

BENZYL PARABEN FROM JAPAN

Determination of the Commission
in Investigation No. 731-TA-462
(Preliminary) Under the Tariff
Act of 1930, Together With
the Information Obtained in
the Investigation



USITC PUBLICATION 2303

AUGUST 1990

**United States International Trade Commission
Washington, DC 20436**

UNITED STATES INTERNATIONAL TRADE COMMISSION

COMMISSIONERS

Anne E. Brunsdale, Acting Chairman

Seeley G. Lodwick

David B. Rohr

Don E. Newquist

Staff assigned:

Larry Reavis, Investigator

Rob Randall, Commodity-Industry Analyst

Gerry Benedick, Economist

Jerry Tepper, Accountant

Frances Marshall, Attorney

Robert Eninger, Supervisory Investigator

**Address all communications to
Kenneth R. Mason, Secretary to the Commission
United States International Trade Commission
Washington, DC 20436
Martin F. Smith,**

CONTENTS

	<u>Page</u>
Determination-----	1
Views of the Commission-----	3
Information obtained in the investigation:	
Introduction-----	A-1
Nature and extent of the alleged sales at LTFV-----	A-1
The product:	
Description and uses-----	A-2
U.S. tariff treatment-----	A-2
U.S. producers-----	A-3
Foreign producers and U.S. importers-----	A-3
U.S. market and channels of distribution-----	A-3
Consideration of the alleged material injury and material retardation-----	A-4
Financial experience of ChemDesign-----	A-6
Overall establishment operations-----	A-6
Operations on benzyl paraben-----	A-6
Investment in productive facilities-----	A-10
Capital expenditures-----	A-11
Research and development expenses-----	A-11
Capital and investment-----	A-11
Consideration of the alleged threat of material injury-----	A-12
Consideration of the causal relationship between the alleged LTFV imports and the alleged material injury:	
Imports-----	A-14
U.S. consumption and market penetration-----	A-16
Prices:	
Market characteristics-----	A-18
Questionnaire price data-----	A-19
Transportation factors-----	A-22
Exchange rates-----	A-23
Lost revenues-----	A-25
Lost sales-----	A-25
Appendix A. Commerce's and Commission's <u>Federal Register</u> notices-----	A-27
Appendix B. List of witnesses at the Commission's conference-----	A-33
Appendix C. Comments received from ChemDesign on the impact of imports of benzyl paraben from Japan on its growth, investment, ability to raise capital, or existing development and production efforts-----	A-35
Appendix D. ***-----	A-37

Tables

1. Benzyl paraben: ChemDesign's production, average practical capacity, capacity utilization, domestic shipments, exports, end-of-period inventories, average number of production and related workers, and hours worked by and total compensation paid to such workers, June-August 1989, September-November 1989, December 1989-February 1990, and March-May 1990-----	A-5
--	-----

CONTENTS

Tables--continued

	<u>Page</u>
2. Income-and-loss experience of ChemDesign on the overall operations of its establishment in which benzyl paraben is produced, 1987-89, January-March 1989, and January-March 1990-----	A-7
3. Income-and-loss experience of ChemDesign on its benzyl paraben operations, 1989 and January-March 1990-----	A-8
4. Income-and-loss experience of ChemDesign on its operations producing benzyl paraben, 1989 and January-March 1990-----	A-9
5. Value of property, plant, and equipment of ChemDesign, as of the end of 1987-89, March 1989, and March 1990-----	A-10
6. Capital expenditures of ChemDesign, 1987-89, January-March 1989, and January-March 1990-----	A-11
7. Benzyl paraben: Ueno's production, domestic shipments, and exports, 1987-89, January-May 1989, and January-May 1990-----	A-14
8. Benzyl paraben: U.S. imports, by principal sources, 1987-89, January-March 1989, and January-March 1990-----	A-15
9. Benzyl paraben: U.S. imports, by principal sources, June-August 1989, September-November 1989, December 1989-February 1990, and March-May 1990-----	A-16
10. Benzyl paraben: Apparent U.S. consumption and ratio of imports to consumption, 1987-89, January-March 1989, and January-March 1990-----	A-17
11. Benzyl paraben: Apparent U.S. consumption and ratio of imports to consumption, June-August 1989, September-November 1989, December 1989-February 1990, and March-May 1990-----	A-18
12. Price indexes and net U.S. f.o.b. selling prices to end users of U.S.-produced and imported benzyl paraben, by country of origin and by quarters, January 1987-June 1990-----	A-21
13. Price indexes and net U.S. f.o.b. selling prices to distributors of imported benzyl paraben, by country of origin and by quarters, January 1987-June 1990-----	A-21
14. Net U.S. delivered selling prices to end users of benzyl paraben produced in the United States and imported from Japan and the United Kingdom, and margins of under/(over) selling, by quarters, July 1989-March 1990-----	A-23
15. Exchange rates: Indexes of the nominal and real exchange rates between the U.S. dollar and currencies of Japan and the United Kingdom, and indexes of producer prices in the foreign countries and the United States, by quarters, January 1987-March 1990-----	A-24

Note.--Information that would reveal business proprietary operations of individual concerns may not be published and therefore has been deleted from this report. Such deletions are indicated by asterisks.

