

MENTHOL FROM THE PEOPLE'S REPUBLIC OF CHINA

**Determination of the Commission
in Investigation No. 731-TA-28 (Final)
Under the Tariff Act of 1930,
Together With the Information
Obtained in the Investigation**



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UNITED STATES INTERNATIONAL TRADE COMMISSION

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Note.--Data which would disclose confidential operations of individual concerns may not be published and, therefore, have been deleted from this report. Deletions are indicated by asterisks.

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

Investigation No. 731-TA-28 (Final)

MENTHOL FROM THE PEOPLE'S REPUBLIC OF CHINA

Determination

On the basis of the record 1/ developed in Investigation No. 731-TA-28 (Final), the Commission unanimously determines, pursuant to section 735(b)(i) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)(i)), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded by reason of imports of natural menthol from the People's Republic of China, provided for in item 437.64 of the Tariff Schedules of the United States, which the Department of Commerce has found to be sold in the United States at less than fair value.

Background

The Commission instituted this investigation effective January 23, 1981, following a preliminary determination by the Department of Commerce that menthol from the People's Republic of China is being, or is likely to be, sold in the United States at less than fair value. Notice of the institution of the Commission's investigation and of the public hearing to be held in connection therewith and of the change of date of the public hearing was duly given by posting copies of the notices in the Office of the Secretary, U.S. International Trade Commission, Washington, D.C., and by publishing the notice in the Federal Register of January 28, 1981 (46 F.R. 9264) and of March 18, 1981 (46 F.R. 17314). The hearing was held in Washington, D.C. on May 5, 1981, and all persons who requested the opportunity were permitted to appear in person or by counsel.

1/ The record is defined in sec. 207.2(j) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(j)).

VIEWS OF CHAIRMAN BILL ALBERGER, VICE CHAIRMAN MICHAEL J. CALHOUN,
AND COMMISSIONERS CATHERINE BEDELL AND PAULA STERN

DETERMINATION

On the basis of the record 1/ developed in investigation No. 731-TA-28 (Final), the Commission unanimously determines, pursuant to section 735(b) of the Tariff Act of 1930, that an industry in the United States is not materially injured, or threatened with material injury and that the establishment of such industry in the United States is not materially retarded by reason of imports of natural menthol from the People's Republic of China, which the Department of Commerce has found to be sold in the United States at less than fair value.

THE DOMESTIC INDUSTRY

In general, the domestic industry is defined as consisting of all domestic producers of a like product or those producers whose collective output of the like product constitutes a major proportion of the like product. 2/ A like product is a product which is like, or in the absence of like, most similar in characteristics and uses with, the imported article which is the subject of the investigation. 3/

The imported product which is the subject of this investigation is natural 1-menthol from the People's Republic of China (China). 4/ Natural 1-menthol is derived from peppermint oil and is used as an additive by the flavor and fragrance industries. 5/ China does not export synthetic 1-menthol

1/ The record is defined in sec. 207.2(j) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(j)).

2/ Section 771(4)(A) of the Tariff Act of 1930.

3/ Section 771(10).

4/ 46 F.R. 24614 (May 1, 1981).

5/ Staff Report at A-5 and A-13.

to the United States. 1/ Brazil and Paraguay also export natural l-menthol to the United States. 2/

Four varieties of menthol are produced for commercial use in the United States: l-menthol, d-menthol, racemic menthol, and liquid menthol. d-Menthol, racemic menthol, and liquid menthol are chemically distinguishable from l-menthol and do not have the same characteristics or uses. All l-menthol produced in the United States is synthetic. It is manufactured from either m-cresol (available either from coal tar or petroleum) or a derivative of turpentine. 3/ Synthetic and natural l-menthol are chemically identical. The staff conducted a survey of major end users which revealed that, with the exception of those who use l-menthol as a flavoring (these account for only a small percentage of total consumption), the vast majority of end users consider synthetic and natural l-menthol to be interchangeable. 4/ We therefore find the like product in this investigation is synthetic l-menthol. 5/

There are two companies in the United States which produce synthetic l-menthol--Haarmann & Reimer Corp. (H&R) and SCM Corp. (SCM). H&R, the petitioner, is the largest domestic producer. It is a wholly-owned subsidiary of Rhinechem Corp., which is the American holding company for Bayer, AG. of West Germany. Although its plant in Bushy Park, South Carolina did not officially open until 1978, H&R has produced l-menthol since 1977. The plant is dedicated exclusively to the production of menthol and employs production technology based on Bayer AG.'s West German menthol production in which l-menthol is synthesized from m-cresol.

1/ Staff Report at A-37.

2/ Id. at A-36.

3/ Id. at A-4.

4/ Id. at A-5.

5/ See additional views of Vice Chairman Calhoun for a discussion of like product.

SCM, which also supports the petition, is a diversified corporation. Menthol is produced by its Terpene and Aromatic Division in a plant which produces a variety of chemicals from turpentine. SCM began to produce menthol in 1961 but dropped out of the market in 1963 when prices were declining rapidly. SCM resumed production in 1975.

For these reasons, it is our view that the industry is comprised of H & R and SCM.

NO MATERIAL INJURY BY REASON OF LTFV IMPORTS

We have determined on the basis of the record that the domestic industry is not being materially injured or threatened with material injury and that the establishment of such industry is not being materially retarded by reason of the LTFV imports. Material injury is defined as harm which is not inconsequential, immaterial or unimportant. 1/ In determining material injury by reason of LTFV imports, we are directed to consider, among other things, the volume of these imports, the effect of the imports on prices, and the impact of the imports on the domestic industry. 2/ The Commission is directed to assess the effect of dumped imports in relation to the U.S. production of a like product if available data permit the separate identification of production in terms of such criteria as the production process or the producer's profits. 3/ If the domestic production of the like product has no separate identity, then the Commission must examine the production of the narrowest group or range of products containing the like product for which the necessary identifying information is available. 4/

1/ Section 771(7)(A).
2/ Section 771(7)(B).
3/ Section 771(4)(D).
4/ Section 771(4)(D).

In this case two domestic firms, SCM and H & R, account for the total domestic production of synthetic l-menthol. 1/ Both firms provided profit-and-loss information for both their total menthol production and for their production of l-menthol alone. 2/ We are of the opinion that the allocation of the profit-and-loss information for l-menthol is reasonable. Therefore, we will assess the impact of imports from China in relation to the domestic production of l-menthol.

I. VOLUME of LTFV IMPORTS

China was a major supplier of natural l-menthol to the United States menthol market in the 1940's. It reentered the market in 1975 after Brazil had become the principal source of U.S. imports. Total U.S. imports of l-menthol increased significantly in 1978 but have declined since. 3/ The decline is the result of a decline in the penetration of imports from Brazil and other sources. In contrast, imports of l-menthol from China have increased dramatically since 1977. This increase in imports from China seems to be replacing the decline in imports from Brazil and other sources.

The ratio of imports of natural l-menthol from China to apparent U.S. consumption has increased significantly, since the level of domestic consumption has increased at a slower rate than the volume of imports of the subject merchandise. However, this increase in the market share enjoyed by imports from China occurred concurrently with declines in imports from other countries.

1/ Staff Report at A-13 and A-30.

2/ Id. at A-31.

3/ Staff Report at A-35. The specific data regarding volume of imports is confidential as are most of the data for the economic indicators on which the Commission based its determination.

II. EFFECT OF LTFV IMPORTS ON DOMESTIC PRICES

Our analysis of the pricing information obtained in this investigation revealed that LTFV imports from China did not have a significant effect on domestic prices. Although the report presents pricing information in a variety of ways, we relied on the comparisons made in table 20 as being the most relevant to our considerations. Table 20 is the only table which contains comparisons of similar contracts, i.e., the prices shown reflect contract prices negotiated at approximately the same time, for a comparable quantity of material, covering a similar length of time. The comparisons in table 20 result in margins of underselling during only two periods--one in early 1977 before H & R began producing menthol and a slight margin early in 1978. However, in this last instance the importer had negotiated for a significantly larger volume of material than the U.S. producer.

Data on contract prices of U.S. producers and importers were compared by date of delivery in tables 17 and 18. Although these comparisons resulted in occasional margins of underselling, they do not reflect the various factors which directly affect price, such as the date of contract negotiation, duration of the contract, and the volume of material contracted for. The data obtained on spot-market prices were incomplete and the comparisons involved widely discrepant quantities. These comparisons were therefore deemed inconclusive.

We conclude, therefore, that there is no clear pattern of LTFV imports significantly underselling domestic merchandise. Nor do we find that the declining market price for menthol was precipitated by imports from China.

III. IMPACT OF LTFV IMPORTS ON THE DOMESTIC INDUSTRY

Our analysis of the economic data in this investigation indicates that the domestic industry is not being adversely affected by LTFV imports. From 1977 to 1980, U.S. production, capacity, and commercial shipments of l-menthol increased steadily. 1/ Employment and wages in the industry also rose during the same period. 2/ Although domestic inventories increased from 1977 to 1979, they declined significantly in 1980. 3/ The decline in capacity utilization from 1978 to 1980 is accounted for by the increase in U.S. capacity with the opening of the new H & R plant in Bushy Park, South Carolina. 4/

While the overall profitability of the domestic industry declined from 1978 to 1980, we have not found a causal link between the decline and the LTFV imports. The declining profitability of the domestic industry may be explained by a number of factors other than LTFV imports. First, domestic menthol prices have declined along with world menthol prices due to the problem of oversupply in a commodity market in which prices are controlled by supply. The increase in the capacity of domestic producers exceeded the percentage, in both absolute and relative terms, by which total imports declined during 1978 to 1980, therefore creating a situation of oversupply. 5/ This problem was exacerbated by the apparent volatility of domestic consumption which is due to purchasers' stockpiling during periods of low prices and oversupply, such as occurred in 1978. Second, the decline in profitability is due in part to the fact that a majority of H & R's l-menthol, which accounts for a significant percentage of domestic production, is exported to affiliated companies and sold at prices which are lower than

1/ Staff Report at A-12 and A-18.

2/ Id. at A-29-30.

3/ Id. at A-21.

4/ Id. at A-17.

5/ Id. at A-17 and A-36.

domestic prices. 1/ Third, the overall profitability figures were lowered as a result of losses suffered by SCM during a six-month strike in 1980. 2/ The fourth factor is the increase in both U.S. producers' raw material costs at a time when world market prices were apparently declining. 3/

The petitioner alleged eight instances in which sales were lost to imports of menthol from China. The lost sales analysis was complicated by several factors. First, imports from China began prior to 1977 and H & R did not begin to solicit sales in the U.S. until 1977. Other factors include the apparent consumer resistance to a synthetic product and the start up problems H & R had in connection with bringing the Bushy Park plant on stream. 4/ Despite these problems and the existence of the LTFV imports, the producers' share of the domestic market increased from 1978 to 1980. 5/ In light of these factors, there is no indication of significant lost sales.

For the reasons outlined in the preceding paragraphs, we find no evidence of material injury by reason of the LTFV imports.

NO THREAT OF MATERIAL INJURY BY REASON OF LTFV IMPORTS

There is no clear evidence on the record that U.S. producers' share of the domestic market will be prevented from continuing to increase. Although imports from China have continued to increase in January-March of 1981, 6/ these imports appear to be taking over a portion of the domestic market

1/ We note that the producer accounting for the largest percentage of domestic production (H & R) offered profit and loss information restricted to domestic sales. The figures given for the profitability of H & R's sales in the United States are greater than profitability for total domestic production, thus suggesting that lower-priced export sales could be a source of losses. While we did not base our injury analysis on these profitability data for domestic sales alone, we did compare the figures to the level of profits for total domestic production. Staff Report at A-33.

2/ Staff Report at A-10.

3/ Id. at A-31-33.

4/ Id. at A-10 and A-52.

5/ Id. at A-40-41.

6/ Id. at A-37.

traditionally supplied by imports of 1-menthol from other sources. In light of the absence of a clear pattern of underselling of the LTFV imports, we have no evidence that the domestic producers have been or will be precluded from sharing in any future market growth or gaining the share of the U.S. market formerly held by imports from Brazil and other sources.

Further, there is no convincing evidence contained in the record that China intends to increase its production capacity. During 1980, its production was reduced due to flooding. 1/ Additionally, both home-market demand and exports increased, thereby reducing apparent inventories in China. 2/ Currently, the United States is China's fourth largest export market, and there is no evidence on the record which would indicate that the CNEC (the state-trading organization that handles the export of menthol) intends to divert larger volumes of menthol to the United States. 3/

Counsel for H & R argued that inventories of Chinese menthol currently held in bonded warehouses in the United States pose a threat of material injury. An analysis of the current inventory levels of menthol from China in bonded warehouses in the United States does not indicate clearly that the domestic industry is threatened with material injury. A certain percentage of these inventories is destined for transshipment. 4/ Additionally, some of the inventories are held by end users who typically store menthol for long periods of time before withdrawing it for use. 5/ Finally, an additional portion of the inventories is held by dealers who have purchased it against committed fixed price contracts. 6/ As to importers' inventories of material that has already cleared customs, it is reasonable to assume that the majority are

1/ Staff Report at A-15.

2/ Id.

3/ Id.

4/ Id. at A-24.

5/ Id.

6/ Id.

already committed under fixed price contracts, since no new contracts have been negotiated since July of 1980. 1/

In sum, we find no indication that the domestic industry is faced with a threat of material injury by LTFV imports.

ESTABLISHMENT OF THE DOMESTIC INDUSTRY IS NOT MATERIALLY RETARDED

We have determined that the industry in this investigation is established for the purposes of section 735(b). We base our conclusion on the economic data which show that the industry is a viable competitor in the marketplace. It has gained a consistently increasing and substantial share of apparent domestic consumption. Additionally, other economic indicators, such as increasing levels of production, capacity, and employment, point to the fact that this industry has established itself.

1/ Respondent's Post-Hearing Memorandum at A-6.

ADDITIONAL VIEWS OF VICE CHAIRMAN MICHAEL J. CALHOUN

While it is clear that the importance of the like product and industry analysis to the outcome of our material injury determination varies from case to case, the need for detailed delineation of how and why we reach our findings is nevertheless required in each case. First, the statutory scheme under which our material injury analysis in dumping and subsidy cases is conducted is a tight latticework of discrete but interrelated parts. Thus, before our ultimate conclusion can be reached several intervening conclusions are required. This makes the integrity of our ultimate determination no better than that of each intervening finding.

Second, because of the interrelated and cumulative character of the statute our obligation to provide consistent and understandable analysis can only be met through systematic, if not at times seemingly mechanical, treatment in our determinations of the various intervening factors the statutory scheme has imposed upon us. This obligation is best met if we address in each case a rather detailed consideration of them.

Such an exercise can be tedious in cases where the outcome is unaffected by a close analysis of the various factors the law compels us to address in reaching an ultimate determination. But, this kind of case by case attention to the detail of the statute

allows for a ready perception in the community and in the courts that our decisionmaking is thorough and well considered. In this investigation I have concurred with my colleagues in result, but I wish to express my industry analysis separately.

The Domestic Industry

In general, the domestic industry is defined as all domestic producers of a like product or those producers whose total output of the like product constitutes a major portion of domestic production of that product. 1/ A like product is a product which is like, or in the absence of like, most similar in characteristics and uses with the imported article which is the subject of the investigation. 2/

The article subject to the investigation under this title is natural l-menthol from China. Natural menthol appears as fine, white crystals and is obtained primarily from the peppermint plant which, after harvest, is subjected to steam distillation. The steam carries off the peppermint oil, which is collected and cooled to produce large crystals of l-menthol. The flavor and fragrance of natural menthol varies slightly with the type of peppermint from which it was obtained. 3/

Natural l-menthol is used primarily in cigarettes, confections, dentifrices, analgesic balms, mouthwashes, flavorings and perfumes. The natural l-menthol is preferred by some purchasers, mostly

1/ Section 771(4)(A) of the Tariff Act of 1930 (Act).

2/ Section 771(10) of the Act.

3/ Report, A-5 - 6.

makers of confections and coughdrops, who find a distinction between the taste and aroma of natural and that of synthetic l-menthol. 1/ These users account for a small percent of menthol consumption.

No natural l-menthol is produced in the United States. There is production of synthetic l-menthol which is produced from stereospecific or nonstereospecific feedstocks. 2/ The primary nonstereospecific feedstock is m-cresol, a phenol obtained from tall oil, coal tar or petroleum. Synthesizing menthol from these more available, but sometimes more costly, feedstocks automatically produces a mixture of the eight optical isomers of menthol. Sophisticated technology such as that employed by Haarman & Reimer is required to resolve the mixture into l- and d-menthol.

Natural and synthetic l-menthol have the same molecular structure and are chemically equivalent. However, synthetic menthol undergoes a chemical processing which natural menthol does not undergo and natural menthol has certain trace elements which synthetic menthol does not have. Evidence on the record indicates that natural and synthetic l-menthol are readily substitutable for the vast majority of uses without compromise in quality of the end product. But, as mentioned above, some customers believe the natural product is more desirable for some uses. Essentially natural and

1/ Report, A-7 - 8.

2/ With regard to l-menthol, stereospecific means having the specific spatial orientation of atoms required to produce l-menthol upon reaction.

synthetic menthol compete for the same customers, users which value the properties of clean taste and fragrance and a cooling sensation. Because of the combination of these unique features, l-menthol has no simple substitute.

In addition to synthetic l-menthol, three other forms of menthol produced in the United States are commercially significant: d-menthol, racemic menthol, and liquid menthol. All of these types of menthol have a molecular structure different from l-menthol. Neither of these three products has significantly the same uses as l-menthol. d-Menthol, an isomer of l-menthol, is primarily used as a feedstock in the synthesis of l-menthol and, sometimes, as a dilutant in perfume formulae. Racemic menthol is a mixture of equal amounts of d-menthol and l-menthol. It has some cooling effect but much less than l-menthol. Racemic menthol is used primarily in analgesic balms, shaving creams and toothpastes. Both racemic menthol and l-menthol, are certified to be safe for use in foods, beverages and pharmaceuticals under the United States Pharmacopoeia (USP) and Food Chemicals Codex (FCC) specifications. Liquid menthol, a mixture of various isomers, is used in a limited number of industrial applications.

There are two companies in the United States which produce synthetic l-menthol, Haarman & Reimer and SCM, as described in the majority opinion, the substance of which I incorporate here by reference.

For these reasons, it is my view that the like product in this investigation is synthetic l-menthol and the domestic industry is comprised of Haarman & Reimer and SCM.

ADDITIONAL VIEWS OF COMMISSIONER PAULA STERN

In Menthol from the People's Republic of China, Investigation No. 731-TA-28 (Preliminary), I cast the lone dissenting vote, having found at that time that there was no reasonable indication of material injury or threatened material injury due to alleged less than fair value (LTFV) imports of menthol from the People's Republic of China (China). Now that case has returned for a final determination, I am glad to be part of a unanimous Commission finding that LTFV imports of natural menthol from China are not a cause of material injury to the domestic industry and do not threaten to become so. The logic I have followed in the final case closely follows that found in my views in the preliminary one. 1/ I have joined the unanimous views of the Commission in the present case because the analysis of my fellow Commissioners at this stage is now compatible with my own. Although I remain firm in my belief that both the statute and the public interest would have best been served by terminating this case at the preliminary stage, there have been further developments and I have fully examined de novo the entire record as augmented by the final investigation.

