible conflict with the proviso in section 22(b). The Commission has selected the years 1940 through 1953 as a "representative period" for purposes of this investigation, and during this period imports of cotton card laps, sliver, and roving were as follows:

1940	21 pounds
1941	434 pounds
1945	18 pounds
1948	150 pounds

So far as can be ascertained, imports of the other products subject to this investigation have been nil.

In light of the foregoing, it is clear that the recommended quota of 1,000 pounds is not proportionately less than 50 per centum of the total quantity of the products subject to this investigation which was entered, or withdrawn from warehouse, for consumption during the representative period selected, and therefore meets the test laid down in section 22(b).

Respectfully submitted

Walter R. Schreiber, Commissioner

Glenn W. Sutton, Commissioner

William E. Dowling, Commissioner

J. Allen Overton, Jr., Commissioner

Note: Commissioner Joseph E. Talbot did not participate in the consideration of this case because of absence.

APPENDIX

The text of the Secretary of Agriculture's letter of January 13, 1961, to the President follows:

Dear Mr. President:

This is to advise you that I have reason to believe that cotton products produced in any stage preceding the spinning into yarn are being or are practically certain to be imported into the United States under such conditions and in such quantities as to render or tend to render ineffective, or materially interfere with, the price support program and other programs or operations undertaken by the Department of Agriculture with respect to cotton or products thereof, or to reduce substantially the amount of cotton processed in the United States from cotton or products thereof with respect to which any such program or operation is being undertaken.

Presidential Proclamation No. 2351, dated September 5, 1939, established import quotas on long staple cotton of 45.6 million pounds, on short staple cotton of 14.5 million pounds, and on specified cotton waste of 5.5 million pounds, for each quota year beginning September 20. These quotas were established pursuant to Section 22 of the Agricultural Adjustment Act, as amended, because it was found, pursuant to the Tariff Commission investigation and report No. 137, second series, that imports of cotton and cotton waste reduced substantially the amount of domestic cotton processed in the United States and tended to render ineffective certain cotton programs of the U. S. Department of Agriculture. This Proclamation has been amended from time to time, but the general quantitative limitations remain essentially unchanged.

At the time these quotas were established, and for many years thereafter, U. S. imports of cotton products as defined above were not in sufficient quantities to constitute interference with the Department's programs. During the period January-November 1960, imports of these products amounted to approximately 17.9 million pounds compared with 4.6 million during the entire 1959 calendar year, 876,000 pounds during 1958, and 36,000 pounds during 1957.

Preliminary investigations made by the Department show that the imports of these cotton products are a circumvention of the import quotas on cotton and cotton wastes. A sizeable proportion of the imports was United States cotton exported to Canada under the export payment program, and there put through a minor first processing stage, repackaged and exported back to the United States. The remainder was products made from Mexican cotton and imported from Mexico. The differential between the domestic and world prices of cotton, and the export payment of eight cents per pound on cotton in 1959-60 and six cents per pound in 1960-61, provide substantial incentives for these imports. All such imports have been admitted outside the quota on cotton.

In view of these circumstances, it is recommended that you request the U. S. Tariff Commission to make an immediate investigation under Section 22 of the Agricultural Adjustment Act, as amended, to determine whether cotton products produced in any stage preceding the spinning into yarn are being or are practically certain to be imported into the United States under such conditions and in such quantities as to render or tend to render ineffective, or materially interfere with, the price support program and other programs or operations undertaken by the Department of Agriculture with respect to cotton or products thereof, or to reduce substantially the amount of cotton processed in the United States from cotton or products thereof with respect to which any such program or operation is being undertaken.

The text of the President's letter of January 18, 1961, to the Commission, follows:

Dear Mr. Talbot:

I have been advised by the Secretary of Agriculture that there is reason to believe that cotton products produced in any stage preceding the spinning into yarn are being or are practically certain to be imported into the United States under such conditions and in such quantities as to render or tend to render ineffective, or materially interfere with, the price support program and other programs or operations undertaken by the Department of Agriculture with respect to cotton or products thereof, or to reduce substantially the amount of cotton processed in the United States from cotton or products thereof with respect to which any such program or operation is being undertaken. A copy of the Secretary's letter is enclosed.