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC

Investigation No. 731-TA-462 (Preliminary)

BENZYL PARABEN FROM JAPAN

Determination

On the basis of the record ¹ developed in the subject investigation, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that the establishment of an industry in the United States is materially retarded by reason of imports from Japan of benzyl p-hydroxybenzoate (benzyl paraben), provided for in subheading 2918.29.50 of the Harmonized Tariff Schedule of the United States (previously reported under item 404.47 of the former Tariff Schedules of the United States), that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On June 29, 1990, a petition was filed with the Commission and the Department of Commerce by ChemDesign Corp., Fitchburg, MA, alleging that an industry in the United States is materially injured and threatened with material injury, and that the establishment of an industry in the United States is materially retarded, by reason of LTFV imports of benzyl paraben from Japan and the United Kingdom. Accordingly, effective June 29, 1990, the Commission instituted preliminary antidumping investigations Nos. 731-TA-462 and 463 (Preliminary). Notice of the institution of the Commission's

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

investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of July 11, 1990 (55 F.R. 26464). On July 16, 1990, the petitioner submitted a letter to the Department of Commerce withdrawing those portions of the petition that relate to imports from the United Kingdom. Accordingly, the Commission discontinued its investigation with respect to the United Kingdom (Inv. No. 731-TA-463 (Preliminary)) and published a notice in the Federal Register to that effect on August 1, 1990 (55 F.R. 31245). The conference with respect to Inv. No. 731-TA-462 (Preliminary), Benzyl Paraben from Japan, was held in Washington, DC, on July 20, 1990, and all persons who requested the opportunity were permitted to appear in person or by counsel.

VIEWS OF THE COMMISSION

We unanimously determine that there is a reasonable indication that the establishment of an industry in the United States is being materially retarded by reason of imports of benzyl paraben from Japan allegedly sold at less-than-fair-value (LTFV).^{1 2}

I. Like product and domestic industry

To determine whether a "reasonable indication of material injury" exists, the Commission must first make factual determinations with respect to the "like product" and the "domestic industry." The Commission's governing statute defines like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation"³ The Commission applies "like" and "most similar in characteristics and uses" on a case-by-case basis.⁴ The term domestic industry means the "domestic producers as a whole of the like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of the product."⁵

The Commission generally considers a number of factors in analyzing like product issues including: (1) physical characteristics, (2) uses, (3) interchangeability of products, (4) channels of distribution, (5) customer

¹ See American Lamb Co. v. United States, 785 F.2d 994, 1001 (Fed. Cir. 1986).

² During the period of investigation there were only one domestic producer, one importer, and two purchasers of benzyl paraben. Therefore, much of the information gathered in this investigation is confidential, and cannot be specifically discussed.

³ 19 U.S.C. § 1677(10).

⁴ Asociacion Colombiana de Exportadores de Flores v. United States, 12 CIT ___, 693 F. Supp. 1165, 1169 (1988) (ASOCOLFLORES) (like product issue essentially one to be based on the unique facts of each case).

⁵ 19 U.S.C. § 1677(4)(A).

or producer perceptions, (6) common manufacturing facilities and production employees, (7) production processes, and (8) price.⁶ No single factor is necessarily dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation. The Commission may find a like product to be broader than the imported article described in Commerce's scope of investigation,⁷ or it may find two or more like products corresponding to the imported article or articles.⁸ The Commission has not found minor variations to be a sufficient basis for a separate like product analysis, but rather, has looked for clear dividing lines among possible like products.⁹

The Department of Commerce has defined the imported product subject to investigation as "benzyl p-hydroxybenzoate (benzyl paraben)."¹⁰ Benzyl paraben is an ester that was used as a disinfectant until lower priced substitutes become available.¹¹ It is a white crystalline powder now used almost exclusively as a developer in coating formulas used to produce thermal

⁶ See, e.g., Certain Laser Light-Scattering Instruments from Japan, Inv. No. 731-TA-455 (Preliminary), USITC Pub. 2282 (May 1990) at 7.

⁷ See, e.g., Generic Cephalexin Capsules from Canada, Inv. No. 731-TA-423 (Final), USITC Pub. 2211 (Aug. 1989) at 5-10; Shock Absorbers and Parts, Components, and Subassemblies Thereof from Brazil, Inv. No. 731-TA-421 (Preliminary), USITC Pub. 2128 (Sept. 1988) at 10-16.

⁸ See, e.g., American NTN Bearing Manufacturing Corp. v. United States, Slip Op. 90-50 (May 22, 1990) (Ct. Int'l Trade 1990) at 9 n.6 ("ITC may determine during the course of its investigation that the class or kind of merchandise defined by ITA as being within the scope of ITA's investigation may consist of more than one like product. ITC can reach this result despite the finding by ITA that only one class or kind of merchandise is covered by ITA's investigation.")

⁹ ASOCOLFLORES, 693 F. Supp. at 1168-69; S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).

¹⁰ 55 Fed. Reg. 30733 (July 27, 1990).

¹¹ Benzyl paraben's chemical formula is C₁₄H₁₂O₃.

fax paper. The developer in the coating formula is encapsulated in microscopic granules. These granules activate similarly encapsulated granules of dye when appropriately heated by a thermal fax machine. Benzyl paraben is sold in one grade, 99 percent pure. The record in this investigation shows that there is no discernable difference between the imported Japanese benzyl paraben and the U.S. produced benzyl paraben, either physically or chemically,¹² and, thus, we determine benzyl paraben to be a like product.