1/ See "Views of Commissioner Paula Stern," Menthol from Japan and the People's Republic of China Inv. Nos. 731-TA-27 and 28 (Preliminary), USITC Publication 1087, July 1980 at 21-31.

The domestic industry and the imported product. An end-user survey conducted by the Commission's staff has verified that synthetic and natural l-menthol are considered interchangeable for the vast majority of end-users. 1/ Total U.S. production of the domestic like product, synthetic l-menthol, is accounted for by two firms, SCM Corp. and Haarmann & Reimer Corp. (H&R). Both were able to identify separately the production of l-menthol. Thus, it has become possible to assess the impact of the imports on a precise product-line basis rather than on domestic production of all menthol as was done in the preliminary investigation. Also, subsequent to the preliminary investigation, SCM has come out in support of the petition of H&R. 2/

Condition of the domestic industry. The data provided in the final investigation on l-menthol cover the full year of 1980 instead of only the first quarter (on all menthol) as in the preliminary investigation. However, the overall picture, albeit with certain new wrinkles, is quite similar to the one observed in July 1980. U.S. production more than quadrupled, and capacity nearly quintupled during the 1977-1980 period. Capacity utilization declined slightly from exceptionally high levels reached in 1978, but remains quite good. Employment in 1980 was higher than in 1977. 3/ The significant increases over the period in wages paid and hours worked by all production and related workers are notable because they occurred in spite of the facts that the chemical industry is capital- rather than labor-intensive and that the efficiency of H&R's new plant was increased steadily during the period.

1/ See Staff Report at A-8.

2/ Letter of May 13, 1981, to Secretary of the Commission.

3/ Data on U.S. employment were the only data not separately available for l-menthol rather than all menthol.

U.S. producers' inventories declined significantly in 1980 despite an increase in imports. This factor seems compatible with H&R's large exports to related companies in the face of a plant design adapted to operate on a seven days per week, twenty-four hours per day schedule.

The only truly negative development was a rapid decline in overall profitability in 1980. However, further analysis has not been able to link the imports from China in any credible fashion to this decline in profitability. Rather, other factors explain this phenomenon. The market price of 1-menthol continued to decline in the face of ongoing abundant world supply. Because of the most-favored nation and escape clauses found in H&R's contracts, the incidence of this supply situation on the corporation's profits was rapid. 1/ Furthermore, export sales at prices lower than those of the domestic market to firms affiliated to petitioner continued. H&R's data on the profitability of its domestic sales show that home-market sales were consistently and significantly more lucrative than its total 1-menthol operations. While net operating profit of domestic sales declined from 1978 to 1980, the decline was far less precipitous than that experienced on all 1-menthol sales.

In my preliminary views, I observed that H&R's performance should be judged in light of its entry into a new, unfamiliar market. This view has received further support with the confirmation that the corporation, in its 1975 decision to build a U.S. facility, did not factor in China as a possible re-entrant to the market. 2/

1/ See Staff Report at A-13.

2/ See transcript at 94-95 and confidential market study by Arthur D. Little, Inc.

Causality. The decline in profitability constitutes the only sign of injury to the domestic industry. I have already observed that factors which explain that decline do not include LTFV imports from China. Pricing and lost sales information further support this conclusion.

Margins of underselling of domestic production by l-menthol from China were found during 1980 and from the last quarter of 1977 through the third quarter of 1978. 1/ However, U.S. importers' contracts in some cases were negotiated at later dates than domestic ones (during a period of declining prices), and often involved larger volumes and were of longer duration than those offered by domestic producers. The last two factors are certainly reasonable grounds for price discounts. When further comparisons were made on the basis of contract negotiation periods, only two periods of underselling were found -- the most recent being the fourth quarter of 1978, when H&R was still establishing itself in the market. 2/ And the margins of underselling were small. The extended staff analysis of pricing information provided no support for linking the decline in the profitability of the domestic industry in 1980 to the imports from China.

Lost sales information also failed to provide any link to the imports in question. Only a relatively small volume in one or two transactions was confirmed as having been lost to the Chinese imports. Because some lost sales should be found in any competitive market, a few insignificant, isolated incidences do not indicate a trend or recurrent problem.

1/ See Staff Report at A-64 and tables 17 and 18.

2/ Ibid. at table 19.

Threat. I found no persuasive evidence that a threat of material injury by reason of the imports from China has emerged since the preliminary case. While U.S. importers inventories increased during 1980, they are largely committed, i.e., already sold under contract. This conclusion is supported by the fact that imports from China continued to increase despite the fact that U.S. importers negotiated no new contracts since July 1980. Committed inventories can neither affect the market price of new sales nor capture sales from U.S. producers.

Conclusion. The current picture of the domestic l-menthol industry exhibits no credible causal nexus between any of its problems and LTFV imports from China. Indeed, the domestic industry's recent decline in profitability seems wholly related to the business practices of H&R, the petitioner in this case.

In conclusion, I believe that this case illuminates the rationale underlying the two-stage investigatory process. Preliminary investigations are designed to weed out those cases for which, in the short 45-day time frame, a sufficiently adequate record exists to conclude that there is no reasonable indication of injury remediable under the statute. Congress in no way intended that the Commission pay short shrift to preliminary cases. The legislative history provides clear guidance:

While the (Senate Finance) committee recognizes that the ITC cannot conduct a full-scale investigation in 45 days, it expects the Commission to make every effort to conduct a thorough inquiry during that period. 1/

1/ Senate Finance Committee, Trade Agreements Act of 1979, 96th Cong., 1st. Sess., S. Rept. No. 96-249 at 66.

The only cognizable difference in standards for a preliminary determination is that the Commission, to reach an affirmative finding, must look for a "reasonable indication" of material injury due to the imports in question. A "reasonable indication" requires more than a mere showing at the preliminary stage that the petitioner's case is not frivolous. My de novo examination of the entire record has yielded no new information which might indicate that the initial record was not sufficiently adequate to terminate this case at the preliminary stage.

INFORMATION OBTAINED IN THE INVESTIGATION

Introduction

On June 11, 1980, a petition was filed with the U.S. International Trade Commission and the U.S. Department of Commerce (Commerce) on behalf of Haarmann & Reimer Corp., alleging that natural or synthetic menthol imported from Japan or from the People's Republic of China (China) is being, or is likely to be, sold in the United States at less than fair value (LTFV). Accordingly, on June 16, 1980, the Commission instituted preliminary antidumping investigations Nos. 731-TA-27 and 28 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there was a reasonable indication that an industry in the United States was materially injured, or was threatened with material injury, or the establishment of an industry in the United States was materially retarded, by reason of imports of menthol, whether natural or synthetic, from Japan and the People's Republic of China, as provided for in items 437.64 and 413.28 of the Tariff Schedules of the United States (TSUS). On July 22, 1980, a public briefing was held, and the Commission voted (Commissioner Stern dissenting), that there was a reasonable indication that an industry in the United States was threatened with material injury by reason of imports of menthol from the People's Republic of China. 1/ The Commission informed the Department of Commerce of its decision on July 28, 1980.

On January 7, 1981, the Department of Commerce made a preliminary determination that there was a reasonable basis to believe or suspect that exports of natural menthol 2/ from the People's Republic of China are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended. 3/ The petitioner asserted that there are "critical circumstances" in this case because of the recent increase in imports of menthol from China. However, in order to determine that there are critical circumstances, Commerce must find that there is a history of dumping or that importers knew or should have known that the material was being imported at less than fair value in addition to finding that there have been massive imports over a relatively short period. Commerce found that there was no reason to believe that there is a history of dumping of menthol or that importers should have known that the Chinese exporter was selling menthol at less than fair value. Thus, since one of the statutory bases for critical circumstances was not established, it was concluded that critical circumstances do not exist.

As a result of the affirmative preliminary determination of LTFV sales by the Department of Commerce, the Commission instituted investigation No. 731-TA-28 (Final) effective January 23, 1981, to determine whether an industry

1/ The Commission determined (Commissioners Bedell and Moore dissenting) that there was no reasonable indication that an industry in the United States was being materially injured or threatened with material injury, or that the establishment of an industry was being materially retarded by reason of imports from Japan of menthol, whether natural or synthetic, provided for in TSUS items 437.64 and 413.28.

2/ Since, as far as it is known, China exports only natural menthol, Commerce limited the scope of its investigation to natural menthol only.

3/ A copy of the Department of Commerce's preliminary determination is presented in app. A.

in the United States is materially injured, or is threatened with material injury, or the establishment of an industry is materially retarded, by reason of the importation into the United States of menthol, whether natural or synthetic, from the People's Republic of China. Notice of the institution of the investigation and of the public hearing was given by posting copies of the notice at the Office of the Secretary, U.S. International Trade Commission, Washington, D.C., and by publishing the notice in the Federal Register of January 28, 1981 (46 F.R. 9264). 1/

Following receipt of a request by Shearman & Sterling, counsel for the China National Native Produce & Animal By-products Import & Export Corp. (CNEC) (the state-trading organization handling the export of Chinese menthol), the Department of Commerce postponed its final LTFV determination. On April 28, 1981, Commerce determined that natural menthol from China is being sold in the United States at less than fair value. Margins were found on 88 percent of the menthol sold during January-June 1980, with the weighted average margin on all sales being 2.5 percent. 2/

In connection with this investigation, a public hearing was held at the International Trade Commission building, 701 E Street, NW., Washington, D.C., on May 5, 1981. 3/ Notice of the public hearing was given by posting copies of the Commission's notice of change of date of its public hearing at the Office of the Secretary and by publishing the notice in the Federal Register of March 18, 1981 (46 F.R. 17314). 4/ The Commission was briefed and voted on this investigation on June 1, 1981.

The Product

Description and uses

Menthol is one of the leading aromatic chemicals in the flavor and fragrance industry and can be either natural or synthetic in origin. Chemically, it is the monocyclic, saturated, secondary terpene alcohol-- $C_{10}H_{19}OH$. Menthol can exist as any of eight optical isomers, 5/ each of which demonstrates different properties. However, there are only four forms of menthol which are commercially significant--l-menthol, d-menthol, racemic menthol, and liquid menthol. The allegations of LTFV sales in this case concern only natural l-menthol.

1/ A copy of the Commission's notice of investigation and hearing is presented in app. B.

2/ A copy of the Department of Commerce's final determination of LTFV sales is presented in app. C.

3/ A copy of the calendar of the public hearing is presented in app. D.

4/ A copy of the Commission's notice of change of date of its public hearing is presented in app. E.

5/ Isomers are distinct forms of the same molecule which differ only in the spatial orientation of the constituent atoms to one another.

The most common and the most important commercial form of menthol is the levorotary isomer--l-menthol. 1/ This optically active isomer is the major constituent of peppermint oil and the only form of menthol found in nature. It can also be synthesized. The unique characteristic of l-menthol is its organoleptic activity. It produces a "cooling" sensation on the skin and has the characteristic odor and taste of peppermint. l-Menthol has been described as having a clean taste and fragrance, as well as a strong cooling effect. Pure l-menthol appears as fine, white crystals which are shipped in tins, fiber drums, and corrugated boxes. It is used in the manufacture of tobacco products (chiefly cigarettes), oral hygiene products, pharmaceuticals, and other personal-care products. It is also used as a denaturant for alcohol. Because of its unique properties, l-menthol has no simple substitute. However, if prices for l-menthol were to increase substantially, peppermint oil would probably be substituted for l-menthol in some toiletry and confectionery uses.

In contrast, the mirror image of l-menthol, d-menthol (the dextrorotary isomer) can only be produced synthetically. It does not have the same organoleptic properties as l-menthol. d-Menthol has been described as having a musty, resinous flavor and fragrance with only a weak cooling effect. Consequently, d-menthol has only a limited number of uses. It is principally used as a feedstock in the synthesis of l-menthol and occasionally as a diluent in perfume formulas.

Racemic menthol (dl-menthol) is a mixture of equal amounts of the dextrorotary and levorotary isomers of menthol and is optically inactive. It also can only be produced synthetically and is primarily obtained as a by-product in the synthesis of l-menthol. Racemic menthol appears as a clear, colorless liquid at higher temperatures and as a white, crystalline solid at room temperature. As the definition would imply, racemic menthol has some of the characteristic properties of l-menthol and some of d-menthol. Racemic menthol has a musty, resinous flavor and fragrance but also some cooling effect. There is a higher demand for racemic menthol than d-menthol, but racemic menthol is used on a much more limited basis than l-menthol. The primary application of racemic menthol is in analgesic balms. It is also used in the manufacture of some shaving creams and toothpastes. In these applications, racemic menthol can, to some extent, be substituted for l-menthol.

Racemic menthol and l-menthol, whether natural or synthetic, meet United States Pharmacopoeia and Food Chemicals Codex specifications, meaning that they are certified to be safe for use in foods, beverages, and pharmaceuticals. 2/ The fourth commercial form of menthol, liquid menthol, does not meet these specifications. Liquid menthol is considered a technical grade of menthol. It is a solution containing a mixture of isomeric menthols

1/ Chemists use the optical rotation of polarized light by a solution of a particular compound to identify and distinguish mirror image chemical isomers such as d- and l-menthol. Levorotary means that the molecular structure of the isomer rotates polarized light to the left, whereas, dextrorotary means that the light is rotated to the right.

2/ d-Menthol is only produced by Haarmann & Reimer. No specifications exist for this product, because there is no significant demand for it. A-3

of up to 95 percent concentration. Liquid menthol is used in only a limited number of industrial applications as a masking agent and as a precursor for other chemicals. Liquid menthol is produced primarily as a by product in the synthesis of l-menthol.

The production of menthol differs markedly according to the type of menthol produced and the raw materials used. Natural menthol (l-menthol) is obtained primarily from peppermint. The process begins with the harvesting of the peppermint plants, which are then subjected to a steam distillation. The steam carries off the peppermint oil which is then collected and cooled over long periods of time (about a week) to produce large crystals of l-menthol. These crystals are removed from the solution by filtration. The process is fairly simple and requires only rudimentary equipment. The flavor and fragrance of natural menthol will vary somewhat with the type of peppermint from which it is obtained. 1/

Synthetic menthol can be produced from either stereospecific 2/ or non-stereospecific feedstocks. The most common stereospecific feedstocks are d-limonene; d-citronellal, found in citronella oil; thymol, found in thyme oil; and beta-pinene, obtained from turpentine oils. Because they already have the basic isomeric structure desired, these feedstocks can be converted to l-menthol without requiring the resolution of an isomeric mixture.

The primary nonstereospecific feedstock used to synthesize l-menthol is m-cresol, a phenol which can be obtained from tall oil, coal tar, or petroleum. The advantage of using a nonstereospecific feedstock is that it generally is more readily available than the stereospecific feedstocks obtained from nature. However, synthesizing menthol from nonstereospecific feedstocks automatically produces a mixture of all eight optical isomers of menthol. This mixture requires sophisticated technology and equipment to resolve into d- and l-menthol. In fact, Haarmann & Reimer, the first company to synthesize l-menthol from a nonstereospecific feedstock, estimates that more than * * * percent of the capital investment of \$15 million in its U.S. plant is represented by the equipment used to separate and purify d- and l-menthol from the isomeric mixture produced by the initial synthesis. * * * .

Although synthetic and natural l-menthol are essentially the same product (being approximately 99.9 percent chemically equivalent), to some purchasers, there remains a perceived difference in the taste and aroma of the two. This difference is difficult to pinpoint because it resides in trace elements or impurities found in the different types of natural and synthetic menthol. The tests for determining the difference in the two products are extremely subjective. Some customers feel that the natural product has a "mintier" or more desirable flavor and aroma than the synthetic product.

In an effort to evaluate the significance of this perceived difference to the customer, the staff contacted 11 major end users of menthol, accounting for over 80 percent of apparent U.S. consumption of l-menthol during the period under consideration. Some of these end users use menthol in several

1/ Affidavit of Irving R. Boody, Jr., pp. 15-16.

2/ Stereospecific means having a specific spatial orientation of atoms. In this case, stereospecific means having the specific orientation required to produce l-menthol upon reaction. The great majority of these feedstocks come from natural sources. A-4

different products. Five end-users used l-menthol in the manufacture of cigarettes and other tobacco products, and their purchases accounted for an average of more than 65 percent of the purchases made by those surveyed. Four of these purchasers use both synthetic and natural menthol in their tobacco formulations. One firm stated that, although synthetic menthol had been tested, it has not been included in its tobacco formulations. Four of the purchasers surveyed used l-menthol in oral hygiene products. Three of these firms use both synthetic and natural menthol in their products, but one stated that synthetic menthol was not appropriate for use as a flavor in its products. Four other purchasers used l-menthol in the production of shaving cream, skin lotion, denatured alcohol, and pharmaceuticals. Three of these firms used both natural and synthetic menthol, but one stated that synthetic menthol had not been tested or approved for use in its lotion. One purchaser used only natural menthol in its production of confections. Thus, it appears that, despite the preference for natural menthol expressed by those purchasers who used menthol as a flavoring, synthetic menthol and natural menthol are considered interchangeable for the vast majority of end users.

U.S. tariff treatment

Menthol is dutiable under the provisions of item 437.64 or item 413.28 of the Tariff Schedules of the United States (TSUS) depending upon the type of material from which it is derived. Natural menthol and synthetic menthol derived from nonbenzenoid sources, such as cornmint oil (dementholized peppermint oil), citronella oil, or d-limonene, are classified under item 437.64. Since July 1, 1980, synthetic menthol derived from benzenoid chemicals, such as m-cresol, has been dutiable under item 413.28. The Department of Commerce's finding of LTFV sales in this case concerns only natural menthol. The column 1, most-favored-nation (MFN), rate of duty for item 437.64 is 17 cents per pound. 1/ This rate became effective on January 1, 1972, in the final stage of reductions granted in the Kennedy round of trade negotiations. China received MFN status on February 1, 1980, and thus became eligible for column 1 rates of duty. Prior to 1980, imports from China were dutiable at column 2 rates. The column 2 (statutory) rate of duty is 50 cents per pound. 2/ No concessions on imports classified under this item were granted in the recent Tokyo round of the Multilateral Trade Negotiations (MTN). Menthol classified under TSUS item 437.64 is eligible for duty-free treatment under the provisions of the Generalized System of Preferences (GSP). 3/ Menthol imported from Brazil under this TSUS item was not eligible for GSP treatment until April 1981, because imports from Brazil accounted for more than half of all U.S. imports of menthol in prior years.

1/ This rate is applicable to imported products from all countries except those Communist countries and areas enumerated in general headnote 3(f) of the TSUS.

2/ This rate applies to imported products from those Communist countries and areas enumerated in headnote 3(f) of the TSUS.

3/ GSP, under title V of the Trade Act of 1974, provides duty-free treatment of specified eligible articles imported directly from designated beneficiary developing countries. GSP, implemented by Executive Order No. 11888 of Nov. 24, 1975, as amended, applies to merchandise imported on or after Jan. 1, 1976, and is expected to remain in effect until Jan. 4, 1985.

Nature and Extent of Sales at Less Than Fair Value

All U.S. imports of menthol from China are accounted for by exports of the CNEC, 1 of 10 specialized trading corporations established by the Ministry of Foreign Trade of China. 1/ The petition alleges that LTFV sales of l-menthol began when China began exporting large amounts of its menthol late in 1977. According to the petition, these alleged LTFV sales have not only continued from 1977 to the time the petition was filed, but, as evidenced by contracts for Chinese menthol already negotiated with several major end users, they will also continue into 1981.