The Tariff Commission is requested to make an immediate investigation under Section 22 of the Agricultural Adjustment Act, as amended, to determine whether import restrictions on the products described above are necessary to prevent the imports of such articles from rendering or tending to render ineffective or materially interfering with the Department's programs or operations undertaken with respect to cotton or products thereof.

Table 1.--Cotton waste, manufactured or otherwise advanced in value, cotton card laps, roving, and sliver (par. 901(c)): U.S. imports for consumption, by countries, 1954-1960 and January-June 1961

Year	Total, all countries	Mexico	Canada	Japan	United Kingdom	West Germany	Italy	Switzerland	Other countries
	Quantity (pounds)								
1954	355,736	-	-	48,000	15,504	125,154	-	154,017	1/ 13,061
1955	191,716	-	29,080	-	-	88,160	31,766	42,710	-
1956	27,651	-	-	-	-	370	3,179	-	2/ 24,102
1957	35,650	-	35,650	-	-	-	-	-	-
1958	876,331	-	-	757,518	118,813	-	-	-	-
1959 3/	4,589,556	3,331,840	22,286	1,154,430	81,000	-	-	-	-
1960 3/	22,888,181	8,508,622	11,853,214	2,434,970	60,983	-	-	1,100	4/ 29,292
1961: Jan.-June 3/	3,240,165	350,864	1,965,757	846,960	66,445	-	-	-	5/ 10,139
	Foreign value								
1954	$32,478	-	-	$1,298	$862	$12,828	-	$15,276	1/ $2,214
1955	18,716	-	$2,683	-	-	9,099	$2,519	4,415	-
1956	5,270	-	-	-	-	315	927	-	2/ 4,028
1957	1,021	-	1,021	-	-	-	-	-	-
1958	122,941	-	-	105,292	17,649	-	-	-	-
1959 3/	1,083,234	$901,258	2,914	155,056	24,006	-	-	-	-
1960 3/	5,522,577	2,204,809	2,956,710	334,205	24,076	-	-	266	4/ 2,511
1961: Jan.-June 3/	751,998	103,361	530,820	96,220	19,094	-	-	-	5/ 2,503
	Unit value (cents per pound)								
1954	9.1	-	-	2.7	5.6	10.2	-	9.9	1/ 17.0
1955	9.8	-	9.2	-	-	10.3	7.9	10.3	-
1956	19.1	-	-	-	-	85.1	29.2	-	2/ 16.7
1957	2.9	-	2.9	-	-	-	-	-	-
1958	14.0	-	-	13.9	14.8	-	-	-	-
1959 3/	23.6	27.0	13.1	13.4	29.6	-	-	-	-
1960 3/	24.1	25.9	24.9	13.7	39.5	-	-	24.1	4/ 8.6
1961: Jan.-June 3/	23.2	29.5	27.0	11.4	28.7	-	-	-	5/ 24.7

1/ All imported from the Netherlands.
2/ All imported from Sweden.
3/ Preliminary.
4/ Includes 26,224 pounds, valued at $2,043, with a unit value of 7.79 cents, imported from Peru and 3,068 pounds, valued at $468, with a unit value of 15.25 cents, imported from Belgium and Luxembourg.
5/ Includes 3,252 pounds, valued at $1,246, with a unit value of 38.3 cents, imported from Peru, and 6,887 pounds, valued at $1,257, with a unit value of 18.3 cents, imported from Netherlands.

Source: Compiled from official statistics of the U.S. Department of Commerce.

Table 7.--Cotton waste, manufactured or otherwise advanced in value, cotton card laps, roving, and sliver (par. 901(c)): U.S. imports for consumption, by countries, January 1959 - June 1961 1/ 2/