The sole like product issue in this investigation is whether other distinctly different chemicals that can also be used as developers in the production of thermal fax paper should be included in the like product. Both petitioner and respondent argue that other U.S.-produced chemicals used in coating thermal fax paper are not "like" Japanese benzyl paraben. Petitioner states that benzyl paraben's chemical structure is completely different from that of other chemicals that are used to produce thermal fax paper and that benzyl paraben's manufacturing process is different from that of substitute chemicals as well. Moreover, argues petitioner, other chemical reactants used to activate the dye on thermal fax paper cannot be used in the benzyl paraben coating process. Substitution of another dye reactant, i.e a developer, requires a different coating process.¹³

Respondent argues that the like product is U.S. produced benzyl paraben because it is identical to the imported Japanese product. Therefore, asserts respondent, "the issue of whether other products, such as bisphenol-A, are 'similar in characteristics and uses,' is not pertinent."¹⁴ We believe that

¹² Report at A-3-4.

¹³ Petitioner's postconference statement at 25-28.

¹⁴ Respondent's postconference statement at 4.

respondent's conclusion, that U.S.-produced benzyl paraben is the appropriate like product, is correct, but respondent's analysis is not.¹⁵ In several investigations the Commission has determined that a broader like product definition, including products beyond Commerce's scope determination, is appropriate because a like product that is identical to the imports subject to investigation cannot be distinguished in characteristics and uses from other domestic products.¹⁶

1. Physical characteristics, uses, interchangeability, and customer perceptions.

Benzyl paraben has physical characteristics that differentiate it from other chemicals that are also used as a developer in the production of thermal fax paper. The other chemicals used in these processes are not chemically related to benzyl paraben, or each other, and do not have common physical characteristics. Moreover, each process used to coat thermal fax paper with its developer chemical is distinct and relies on a proprietary coating formula as well as proprietary coating methods. Accordingly, benzyl paraben by itself may not simply be substituted for another developer chemical in the production of thermal fax paper. In fact, a switch from one developer, and its accompanying coating process, to another developer requires access to patented

¹⁵ The Commission is not required to limit its like product determination to "identical" products. The Senate Finance Committee did not proffer any further specific definition of the term "like" in its discussion of the statute. S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979). The House Committee on Ways and Means did not address this subject at all. H.R. Rep. No. 317, 96th Cong., 1st Sess. 73-78 (1979).

¹⁶ See, e.g., Generic Cephalixin Capsules from Canada, Inv. No. 731-TA-423 (Final), USITC Pub. 2211 (Aug. 1989); Shock Absorbers and Parts, Components, and Subassemblies Thereof from Brazil, Inv. No. 731-TA-421 (Preliminary), USITC Pub. 2128 (Sept. 1988); 64K Dynamic Random Access Memory Components, Inv. No. 731-TA-270 (Final), USITC Pub. 1862 (June 1986); Certain Natural Bristle Paint Brushes from the People's Republic of China, Inv. No. 731-TA-244 (Final), USITC Pub. 1805 (Jan. 1986).

information (usually through licenses) and the development of a workable formula, a process that can take 9-12 months.¹⁷ Thus, benzyl paraben is not operationally interchangeable with different developer chemicals within a given process for producing thermal fax paper.^{18 19}

2. Channels of distribution.

There are two manufacturers of thermal fax paper in the United States that account for nearly all U.S. consumption of benzyl paraben. Petitioner sells its production directly to one of these end users. The imported product is either: (1) shipped directly to the end user or (2) sold to a third party chemical distributor.²⁰ The record contains little information regarding the channels of distribution of substitute chemicals such as bisphenol-A. Neither ChemDesign nor the importers of benzyl paraben offer bisphenol-A to their customers.²¹ Bisphenol-A has a much larger number of applications and is widely available.²² Thus, it has a much larger and more varied distribution network than does benzyl paraben.

¹⁷ Report at A-26.

¹⁸ Id. at A-2.

¹⁹ The manufacture of thermal fax paper may, however, be accomplished using several different processes in which the various developer chemicals play a role. Viewed in this fashion, one process for manufacturing thermal fax paper that uses benzyl paraben as its developer may be substituted for another process that uses a different developer chemical such as bisphenol-A. Thus, these chemicals are indirectly commercially interchangeable because they are each inputs in competing chemical processes used to produce virtually identical downstream products, i.e. thermal fax paper. See Report at A-26.

²⁰ Report at A-3-4.

²¹ ChemDesign, however, does sell the sensitizer that must be added to the bisphenol-A process in order to produce high quality thermal fax paper. Conference transcript (Tr.) at 108.

²² Report at A-2 n.3.

3. Manufacturing facilities and production processes.

Petitioner ChemDesign produces its benzyl paraben on one production line exclusively dedicated to the production of benzyl paraben. This production line cannot presently be used to produce any of the alternative chemicals. Conversion of this dedicated production line to another chemical would require capital investment of \$200,000 to \$900,000 and six to nine months of lost production time.²³

4. Price.

Benzyl paraben is substantially more expensive than bisphenol-A in part because bisphenol-A has many more uses than does benzyl paraben and is, therefore, produced on a much larger scale.²⁴

C. Conclusions.

We determine that the like product in this investigation includes only domestically produced benzyl paraben. Benzyl paraben and other developer chemicals have distinct physical characteristics, are used in distinct chemical processes and so are not operationally interchangeable, cannot be produced on the same production line, and are not similarly priced. The fact that benzyl paraben and other developer chemicals are, when considered broadly, similar inputs into finished thermal fax paper is not sufficient, in our view, to warrant inclusion of all developer chemicals in a single like product.