On June 24, 1980, the Department of Commerce issued a notice announcing that it had found the petition to be properly filed within the meaning of its rules and that it was instituting an investigation. Notice to such effect was published in the Federal Register of July 2, 1980 (45 F.R. 44976). Pursuant to section 733(c) of the act (19 U.S.C. 167(c)), Commerce then concluded that all parties were cooperating and that the case was extraordinarily complicated because it presented the novel issue of the extent of state controls in China. Accordingly, the period for preliminary analysis was extended from November 18, 1980, until January 7, 1981. 2/

On January 7, 1981, Commerce reached a preliminary determination that natural menthol from China is being, or is likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended. Commerce determined in the preliminary investigation that the economy of China was state-controlled to the extent that home-market sales of menthol would not provide an appropriate basis for fair-value comparisons. Paraguay was selected as a surrogate market at a stage of economic development comparable with that of China. Accordingly, quotations from a U.S. purchaser for natural menthol from Paraguay were compared with the purchase price in the United States for natural menthol from China. Comparisons of these prices during the period January 1 through June 30, 1980, resulted in a preliminary weighted average dumping margin of 13.5 percent. Commerce's preliminary determination being affirmative, liquidation of entries of menthol from China (or withdrawals from warehouses) for consumption were therewith suspended.

Following the receipt of a request from CNEC, the sole exporter of natural menthol from China, the Department of Commerce extended the period for its final determination by 30 days. 3/ Commerce made its final determination of LTFV sales on April 28, 1981. The determination covered natural menthol (that produced from natural feed stocks), currently classifiable under item 437.64 of the TSUS. In making its determination, Commerce compared the price paid by unrelated U.S. purchasers of menthol from China adjusted for a discount, ocean freight, and home-market inland freight, with the price paid for menthol from Paraguay adjusted to exclude export taxes, inland and ocean

1/ Respondent's pre-hearing memorandum, app. F, p. 1.

2/ A copy of the Department of Commerce's notice of postponement of preliminary decision is presented in app. F.

3/ Notice of Commerce's extension of the period for the final determination was published in the Federal Register on March 12, 1981 (46 F.R. 16287). A copy of the notice is presented in app. G.

freight, and to account for difference in packing costs. Sales of menthol from China made during January-June 1980 were examined, and a final weighted average dumping margin of 2.5 percent was found.

U.S. Market and Channels of Distribution

Although menthol has been known for centuries, its present importance is the result of changing consumer demands in the 1950's. Before World War II, menthol was primarily used in the production of pharmaceuticals. However, the general, progressive increase in the U.S. standard of living following the war generated a consumer market for goods containing menthol, such as cigarettes, oral hygiene products (toothpastes and mouthwashes), and other personal-care products (perfumes, shaving creams, and cosmetics). Thus, menthol has become a necessary ingredient in a range of products which consumers will demand with little regard to their price. The demand for menthol is primarily derived from the demand for these consumer products. Therefore, the demand for menthol is likely to be somewhat insensitive to changes in its price and also somewhat insulated from the business cycle. ^{1/}

The United States is the largest single market for menthol, and it is estimated that U.S. consumption accounts for roughly 40 percent of the world's consumption of menthol. U.S. consumption can be broken down by the following end-use categories:

<u>End use</u>	<u>Estimated share of U.S. consumption (percent)</u>
Tobacco-----	60
Pharmaceuticals-----	15
Oral hygiene products-----	12
Personal-care products-----	6
Miscellaneous-----	7

Miscellaneous uses include confectionery, beverages, and industrial applications. According to industry sources, the U.S. market for menthol is expected to undergo only slow growth (3 to 5 percent annually) in the coming years. ^{2/} Some 11 customers account for over 80 percent of domestic sales of menthol.

To a substantial degree, the channels of distribution for menthol have been shaped by the supply. Prior to 1939, Japan was the major supplier of natural menthol, the only form of menthol then available. China was also an important source. However, the menthol supply from the Far East was disrupted during World War II, and Brazil became the major supplier. Brazil's position was further consolidated in the 1950's, when Japan and China underwent political and industrial transformations which sharply curtailed their production of menthol. Synthetic menthol produced from natural feedstocks began to appear on the market in the 1950's. However, despite the

^{1/} Transcript of the conference pp. 56-57.

^{2/} Ibid.

improved methods by which synthetic menthol is produced and the improved product quality, natural menthol still accounts for more than 70 percent of U.S. consumption.

Because of the traditional reliance on a single source of natural menthol, the menthol market is essentially a commodity market. Prices have varied dramatically according to the supply situation. An estimated 90 percent of domestic sales of menthol are made through contracts similar to futures contracts, typically calling for delivery of a certain quantity of menthol anywhere from 6 months to 3 years in the future. Contracts offered by importers contain a firm commitment on price by the supplier. The contracts are usually negotiated annually and may specify the dates and quantities of deliveries. However, contracts offered by Haarmann & Reimer may include MFN clauses or escape clauses. 1/ The MFN clause provides that if a price lower than the one established in the contract were offered by the producer to another purchaser, then the producer would make that price available to any purchaser having such a clause in his contract. An escape clause permits the purchaser to be released from the contract if the market price erodes substantially and an agreement cannot be reached on a price adjustment consistent with the declining market price. * * *.

It is estimated that U.S. producers sell about 90 percent of their menthol directly to producers of consumer goods. 2/ Virtually all of these sales are made under contracts. The remaining menthol is sold to producers of consumer goods on the spot market. Only minimal quantities of U.S. producers' menthol are sold to dealers or distributors. On the other hand, most of the imported menthol is brought in by brokers or dealers. Brokers generally arrange for delivery of the imported product to end users or dealers for a sales commission, whereas dealers generally receive a price discount, accept delivery of the imported material, and then make sales.

Because menthol from various sources is generally interchangeable and because the number of major end users is small, the need for marketing, sales, and service personnel is very limited. Advertising is minimal, and technical service is required only to obtain product approval by the customer for menthol from new sources.

The Domestic Industry

U.S. producers

There are three producers of menthol in the United States 3/--Givaudan Corp., which is a wholly owned subsidiary of Givaudan S.A. of Switzerland, SCM Corp. which is publicly owned, and Haarmann & Reimer Corp., a wholly owned subsidiary of Rhinechem Corp., which is the U.S. holding company for Bayer,

1/ Transcript of the hearing pp. 41-42.

2/ Transcript of the conference, p. 20.

3/ A fourth producer had been listed in the report on the preliminary investigation. However, upon further study of the Commission's definition of liquid menthol, the firm found that it did not produce liquid menthol and had erroneously filled out the questionnaire in the preliminary investigation, indicating that it did produce the chemical.

AG., of the Federal Republic of Germany (West Germany). These three firms vary significantly in size of their menthol operations and in the types of menthol they produce (table 1).

Table 1.--Menthol: U.S. production and commercial shipments, by firms, 1977-80

Item and firm	1977	1978	1979	1980
Production:				
Haarmann & Reimer				
1,000 pounds--	***	***	***	***
SCM-----do-----	***	***	***	***
Givaudan-----do-----	***	***	***	***
Total-----do-----	***	***	***	***
Shipments:				
Quantity:				
Haarmann & Reimer				
1,000 pounds--	***	***	***	***
SCM-----do-----	***	***	***	***
Givaudan-----do-----	***	***	***	***
Total-----do-----	***	***	***	***
Value:				
Haarmann & Reimer				
1,000 dollars--	***	***	***	***
SCM-----do-----	***	***	***	***
Givaudan-----do-----	***	***	***	***
Total-----do-----	***	***	***	***

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

The smallest U.S. menthol producer, Givaudan, is a manufacturer of fragrances and flavors. This firm produces only liquid menthol, * * *.

SCM, the second largest producer, is also a diversified corporation. Menthol is produced by SCM's Terpene and Aromatic Division in a plant which produces a variety of chemicals from turpentine. Turpentine is an essential oil obtained primarily as a by product of pulp and paper processing. SCM buys all of its turpentine on the open market. Upon fractionation, turpentine yields approximately 70 percent alpha-pinene, 25 percent beta-pinene, and some * * *. * * *.

SCM began producing menthol in 1961 * * *. However, according to company officials, the firm was driven out of the market in 1963 when prices for l-menthol fell from around \$8 per pound to less than \$3 per pound as Brazilian A-9

menthol saturated the U.S. market. SCM resumed production of menthol in February 1975. The decision to reenter the market was based, in part, * * * and on management's feeling that synthetic menthol had an important, stabilizing role to play in what had traditionally been a commodity market. 1/ SCM has indicated that it supports Haarmann & Reimer's petition in this case. 2/

* * * * *

The process for synthesizing l-menthol is batch continuous, and the production rate can be adjusted either by slowing down the flow rate through the system or shutting down the equipment for a period of time. The equipment is also flexible to a degree. Some of it is used to produce chemicals other than menthol.

SCM's employees are unionized and recently went on strike. Though the plant was run by salaried employees for the 5-month period from April through August 1980, * * *.

* * * the largest U.S. producer, Haarmann & Reimer, has a plant worth \$15 million dedicated exclusively to the production of menthol. The plant's technology is based on the parent company's menthol plant in Holzminden, West Germany. The plant is designed to synthesize l-menthol from m-cresol. * * *. The nature of the equipment and the processes involved dictate that the plant be run at maximum capacity in order to keep unit costs at a reasonable level. Racemic menthol is produced during one stage of the process. Some of this material is then siphoned off and drummed for sale. Liquid menthol is also obtained as a by product of the process. * * *.

* * * * *

Haarmann & Reimer began producing menthol late in 1977; however, it was not until January-March 1978 that the plant became fully operational. As shown in table 2, since its entry the company has * * *.

1/ Report on Outside Contacts, Feb. 2, 1981.

2/ SCM's letter of May 13, 1981, to Mr. Mason.

Table 2.--Menthol: Percentage distribution of U.S. production and commercial shipments, by firms, 1977-80

Firm	1977	1978	1979	1980
Production:				
Haarmann & Reimer-----	***	***	***	***
SCM-----	***	***	***	***
Givaudan-----	***	***	***	***
Total-----	100.0	100.0	100.0	100.0
Shipments:				
Quantity:				
Haarmann & Reimer-----	***	***	***	***
SCM-----	***	***	***	***
Givaudan-----	***	***	***	***
Total-----	100.0	100.0	100.0	100.0
Value:				
Haarmann & Reimer-----	***	***	***	***
SCM-----	***	***	***	***
Givaudan-----	***	***	***	***
Total-----	100.0	100.0	100.0	100.0

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Note.--Because of rounding, figures may not add to totals shown.

The production of l-menthol has accounted for over * * * percent of Haarmann & Reimer's total menthol production, and, as shown in table 3, the company's importance as a producer of l-menthol has * * *.

* * * * *

Table 3.--l-Menthol: U.S. production and commercial shipments, by firms, 1977-80

Item and firm	1977	1978	1979	1980
Production:				
Haarmann & Reimer				
1,000 pounds--	***	***	***	***
SCM-----do-----	***	***	***	***
Total-----do-----	***	***	***	***
Shipments: <u>l</u> /				
Quantity:				
Haarmann & Reimer				
1,000 pounds--	***	***	***	***
SCM-----do-----	***	***	***	***
Total-----do-----	***	***	***	***
Value:				
Haarmann & Reimer				
1,000 dollars--	***	***	***	***
SCM-----do-----	***	***	***	***
Total-----do-----	***	***	***	***
Production:				
Haarmann & Reimer---percent--	***	***	***	***
SCM-----do-----	***	***	***	***
Total-----do-----	100.0	100.0	100.0	100.0
Shipments: <u>l</u> /				
Quantity:				
Haarmann & Reimer---percent--	***	***	***	***
SCM-----do-----	***	***	***	***
Total-----do-----	100.0	100.0	100.0	100.0
Value:				
Haarmann & Reimer---percent--	***	***	***	***
SCM-----do-----	***	***	***	***
Total-----do-----	100.0	100.0	100.0	100.0

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

U.S. importers

U.S. importers of menthol are primarily chemical dealers in the flavor and fragrance industry. Many of them have been buying and selling menthol for decades. The vast majority of the Chinese product is imported by five independent menthol dealers--Irving R. Boody & Co., Inc.; J. Manheimer, Inc.; Polarome Manufacturing Co., Inc.; MacAndrews & Forbes Co.; and George Uhe Co., Inc. Two smaller companies have also imported smaller amounts of menthol from China during the period under consideration--Biddle Sawyer Corp., and Busch Boake Allen, Inc. These companies, along with Takasago, U.S.A., the exclusive dealer for synthetic menthol from Japan, are the major menthol dealers in the United States. All importers are located either in New Jersey or New York. Their imports of menthol have accounted for an average of * * * percent of the imports of menthol from China, 60 percent of the imports from Brazil, and * * * percent of all menthol imports during the period under consideration (table 4).

All but one of these dealers imported menthol from several sources during the period under consideration. Total imports by all reporting importers varied greatly, dropping from a high of 2.2 million pounds in 1978 to 1.4 million pounds in 1979, or by 36 percent, and then increasing to 1.7 million pounds, or by 20 percent, in 1980. However, imports of menthol from China increased substantially both in terms of quantity and as a percentage of total imports of menthol by these firms. Imports from China totaled only * * * pounds and accounted for only * * * percent of all menthol imported by these selected dealers in 1977. However, imports from China increased steadily to * * * pounds, accounting for * * * percent of all imports in 1980. In contrast, menthol imported from both Brazil and all other sources declined markedly in terms of quantity and as a share of total imports by these firms.

Foreign Producers

Natural menthol is produced in a number of countries, but the major exporting countries are Brazil, Paraguay, and China. From the 1940's until 1979, Brazil was the world's largest producer of natural menthol. However, Brazil's production has been declining steadily in recent years because of the diminishing amount of available land suitable for the production of peppermint. In Brazil, peppermint is often the first crop planted after the rain forest is cleared. However, peppermint is a very demanding plant, and after several years, the soil becomes exhausted and can no longer support it. Thus, the peppermint farmers must continually clear new land to support their crops. For this reason, many of the Brazilian peppermint farmers have moved into neighboring Paraguay. 1/ Paraguay now supplies a significant portion of the Brazilian raw material for natural menthol production and the larger of the two Paraguayan producers of menthol is owned by a Brazilian producer. 2/

The Chinese have cultivated peppermint for centuries. However, only in recent years has some importance been placed on the production of peppermint

1/ Report on Outside Contacts, June 19, 1980.

2/ Transcript of the hearing, p. 156.

Table 4.--Menthol: Imports of selected firms, by principal sources, 1977-80

Source and firm	1977	1978	1979	1980	1977	1978	1979	1980	1977	1978	1979	1980
	Quantity (1,000 pounds)				Percent of total imports							
China:												
Irving R. Boody	***	***	***	***	***	***	***	***	***	***	***	***
MacAndrews & Forbes	***	***	***	***	***	***	***	***	***	***	***	***
J. Manheimer	***	***	***	***	***	***	***	***	***	***	***	***
Polarome	***	***	***	***	***	***	***	***	***	***	***	***
George Uhe	***	***	***	***	***	***	***	***	***	***	***	***
Other	***	***	***	***	***	***	***	***	***	***	***	***
Total	***	***	***	***	***	***	***	***	***	***	***	***
Brazil:												
Irving R. Boody	***	***	***	***	***	***	***	***	***	***	***	***
MacAndrews & Forbes	***	***	***	***	***	***	***	***	***	***	***	***
J. Manheimer	***	***	***	***	***	***	***	***	***	***	***	***
Polarome	***	***	***	***	***	***	***	***	***	***	***	***
George Uhe	***	***	***	***	***	***	***	***	***	***	***	***
Other	***	***	***	***	***	***	***	***	***	***	***	***
Total	***	***	***	***	***	***	***	***	***	***	***	***
All other sources:												
Irving R. Boody	***	***	***	***	***	***	***	***	***	***	***	***
MacAndrews & Forbes	***	***	***	***	***	***	***	***	***	***	***	***
J. Manheimer	***	***	***	***	***	***	***	***	***	***	***	***
Polarome	***	***	***	***	***	***	***	***	***	***	***	***
George Uhe	***	***	***	***	***	***	***	***	***	***	***	***
Other	***	***	***	***	***	***	***	***	***	***	***	***
Total	***	***	***	***	***	***	***	***	***	***	***	***
All sources:												
Irving R. Boody	***	***	***	***	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
MacAndrews & Forbes	***	***	***	***	-	-	-	-	100.0	100.0	100.0	100.0
J. Manheimer	***	***	***	***	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Polarome	***	***	***	***	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
George Uhe	***	***	***	***	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Other	***	***	***	***	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Total	***	***	***	***	***	***	***	***	***	***	***	***
All sources:												
Irving R. Boody	***	***	***	***	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
MacAndrews & Forbes	***	***	***	***	-	-	-	-	100.0	100.0	100.0	100.0
J. Manheimer	***	***	***	***	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Polarome	***	***	***	***	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
George Uhe	***	***	***	***	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Other	***	***	***	***	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Grand total	1,409	2,184	1,398	1,681	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Note:--Because of rounding, figures may not add to totals shown.

as a source of menthol. 1/ Menthol is well suited for generating revenue (especially Western currency), because it requires no large investment in research, equipment, or market development.

* * *. The study states that "the acreage of mentha peperita (peppermint) under cultivation in China has been greatly expanded," 2/ and that the production of menthol has increased dramatically, from 500 metric tons (1.1 million pounds) in 1978 to 2,000 metric tons (4.4 million pounds) in 1980. 3/ However, the information provided by CNEC, the state trading organization handling the export of Chinese menthol, presents a much different picture. 4/ Some of the data is tabulated below.

<u>Production</u> <u>of menthol in China</u> <u>(1,000 pounds)</u>	<u>Total export of</u> <u>menthol from China</u> <u>(1,000 pounds)</u>	<u>U.S. imports for consumption</u> <u>menthol from China</u> <u>(1,000 pounds)</u>
1978----- * * *	* * *	467
1979----- * * *	* * *	645
1980----- * * *	* * *	1,028

	<u>Consumption</u> <u>in China</u> <u>(1,000 pounds)</u>	<u>Apparent inventories</u> <u>in China</u> <u>(1,000 pounds)</u>
1978-----	1,980	* * *
1979-----	2,090	* * *
1980-----	2,200	* * *

These data are limited to the last 3 years. However, they show that production of menthol in China * * *. This decline in production is reportedly due to flooding which damaged the peppermint crop. 5/ The data also show that exports of menthol have * * *. U.S. imports for consumption accounted for * * * percent of Chinese menthol production in 1979 and * * * percent in 1980. This increase in exports to the United States followed the granting of MFN status to China on February 1, 1980. The remaining exports of menthol from China, accounting for between * * * percent of total production in China, have been shipped to other Asian markets and to Europe, * * *. According to the CNEC, the United States continues to be China's fourth largest market for menthol following home-market consumption, Europe, and Asia.

1/ * * *.

2/ Ibid.

3/ Ibid., p. VII-2.

4/ Letter from Shearman & Sterling, March 18, 1981.

5/ Respondent's post-hearing reply memorandum, p. 8.

Apparent inventories of menthol in China * * *. The quantity of these inventories would be equivalent to * * * percent of China's home-market consumption plus exports.