Month	Total, all countries	Mexico	Canada	Japan	United Kingdom
	Quantity (pounds)				
1959:					
January-June	943,402	534,990	15,327	383,215	-
July-December	1,296,004	1,296,350	4,959	771,215	81,000
Total 1959	4,239,406	3,341,340	20,286	1,154,430	81,000
1960:					
January-June	3/ 10,248,443	4,080,994	4,548,941	1,007,640	54,188
July	1,772,517	123,410	1,303,907	235,200	-
August	1,919,768	90,433	1,676,395	147,040	5,792
September	2,068,810	655,730	1,164,680	248,400	-
October	1,993,398	372,180	1,484,418	136,800	-
November	4,157,093	2,242,449	1,597,850	316,800	-
December	4/ 778,148	387,446	17,917	342,490	1,003
Total 1960	22,838,181	8,508,622	11,953,214	2,434,770	60,983
1961:					
January	5/ 368,918	307,802	-	48,000	9,864
February	208,778	30,702	-	174,000	4,076
March	6/ 176,369	9,268	-	126,000	34,214
April	295,093	-	33,090	244,800	12,203
May	401,120	2,094	131,978	210,960	6,088
June	1,789,887	993	1,745,687	43,200	-
Total (Jan.-June)	3,240,165	350,864	1,965,757	846,960	66,445
	Foreign value				
1959:					
January-June	$179,559	$128,095	$1,100	$50,364	-
July-December	903,675	773,163	1,814	104,692	$24,006
Total 1959	1,083,234	901,258	2,914	155,056	24,006
1960:					
January-June	3/ 2,368,025	1,121,681	1,089,348	135,537	21,193
July	389,917	24,655	334,128	31,134	-
August	455,733	22,599	410,589	20,092	2,453
September	523,240	189,480	293,922	39,838	-
October	492,417	89,131	384,934	18,352	-
November	1,127,097	644,667	439,084	43,346	-
December	4/ 166,148	112,596	4,705	45,906	430
Total 1960	5,522,577	2,204,809	2,956,710	334,205	24,076
1961:					
January	5/ 102,030	90,126	-	6,529	4,129
February	33,359	8,989	-	22,658	1,712
March	6/ 25,298	2,714	-	15,445	5,882
April	39,399	-	9,969	24,346	5,084
May	77,099	724	52,173	21,915	2,287
June	474,813	808	468,678	5,327	-
Total (Jan.-June)	751,998	103,361	530,820	96,220	19,094
	Unit value (cents per pound)				
1959:					
January-June	19.2	23.9	7.2	13.1	-
July-December	24.7	27.6	26.1	13.6	29.6
Average 1959	23.0	27.0	13.1	13.4	29.6
1960:					
January-June	3/ 23.1	24.2	23.9	13.4	39.1
July	22.6	19.9	24.4	13.2	-
August	23.7	24.9	24.4	13.6	42.3
September	25.2	28.9	25.2	16.0	-
October	24.7	23.9	25.9	13.4	-
November	27.1	28.7	27.5	13.7	-
December	4/ 21.4	29.1	26.3	13.4	42.9
Average 1960	24.1	25.9	24.9	13.7	39.5
1961:					
January	5/ 27.7	29.3	-	13.6	41.9
February	16.0	29.3	-	13.0	42.0
March	6/ 14.3	29.3	-	12.3	17.2
April	13.4	-	26.2	9.9	41.7
May	19.2	34.6	28.7	10.4	37.6
June	26.5	8.1	26.8	12.3	-
Average (Jan.-June)	23.2	29.5	27.0	11.4	28.7

1/ Preliminary.

2/ Does not include raw cotton entered into Foreign-Trade Zone No. 2 (New Orleans) under paragraph 1662, intended for processing into card laps, as follows:

	Pounds
November 1960	935,824
December 1960	1,133,994
January 1961	3,006,284
February 1961	-
March 1961	1,036,336
April 1961	5,384,714
May 1961	-
June 1961	2,808,879

All of the raw cotton listed above originated in Mexico except for 246,614 pounds from Nicaragua in April 1961.

3/ Includes 1,100 pounds, valued at $266, with a unit value of 24.1 cents, imported from Switzerland.

4/ Includes 26,224 pounds, valued at $2,043, with a unit value of 7.79 cents, imported from Peru and 3,068 pounds, valued at $468, with a unit value of 15.25 cents, imported from Belgium and Luxembourg.

5/ Includes 3,252 pounds, valued at $1,246, with a unit value of 38.3 cents, imported from Peru.

6/ Includes 6,887 pounds, valued at $1,257, with a unit value of 18.3 cents, imported from Netherlands.

Source: Compiled from official statistics of the U.S. Department of Commerce.