²³ Id. at A-4.

²⁴ Id. at A-2 n.3.

Accordingly, we also determine that the potential domestic industry be defined as the U.S. producer of benzyl paraben.²⁵

II. Related Parties

Petitioner ChemDesign is a U.S. corporation that began producing benzyl paraben in 1985. It produced benzyl paraben for U.S. purchasers through 1986, stopped production in 1987 and 1988, and resumed production again in 1989. During its production hiatus ChemDesign purchased imported benzyl paraben from Japan and supplied it to its domestic purchaser.²⁶ Thus, the Commission must decide whether ChemDesign, currently a domestic producer of benzyl paraben and formerly an importer/distributor of Japanese benzyl paraben, should be excluded from the domestic industry as a related party under section 771(4)(B) of the statute.

The related parties provision enables the Commission to exclude a domestic producer from the domestic industry, in appropriate circumstances:

(B) Related parties. When some producers are related to the exporters or importers, or are themselves importers of the allegedly subsidized or dumped merchandise, the term "industry" may be applied in appropriate circumstances by excluding such producers from those included in that industry.²⁷

²⁵ We use the term "potential" in light of our determination below that there is a reasonable indication that imports of benzyl paraben from Japan have materially retarded the establishment of the domestic benzyl paraben industry.

²⁶ Report at A-19; Tr. at 27.

²⁷ 19 U.S.C. § 1677(4)(B). For example, if the producer is "related to a foreign exporter and the foreign exporter directs his exports to the United States so as not to compete with his related U.S. producer" appropriate circumstances for exclusion may exist. S. Rep. No. 249, 96th Cong., 1st Sess. 83 (1979).

Application of the related parties provision is within the Commission's discretion based on the facts presented in each case.²⁸

ChemDesign accounts for all U.S. production of benzyl paraben which means that its data are essential to the Commission's injury analysis in this investigation. Although ChemDesign was a significant purchaser of the imported product from Japan during the period of investigation, ChemDesign relied on the imports in order to maintain its relationship with its single purchaser during its production hiatus, and thus enable it to continue to compete in the U.S. market.²⁹ Moreover, ChemDesign sold the benzyl paraben purchased from Japan through a separate affiliate and the data from that operation are not reflected in ChemDesign's establishment or benzyl paraben income-and-loss data. For these reasons, we determine not to exclude ChemDesign from the domestic benzyl paraben industry under the related parties provision.

²⁸ *Empire Plow Co. v. United States*, 11 CIT ___, 675 F. Supp. 1348, 1352 (1987). Factors the Commission has examined in determining whether appropriate circumstances exist to exclude a company from the domestic industry include: (1) the percentage of domestic production attributable to the importing producer, (2) the reasons why the U.S. producer has decided to import the product subject to the investigation, to benefit from the LTFV sales or subsidies, or to enable it to continue production and compete in the U.S. market, and (3) the position of the related producers vis-a-vis the rest of the industry, *i.e.* whether inclusion or exclusion of the related party will skew the data for the rest of the industry. *See, e.g.*, *Digital Readout Systems and Subassemblies Thereof from Japan*, Inv. No. 731-TA-390 (Final), USITC Pub. No. 2150 (Jan. 1989) at 15; *Thermostatically Controlled Appliance Plugs and Internal Probe Thermostats Therefor from Canada, Japan, Malaysia, and Taiwan*, Invs. Nos. 701-TA-292, 731-TA-400 and 402 through 404 (Final), USITC Pub. 2152 (Jan. 1989) at 9-10. The Commission has also considered whether each company's records are maintained separately from its "relations" and whether the primary interests of the related producers lie in domestic production or in importation. *Certain All-Terrain Vehicles from Japan*, Inv. No. 731-TA-388 (Preliminary), USITC Pub. 2071 (March 1988) at 13 & n.44.

²⁹ Report at A-27-28; Tr. at 27-28.

III. Material Retardation

Under the material retardation standard in a preliminary investigation, the Commission determines whether there is a reasonable indication that the establishment of an domestic industry in the United States is materially retarded by reason of the subject imports.³⁰ The statute does not indicate how the Commission should apply this provision. The Commission has stated that "the establishment of any new industry is so inherently unique that material retardation must always be examined on a case-by-case basis."³¹ In prior investigations, the Commission has determined first whether a domestic industry is already "established," and second, if the industry is not "established," whether the performance of the unestablished industry appears to have been materially retarded by the LTFV imports.³² If, however, the industry is "established," the material retardation standard is not applicable, and the Commission focuses on the standards of material injury and threat of material injury.³³

³⁰ 19 U.S.C. § 1673b(a).

³¹ Certain Dried Salted Codfish from Canada, Inv. No. 731-TA-199 (Preliminary), USITC Pub. 1571 (Sept. 1984) at 6.