No information on China's actual capacity to produce menthol was provided. However, in contrast to the methods used in Brazil, in China, peppermint is grown in farming operations by peasants using "well cultivated" techniques, rudimentary equipment, and some fertilizers. These farming operations are owned by certain people's communes located in Jiangsu province and to a limited extent in Anwei province. These communes apparently sell their peppermint to one of the seven or more menthol production facilities in China. These are owned either by unrelated people's communes, subunits of such communes, or the town of Nantung. CNEC purchases menthol from two of these production facilities as do Chinese producers of medicine, toiletries, cigarettes, and other domestic products. 1/ CNEC is a national corporation organized under the laws of China. It is one of 10 specialized trading corporations established by the Ministry of Foreign Trade of China. CNEC uses revenues from the sale of menthol and other products to cover its domestic and foreign operating costs. Some revenue is also retained for working capital. The remaining revenue is remitted to the Chinese government. 2/

The only foreign producers of synthetic menthol that export significant amounts of the product are Takasago Perfumery, Ltd., in Japan and Haarmann & Reimer, GmbH in West Germany (Haarmann & Reimer, GmbH is considered the parent company of the petitioner, Haarmann & Reimer Corp., and is also owned by Bayer AG.).

The Question of Injury

U.S. production, capacity, and capacity utilization

U.S. production of l-menthol has * * * during the period under consideration (table 5). Production of l-menthol * * * from 1977 to 1978 as the Haarmann & Reimer plant began operation. Domestic production then * * *.

U.S. production of all menthol has followed a similar pattern. Domestic production * * *.

1/ Transcript of hearing pp. 130-133 and 167, and respondent's pre-hearing memorandum, p. 28. and app. F, p. 3

2/ Letter of Shearman & Sterling, May 14, 1981.

Table 5.--Menthol: U.S. production, capacity, and capacity utilization, by firms, 1977-80

Item and firm	1977	1978	1979	1980
<u>1</u> -Menthol				
Production:				
Haarmann & Reimer				
1,000 pounds--	***	***	***	***
SCM-----do-----	***	***	***	***
Total-----do-----	***	***	***	***
Capacity: <u>1</u> /				
Haarmann & Reimer				
1,000 pounds--	***	***	***	***
SCM-----do-----	***	***	***	***
Total-----do-----	***	***	***	***
Capacity utilization:				
Haarmann & Reimer--percent---	***	***	***	***
SCM-----do-----	***	***	***	***
Average-----do-----	***	***	***	***
All menthol				
Production:				
Haarmann & Reimer				
1,000 pounds--	***	***	***	***
SCM-----do-----	***	***	***	***
Givaudan-----do-----	***	***	***	***
Total-----do-----	***	***	***	***
Capacity: <u>1</u> /				
Haarmann & Reimer				
1,000 pounds--	***	***	***	***
SCM-----do-----	***	***	***	***
Givaudan-----do-----	***	***	***	***
Total-----do-----	***	***	***	***
Capacity utilization:				
Haarmann & Reimer--percent---	***	***	***	***
SCM-----do-----	***	***	***	***
Givaudan-----do-----	***	***	***	***
Average-----do-----	***	***	***	***

1/ Capacity is defined as the normal sustained production that can be achieved on an annual basis, making allowance for anticipated maintenance and downtime. Capacity is based on 24 hours-a-day operation, 7 days a week, and on the product mix in 1979.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

U.S. capacity to produce l-menthol has * * *. Haarmann and Reimer's increasing capacity represents the normal "maturing" of a chemical plant (i.e., the capacity of the plant increases as problems in the system are resolved and optimal operating conditions are achieved). SCM's capacity has * * *.

Domestic capacity to produce all types of menthol followed a similar pattern and for the same reasons. U.S. capacity to produce all types of menthol * * *.

The * * * capacity of the U.S. industry has resulted in a * * * capacity utilization for U.S. menthol producers. The utilization of U.S. capacity for the production of l-menthol * * * percent in 1978 to * * * percent in 1980. Similarly, U.S. producers' capacity utilization for all menthol * * * percent in 1978 to * * * percent 1980.

U.S. producers' commercial shipments

U.S. producers' commercial shipments of l-menthol (including exports) * * * during the period under consideration (table 3). U.S. producers' shipments * * *.

U.S. producers' commercial shipments of all menthol delineate a similar pattern, although the * * * have not been as great (table 1). U.S. producers' shipments of all menthol * * *. Similarly, the value of U.S. producers' commercial shipments of all menthol * * *.

As shown in table 6, Haarmann & Reimer's exports of menthol have * * *.

Table 6.--Menthol: Haarmann & Reimer's export sales of l-menthol and all menthol, 1977-80

Item	1977	1978	1979	1980
<u>l</u> -Menthol				
Quantity:				
Units-----1,000 pounds--:	***	***	***	***
Ratio of H & R's export ship- ments to its commercial shipments-----percent--:	***	***	***	***
Ratio of H & R's export ship- ments to U.S. producers' commercial shipments percent--:	***	***	***	***
Value:				
Units-----1,000 dollars--:	***	***	***	***
Ratio of H & R's export ship- ments to its commercial shipments-----percent--:	***	***	***	***
Ratio of H & R's export ship- ments to U.S. producers' commercial shipments percent--:	***	***	***	***
All menthol				
Quantity:				
Units-----1,000 pounds--:	***	***	***	***
Ratio of H & R's export ship- ments to its commercial shipments-----percent--:	***	***	***	***
Ratio of H & R's export ship- ments to U.S. producers' commercial shipments percent--:	***	***	***	***
Value:				
Units-----1,000 dollars--:	***	***	***	***
Ratio of H & R's export ship- ments to its commercial shipments-----percent--:	***	***	***	***
Ratio of H & R's export ship- ments to U.S. producers' commercial shipments percent--:	***	***	***	***

Source: Compiled from data collected in response to questionnaires of the U.S. International Trade Commission.

Virtually all of Haarmann & Reimer's export sales are made to affiliated firms. 1/ The unit value of Haarmann & Reimer's exports of l-menthol averaged * * * per pound from 1978 to 1980, compared with an average unit value of * * * per pound for its domestic shipments during the same period.

* * *

U.S. importers of menthol from China have alleged that Haarmann & Reimer's plant was originally intended to be used in major part for supplying menthol to foreign markets. 3/ A market study on the U.S. market for l-menthol was written for Haarmann & Reimer by Arthur D. Little, Inc., in 1974 to assist the firm in making its decision as to whether or not it should construct a plant for the production of l-menthol. * * *.

Inventories

U.S. producers' end-of-period inventories of l-menthol * * * from 1977 to 1979, but then * * * in 1980 (table 7). U.S. producers' end-of-period inventories of l-menthol * * *.

1/ Transcript of the conference, p. 55.

3/ Transcript of the conference, p. 68.

Table 7.--Menthol: U.S. producers' inventories, by types and firms, as of Dec. 31, 1977-80

Item and firm	As of Dec. 31--			
	1977	1978	1979	1980
Inventories:				
Of <u>l</u> -menthol:				
Haarmann & Reimer 1,000				
pounds--	***	***	***	***
SCM-----do-----	***	***	***	***
Total-----do-----	***	***	***	***
Of all menthol:				
Haarmann & Reimer----do----	***	***	***	***
SCM-----do-----	***	***	***	***
Givaudan-----do-----	***	***	***	***
Total-----do-----	***	***	***	***
Ratio of inventories to sales:				
Of <u>l</u> -menthol:				
Haarmann & Reimer--percent--	***	***	***	***
SCM-----do-----	***	***	***	***
Total-----do-----	***	***	***	***
Of all menthol:				
Haarmann & Reimer----do----	***	***	***	***
SCM-----do-----	***	***	***	***
Givaudan-----do-----	***	***	***	***
Total-----do-----	***	***	***	***

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

U.S. producers' end-of-period inventories of all types of menthol follow a slightly different pattern. U.S. producers' inventories of all menthol * * *. As a ratio to sales, U.S. producers' end-of-period inventories of all menthol * * *.

* * * * *

The difference between inventories of all menthol and l-menthol is primarily the result of * * *.

U.S. importers' inventory practices vary greatly. Some importers maintain little or no inventories of menthol, and others maintain substantial inventories (table 8). Nonetheless, definite trends are discernible in the aggregate figures. U.S. importers' inventories of menthol from China have * * * since 1978, increasing from * * * pounds as of December 31, 1978, to * * * pounds as of December 31, 1980. As a share of U.S. importers' sales of menthol from China, inventories increased annually from * * * percent in 1978 to * * * percent in 1980.

Table 8.--1-Menthhol: Selected U.S. importers' inventories, by sources and by firms, as of Dec. 31, 1977-80

Source and firm	As of Dec. 31--					Ratio (percent) of inventories to sales of imported material			
	1977	1978	1979	1980	1977		1978	1979	1980
	Quantity (1,000 pounds)								
China:									
Irving R. Boody	***	***	***	***	***	***	***	***	***
MacAndrews & Forbes	***	***	***	***	***	***	***	***	***
J. Manheimer	***	***	***	***	***	***	***	***	***
Polarome	***	***	***	***	***	***	***	***	***
George Uhe	***	***	***	***	***	***	***	***	***
Other	***	***	***	***	***	***	***	***	***
Total	***	***	***	***	***	***	***	***	***
Brazil:									
Irving R. Boody	***	***	***	***	***	***	***	***	***
MacAndrews & Forbes	***	***	***	***	***	***	***	***	***
J. Manheimer	***	***	***	***	***	***	***	***	***
Polarome	***	***	***	***	***	***	***	***	***
George Uhe	***	***	***	***	***	***	***	***	***
Other	***	***	***	***	***	***	***	***	***
Total	***	***	***	***	***	***	***	***	***
All other sources:									
Irving R. Boody	***	***	***	***	***	***	***	***	***
MacAndrews & Forbes	***	***	***	***	***	***	***	***	***
J. Manheimer	***	***	***	***	***	***	***	***	***
Polarome	***	***	***	***	***	***	***	***	***
George Uhe	***	***	***	***	***	***	***	***	***
Other	***	***	***	***	***	***	***	***	***
Total	***	***	***	***	***	***	***	***	***
All sources:									
Irving R. Boody	***	***	***	***	***	***	***	***	***
MacAndrews & Forbes	***	***	***	***	***	***	***	***	***
J. Manheimer	***	***	***	***	***	***	***	***	***
Polarome	***	***	***	***	***	***	***	***	***
George Uhe	***	***	***	***	***	***	***	***	***
Other	***	***	***	***	***	***	***	***	***
Total	***	***	***	***	***	***	***	***	***

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

These inventory levels are markedly higher than those for menthol from other sources. U.S. importers' inventories of menthol from Brazil declined significantly from * * * pounds as of December 31, 1977, representing * * * percent of U.S. importers' sales of Brazilian menthol in that year to * * * pounds as of December 31, 1979, representing only * * * percent of their annual sales. However, inventories of menthol from Brazil increased sharply to * * * pounds as of December 31, 1980, representing nearly * * * percent of sales made during the year. In contrast, U.S. importers' inventories of menthol from all other sources increased from * * * pounds as of December 31, 1977, representing * * * percent of the sales of these sources, to * * * pounds as of December 31, 1979, representing * * * percent of sales made that year and then fell to * * * pounds as of December 31, 1980, representing only * * * percent of U.S. importers' annual sales from these sources.

The collective result of these inventory changes has been an increase in U.S. importers' overall inventories which is primarily due to the increasing inventories of the Chinese product. As a share of U.S. importers' sales of menthol, end-of-period inventories of all menthol increased steadily from a low of * * * percent in 1977 to a high of * * * percent in 1980.

Some importers maintain inventories of menthol in bonded warehouses, liquidating the material only as it is delivered. Thus, the figures in table 8, which show only end-of-period inventories of menthol which has already cleared customs, do not reveal the full extent of menthol inventories. The Department of Commerce's figures on general imports include material which is placed in bonded warehouses in the United States. Comparisons of the yearend figures on general imports of menthol with those on imports for consumption reveal only negligible differences for 1977 and for imports from all countries except China and Brazil for 1978-80. The residual quantity of imports from China which may remain in bonded warehouses (i.e., general imports less imports for consumption), the cumulative quantity of imports which may be in bonded warehouses, as well as the ratio of this cumulative quantity to imports for consumption are given in the following tabulation:

<u>Year</u>	<u>Residual imports (1,000 pounds)</u>	<u>Cumulative quantity (1,000 pounds)</u>	<u>Ratio of cumulative quantity to imports for consumption (percent)</u>
1978-----	56	56	12.0
1979-----	653	709	109.2
1980-----	250	959	93.3
Jan.-March 1981---	80	1,039	<u>1/</u> 66.8

1/ Based on annualized imports.

Similar figures for menthol imported from Brazil are shown in the following tabulation:

<u>Year</u>	<u>Residual imports</u> (1,000 pounds)	<u>Cumulative</u> <u>quantity</u> (1,000 pounds)	<u>Ratio of cumulative</u> <u>quantity to imports for</u> <u>consumption</u> (percent)
1978-----	40	40	2.7
1979-----	106	146	14.3
1980-----	163	309	32.8
Jan.-March 1981---	-40	269	<u>1/</u> 17.3

1/ Based on annualized imports.

Although these figures reveal that significant inventories of menthol from China and Brazil are kept in bonded warehouses pending sale in the United States or export to a third market, these cumulative figures ignore the fact that a significant quantity of the menthol shipped to the United States is transshipped to Canada, Europe, or a variety of other countries by menthol dealers. A U.S. importer stated that all Canadian imports of natural menthol are transshipped from U.S. bonded warehouses. 1/ Canadian consumption of menthol, however, amounts to only about 5 percent of U.S. consumption, and Canadian imports of menthol from China have totaled no more than 70,000 pounds over the last 3 years. 2/ Nonetheless, transshipments from U.S. bonded warehouses of menthol from China may account for as much as 400,000 pounds of material over the last 4 years. 3/ Counsel for CNEC alleges that a second factor which mitigates the threatening nature of the quantity of material which may be held in bonded warehouses is the fact that a substantial portion of the material is not available for sale. 4/ A significant portion of the menthol held in bonded warehouses is held by end users who may store it there for years before importing the menthol for use. Another portion of the material is held by dealers who have purchased it for future delivery against committed fixed-price contracts. 5/ The cumulative quantity of menthol from China which may be held in bonded warehouses appears to have increased steadily to very high levels over the period under consideration. Imports of menthol from Brazil which may be held in bonded warehouses also increased from a relatively small amount as of December 31, 1977, representing only 3 percent of imports for consumption in that year to 309,000 pounds as of December 31, 1980, representing 33 percent of annual imports for consumption in that year. The cumulative quantity of imports which may remain in bonded warehouses declined slightly in January-March 1981. The resulting total of possible inventories of menthol are given for 1978-80 in the following tabulation (in thousands of pounds):

1/ Affidavit of Irving R. Boody, Jr., p. 12.

2/ Imports by Commodities, Statistics Canada, December 1978, 1979, and 1980.

3/ Affidavit of Irving R. Boody, Jr., p. 12.

4/ Respondent's post-hearing reply memorandum, p. A-2.

5/ Affidavit of Irving R. Boody, Jr., p. 11.

Item	1978	1979	1980
China:			
U.S. importers' inventories----	***	***	***
Cumulative quantity held in bonded warehouses-----	56	709	959
Total-----	***	***	***
Brazil:			
U.S. importers' inventories----	***	***	***
Cumulative quantity held in bonded warehouses-----	40	146	309
Total-----	***	***	***
All sources:			
U.S. importers' inventories----	***	***	***
Cumulative quantity held in bonded warehouses-----	96	855	1,268
Total-----	***	***	***

Apparent U.S. consumption

Although industry sources have stated that demand for l-menthol has been fairly stable, l/ apparent U.S. consumption, including captive consumption of l-menthol, has been volatile (table 9). Apparent consumption of l-menthol increased from * * * million pounds in 1977 to * * * million pounds in 1978, or by * * * percent, but then declined to * * * million pounds, or by * * * percent in 1979. Apparent U.S. consumption increased again, by * * * percent in 1980 to * * * million pounds. This amount is * * * percent higher than apparent consumption in 1977.

Table 9.--l-Menthol: U.S. production, imports for consumption, exports, net change in end-of-period inventories, and apparent consumption, 1977-80

Year	(In thousands of pounds)					
	Production	Imports	Exports	Net increase in: end-of-period inventories	Apparent consumption	
1977	***	***	***	***	***	***
1978	***	***	***	***	***	***
1979	***	***	***	***	***	***
1980	***	***	***	***	***	***

Source: U.S. production, exports, and end-of-period inventories, compiled from data submitted in response to questionnaires of the U.S. International Trade Commission; imports for consumption, compiled from official statistics of the U.S. Department of Commerce.

Although no precise data are available, the apparent fluctuation in U.S. consumption may be explained by U.S. purchasers' inventory practices. Industry sources have indicated that it is a fairly common practice among end users to maintain large inventories of l-menthol.^{1/} This practice is understandable in light of the commodity nature of the menthol market and the historic dependence of the market on natural menthol from Brazil. Menthol is also easy to store. It requires no special handling or facilities and does not represent a safety hazard. Deterioration of the product is also minimal even after several years in storage. Thus, the surge in apparent U.S. consumption in 1978 can be explained, in part, by end users building inventories while supplies were plentiful.

Apparent U.S. consumption of all menthol followed a similar pattern (table 10). Apparent consumption increased from * * * million pounds in 1977 to * * * million pounds in 1978, or by * * * percent and then declined to * * * million pounds, or by 12 percent, in 1979. Apparent consumption of all menthol increased by * * * percent from 1979 to 1980. The decline in 1980 in apparent consumption of all menthol other than l-menthol may be the indirect result of the declining price of l-menthol. Some users of racemic and liquid menthol may have switched to l-menthol as the price became more favorable.

^{1/} Report on Outside Contacts, call to * * * March 10, 1981.

Table 10.--Menthol: U.S. production, imports for consumption, exports, net change in end-of-period inventories, and apparent consumption, 1977-80

Year	(In thousands of pounds)					
	Production	Imports	Exports	Net increase in: end-of-period inventories	Apparent consumption	
1977	***	***	***	***	***	***
1978	***	***	***	***	***	***
1979	***	***	***	***	***	***
1980	***	***	***	***	***	***

Source: U.S. production, exports, and end-of-period inventories, compiled from data submitted in response to questionnaires of the U.S. International Trade Commission; imports for consumption, compiled from official statistics of the U.S. Department of Commerce.

U.S. employment and wages

Data on employment and wages in the U.S. menthol industry are available only for SCM Corp. and Haarmann & Reimer. * * *.

As shown in table 11, the average number of all employees in U.S. establishments producing menthol * * *.

Table 11.--Average number of employees in U.S. establishments producing menthol, total and all production and related workers producing menthol, and wages paid to and hours worked by all production and related workers producing menthol, by firms, 1977-80

Item and firm	1977	1978	1979	1980
Average number of all employees:				
Haarmann & Reimer-----	***	***	***	***
SCM-----	***	***	***	***
Total-----	***	***	***	***
All production and related workers producing menthol:				
Haarmann & Reimer-----	***	***	***	***
SCM-----	***	***	***	***
Total-----	***	***	***	***
Wages paid to all production and related workers:				
Haarmann & Reimer				
1,000 dollars--	***	***	***	***
SCM-----do-----	***	***	***	***
Total-----do-----	***	***	***	***
Hours worked by all production and related workers:				
Haarmann & Reimer				
1,000 hours--	***	***	***	***
SCM-----do-----	***	***	***	***
Total-----do-----	***	***	***	***

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

A different trend is presented by the average number of production and related workers producing menthol. That number * * *. The chemical industry as a whole is typically capital intensive. Much of the equipment is automated, and the chemical processes occur naturally under a given set of conditions. Thus, there is little actual work for a production worker to do outside of loading, unloading, and maintaining the equipment.