³² Codfish, Inv. No. 731-TA-199 (Final), USITC Pub. 1711 (July 1985), aff'd, BMT Commodity Corp. v. United States, 11 CIT ___, 667 F. Supp. 880 (1987), aff'd, 852 F.2d 1285 (Fed. Cir. 1988), cert. denied, 109 S.Ct. 1120 (1989).

³³ Certain Copier Toner from Japan, Inv. No. 731-TA-373 (Preliminary), USITC Pub. 1960 (March 1987) at 10 n.26; Pressure Sensitive PCV Battery Covers from West Germany, Inv. No. 731-TA-452 (Preliminary), USITC Pub. 2265 (March 1990) at 11, n.22; Fresh Chilled Atlantic Salmon From Norway, Inv. Nos. 701-TA-302, 731-TA-454, USITC Pub. 2272 (Apr. 1990) at 15, n.39. Having determined to analyze the U.S. benzyl paraben production under the material retardation standard, material injury and threat of material injury are no longer issues in this investigation, and will not be discussed further.

A. The domestic benzyl paraben industry is not yet established.

1. Analytical framework.

In this investigation, the domestic industry has been producing benzyl paraben for at least one year, so the Commission must determine whether the domestic benzyl paraben producer has "stabilized" its operations.³⁴ To make this assessment in prior investigations, the Commission has looked at several aspects of domestic operations including: 1) the date production began, 2) whether production has been steady or start-and-stop, 3) the size of domestic production compared to the size of the domestic market as a whole, 4) whether the domestic industry has reached a "break even point", and 5) whether the activities involve the establishment of a new industry or are merely a new product-line of an established firm.³⁵

2. Analysis.

Several factors persuade us that, for the purposes of this preliminary investigation, the U.S. benzyl paraben industry is not yet established.

a. Characteristics of U.S. production.

Domestic production of benzyl paraben has not been steady. ChemDesign's production of benzyl paraben over the last 12 months of the period of investigation is petitioner's second attempt to enter the benzyl paraben market.³⁶ ChemDesign had previously tried to establish production of benzyl paraben in 1985 and 1986, but left the market after 15 months. In

³⁴ Codfish, USITC Pub. 1711 at 4.

³⁵ Atlantic Salmon, USITC Pub. 2272 at 15-16; Battery Covers, USITC Pub. 2265 at 12-13; Lime Oil from Peru, Inv. No. 303-TA-16 (Preliminary), USITC Pub. 1723 (July 1985) at 8 n.19.

³⁶ See Codfish, USITC Pub. 1711 at 6-9 (affirmative finding of material retardation where production of salted codfish suspended after 2 years with intent to resume production pending resolution of ITC investigation).

prior investigations, we have rejected using the material retardation analysis in some circumstances in which production had been taking place for two or three years, but we have never stated that any specific period of production would "establish" an industry.³⁷ This second attempt at production does not, of itself, indicate that the industry is established for the purposes of section 733(a) of the statute.

b. Financial indicators.

The second factor indicating that the domestic industry is not yet established is that ChemDesign's benzyl paraben operations have not reached a break-even point. In prior investigations, we have stated that the break-even point of firms within an industry is that level of sales at which total revenues and total expenses are equal. Where possible, the break-even point is calculated by dividing total fixed costs and expenses by the unit contribution margin (which is equal to the unit sales price minus the unit variable costs.)³⁸ In this preliminary investigation, however, the Commission does not have the information necessary to calculate a reliable break-even point in this manner and, therefore, must rely on the net income figures in order to take into consideration all fixed and variable costs. According to petitioner's submissions, which take into account expenses associated with production start-up, it appears that ChemDesign's benzyl paraben operations have not reached a break-even point because they are not posting a profit.³⁹

³⁷ See Lime Oil, USITC Pub. 1723 at 8 (industry established where production began 2 years prior to ITC investigation); Battery Covers, USITC Pub. 2265 at 12 (industry established where production began 3-4 years prior to ITC investigation).

³⁸ Certain All-Terrain Vehicles from Japan, Inv. No. 731-TA-388 (Preliminary), USITC Pub. 2071 (March 1988) at A-15.

³⁹ Report at A-8, Table 3.

We question, however, ChemDesign's method of allocating selling, general, and administrative expenses and intend to verify all financial submissions in any final investigation.⁴⁰

c. Whether benzyl paraben is a new product line or new industry.

We have also examined whether or not the "start-up" industry is truly a new industry or is more in the nature of a new product introduced by an established industry. An established industry introducing a new product line, for example, might be able to promote sales of the new product line through its established distribution and marketing networks and industry contacts, thereby hastening the establishment of the new product in the market place.⁴¹

We note that ChemDesign, a producer of a number of chemicals other than benzyl paraben, is not a "start-up" company. ChemDesign was founded in 1982 and began production of various chemicals in 1985. The chief executive officer of ChemDesign characterized his company as "a well-established business."⁴² It had significant operating income in 1987, 1988, and 1989.⁴³

⁴⁰ Id. at A-6-9.

⁴¹ See generally Lime Oil, USITC Pub. 1723, at 8 n.19 (the Commission considered that distilled lime oil was merely a new product line of the established cold-pressed lime oil industry); Fabric and Expanded Neoprene Laminate from Japan, Inv. No. 731-TA-206 (Preliminary), USITC Pub. 1608 (Nov. 1984) at 8 (the Commission found that R-131 neoprene were merely a change in the product line of the established fabric and expanded neoprene laminate industry); Battery Covers, USITC Pub. 2265 at 13 (the Commission found that pressure sensitive battery covers were merely a new product line of an established firm that had been producing labels for 76 years). See also Copier Toner, USITC Pub. 1960 at 9 n.24 (the Commission found that the electrically resistive monocomponent toner (ERMT) industry was not established even though ERMT producers produced other toners as well because the sale of one toner did not create a ready market for other toners produced specifically for one type of copying machine).

⁴² Tr. at 35.

⁴³ Petition at exhibit 1; Report at A-7, Table 2.

However, benzyl paraben was ChemDesign's first product when it began operations in 1985 and, thus, could not have benefited initially from a pre-existing distribution network or sales force.⁴⁴ Moreover, benzyl paraben is a highly specialized product, having few domestic purchasers. The benefit that ChemDesign could have derived from its other, arguably "established" operations, does not appear to be significant in this case.

d. Market share.

Before ChemDesign's entry into the U.S. benzyl paraben market, the imported product held 100 percent of that market. Since the introduction of its product in 1989, petitioner's market share has increased significantly.⁴⁵ The fact that petitioner was able to retain most of its market share during its current period of production may be an indication that the benzyl paraben industry is in fact established. Our information regarding market share in this preliminary investigation, however, concerns sales to such a limited number of purchasers and covers such a short period of time that we do not believe these numbers to be indicative of any stable market share trends.⁴⁶

4. Conclusion.

ChemDesign is the only domestic producer of benzyl paraben. Its production of benzyl paraben has been intermittent, with current production having taken place for just over one year. ChemDesign's benzyl paraben operations apparently have not yet reached a break-even point. Further, it does not appear benzyl paraben operations were significantly aided by those

⁴⁴ Tr. at 8.

⁴⁵ Report at A-17, Table 10.

⁴⁶ We note that only two producers of thermal fax paper have used benzyl paraben in their thermal fax paper production processes during the period of investigation.

portions of ChemDesign's operations that are already established. While we are cognizant of the fact that ChemDesign has gained a significant share of the domestic benzyl paraben market during its year of production, we are unable to determine that its market share has stabilized during this limited period of production. For these reasons, we determine for purposes of this preliminary investigation that there is a reasonable indication that the U.S. benzyl paraben industry has not yet been established, but intend to closely reexamine this question in any final investigation.

B. There is a reasonable indication that the establishment of the domestic benzyl paraben industry has been materially retarded by reason of imports of benzyl paraben from Japan.

Having determined that the domestic benzyl paraben industry is not established, we also determine that there is a reasonable indication that it is materially retarded by reason of imports of benzyl paraben from Japan.⁴⁷

Domestic consumption of benzyl paraben increased significantly over most of the period of investigation indicating strong domestic demand for the product, although consumption declined considerably during the last period for which we were able to gather information.⁴⁸ Despite this strong demand for the product, petitioner has been unable to make sufficient sales at the price it requires to meet its fixed and variable costs and, thus, has been incurring losses. Unable to sell all the benzyl paraben it produces, petitioner's

⁴⁷ None of the parties to this investigation raised the issue of the inherent viability of the U.S. benzyl paraben industry. See Codfish, USITC Pub. 1711 at 8. In this preliminary determination, we find that the increasing U.S. consumption of benzyl paraben is a reasonable indication that ChemDesign's plan for domestic benzyl paraben production was apparently viable at its inception.

⁴⁸ Report at A-17, Table 10 & A-28, Table 11.

inventories have recently increased dramatically.⁴⁹ For this reason, we find the U.S. benzyl paraben industry to be materially retarded.⁵⁰

In order to reach an affirmative determination in this investigation, we must also determine that there is a reasonable indication that material retardation is by reason of the alleged LTFV sales. Petitioner's argument in this investigation focuses primarily on its assertion that the price of Japanese imports has been lowered in order to take sales from the domestic product resulting in depressed revenues and ChemDesign's inability to sell in the benzyl paraben market. It appears from the record in this preliminary investigation that any effect of the Japanese imports on the operations of the domestic producer are shown in the purchases of benzyl paraben made by petitioner's single domestic purchaser. Although that purchaser bought the majority of its benzyl paraben from ChemDesign, it also bought relatively small amounts of benzyl paraben from Japan at a price that was significantly lower than the price originally obtained by the domestic industry.^{51 52}

⁴⁹ Employment has remained constant since the beginning of domestic production due to the fact that production of less than a full "batch" of benzyl paraben would be economically inefficient. Report at A-4. We note that while normally we do not rely on partial data, domestic production has only taken place for the past 12 months and more complete data are not available in this investigation.

⁵⁰ Acting Chairman Brunsdale joins in the description of the condition of the domestic industry. However, she does not reach a separate legal conclusion regarding the presence or absence of material retardation based on this information. While she does not believe an independent determination is either required by statute or useful, she finds the discussion of the condition of the industry helpful in determining the extent to which imports caused the retardation of the industry.

⁵¹ Report at A-25-26.