Wages paid to all production and related workers producing menthol have * * *.

When requested by the Commission's staff, both SCM and Haarmann & Reimer produced some data on employment for l-menthol alone. SCM allocated the number of production and related workers producing l-menthol as well as the wages paid to and the hours worked by those workers on the basis of * * *. The data provided by SCM are tabulated below:

	<u>1977</u>	<u>1978</u>	<u>1979</u>	<u>1980</u>
Production and related workers-----	***	***	***	***
Wages paid-----	***	***	***	***
Hours worked-----	***	***	***	***

The data follow the same trends as those established by the figures provided on the overall operations on menthol. Haarmann & Reimer did not allocate the number of production and related workers since all such workers were employed in the operation of the entire plant. However, the firm provided the Commission with the hours worked by production and related workers producing l-menthol and the wages paid to such workers. These data were broken out on the basis of actual cost assignments as explained on page 11 of The Prehearing Statement of Haarmann & Reimer.

The data are tabulated below:

	<u>1978</u>	<u>1979</u>	<u>1980</u>
Hours worked-----	***	***	***
Wages paid-----	***	***	***

Again, the trends established by these figures closely follow those established by the data supplied for all menthol.

Financial performance of U.S. producers

Profit-and-loss data on U.S. menthol operations were available only for SCM and Haarmann & Reimer. * * *.

As shown in table 12, U.S. producers' net sales of menthol * * *.

Table 12.--Profit-and-loss experience of selected U.S. producers of menthol on their total menthol operations and on their 1-menthol operations, by firms, 1977-80

Item, year, and firm	Net sales		Cost of goods sold		Gross profit or (loss)		General, selling, and administrative expenses		Net operating profit or (loss)		Ratio of net operating profit or (loss) to net sales		Ratio of cost of goods sold to net sales	
	1,000 dollars	1,000 dollars	1,000 dollars	1,000 dollars	1,000 dollars	1,000 dollars	1,000 dollars	1,000 dollars	1,000 dollars	Percent	Percent	Percent	Percent	
Total menthol:														
1977:														
Haarmann & Reimer	***	***	***	***	***	***	***	***	***	***	***	***	***	***
SCM	***	***	***	***	***	***	***	***	***	***	***	***	***	***
Total	***	***	***	***	***	***	***	***	***	***	***	***	***	***
1978:														
Haarmann & Reimer	***	***	***	***	***	***	***	***	***	***	***	***	***	***
SCM	***	***	***	***	***	***	***	***	***	***	***	***	***	***
Total	***	***	***	***	***	***	***	***	***	***	***	***	***	***
1979:														
Haarmann & Reimer	***	***	***	***	***	***	***	***	***	***	***	***	***	***
SCM	***	***	***	***	***	***	***	***	***	***	***	***	***	***
Total	***	***	***	***	***	***	***	***	***	***	***	***	***	***
1980:														
Haarmann & Reimer	***	***	***	***	***	***	***	***	***	***	***	***	***	***
SCM	***	***	***	***	***	***	***	***	***	***	***	***	***	***
Total	***	***	***	***	***	***	***	***	***	***	***	***	***	***
1-Menthol:														
1977:														
Haarmann & Reimer	***	***	***	***	***	***	***	***	***	***	***	***	***	***
SCM	***	***	***	***	***	***	***	***	***	***	***	***	***	***
Total	***	***	***	***	***	***	***	***	***	***	***	***	***	***
1978:														
Haarmann & Reimer	***	***	***	***	***	***	***	***	***	***	***	***	***	***
SCM	***	***	***	***	***	***	***	***	***	***	***	***	***	***
Total	***	***	***	***	***	***	***	***	***	***	***	***	***	***
1979:														
Haarmann & Reimer	***	***	***	***	***	***	***	***	***	***	***	***	***	***
SCM	***	***	***	***	***	***	***	***	***	***	***	***	***	***
Total	***	***	***	***	***	***	***	***	***	***	***	***	***	***
1980:														
Haarmann & Reimer	***	***	***	***	***	***	***	***	***	***	***	***	***	***
SCM	***	***	***	***	***	***	***	***	***	***	***	***	***	***
Total	***	***	***	***	***	***	***	***	***	***	***	***	***	***

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

The cost of goods sold of U.S. producers * * *.

The gross profit for these two menthol producers * * *.

General, selling, and administrative expenses * * *.

The net operating profit of these two producers on their menthol operations * * *.

The ratio of net operating profit to net sales of menthol * * *.

In evaluating these profit-and-loss data, it should be noted that Haarmann & Reimer is but one part of a large multinational chemical corporation and that this firm's profitability is to a large extent affected by the transfer prices applicable to its purchases of feedstocks from and its sales of menthol to its corporate affiliates in other countries. * * *.

<u>Year</u>	<u>U.S. price for m-cresol (per pound)</u>	<u>Average unit value of menthol isomers (per pound)</u>
1978-----	***	***
1979-----	***	***
1980-----	***	***

* * * * *

* * * * *

Both Haarmann & Reimer's and SCM's plant or equipment were constructed and are maintained to produce l-menthol. The other types of menthol--liquid menthol and racemic menthol--as well as * * * are obtained as byproducts in the production process. Normally, any revenue obtained from the sale of by-products generated in the production of a given item is included in the profitability of a firm's operations on that item. However, both domestic producers submitted data on the profitability of their operations on l-menthol alone. SCM allocated its costs to l-menthol on the basis of a standard cost system * * *. Haarmann & Reimer assigned costs to racemic menthol on the basis of constructed cost centers as explained on page 9 of the firm's prehearing statement of May 1, 1981. * * *. However, because the processes by which the other types of menthol are produced are inherently the same as those that produce l-menthol, some of the allocations must be somewhat arbitrary.

Nonetheless, there are significant differences in U.S. producers' profitability on l-menthol as opposed to their total menthol operations. * * *.

Profit-and-loss data were submitted by Haarmann & Reimer on its domestic sales of l-menthol. These data are compared with data submitted by Haarmann & Reimer on its total l-menthol operations in the following tabulation:

Item	1978	1979	1980
Domestic sales of 1-menthol:			
Net sales-----per pound--:	***	***	***
Cost of goods sold-----do--:	***	***	***
Gross profit-----do--:	***	***	***
General, selling, and administrative expenses-----per pound--:	***	***	***
Net operating profit-----do--:	***	***	***
Ratio of net operating profit to net sales-----percent--:	***	***	***
Total 1-menthol:			
Net sales-----per pound--:	***	***	***
Cost of goods sold-----do--:	***	***	***
Gross profit or (loss)-----do--:	***	***	***
General, selling, and administrative expenses-----per pound--:	***	***	***
Net operating profit or (loss)-----do--:	***	***	***
Ratio of net operating profit or (loss) to net sales-----percent--:	***	***	***

The figures would indicate that Haarman & Reimer's profitability on its domestic sales of 1-menthol has been * * *.

For the purposes of this report, cash flow from operations is defined as net operating profit plus depreciation and amortization. Haarmann & Reimer's plant started its menthol operations in 1978. Hence, the cash flow from operations on menthol in 1977 represents only that of one firm, SCM (table 13). The cash flow from operations of these two firms on all menthol * * *. U.S. producers' cash flow from their operations of 1-menthol, * * * followed a similar pattern. However, the cash flow on 1-menthol * * *.

Table 13.--U.S. producers' cash flow from operations on all menthol and 1-menthol, by firms, 1977-80

(In thousands of dollars)

Item and firm	1977	1978	1979	1980
All menthol:				
Haarmann & Reimer -----:	***	***	***	***
SCM-----:	***	***	***	***
Total-----:	***	***	***	***
1-menthol:				
Haarmann & Reimer -----:	***	***	***	***
SCM-----:	***	***	***	***
Total-----:	***	***	***	***

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Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

The Question of Threat of Injury

There are various factors which may contribute to the likelihood of injury to the domestic industry. These factors include the characteristics and capacity of the foreign producer or exporter of Chinese menthol and the significant inventories of Chinese material held in importers' warehouses and in bonded warehouses in the United States.

China has a centralized government, which exercises considerable control over the composition and distribution of goods in the country. Although the production of menthol is presently subject to little direct regulation, the decision to produce and market menthol is not completely dependent on normal market considerations such as generating the maximum return on investments since the investment in land and labor (the primary investments necessary for the production of menthol) is allocated indirectly by the Government. Although no precise data on the Chinese capacity to produce menthol are available, the * * * million pounds of menthol produced in 1980 is evidence that China's production capacity is substantial. Although the ability of China to increase that capacity may be the matter of some debate, 1/ exports of menthol from China to the United States, which are controlled by a state-owned organization, CNEC, have accounted for a relatively small percent * * * of its total menthol production. Though the remainder was either consumed in the home market or exported to markets other than the United States, considerably larger quantities of menthol could be shipped to the United States in the future if CNEC were willing to divert menthol from other markets.

Inventories of menthol from China are significant. U.S. importers' inventories as of December 31, 1980, totaled * * * pounds and represented * * * percent of their sales of menthol from China in 1980. Cumulative inventories of menthol from China which may remain in bonded warehouses at the end of the year totaled an additional 959,000 pounds. Thus, inventories of menthol from China in the United States could total * * * pounds at the end of the year and could represent as much as *** percent of apparent U.S. consumption of 1-menthol in 1980.

<u>Item</u>	<u>As of Dec. 31, 1980</u> <u>(1,000 pounds)</u>
U.S. importers' inventories-----	***
Cumulative quantity in bonded warehouses-----	<u>959</u>

1/ Post-hearing submission of Haarmann & Reimer Corp., pp. 11-13 and transcript of the hearing pp. 132-133.

The Question of the Causal Relationship between LTFV
Imports from the People's Republic of China and
the Alleged Injury or Threat Thereof

U.S. imports and market penetration of LTFV imports

U.S. imports of l-menthol increased significantly in 1978, but have declined since then (table 14). Imports of l-menthol increased from * * * million pounds in 1977 to * * * million pounds in 1978, or by * * * percent. Imports then declined to * * * million pounds, or by * * * percent in 1980.

Table 14.--Menthhol: U.S. imports for consumption, by types and sources, 1977-80

Type and source	1977	1978	1979	1980	1977	1978	1979	1980	1977	1978	1979	1980
	Quantity (1,000 pounds)								Percent of total quantity			
Natural:												
China	29	467	649	1,028	***	***	***	***	***	***	***	***
Brazil	1,457	1,490	1,019	943	***	***	***	***	***	***	***	***
Japan 1/	200	351	205	281	***	***	***	***	***	***	***	***
Paraguay	226	106	73	67	***	***	***	***	***	***	***	***
All other	261	275	167	67	***	***	***	***	***	***	***	***
Total	2,173	2,689	2,113	2,386	***	***	***	***	***	***	***	***
Synthetic:												
1-Menthhol, West Germany 2/	***	***	***	***	***	***	***	***	***	***	***	***
Total 1-menthol	***	***	***	***	***	***	***	***	***	***	***	***
All other menthol	***	***	***	***	***	***	***	***	***	***	***	***
Total menthol	***	***	***	***	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
	Value 3/ (1,000 dollars)								Average unit value (per pound)			
Natural:												
China	193	2,900	3,743	5,433	\$	6.66	\$	6.21	\$	5.77	\$	5.28
Brazil	15,539	12,895	6,781	6,019	10.61	8.65	6.65	6.65	6.65	6.65	6.65	6.38
Japan	1,337	2,414	1,247	1,551	6.68	6.88	6.08	6.08	6.08	6.08	6.08	5.52
Paraguay	1,576	697	418	332	6.97	6.58	5.73	5.73	5.73	5.73	5.73	4.96
All other	1,935	1,788	1,067	381	7.41	6.50	6.39	6.39	6.39	6.39	6.39	5.69
Total	20,580	20,694	13,256	13,715	9.47	7.70	6.28	6.28	6.28	6.28	6.28	5.75
Synthetic:												
West Germany 2/	***	***	***	***	***	***	***	***	***	***	***	***
Total 1-menthol	***	***	***	***	***	***	***	***	***	***	***	***
All other menthol	***	***	***	***	***	***	***	***	***	***	***	***
Total menthol	***	***	***	***	9.27	7.45	5.95	5.95	5.95	5.95	5.95	5.74

1/ Although it is produced via chemical processes, the Japanese product is considered a natural product for the purposes of U.S. tariff treatment and hence Commerce's statistical reports. It is derived from a natural raw material rather than a benzenoid chemical.

2/ 1-Menthhol only.

3/ Customs import value.

Source: Imports of natural menthol, compiled from official statistics of the U.S. Department of Commerce; imports of synthetic menthol, compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Note.--Because of rounding, figures may not add to totals shown.

Imports of natural menthol (TSUS item 437.64) for January-March 1980 and 1981 are shown in the following tabulation.

<u>Jan.-March 1980</u>		<u>Jan.-March 1981</u>	
<u>Quantity</u>	<u>Value</u>	<u>Quantity</u>	<u>Value</u>
<u>(1,000 pounds)</u>	<u>(1,000 dollars)</u>	<u>(1,000 pounds)</u>	<u>(1,000 dollars)</u>
China-----209	1,172	389	2,042
Brazil-----237	1,488	380	2,054
All other----237	1,346	33	198
Total-----683	4,006	802	4,294

These figures show that despite the noticeable decline in imports from all countries other than China and Brazil, total imports of natural menthol increased by 17 percent in January-March 1981 relative to those of the corresponding period of 1980.

Brazil and China export only natural l-menthol. Until 1979, Brazil was the principal source of U.S. imports of menthol. However, the quantity of imports from Brazil has declined annually since 1978, and as a share of total U.S. imports, imports from Brazil have declined significantly. Imports of menthol from Brazil declined from 1.5 million pounds in 1978 to 943,000 pounds in 1980, or by 35 percent. As a share of total imports, imports of menthol from Brazil declined from * * * percent in 1977 to * * * percent in 1980. In January-March 1981, imports of menthol from Brazil increased by 60 percent over those in the corresponding period of 1980 and accounted for 47 percent of U.S. imports in natural menthol.

Since 1977, imports of Chinese menthol have increased from 29,000 pounds in 1977 to 1.0 million pounds in 1980. The largest increase in quantity occurred from 1979 to 1980, when imports of menthol from China increased by 379,000 pounds or by 58 percent. Menthol from China accounted for only * * * percent of total U.S. imports in 1977, but accounted for * * * percent of total imports in 1980. This increasing trend was continued into 1981. Imports of menthol from China increased by 86 percent in January-March 1981 over those in the corresponding period of 1980 and accounted for 48 percent of U.S. imports of natural menthol. However, counsel for CNEC has indicated that January, the month when the bulk of these imports was entered, was a complete aberration because a large quantity of material which had already been contracted for was withdrawn from bonded warehouses before the suspension of liquidation on January 14, 1981. 1/

During the period under consideration, imports of l-menthol have accounted for between 93 and 100 percent of all menthol imports. Yet, imports of all types of menthol have followed a slightly different pattern than that established by imports of l-menthol. Imports of all types of menthol increased from * * * million pounds in 1977 to * * * million pounds in 1978, or by * * * percent, but declined to * * * million pounds, or by * * * percent in 1980. Imports of racemic and liquid menthol have declined significantly since 1978. A-37

1/ Transcript of the hearing pp. 210-211.

Unlike the quantity of imports, the average unit value of U.S. imports of l-menthol has declined markedly since 1977. The average unit value declined steadily from \$9.44 per pound in 1977 to \$5.75 in 1980, or by 39 percent. The average unit value of imports from Brazil, while also declining, has been consistently higher than that for all imports of l-menthol. It has, however, been alleged by counsel for CNEC that these average unit values are artificially inflated as a result of the Brazilian Government's minimum export price system. 1/ The average unit value of imports from China has been consistently lower than the average for total imports.

Imports have traditionally been the principal source of menthol for the U.S. market. However, U.S. imports of l-menthol have declined as a ratio of apparent U.S. consumption during the period under consideration (table 15). The ratio declined annually from * * * percent in 1977 to * * * percent in 1980, or by * * * percent. Imports of menthol from China increased significantly as a share of apparent U.S. consumption of l-menthol. The ratio increased from * * * percent in 1977 to * * * percent in 1980.

1/ See respondent's prehearing memorandum, pg. 41-42.

Table 15.--l-Menthol: U.S. imports for consumption, by countries and by types, 1977-80

Sources and type	1977	1978	1979	1980
	Quantity			
China, natural----1,000 pounds--:	***	***	***	***
Brazil, natural-----do-----:	***	***	***	***
All other:				
Natural-----do-----:	***	***	***	***
Synthetic-----do-----:	***	***	***	***
Total-----do-----:	***	***	***	***
All countries:				
Natural-----do-----:	***	***	***	***
Synthetic-----do-----:	***	***	***	***
Total-----do-----:	***	***	***	***
	Ratio of imports to apparent U.S. consumption			
China, natural-----percent--:	***	***	***	***
Brazil, natural-----do-----:	***	***	***	***
All other:				
Natural-----do-----:	***	***	***	***
Synthetic-----do-----:	***	***	***	***
Total-----do-----:	***	***	***	***
All countries:				
Natural-----do-----:	***	***	***	***
Synthetic-----do-----:	***	***	***	***
Total-----do-----:	***	***	***	***

Source: Imports of natural menthol, compiled from official statistics of the U.S. Department of Commerce and adjusted to exclude exported material and end-of-period inventories. Imports of synthetic l-menthol, compiled from data submitted in response to questionnaires of the U.S. International Trade Commission and adjusted to exclude exported material and end-of-period inventories.

The information collected on consumption of l-menthol by 8 major end users of menthol reveals a different pattern. These purchasers accounted for an average of more than 75 percent of apparent U.S. consumption of l-menthol from 1977-80. Among these major end users, the percent of menthol purchases accounted for by imports declined from 84 percent in 1977 to 61 percent in 1980. This decline was especially marked in the purchases of menthol from Brazil. Brazilian menthol accounted for 61 percent of these major end users' total menthol purchases in 1977, but declined to 27 percent of total menthol purchases in 1980. In contrast, among these end users, purchases of menthol from China were nonexistent in 1977, compared with 22 percent in 1980. As a share of total menthol purchased by these end users, domestically produced menthol increased substantially, from 16 percent in 1977 to 39 percent in 1979, and maintained the same percentage of these end users' purchases in 1980. The fact that import penetration is significantly lower among these end users is possibly the result of U.S. producers concentrating their marketing and sales efforts at these firms.

The U.S. market has been less dependent on imports of all types of menthol than imports of l-menthol alone, and the ratio of imports of all types of menthol to apparent U.S. consumption of menthol also declined from 1977 to 1979 and then increased slightly in 1980 (table 16). The ratio of imports of all menthol to apparent U.S. consumption of menthol declined from * * * percent in 1977 to * * * percent in 1979, or by * * * percent, but then increased slightly in 1980. In contrast, the ratio of imports of menthol from China to U.S. consumption of all menthol increased steadily and significantly from * * * percent in 1977 to * * * percent in 1980.

Table 16.--Menthol: U.S. imports for consumption by countries and by types, 1977-80

Item	1977	1978	1979	1980
	Quantity			
China, natural-----1,000 pounds--:	***	***	***	***
Brazil, natural-----do-----:	***	***	***	***
All other:				
Natural-----do-----:	***	***	***	***
Synthetic-----do-----:	***	***	***	***
Total-----do-----:	***	***	***	***
All countries:				
Natural-----do-----:	***	***	***	***
Synthetic-----do-----:	***	***	***	***
Total-----do-----:	***	***	***	***
	Ratio of imports to apparent U.S. consumption			
China, natural-----percent--:	***	***	***	***
Brazil, natural-----do-----:	***	***	***	***
All other:				
Natural-----do-----:	***	***	***	***
Synthetic-----do-----:	***	***	***	***
Total-----do-----:	***	***	***	***
All countries:				
Natural-----do-----:	***	***	***	***
Synthetic-----do-----:	***	***	***	***
Total-----do-----:	***	***	***	***

Source: Imports of natural menthol, compiled from official statistics of the U.S. Department of Commerce and adjusted to exclude exported material and end-of-period inventories. Imports of synthetic menthol, compiled from data submitted in response to questionnaires of the U.S. International Trade Commission and adjusted to exclude exported material and end-of-period inventories.

Prices

Contract prices and noncontract prices were requested of both importers and domestic producers of 1-menthol for each quarter during 1977-80. Contract prices primarily reflect prices negotiated 3 months to 3 years prior to delivery and were requested for the largest shipment in each quarter to each importer's and domestic producer's three principal purchasers of 1-menthol. Contract prices are discussed in two ways--first by date of delivery and second by date of contract negotiation. Noncontract prices (spot market sales) were requested for each importer's and domestic producer's largest noncontract shipment in each quarter. Although only small amounts of 1-menthol are typically sold on the spot market, it has been alleged that price quotations on such sales determine the prices negotiated in forward contracts and thus, contract prices in the coming year 1/. Therefore, both price series will be discussed below.

The two domestic producers gave information regarding both contract prices and noncontract prices. Five of the six importers reported contract prices, but only three were involved with spot-market sales on which noncontract prices were reported.

In this industry, domestic transportation costs are usually borne by the purchaser regardless of the origin of 1-menthol. Thus, in discussing contract and noncontract prices, only prices, f.o.b. point of shipment, net of inland freight charges will be considered.

Contract prices.--Weighted average contract prices based on delivery dates of domestically produced 1-menthol, with one exception, rose continually from January 1977 through September 1978 (table 17). The increase over the period was 7 percent. However, the weighted average contract price of U.S. producers' 1-menthol has declined since then, falling by 17 percent from September 1978 to December 1980. Since entering the market in April-June 1978, Haarmann & Reimer has, * * *.

Table 17.--1-Menthol: Weighted average contract prices by delivery date of U.S. producers and importers to their principal end-user customers, by quarters, January 1977-December 1980

Period	U.S. producers				U.S. importers				Weighted average
	Haarmann & Reimer	SCM	Weighted average 1/	Irving R. Boody	J. Manheimer	Polarome	Biddle Sawyer	George Uhe	
1977:									
January-March	***	***	***	***	***	***	***	***	-
April-June	***	***	***	***	***	***	***	***	-
July-September	***	***	***	***	***	***	***	***	-
October-December	***	***	***	***	***	***	***	***	\$6.85
1978:									
January-March	***	***	***	***	***	***	***	***	6.99
April-June	***	***	7.03	***	***	***	***	***	6.99
July-September	***	***	7.43	***	***	***	***	***	7.22
October-December	***	***	6.68	***	***	***	***	***	7.41
1979:									
January-March	***	***	6.46	***	***	***	***	***	7.02
April-June	***	***	6.65	***	***	***	***	***	6.98
July-September	***	***	6.52	***	***	***	***	***	6.94
October-December	***	***	6.52	***	***	***	***	***	6.95
1980:									
January-March	***	***	6.34	***	***	***	***	***	5.98
April-June	***	***	6.31	***	***	***	***	***	6.13
July-September	***	***	6.14	***	***	***	***	***	5.71
October-December	***	***	6.19	***	***	***	***	***	5.78

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

The weighted average contract price for 1-menthol imported from China increased by 8 percent from October 1977 through December 1978. However, the weighted average contract price of 1-menthol imported from China declined by 22 percent over the 2-year period from December 1978 through December 1980. U.S. importers' prices have varied significantly in any given quarter, but as the number of importers has increased, the price differential narrowed to only * * *.

The weighted average contract price of U.S. importers for October-December 1978 represents the highest selling price provided between January 1977 and December 1980 for imported 1-menthol from China. The corresponding highest selling price to date for domestically produced 1-menthol was recorded in July-September 1978. The decline in price for domestically produced 1-menthol from September 1978 through December 1980 was 17 percent. Thus, prices of domestically produced 1-menthol and imported 1-menthol from China have not only tended to rise and fall together, but the changes in the two price series, in terms of percent, have been relatively close.

Two distinct periods of underselling are evident in table 18. During October-December 1977, the first period in which imports of 1-menthol from China are reported, through July-September 1978, imports of menthol from China undersold domestically produced 1-menthol by relatively small margins. The margins ranged from a low of 4 cents per pound (1 percent) in April-June 1978 to a high of * * * cents per pound * * * in January-March 1978. During October 1978-December 1979, there is no evidence that imported 1-menthol from China undersold domestically produced 1-menthol. However, in 1980, menthol imported from China consistently undersold domestically produced 1-menthol. The margins of underselling ranged from a low of 18 cents per pound (3 percent) in April-June to high of 43 cents per pound (7 percent) in July-September. China received MFN status on February 1, 1980. This made 1-menthol imported from China dutiable at the column 1 rate of 17 cents per pound. The column 2 rate in effect prior to this was 50 cents per pound. On each pound of 1-menthol imported from China, the net difference in the duty rate change is 33 cents. Thus, acquiring MFN status probably contributed to the lower delivered price of 1-menthol imported from China during 1980.

^{1/} Domestic transportation costs do not appear to be a factor in purchasers' considerations of 1-menthol sources. Transportation charges were estimated by both importers and domestic producers to account for approximately 5 to 6 percent of 1-menthol's delivered price. Also, the distance differential between most purchasers and the principal domestic source (South Carolina) compared with the principal port-of-entry of imports (New York) is negligible and is not a significant factor.

Table 18.--1-Menthol: Weighted average contract prices paid for domestically produced material and material imported from China and margins of underselling, by quarters, January 1977-December 1980

Period of delivery	(Per pound)		Margins of underselling	
	Weighted average price <u>1</u> /:		Actual	Percent
	U.S. produced <u>1</u> -menthol	Imported <u>1</u> -menthol from China:		
1977:				
January-March-----	***	-	-	-
April-June-----	***	-	-	-
July-September-----	***	-	-	-
October-December-----	***	\$6.85	***	***
1978:				
January-March-----	***	6.99	***	***
April-June-----	\$7.03	6.99	\$0.04	0.6
July-September-----	7.43	7.22	.21	2.8
October-December-----	6.68	7.41	<u>2</u> /	-
1979:				
January-March-----	6.46	7.02	<u>2</u> /	-
April-June-----	6.65	6.98	<u>2</u> /	-
July-September-----	6.52	6.94	<u>2</u> /	-
October-December-----	6.52	6.95	<u>2</u> /	-
1980:				
January-March-----	6.34	5.98	.36	5.7
April-June-----	6.31	6.13	.18	2.9
July-September-----	6.14	5.71	.43	7.0
October-December-----	6.19	5.78	.41	6.6

1/ Weighted on the basis of quantities sold.

2/ No evidence of underselling.

* * * * *

Counsel for CNEC has argued that the most relevant price comparisons are those made between contracts entered into at approximately the same time. Contract prices reported as of the date of contract rather than as of the date of delivery are shown in table 19. 1/ These prices are also based on the largest shipment in each quarter to principal purchasers of 1-menthol. Because a contract often calls for staggered deliveries extending over several quarters, reporting prices on a date-of-contract basis results in significantly fewer observations of prices than reporting prices as of the delivery date. Thus, prices are not reported in many quarters because contracts were not negotiated during those periods, although deliveries were very likely occurring. Contract prices for 1980 generally call for deliveries in 1981 or later. The previous discussion of contract prices on a delivery-date basis did not include prices beyond 1980.

1/ Coverage includes * * *.

Table 19.-1-Menthol: Weighted average contract prices of U.S. producers and importers to their principal end-user customers, by quarters, January 1977-December 1980

Period of contract negotiation	Haarmann & Reimer		Irving R. Boody		J. Manheimer		Polarome		George Uhe		Biddle Sawyer		Weighted average price		Margins of underselling	
	Price	Quantity	Price	Quantity	Price	Quantity	Price	Quantity	Price	Quantity	Price	Quantity	Per pound	Per pound	Actual	Percent
	Per pound	Pounds	Per pound	Pounds	Per pound	Pounds	Per pound	Pounds	Per pound	Pounds	Per pound	Pounds	Per pound	Per pound	Per pound	Per pound
1977:																
January-March	***	***	***	***	***	***	***	***	***	***	***	***	***	\$7.45	***	***
April-June	***	***	***	***	***	***	***	***	***	***	***	***	***	7.75	***	***
July-September	***	***	***	***	***	***	***	***	***	***	***	***	***	6.90	***	***
October-December	***	***	***	***	***	***	***	***	***	***	***	***	***	7.70	***	***
1978:																
January-March	***	***	***	***	***	***	***	***	***	***	***	***	***	7.35	***	***
April-June	***	***	***	***	***	***	***	***	***	***	***	***	***	7.17	***	***
July-September	***	***	***	***	***	***	***	***	***	***	***	***	***	6.58	***	***
October-December	***	***	***	***	***	***	***	***	***	***	***	***	***	5.99	***	***
1979:																
January-March	***	***	***	***	***	***	***	***	***	***	***	***	***	6.20	***	***
April-June	***	***	***	***	***	***	***	***	***	***	***	***	***	6.50	***	***
July-September	***	***	***	***	***	***	***	***	***	***	***	***	***	6.15	***	***
October-December	***	***	***	***	***	***	***	***	***	***	***	***	***	7.02	***	***
1980:																
January-March	***	***	***	***	***	***	***	***	***	***	***	***	***	5.22	***	***
April-June	***	***	***	***	***	***	***	***	***	***	***	***	***	4.89	***	***
July-September	***	***	***	***	***	***	***	***	***	***	***	***	***	-	***	***
October-December	***	***	***	***	***	***	***	***	***	***	***	***	***	-	***	***

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Haarmann & Reimer negotiated contract prices in * * * quarters from 1977 through 1980. U.S. importers reported prices negotiated in all but the last two quarters of 1980. If the date of the contract is considered the key factor in determining price, then direct price comparisons are possible if both parties negotiated a contract in the same period. There are eight quarters in which both Haarman and Reimer and an importer negotiated a contract. In six of the eight quarters, underselling by importers did not occur. In the remaining two quarters, * * *, imports of Chinese l-menthol were priced lower than domestically produced l-menthol. The margins of underselling for these two quarters were * * * cents per pound * * * and * * * cents per pound * * * respectively. * * *.

If contract terms such as volume and duration are also important determinants of price, then these conditions should be considered in price comparisons. 1/ In table 20, Haarmann & Reimer's and importers' prices are compared on the basis of similar contract dates, duration, and volume. Four of the comparisons show Haarmann & Reimer contracted for delivery of l-menthol to end users at a lower price than was reported for similar importers' contracts. In two instances, * * *, importer's price was lower than Haarmann & Reimer's price for domestically produced menthol; in one instance, * * * Haarmann & Reimer's price was the same as an importer's.

1/ Larger volumes of material and longer contract durations may be grounds for a price discount from the supplier, especially in a declining market.

In table 21, the weighted average contract price of imported l-menthol from China is compared with the contract price of l-menthol imported from Brazil, which prior to 1979, was the principal source of import supply. 1/ The price series of l-menthol imported from China is taken from table 17. The price series for l-menthol imported from Brazil has been constructed similar to those for U.S. producers and U.S. importers of menthol from China. The price series represents the weighted average price of the four reporting importers of l-menthol from Brazil.

Table 21.--l-Menthol: Weighted-average prices paid for material imported from Brazil and from China and margins of underselling, by quarters, January 1977-December 1980

Period of delivery	(Per pound)		Margins of underselling	
	Weighted average price <u>1</u> /		Actual	Percent
	<u>l</u> -menthol from Brazil	<u>l</u> -menthol from China		
1977:				
January-March-----	\$7.67	-	-	-
April-June-----	7.24	-	-	-
July-September-----	7.90	-	-	-
October-December-----	8.00	\$6.85	\$1.15	14.4
1978:				
January-March-----	7.85	6.99	.86	11.0
April-June-----	7.85	6.99	.86	11.0
July-September-----	8.11	7.22	.89	11.0
October-December-----	7.52	7.41	.11	1.5
1979:				
January-March-----	7.40	7.02	.38	5.1
April-June-----	6.69	6.98	<u>2</u> /	-
July-September-----	6.78	6.94	<u>2</u> /	-
October-December-----	6.83	6.95	<u>2</u> /	-
1980:				
January-March-----	6.66	5.98	.68	10.2
April-June-----	6.51	6.13	.38	5.8
July-September-----	6.33	5.71	.62	9.8
October-December-----	6.79	5.78	1.01	14.9

1/ Weighted on the basis of quantities sold.

2/ No evidence of underselling.

Similar to the contract prices of both U.S.-produced l-menthol and that imported from China, the weighted-average price of l-menthol imported from Brazil has declined from July 1978 through December 1980. The weighted

1/ This is taken to be a reasonable approximation of the world market price variations between l-menthol produced in China and l-menthol produced in Brazil, although there is some difference in customs valuation.

average price declined by 16 percent over the period. ^{1/} With the exception of prices in April-December 1979, prices of 1-menthol imported from China have been lower than those of 1-menthol imported from Brazil during October 1977-December 1980. Contract prices of 1-menthol imported from Brazil are invariably higher than those of domestically produced 1-menthol, as shown by the data in tables 17 and 21.

Noncontract prices.--Noncontract prices reflecting spot-market sales were reported by both domestic producers and by three of the six reporting importers of Chinese 1-menthol--* * *. Because of the extreme variation in the quantities involved in spot-market sales, the quantities have been included in table 22 to provide additional insight into the underselling margins derived using these quantities. ^{2/} No U.S. producer presented allegations of sales lost to menthol from China on the spot market.

^{1/} Customs valuation of 1-menthol imported from Brazil has been consistently higher than 1-menthol imported from China during the period under consideration although the difference in unit values has been declining.

^{2/} The quantities used in constructing weighted-average contract prices by delivery dates did not present such great disparities.

Table 22.--1--Menthhol: Noncontract prices of U.S. producers and importers to purchaser of single largest quantity and margins of underselling, by quarters, January 1977-December 1980

Period of delivery	Haarmann & Keimer		KCN		MacAndrews & Forbes		J. Manheimer		Polarome		Weighted average price		Margins of under-selling	
	Quantity	Price	Quantity	Price	Quantity	Price	Quantity	Price	Quantity	Price	Weighted average price	Actual	Per pound	Percent
	Pounds	Per pound	Pounds	Per pound	Pounds	Per pound	Pounds	Per pound	Pounds	Per pound	Per pound	Per pound	Per pound	Per pound
1977:														
January-March	***	***	***	***	***	***	***	***	***	***	***	***	***	***
April-June	***	***	***	***	***	***	***	***	***	***	***	***	***	***
July-September	***	***	***	***	***	***	***	***	***	***	***	***	***	***
October-December	***	***	***	***	***	***	***	***	***	***	***	***	***	***
1978:														
January-March	***	***	***	***	***	***	***	***	***	***	***	***	***	***
April-June	***	***	***	***	***	***	***	***	***	***	***	***	***	***
July-September	***	***	***	***	***	***	***	***	***	***	***	***	***	***
October-December	***	***	***	***	***	***	***	***	***	***	***	***	***	***
1979:														
January-March	***	***	***	***	***	***	***	***	***	***	***	***	***	***
April-June	***	***	***	***	***	***	***	***	***	***	***	***	***	***
July-September	***	***	***	***	***	***	***	***	***	***	***	***	***	***
October-December	***	***	***	***	***	***	***	***	***	***	***	***	***	***
1980:														
January-March	***	***	***	***	***	***	***	***	***	***	***	***	***	***
April-June	***	***	***	***	***	***	***	***	***	***	***	***	***	***
July-September	***	***	***	***	***	***	***	***	***	***	***	***	***	***
October-December	***	***	***	***	***	***	***	***	***	***	***	***	***	***

* * *. Haarmann & Reimer reported noncontract prices on sales volumes ranging from * * *. SCM, the other domestic producer, reported noncontract prices * * * .

* * * * *

A comparison of the domestic and imported weighted average noncontract prices for l-menthol shows a pattern of underselling by l-menthol imported from China similar to that for transaction prices. * * *.

Underlying these discussed margins of underselling are the widely discrepant quantities previously discussed and occasionally, sales by only one domestic producer and a single importer. * * *.

* * * * *

January-March of 1980 shows the most comparable quantities of domestically produced l-menthol and l-menthol imported from China on which noncontract prices were reported. * * *.

Lost sales

The petitioner, Haarmann & Reimer Corp., was the only U.S. producer of menthol to present allegations to the Commission of lost sales. Haarmann & Reimer alleged that it had lost sales totaling * * * pounds of l-menthol, valued at * * * million, to imports of l-menthol from China during 1978-80. All of these sales were contract sales bid on during the year prior to delivery. These sales were allegedly lost at six firms.

When contacted by the Commission's staff, two smaller firms * * * stated that they had never purchased either menthol from China or domestically produced menthol. One firm purchased only menthol from Brazil and one purchased menthol from both Brazil and Taiwan. Both companies used only natural menthol in their production of pharmaceuticals.

Another firm * * * confirmed that it had purchased a small amount of menthol from China in 1980. Haarmann & Reimer had allegedly lost sales of * * * pounds, valued at * * *, at this firm in 1979. However, the firm's

representative stated that only natural menthol and racemic menthol were used by the firm. The firm had never purchased l-menthol from domestic producers. The firm's representative declined to comment on what it used menthol to produce and on why synthetic l-menthol was unsuitable, claiming that the information was proprietary.

Sales of * * * pounds of l-menthol valued at * * * million were allegedly lost at a fourth firm * * * in a contract bid made in 1979 for delivery in 1980. This firm began purchasing menthol from China in * * *. It purchased * * *. When questioned about the reasoning behind these purchases, the firm's representative stated that the firm was looking for an alternate source of supply, because Brazil was apparently losing interest in the market. The firm purchased * * * percent of its menthol from Brazil in 1977. In 1978, menthol from China accounted for * * * percent of its menthol purchases. In 1980, * * * percent of the firm's purchases were from China. Domestically produced l-menthol was purchased in significant quantities by this firm only in * * *. That year * * * pounds of domestic menthol were purchased, accounting for * * * percent of the firm's total menthol purchases. ^{1/} The firm's representative stated that price was an important consideration in making the actual purchasing decision and that menthol was sometimes traded within a price margin of 10 cents per pound. However, * * * the firm was also interested in securing a long-term contract for menthol, * * *. According to this official, Haarmann & Reimer was unwilling to make such a long-term commitment at that time.