⁵² Acting Chairman Brunsdale notes that the price of benzyl paraben would have to be at a level low enough to permit thermal fax paper manufacturers using that chemical to compete with those paper manufacturers using bisphenol-A. She finds unpersuasive the argument that petitioner could have raised its

(continued...)

It may be argued that the lost sales resulting from the purchase of the Japanese product by ChemDesign's purchaser were modest in terms of absolute volume. In addition, other factors may have caused the price reduction and lost sales volume suffered by the producer of benzyl paraben.⁵³ Petitioner's failure to secure purchase orders from a second end-user of benzyl paraben appears to have been based on a desire by that purchaser to maintain a long-time supply relationship with another chemical distributor that provided excellent technical expertise.⁵⁴ Further, in the course of this investigation, we have discovered that domestic demand for benzyl paraben is declining.

Nearly all benzyl paraben is used in the production of thermal fax paper, and, therefore, the demand for benzyl paraben is derived from the demand for thermal fax paper. While demand for thermal fax paper remains high, the thermal fax paper market is a highly price competitive one that depends on technological improvements to reduce production costs. Alternative production processes that use chemicals such as bisphenol-A permit the reduction of thermal fax paper production costs, relative to processes using benzyl paraben, and decrease demand for benzyl paraben. We intend to explore

⁵²(...continued)

price without losing sales had the subject imports not been present in the market.

⁵³ While we are not to weigh causes, we are able take into account information concerning other causes of harm to the domestic injury such as "the volume and prices of nonsubsidized [LTFV] imports, contraction in demand or changes in patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology, and the export performance and productivity of the domestic industry." S. Rep. No. 249, 96th Cong., 1st Sess. 57-58, 74 (1979); *Citrosuco Paulista, S.A. v. United States*, 12 CIT ___, 704 F. Supp. 1075, 1101 (1988).

⁵⁴ Report at A-26.

more thoroughly these alternative causation issues in any final investigation when data covering a longer period of production will be available.

The evidence of record presents a close question whether the establishment of a domestic industry has been materially retarded by reason of the subject imports allegedly sold at less-than-fair-value. In this preliminary investigation, however, we determine there is a reasonable indication that the volume of these sales lost to the subject imports and the depressing effect these sales had on the price that ChemDesign could obtain for its domestically produced product have materially retarded the establishment of a U.S. industry producing benzyl paraben.

INFORMATION OBTAINED IN THE INVESTIGATION

Introduction

On June 29, 1990, a petition was filed with the U.S. International Trade Commission and the U.S. Department of Commerce by ChemDesign Corp., Fitchburg, MA, alleging that imports of benzyl p-hydroxybenzoate (benzyl paraben) from Japan and the United Kingdom are being sold in the United States at less than fair value (LTFV) and that an industry in the United States is materially injured, is threatened with material injury, and is materially retarded by reason of such imports. Accordingly, effective June 29, 1990, the Commission instituted antidumping investigations Nos. 731-TA-462 and 463 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of such imports.

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was posted in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and published in the Federal Register on July 11, 1990 (55 F.R. 26464).

On July 16, 1990, the petitioner submitted a letter to the Department of Commerce withdrawing those portions of the petition that relate to imports from the United Kingdom. Accordingly, the Commission discontinued its investigation with respect to the United Kingdom (Investigation No. 731-TA-463 (Preliminary)) and published a notice in the Federal Register to that effect on August 1, 1990 (55 F.R. 31245).¹

The public conference with respect to Investigation No. 731-TA-462 (Preliminary), Benzyl Paraben from Japan, was held in Washington, DC, on July 20, 1990,² and the vote was held on August 7. Benzyl paraben has not been the subject of any other investigation conducted by the Commission.

Nature and Extent of the Alleged Sales at LTFV

There is no information relating to the nature and extent of the alleged LTFV sales other than the allegations of the petitioner. The petitioner identified one producer in Japan--Ueno Fine Chemicals Industry, Ltd., Osaka-- that has exported the subject product to the United States. On the basis of a home-market price for Ueno and prices paid by unrelated customers in the United States during January-June 1990, the petitioner calculated dumping margins ranging from 50.0 percent to 125.7 percent.

¹ Copies of the Commission's and Commerce's notices are shown in app. A.

² A list of witnesses appearing at the conference is presented in app. B.

The Product

Description and uses

The imported article subject to the petitioner's complaint, benzyl paraben, is a white to off-white crystalline powder (chemical formula-- $C_{14}H_{12}O_3$) used almost exclusively as a developer in coating formulas for thermographic recording paper--i.e., paper coated with heat-sensitive mixtures that allow visual images to develop on the paper when it is used in conjunction with certain printers and calculating machines; facsimile (fax) machines; machines for printing labels, tickets, and bar codes; and machines for printing medical and scientific information (such as electrocardiograms). The coating formula associated with benzyl paraben is used almost exclusively for fax paper.