Haarmann & Reimer allegedly lost sales of * * * pounds of l-menthol valued at * * * to an importer of menthol from China in 1980 at a fifth firm * * *. This sale represented a contract for delivery in 1981. This firm also began purchasing menthol from China in * * *. In 1977, it purchased * * * percent of its menthol from Brazil and other sources of natural menthol. This firm's purchases of menthol from China increased from * * * pounds, accounting for * * * percent of its total menthol purchases in * * * to * * * pounds, representing * * * percent of its total menthol purchases in 1980. The firm has contracted for * * * pounds in 1981. However, it should be noted that purchases of natural menthol from sources other than China declined steadily since 1977, * * *. Simultaneously, purchases of domestically produced synthetic menthol increased steadily from * * * pounds, representing * * * percent of total purchases in * * * to * * * pounds, representing * * * percent of the firm's purchases in 1980. An official of the company stated that domestic sources would continue to account for * * * percent or more of the firm's purchases in 1981. When questioned as to the reasoning behind the firm's purchasing decision, it was stated that l-menthol is purchased by competitive bid, that any approved material is acceptable for purchase, and that more than one source of supply is required.

The petitioner allegedly lost contract sales of * * * pounds of l-menthol, valued at * * *, in 1979 and * * * pounds, valued at * * *, in 1980 to an importer of menthol from China at the last firm * * *. This firm also began purchasing menthol from China * * *. It purchased * * *. However, the firm was unable to indicate how much material it had under contract for 1981

^{1/} These figures are obtained from purchasers' questionnaires. * * * .

would be from China. This firm's representative stated that menthol is considered strictly as a commodity and that competitive bids are accepted from a number of importers and domestic producers on any material meeting the firm's specifications. The origin of menthol is immaterial and is not specified. The firm can and does use both natural and synthetic l-menthol. Purchasing decisions are made on the basis of a total value equation which weights price heavily, but also considers the need to maintain alternate suppliers. In 1977, * * * percent of this firm's menthol purchases were accounted for by natural menthol from Brazil and sources other than China. Menthol from China accounted for * * * percent of menthol purchases in * * * and * * * percent in 1980. Purchases from domestic producers increased from nothing in * * * to * * * percent in 1979, but then declined to * * * percent in 1980. According to contracts already negotiated, purchases of domestically produced l-menthol will account for * * * percent of the firm's total menthol purchases in 1981.

In conclusion, although Haarmann & Reimer were actively soliciting sales of menthol, the firm apparently had not established itself as a supplier during the period (late 1977 or early 1978) when, according to the petition, LTFV sales of the Chinese material allegedly began. Therefore, while there is some evidence that Haarmann & Reimer lost sales of menthol to imports from China, the lack of a previous purchasing history with Haarmaan & Reimer makes the quantity and value of these sales difficult to judge.

APPENDIX A

DEPARTMENT OF COMMERCE'S
PRELIMINARY DETERMINATION

SUPPLEMENTARY INFORMATION:**Procedural Background**

On June 11, 1980, the Department of Commerce received an antidumping petition from counsel representing Haarmann & Reimer Corporation, Springfield, New Jersey. After reviewing the petition as required by section 732 of the Tariff Act of 1930, as amended (19 U.S.C. 1673a) (the Act), we determined that there were sufficient grounds to initiate an antidumping investigation and published a notice of the initiation in the Federal Register on July 2, 1980 (45 FR 44976).

On July 28, 1980, the United States International Trade Commission (ITC) determined that there is a reasonable indication that an industry in the United States is being materially injured, or is threatened with material injury, by reason of imports of natural menthol from the People's Republic of China allegedly sold at less than fair value. The ITC published a notice of that determination in the Federal Register on August 6, 1980 (45 FR 52273).

Pursuant to section 733(c) of the Act (19 U.S.C. 1673b(c)), the Department concluded that the parties were cooperating and that this case is extraordinarily complicated because it presents the novel issue of the extent of state controls in the PRC. Accordingly, we extended the period for preliminary analysis until January 7, 1981. Notice to this effect was published in the Federal Register on October 8, 1980 (45 FR 66835).

Production Description

This determination covers natural menthol, which is classifiable in the Tariff Schedules of the United States under item number 437.64. Natural menthol is used in cigarettes, confections, dentrifices, analgesic balms, mouthwashes, flavorings, and perfume.

State-Control of the Economy of the People's Republic of China

The overriding issue in the preliminary stage of this investigation has been whether the economy of the PRC is state-controlled "to an extent that sales or offers of sales of [menthol in the PRC] or to countries other than the United States do not permit a determination of foreign market value" by normal standards. If we find this condition to exist, section 773(c) of the Tariff Act of 1930, as amended (19 USC 1677(b)) requires us to use prices or costs from a producer in a non-state-controlled economy for our foreign market value in deciding whether the imports are being sold at less than fair value. Counsel for both respondent and

petitioner have submitted extensive materials addressing this issue.

A threshold question is raised by respondent's contention that the special rules of section 773(c) apply only if the effects of state economic controls on the particular sector in question are such that a fair value determination under normal procedures cannot be made. Respondent finds support for its position in the language of the statute, which is drafted in terms of whether an exporting country being state-controlled "to an extent that sales or offers of sales of such or similar merchandise" (emphasis added) do not permit normal foreign market value calculations. Respondent also finds support for its position in a number of antidumping determinations by the Treasury Department in the 1960's.

Counsel for petitioner contends that the statutory language quoted above, when read in light of its legislative history, requires the administering authority to apply the special provisions of section 773(c) whenever a determination is made that the economy of a country is generally state controlled. Under this interpretation, sectoral analysis of the impact of state controls is unnecessary.

In reaching our conclusion in this preliminary determination, we have examined (and discuss below) both the degree of control exercised by the State over the PRC economy generally and the impact of state control on the production and sale of menthol. Since our conclusion would be the same under either petitioner's or respondent's interpretation of the statute, we need not specifically decide the issue at this time. We do, however, note that in our view, respondent has raised arguments which would have to be given very careful consideration where different conclusions would have resulted depending upon the approach taken.

In reaching our preliminary determination, we have reviewed extensive data on the development of China's economy since the early 1950s and the structure of the economy as it exists today. Since menthol is a direct derivative of the peppermint plant, we have concentrated on the role of the state in agricultural production and distribution.

There are no set criteria for judging whether, in a particular case, the degree of state control over an economy is such as to make home market prices⁵⁶ inappropriate for purposes of foreign market value. Neither the language of the statute nor the legislative history offers anything more than the most

Natural Menthol From the People's Republic of China; Antidumping—Preliminary Determination of Sales at Less Than Fair Value and Suspension of Liquidation

AGENCY: U.S. Department of Commerce.

ACTION: Preliminary determination of sales at less than fair value and suspension of liquidation.

SUMMARY: The U.S. Department of Commerce has reached a preliminary determination that natural menthol from the People's Republic of China (PRC) is being, or is likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended. Liquidation of entries (or withdrawals from warehouses) for consumption is being suspended. A cash deposit, bond, or other security in an amount equal to the estimated dumping margin of 13.5% will be required at the time of each entry or withdrawal from warehouse.

To date this investigation raises two important issues:

(1) The circumstances that determine whether the economy of the PRC is state-controlled to an extent that sales of natural menthol in the home market do not permit a fair value determination under normal standards, and

(2) The choice of a surrogate market for a fair value comparison when a home market is found to be state-controlled.

We have, in this preliminary determination, found the economy of the PRC to be state-controlled to the extent that sales of menthol in the PRC do not provide an appropriate basis for fair value comparison. Accordingly, we have selected sales in a surrogate market at a stage of economic development comparable to that in the PRC—sales of natural menthol from Paraguay to the United States—for purposes of determining fair value.

EFFECTIVE DATE: January 14, 1981.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp, Office of Investigations, International Trade Administration, Department of Commerce, Washington, D.C. 20230 (202-377-5496).

general guidance. Each case must be decided upon an analysis of the particular economic factors involved. Summarized below are the more important factors leading to our conclusion that the PRC's economy is state-controlled to the extent that home market prices of menthol do not provide an appropriate basis for foreign market value.

The economy of the PRC is that of a huge developing country in which the government has considerable control over the composition of inputs and the distribution of outputs. The State Planning Commission sets output targets and prices, allocates commodities and production, and establishes overall guidelines for the economy. Most capital goods and consumer necessities are subject to "unified distribution," the Chinese system for licensing and rationing. There is, therefore, little question that judged on the basis of the role of the state in the economy overall, the PRC is a state controlled economy country.

However, the degree of direct control varies both geographically and across product lines. For at least two decades, the central government has maintained a planning system with categories of goods. Category I includes those products considered most important in the economy. The major agricultural products included in this group are grains, oil seeds, and cotton. For these products the State Planning Commission sets targets for purchase, sale, export, import, and stockpiling. Category II goods are less controlled, although the State Planning Commission sets interprovincial transfer and export levels. Subordinate ministries and provincial governments may add further controls (including controls on price). Goods which are not in Categories I and II, e.g., menthol, are not subject to either of these major formal systems of control, but are variably subject to miscellaneous controls. Thus, natural menthol is subject to very little direct regulation.

Respondent has presented persuasive evidence showing that the purchases and sales of menthol in the PRC essentially are based on market considerations. Transaction prices appear to be largely based on negotiations between buyer and seller

within the PRC. In purchasing menthol for resale to foreign markets, respondent must compete with purchasers in the PRC who intend to use menthol domestically.

Further, there appear to be no direct controls (e.g. production quotas or special production incentives) on the production of menthol or peppermint oil (the primary raw material used in producing menthol). The difficulty in accepting PRC home market prices for menthol as the measure of fair value is not a function of the presence or absence of direct controls over the production and distribution of menthol. Rather, it results from general limitations on the transferability of land and labor in the PRC and from the indirect effects that pervasive controls on other agricultural products necessarily have on menthol production.

The two most important factors in the production of menthol are the land and labor needed to grow peppermint. While respondents have presented evidence indicating that "quasi-markets" exist for both (e.g. the use of surplus land and labor can be traded to neighboring production units), we cannot conclude, based on the information we have reviewed, that there is a genuine market for either. The extent of "quasi-market" transactions appears to be small and, even where they occur, land cannot be sold and the restrictions on labor mobility remain substantial. Without an active market for land and labor, it is difficult to find that production and pricing decisions reflect market forces and accurate valuation of inputs.

Furthermore, and also importantly, the pervasiveness of state planning and control of major agricultural products substantially limits the autonomy of production units and distorts the incentives that would be developed by a freely operating market.

The most severe limitation on production unit autonomy is the imposition of mandatory quotas on major agricultural products, which requires production units to grow specified amounts of particular crops and deliver these crops to the state at a set price. While these "Category I" crops are few in number, they include the most important agricultural products: grains, oil seeds, and cotton. The resulting limitation on production unit autonomy is substantial, because quotas can cover a large proportion of that part of the units' production. In addition, most agricultural units are required to meet their own subsistence needs, further limiting the volume of crops which can be grown for profit.

In addition to the impact which production quotas have on land and

labor available for the production of non-quota goods, the pricing and distribution system which exists in the PRC for major agricultural products also has an unavoidable effect on production team decisions to produce or not to produce crops such as menthol. If, for example, the price set for cotton is too low, there is a clear incentive to produce alternative crops such as peppermint which is grown on similar types of land. This, obviously, has a significant effect on the supply of menthol.

There are other factors in the PRC's agricultural sector which limit the freedom of production teams to choose their output mix. These include the requirement to pay agricultural taxes in kind and restraints on the free marketing of Category I goods. The marketing restraints seem to create barriers to specialization and economic crops by making it difficult to procure Category I goods freely.

A number of reforms designed to give greater play to market forces in the production and distribution of agricultural products have been introduced. We understand that efforts have been made to relax taxes in kind, enforced regional grain self-sufficiency, and quota production. Further, the PRC is allowing greater freedom to sell above-quota production in rural markets. However, our evidence suggests that these reforms are as yet tentative and limited.

In summary, we believe, that the PRC remains state-controlled both in the aggregate and the agricultural sector. Further, the production and therefore the pricing of menthol is affected by the framework of state-control to the extent that both home market and export menthol prices in the PRC may not be used as evidence of fair value. We recognize the recent tempering of the role of centralized planning in the PRC's economy. However, at this time these reforms seem to us as too new and too limited to have altered the fundamental nature of the PRC's economy and its effects on the production of menthol.

Fair Value Comparisons

Since all sales to unrelated U.S. customers were concluded prior to the importation of the menthol, we used purchase price, as defined in section 772(b) of the Act (19 U.S.C. 1677a(b)), to determine the United States price. We calculated the purchase price on the basis of the C & F price unrelated U.S. purchasers with deductions for a discount, ocean freight and home market inland freight. We determined the purchase price for all contracts made with unrelated U.S. purchasers in the

¹The Report of the Senate Finance Committee states that in determining the applicability of the State-controlled economy provision currently section 773(c), the administering authority should look to see if "... the supply and demand forces do not operate to produce prices either in the home market or in third countries which can be relied upon for comparison purposes." (Trade Reform Act of 1974: Report of the Senate Finance Committee on H.R. 10710, 93rd Cong., 2d Sess. 174 (1974)).

period of January 1 through June 30, 1980.

Foreign Market Value

Since, for the reasons set forth above, we have concluded that the PRC home market or export prices for natural menthol are not an appropriate measure of fair value, we have, in accordance with the provisions of section 773(c) of the Act, calculated the foreign market value on the basis of sales of natural menthol from a non-state-controlled economy country—Paraguay—to the United States (19 CFR 353.8). The prices we have used were based on quotations received from a U.S. purchaser for prices from Paraguay to the United States during the period January 1 through June 30, 1980. The prices were quoted in U.S. dollars on an f.o.b. basis. No adjustments were made to these prices. These prices were used since they were the only prices of natural menthol produced in Paraguay which were available. We are pursuing the possibility of obtaining further price data on home market sales in and export sales from Paraguay.

We have been focusing on prices of natural menthol from Paraguay since the level of economic development of Paraguay appears to be closer to that of the PRC than do the levels of other major producers of natural menthol. In addition, Paraguay appears to be the only major non-state-controlled natural menthol producer which produces all its own raw material (peppermint).

Results of Fair Value Comparison

Using the above criteria, we found that the purchase price was lower than the foreign market value. The margins ranged from 12.58 to 14.85 percent and the weighted-averaged margin was 13.5 percent.

Critical Circumstance Determination

On November 25, 1980, the petitioner amended its petition under section 773(e)(1) of the Act (19 U.S.C. 1677b(e)(1)) to assert that there are "critical circumstances" with respect to imports of menthol from the PRC. In order to determine that critical circumstances exist, the Department must find that there is a reasonable basis to believe that (1) there is a history of dumping of menthol in the United States or elsewhere, or (2) importers knew or should have known that the exporter was selling menthol at less than fair value, and (3) there have been massive imports of menthol over a relatively short period.

The Department is not aware of any other dumping investigation or determination concerning menthol from

the PRC. The fact that the petitioner has alleged "significant estimated margins" of dumping from 1977 through 1979 and provided evidence of "consistent underselling by the PRC of menthol from other sources" does not establish a history of dumping by the respondent.

The petitioner contends that it has presented sufficient evidence of dumping and price cutting for the Department to find that importers of menthol from the PRC knew or should have known that the PRC exporter was selling at less than fair value. The petitioner's evidence of dumping, however, is based on the price of menthol in the home markets of Brazil or Japan. The respondent and the importers contend that the Department should rely on the home market price of menthol in the PRC. If that argument is rejected, the respondents and importers urge that the Department rely on the price from the PRC to a third country, preferably the United Kingdom.

The Department does not have a reasonable basis to believe that importers knew, or should have known, from the petitioner's information, that the PRC exporter was selling menthol in the United States at less than fair value because the importers have no reason to believe that the petitioner's analysis is accurate or reasonable. Moreover, price cutting in a declining market alone is not sufficient to warrant a conclusion that merchandise is being dumped. There is no reason to believe that there is a history of dumping of menthol or that importers should have known that CNEC was selling menthol at less than fair value. Therefore, since one of the statutory bases for critical circumstances has not been met, I conclude that critical circumstances do not exist. Accordingly, liquidations will not be suspended retroactively.

Verification

Although no information has been verified to date, all information relied on in making the final determination will be verified in accordance with section 776 of the Act (19 U.S.C. 1677e).

Preliminary Determination

Based on a comparison between United States prices and prices to the United States from Paraguay we have preliminarily determined that there is a reasonable basis to believe or suspect that exports of natural menthol from the PRC are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act (19 U.S.C. 1673). The weighted average margin preliminarily found was 13.5 percent.

The Department will afford interested parties an opportunity to present oral views in accordance with § 353.47, Commerce Regulations (19 CFR 353.47). This hearing is scheduled to be held, if requested, at the U.S. Department of Commerce, room 4830, 14th and Constitution Avenue, N.W., Washington, D.C. 20230, beginning at 10:00 a.m., February 11, 1981. Interested parties who desire such a conference should provide a written request for a conference to the Office of the Deputy Assistant Secretary for Import Administration, room 2800, at the address shown above. This request should contain: (1) the name, address, and telephone number of the party requesting the conference; (2) the number of participants; and (3) a list of the issues to be discussed. All requests must be received by the Deputy Assistant Secretary no later than 10 days after publication of this notice. Any written views filed in accordance with § 353.46(a), Commerce Regulations (19 CFR 353.46(a)) should be filed at the address indicated above, in at least 10 copies. Any written views should be filed not later than 30 days from the publication of this notice.

In accordance with section 753(d)(1) and (2) of the Act (19 U.S.C. 1673b(d)(1) and (2)), the liquidation of all entries, or withdrawals from warehouse, for consumption of this merchandise on or after the date of publication of this notice, shall be suspended. The posting of a cash deposit, bond, or other security in the amount of 13.5 percent of the f.o.b. value of natural menthol from the PRC will be required as of that date. This suspension of liquidation shall remain in effect until further notice.

This case is being referred to the International Trade Commission for a determination concerning material injury or a threat of material injury. This determination is published in accordance with § 353.39(a)(2), Commerce Regulations (19 CFR 353.39(a)(2)).

January 7, 1981.

John D. Greenwald,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 81-1182 Filed 1-13-81; 8:45 am]

BILLING CODE 3510-24-M

APPENDIX B

**COMMISSION'S NOTICE OF
INVESTIGATION AND HEARING**

[Investigation No. 731-TA-28 (Final)]

Menthol From the People's Republic of China; Institution of Final Antidumping Investigation and Scheduling of Hearing

AGENCY: United States International Trade Commission.

ACTION: Institution of a final antidumping duty investigation.

SUMMARY: On January 7, 1981, the United States Department of Commerce issued an affirmative preliminary determination that there is a reasonable basis to believe or suspect that menthol from the People's Republic of China is being, or is likely to be, sold in the United States at less than fair value within the meaning of section 723 of the Tariff Act of 1930 (19 U.S.C. 1673b). Accordingly, the United States International Trade Commission (hereinafter "the Commission") hereby gives notice of the institution of investigation No. 731-TA-28 (Final) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of such merchandise. For purposes of this investigation, the term "menthol" means menthol, whether natural or synthetic, provided for in items 413.28 and 437.64 of the Tariff Schedules of the United States (TSUS). This investigation will be conducted according to the provisions of Part 207 of the Commission's *Rules of Practice and Procedure* (19 CFR 207, 44 FR 76457), Subpart C, effective January 1, 1980.

EFFECTIVE DATE: January 23, 1981.

FOR FURTHER INFORMATION CONTACT: Ms. Miriam A. Bishop, Staff Investigator, Office of Investigations, U.S. International Trade Commission, Room 350, 701 E Street, NW., Washington, D.C. 20436; telephone (202) 523-0291.

SUPPLEMENTARY INFORMATION: On July 22, 1980, the Commission determined

(Commissioner Stern dissenting), on the basis of the information developed during the course of investigation No. 731-TA-28 (Preliminary), that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of menthol from the People's Republic of China, provided for in TSUS items 413.28 and 437.64, which are allegedly sold or likely to be sold at less than fair value. As a result of the Commission's determination, the Department of Commerce continued its investigation into the question of less-than-fair-value sales. The final determination by the Department of Commerce of whether menthol from the People's Republic of China is being, or is likely to be, sold in the United States at less than fair value will be made within 75 days after the date of its preliminary determination, or, in this case, by March 23, 1981.

Written Submissions: Any person may submit to the Commission a written statement of information pertinent to the subject of this investigation. A signed original and nineteen (19) true copies of each submission must be filed at the Office of the Secretary, U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. 20436, on or before April 20, 1981. All written submissions, except for confidential business data, will be available for public inspection.

Any submission of business information for which confidential treatment is desired shall be submitted separately from other documents. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of section 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6).

A staff report containing preliminary findings of fact will be available to all interested parties on March 24, 1981.

Public Hearing: The Commission will hold a public hearing in connection with this investigation on April 13, 1981, in the Hearing Room of the U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. 20436, beginning at 10:00 a.m., e.s.t. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m., e.s.t.), April 8, 1981. All persons desiring to appear at the hearing and make oral presentations must file prehearing statements and should attend a prehearing conference to be held at 10:00 a.m., e.s.t., on April 10, 1981, in Room 117 at the U.S.

International Trade Commission Building. Prehearing statements must be filed on or before April 8, 1981. For further information concerning the conduct of the investigation, hearing procedures, and rules of general application, consult the Commission's *Rules of Practice and Procedure*, Part 207, Subpart C (19 CFR 207), and Part 201, Subparts A through E (19 CFR 201).

The Commission has waived Commission rule 201.12(d) as amended, "Submission of prepared statements" in connection with this investigation. This rule stated that "Copies of witnesses' prepared statements should be filed with the Office of the Secretary of the Commission not later than 3 business days prior to the hearing and submission of such statements shall comply with sections 201.6 and 201.8 of this subpart". It is nevertheless the Commission's request that parties submit copies of witnesses' prepared testimony as early as practicable before the hearing in order to permit Commission review.

This notice is published pursuant to section 207.20 of the Commission's *Rules of Practice and Procedure* (19 CFR 207.20, 44 FR 76458).

Issued: January 23, 1981.

By order of the Commission.

Kenneth R. Mason,
Secretary.

[FR Doc. 81-3194 Filed 1-27-81; 8:45 am]
BILLING CODE 7020-02-48

APPENDIX C

DEPARTMENT OF COMMERCE'S
FINAL DETERMINATION OF LTFV SALES

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping, Natural Menthol From the People's Republic of China; Final Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Commerce.

ACTION: Final determination of sales at less than fair value.

SUMMARY: The U.S. Department of Commerce has determined that natural menthol from the People's Republic of China is being sold in the United States at less than fair value. The U.S. International Trade Commission is determining whether these imports are materially injuring or threatening material injury to a U.S. industry.

EFFECTIVE DATE: May 1, 1981.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, D.C. 20230 (202-377-5496).

SUPPLEMENTARY INFORMATION:**Procedural Background**

On June 11, 1980, we received a petition in proper form from counsel representing Haarman & Reimer Corporation, of Springfield, N.J. the petition alleged that natural menthol from the People's Republic of China ("PRC") is being "dumped," that is, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (19

U.S.C. 1673) ("the Act"). It also alleged that these imports are materially injuring a U.S. industry. Because the petition contained sufficient grounds to warrant an investigation, on July 2, 1980, we initiated an antidumping investigation and informed the U.S. International Trade Commission ("ITC") of our action (45 FR 44976). On July 28, 1980, the ITC determined that there is reasonable indication that these imports are materially injuring, or are threatening to injure materially, a U.S. industry (45 FR 52273).

After postponing our preliminary determination because this case was "extraordinarily complicated" (45 FR 66835), we announced on January 14, 1981, that menthol from the PRC was, or was likely to be, sold in the United States at less than fair value (46 FR 3258). On March 6, 1981, we extended by 30 days the period for final determination (46 FR 16287).

Scope of the Investigation

This determination covers natural menthol (i.e. menthol produced from natural feed stock) that is currently classifiable under item 437.04 of the Tariff Schedules of the United States. It is used primarily in cigarettes, confections, dentifrices, analgesic balms, mouthwashes, flavorings, and perfume.

The period of investigation was January 1, through June 30, 1980.

Methodology**U.S. Price**

Since all sales of natural menthol from the PRC to unrelated U.S. customers were concluded before the menthol was

imported into the United States, we used purchase price, as defined in section 772(b) of the Act, to determine the U.S. price. We calculated the purchase price on the basis of the price to unrelated U.S. purchasers with deductions for a discount, ocean freight and home market inland freight.

Foreign Market Value

The overriding issue in the Preliminary stage of this investigation was whether the economy of the PRC is state-controlled "to an extent that sales or offers for sales of (menthol in the PRC), or to countries other than the United States do not permit a determination of foreign market value" by normal standards. In our preliminary determination we discussed this issue at length and concluded that the PRC's economy is state-controlled generally and in the agricultural sector. We further stated that the framework of state-control affects the production and, therefore, the pricing of menthol to the extent that the PRC's home market and export prices of menthol cannot be used as evidence of fair value. This conclusion has been sustained through the final stages of this investigation. As a result, we have applied section 773(c) of the Act in this case.

According to section 773(c) of the Act, in deciding whether imports from a state-controlled economy country are being sold at less than fair value, we must use prices or costs from a producer in a "non-state-controlled economy" to determine the foreign market value. We chose prices of menthol exported from Paraguay to the United States.

We have considered country-wide and sectoral criteria and determined that the level of economic development of Paraguay is closer to that of the PRC than it is to that of other major producers of menthol. We have information indicating Paraguay is the only major free market producer of natural menthol that also produces all of its own raw material (peppermint). Other countries considered were South Korea, Thailand and Brazil. South Korea and Thailand are minor producers that import most of their raw materials. Brazil is a major producer of menthol, but also imports a large proportion of its raw material. Both Brazil and Korea impose significant tariffs on the importation of peppermint oil (about 30 percent and 66 percent ad valorem respectively). Moreover the economies of both Brazil and Korea are considerably more developed than the economy of either the PRC or Paraguay. Therefore, we determined that Paraguay is the proper surrogate.

Since almost all of the Paraguayan sales of menthol during the period of investigation were to the United States, we used those sales as the basis for determining fair value.

To compensate for differences in circumstances of sales to the U.S. from Paraguay and the PRC (119 CFR 353.15), we adjusted for the export tax paid on export sales from Paraguay. Sales from the PRC are not subject to an export tax. In order to arrive at comparable ex-factory prices of the menthol we deducted the inland and ocean freight charges and accounted for differences in packing costs in accordance with section 773(a) of the Act.

Issues Raised During the Investigation

The petitioner alleged that the prices of menthol from Paraguay to the United States were at less than the cost of producing menthol. In reviewing the petitioner's allegation, we found that the cost information submitted was too general, that there was a lack of specific source data, that the petitioner failed to allocate costs properly between co-products (menthol and de-mentholized peppermint oil) and that the raw material costs used by the petitioner were probably overstated because they were based on the highest raw material costs rather than the average raw material costs during the period under consideration. For these reasons, we determined that the petitioner had not presented sufficient basis upon which to initiate a full investigation into whether Paraguayan sales to the U.S. were made at less than the cost of production.

There are two factors for which we have not been able to make adjustment and which prevent total comparability of the PRC sales to the Paraguayan sales used for the calculation of fair value. These factors are differences in the contract period and differences in the volumes associated with each contract.

The Chinese sell menthol to the U.S. almost exclusively in the form of long-term contracts which specify delivery from one to two years after sale date. In contrast, the Paraguayans sell almost entirely in the short-term market. In a declining-price market such as the menthol market during our investigatory period, it may be normal commercial behavior to price the long-term contracts at a discount from the prevailing spot market prices since both seller and buyer expect the spot price at the time of delivery will be lower than the current spot price. This type of price differentiation is acceptable market behavior and should not be confused with dumping. However, we were unable to develop information needed to measure the extent to which differences

in price may be attributable to differences in the date of delivery. In order to properly test the proposition that PRC pricing reflects a market response to long-term contracts, we would like to review PRC pricing patterns when the market price for natural menthol is rising.

In addition, Paraguayan and PRC sales are not strictly comparable because of differences in sales volume. Sales from PRC generally involve volumes up to ten times greater than Paraguayan sales. We have evidence that the Chinese regularly give volume related discounts. Quantity discounts are generally accounted for in an antidumping calculation by lowering the foreign market value by the discount available to foreign market buyers when volumes similar to those U.S. sales are involved. However, in this case we have no sales from Paraguay that approximate the volumes of PRC sales.

Data has been presented on sales from Brazil to the United States to demonstrate the relationship between price and quantity. The data reflect various prices and terms of delivery. It requires careful analysis before we can determine with any precision what sort of quantity discounting is normal practice in the sale of natural menthol. Unfortunately, this information was presented in the final stage of the investigation and there was insufficient time to refine, verify and analyze the data. It may, however, provide a basis for adjustment in a subsequent review of this case under section 751 of the Act.

Counsel for CNEC has claimed that we should adjust for losses incurred in currency conversion, since revenue from menthol exports from Paraguay must be converted at a fixed rate of exchange which results in a lower return of local currency than that which would be realized if the seller converted his dollars at the prevailing free rate. The sales of menthol from Paraguay were made in U.S. dollars, and we did not convert currency in calculating the foreign market value. Consequently, we do not believe an adjustment for currency conversion is appropriate.

CNEC has claimed that we should increase the deduction for export taxes since it has information that indicates that additional taxes were paid. Our deduction made was based on verified information. We are prepared to review this issue in any subsequent review of this finding.

CNEC claims that we should adjust foreign market value for inland freight in Paraguay. We uncovered, no indication of such freight charges during the verification. Consequently we rejected the claim.

Negative Determination of Critical Circumstances

The best information available at the time for the preliminary determination was not sufficient to support a finding, under section 733(e)(1) of the Act, that critical circumstances exist in this case. Therefore, we did not retroactively suspend liquidation in the preliminary determination (January 14, 1981).

Since the preliminary determination, the petitioner has submitted no additional information to establish a history of dumping.

With regard to knowledge of dumping of the part of importers, we have concluded that issues and problems associated with calculating fair value in this case are far too numerous and complex to warrant a finding that importers had reason to anticipate that CNEC was selling menthol at less than fair value.

Since there is neither a history of dumping nor a reasonable basis to impute knowledge of sales at less than fair value to importers of menthol from the PRC, there is no need to determine whether there have been massive imports from the PRC over a relatively short period of time.

For the reasons stated above, we have determined under section 735(a)(3) that critical circumstances do not exist in this case. Accordingly, the U.S. Custom Service will not suspend liquidation of entries of menthol for consumption prior to January 14, 1981.

Verification

In making our final determination, in accordance with section 776 of the Act, we have verified all the information we relied upon, using the corporate books and records of the Chinese and Paraguayan companies involved.

Final Determination

Based on the preceding criteria and in accordance with § 353.39(a)(2) of the Commerce Regulations, we have determined that exports of natural menthol from the PRC are being sold at less than fair value within the meaning of section 731 of the Act. Margins were found on 88 percent of the menthol sold during the period. They ranged from 2.9 to 3.8 percent, with the weighted average margin over all sales being 2.5 percent. We have provided interested parties an opportunity to present oral views in accordance with (19 CFR 353.47) and written views in accordance with (19 CFR 353.46(a)).

Continuation of Suspension of Liquidation

The liquidation of all entries, or withdrawals from warehouse, for consumption of this merchandise will continue to be suspended. The Customs Service will require posting of a cash deposit, bond, or other security in the amount of 2.5 percent of the f.o.b. value of the natural menthol from the PRC for all entries, or withdrawals from warehouse, for consumption on or after the date of publication of this notice. The cash deposits, bonds, or other security on merchandise entered since the preliminary determination will remain in effect.

ITC Notification

We have referred this case to the ITC so that it may determine whether these imports are materially injuring a U.S. industry. That determination is due on or before June 15, 1981.

As section 735(c)(1)(A) of the act requires, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration. If the ITC rules that material injury does not exist, this case will be terminated, and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC rules that such injury does exist, within seven days we will issue an antidumping duty order, directing the customs officers to assess an antidumping duty on all menthol from the PRC, entered for consumption after the suspension of liquidation, which was sold at less than the foreign market value.

John D. Greenwald,

Acting Assistant Secretary for Trade Administration.

April 27, 1981.

[ER Doc 81-13227 Filed 4-30-81; 8:45 am]

BILLING CODE 3510-25-M

APPENDIX D
CALENDER OF THE PUBLIC HEARING

TENTATIVE CALENDAR OF PUBLIC HEARING

Those listed below appeared as witnesses at the United States International Trade Commission's hearing on:

Subject : Menthol from the People's Republic of China
Inv. No. : 731-TA-28 (Final)
Date and time : May 5, 1981 - 10:00 a.m., e.d.t.

Sessions were held in the Hearing Room of the United States International Trade Commission, 701 E Street, N.W., in Washington.

In support of the petition:

Eugene L. Stewart--Counsel
Washington, D.C.
on behalf of

Haarmann & Reimer Corporation

Eugene L. Stewart--OF COUNSEL

In opposition to the petition:

Shearman & Sterling--Counsel
New York, N.Y.
on behalf of

The China National Native Produce & Animal By-Products
Import and Export Corporation

Donald L. Cuneo)
Charles B. Manuel, Jr.)--OF COUNSEL

APPENDIX E

NOTICE OF THE COMMISSION'S
CHANGE OF DATE OF PUBLIC HEARING

17314

Federal Register / Vol. 46, No. 52 / Wednesday, March 18, 1981 / Notices

[Investigation No. 731-TA-28 (Final)]**Menthol From the People's Republic of China; Change of Date of Public Hearing**

Notice is hereby given that the hearing in this investigation will be held beginning at 10 a.m., e.d.t., Wednesday, May 5, 1981, in the Commission's Hearing Room, U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. 20436. A hearing date of April 13, 1981, had previously been announced in the Commission's notice of institution of the investigation as published in the Federal Register of January 28, 1981 (46 FR 9264). The Commission's hearing has been rescheduled as a result of the postponement by the United States Department of Commerce of its final determination as to the question of whether menthol from the People's Republic of China is being, or is likely to be, sold in the United States at less than fair value.

The Commission will prepare and place on the record by April 16, 1981, a staff report containing preliminary findings of fact, the public portion of which will be made available to interested persons. Requests to appear at the Commission's hearing should be filed in writing with the Secretary to the Commission not later than close of business (5:15 p.m., e.d.t.), April 23, 1981. All persons desiring to appear at the hearing and make oral presentations must file prehearing statements and should attend a prehearing conference to be held at 2 p.m., e.d.t., on April 24, 1981, in Room 117 at the U.S. International Trade Commission Building. Prehearing statements must be filed on or before May 1, 1981. Testimony will be received separately at the hearing.

For further information concerning the conduct of the investigation, hearing procedures, and rules of general application, consult the Commission's *Rules of Practice and Procedure*, Part

207, Subpart C (19 CFR 207), and Part 201, Subparts A through E (19 CFR 201).

Issued: March 12, 1981.

By order of the Commission.

Kenneth R. Mason,
Secretary.

(FR Doc. 81-6234 Filed 3-17-81; 9:45 am)
BILLING CODE 7020-02-M

APPENDIX F

DEPARTMENT OF COMMERCE'S
NOTICE OF POSTPONEMENT OF PRELIMINARY DECISION

Menthol From the People's Republic of China, Postponement of Preliminary Decision

AGENCY: Department of Commerce.

ACTION: Postponement of preliminary antidumping determination.

SUMMARY: This notice informs the public that the Department of Commerce has determined that this antidumping case is "extraordinarily complicated," and that the Department will postpone the preliminary determination as to whether sales of menthol from the People's Republic of China have occurred at less than fair value until not later than January 7, 1981.

EFFECTIVE DATE: October 8, 1980.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp, Supervisory Import Administration Specialist, Office of Investigations Import Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, D.C. 20230 (202) 377-5496.

SUPPLEMENTARY INFORMATION: On July 2, 1980, the Department of Commerce published notice in the Federal Register (45 FR 44976) that it was initiating, under section 732(b) of the Tariff Act of 1930 (19 U.S.C. 1673a(b)), an antidumping investigation to determine whether natural menthol from the People's Republic of China is being or is likely to be sold at less than fair value. The notice stated that, unless the investigation were extended, the Department would issue a preliminary determination not later than November 18, 1980.

Section 733(c) of the Act provides that the Department of Commerce may postpone its preliminary determination concerning sales at less than fair value if it concludes that the parties involved are cooperating in the investigation, the case is extraordinarily complicated, and additional time is needed to make the preliminary determination.

Pursuant to section 733(c) of the Act, the Department concludes that the parties concerned are cooperating and that this case is extraordinarily complicated because it presents a novel issue. This is the first dumping case brought against the People's Republic of China. In order to determine the appropriate measure of fair value, the Import Administration must analyze the nature of the Chinese economy in general and the agricultural sector in detail because natural menthol is a direct derivative of an agricultural product. Therefore, the Department will need additional time to perform this analysis and collect and analyze data necessary for a preliminary determination.

Accordingly, the Department will issue a preliminary determination in this case not later than January 7, 1981.

This notice is published pursuant to section 733(c)(2) of the Act (19 U.S.C. 1673b(c)(2)).

John D. Greenwald,
Deputy Assistant Secretary for Import Administration.

October 2, 1980.

[FR Doc. 80-31334 Filed 10-7-80; 8:45 am]

BILLING CODE 3510-25-M

APPENDIX G

DEPARTMENT OF COMMERCE'S EXTENSION OF PERIOD
FOR FINAL DETERMINATION

Natural Menthol From the People's Republic of China, Antidumping; Extension of Period for Final Determination

March 9, 1981.

AGENCY: United States Department of Commerce.

ACTION: Extension of period for final determination.

SUMMARY: We are extending by 30 days the period for final determination in the antidumping investigation of natural menthol from the People's Republic of China. We will make a final determination by April 22, 1981.

EFFECTIVE DATE: March 12, 1981.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp, Office of Investigations, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230 (202-377-5496).

SUPPLEMENTARY INFORMATION: On January 7, 1981, we determined preliminarily that natural menthol from the People's Republic of China was being, or was likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930 (19 U.S.C. 1673) ("the Act"). We announced our determination in the Federal Register on January 14, 1981. (46 FR 3258).

The China National Native Produce & Animals By-Products Import & Export Corporation (CNEC) is the sole exporter of natural menthol from the People's Republic of China. On February 19, 1981, counsel for CNEC requested that we extend by 30 days the period for final determination, in accordance with section 735(a)(2) of the Act. We are granting this request and extending the

period for final determination to April 22, 1981.

John D. Greenwald,
Deputy Assistant Secretary for Import Administration.

March 6, 1981.

(FR Doc. 81-7685 Filed 3-11-81; 8:45 am)

BILLING CODE 3510-25-M