There are several coating formulas in use for thermographic recording paper, depending on the type of machine the paper is to be used with and the specific demands of the buyer. Each formula typically consists of a dye, a developer (such as the subject product), and other chemicals for such things as stability and paper whiteness, all of which are encapsulated into microscopic granules to ensure that chemical reaction will occur only when the paper is used with certain printing machines. In general, the individual chemicals are specific to the coating formulas they are used in. There are no one-to-one substitutes for benzyl paraben or any other chemical in the specific coating mixture for which it is designed. The coatings themselves are much less specific. At least two are used in the manufacture of fax paper--one incorporating the subject product as the developer, and another, the most predominant, incorporating bisphenol-A. Although bisphenol-A must be used with an additional chemical, known as a sensitizer, to be effective, it is much less expensive³ than benzyl paraben and coatings made therefrom are reportedly less costly to produce and less subject to color fading. Benzyl paraben, on the other hand, is reportedly better suited for faster, low-heat printing. In terms of the end product, however, i.e., the coated paper, no one factor is determinative. The relative disadvantage or advantage of benzyl paraben, bisphenol-A, or any other ingredient depends on the specific coating formula in which it is used and the proprietary production methods of the paper manufacturer that uses it.

To produce benzyl paraben, p-hydroxybenzoic acid is mixed with benzyl alcohol to produce benzyl paraben and water. There are no byproducts or coproducts produced in the process. Benzyl paraben, a specialty chemical made largely for a single application, is produced to virtually identical specifications worldwide.

U.S. tariff treatment

Benzyl paraben is provided for in subheading 2918.29.50 of the Harmonized Tariff Schedule of the United States (previously provided for in

³ Bisphenol-A, unlike benzyl paraben, has a number of applications, is widely distributed, and is mass produced in relatively large quantities.

item 404.47 of the former Tariff Schedules of the United States), a residual classification which includes other chemical compounds (nonenumerated carboxylic acids and derivatives). The column 1-general (most-favored-nation) rate of duty for this subheading, applicable to imports from Japan, is 3.7 cents per kilogram (1.68 cents per pound) plus 17.9 percent ad valorem.

U.S. Producers

Since 1986, only one firm in the United States--the petitioner, a specialty chemical manufacturer--has produced benzyl paraben in any significant quantities. (Another firm--RSA Corp., Ardesley, NY--has produced very small quantities of less than *** pounds per year for ***). ChemDesign produces benzyl paraben at a single plant location in Fitchburg, MA, on a production train exclusively dedicated to the subject product. Following a *** investment in the required equipment, the company began producing benzyl paraben in January 1985, but ceased production in May 1986 after allegedly encountering price undercutting by Ueno.⁴ After investing an additional *** in an effort to reduce production costs (*** capital investment and *** for research in developing a new production process), the petitioner resumed production in June 1989. In the interim it purchased imported benzyl paraben ***.

The petitioner's production train for manufacturing benzyl paraben is one of six product trains located at the Fitchburg site. At this site and one other in Marinette, WI, it produces a total of about 45 specialty and fine chemicals, each for a single or small group of buyers.

Foreign Producers and U.S. Importers

Ueno and a producer in the United Kingdom--Nipa Laboratories, Ltd., Mid Glamorgan, England--account for all known exports of benzyl paraben to the United States. Most of this material has been imported by and/or through their respective U.S. subsidiaries: Ueno Fine Chemicals Industry (USA) Inc., New York, NY; and Nipa Laboratories (USA) Inc., Wilmington, DE.⁵ No value is added to the imported product other than storage and handling.

U.S. Market and Channels of Distribution

Two manufacturers of fax paper account for nearly all consumption of benzyl paraben in the United States: *** and ***. ChemDesign's decision to

⁴ ChemDesign alleges that Ueno dropped its price from *** per pound to *** per pound. Ueno claims that its *** per pound price corresponded to sample quantities that it shipped to *** by air freight; the *** per pound price corresponded to commercial quantities that it shipped to *** after *** approved its samples.

⁵ In many instances, however, it is not clear which firms (Ueno (USA), Nipa (USA), ChemDesign, or others) have been the actual importers of record.

produce the subject product was largely predicated on expected sales to ***, and *** its production (***) has been shipped to this firm. Most of Ueno's product has either been sold and shipped directly to ***; to ChemDesign, ***; or ***. Most of Nipa's product has ***. At least four other firms in the United States manufacture large quantities of thermal imaging paper, including fax paper: Appleton Papers, Inc.; Kanzaki Specialty Papers Inc.; Ricoh Electronics Corp.; and the 3M Company. None of these, however, use coating formulas that require benzyl paraben.⁶

Consideration of the Alleged Material Injury and Material Retardation⁷

All of the data in the following sections reflect the operations of ChemDesign from January 1987 to May 1990 and therefore represent virtually 100 percent of U.S. production during this period. Since the company only resumed production in June 1989 (after having ceased operations in May 1986), data for its operations fall into only 2 periods of the Commission's usual presentation format: 1989 and January-June 1990. Thusly distributed, its operational data cannot be evaluated on a time-series basis. Accordingly, certain data for ChemDesign's most recent period of operation--i.e., June 1989-May 1990--are presented in four successive 3-month periods: June-August 1989, September-November 1989, December 1989-February 1990, and March-May 1990.

The production train ChemDesign devotes to benzyl paraben includes raw material storage tanks, reactors, centrifuges, and dryers. According to the company's chairman and chief executive officer, this train was configured specifically for benzyl paraben production and conversion to another chemical would call for significant modifications and a considerable period of idleness. Depending on the product, the switch would allegedly require a capital investment of \$200,000 to \$900,000 and 6 to 9 months of lost production time.

Selected data on ChemDesign's benzyl paraben operations are shown in table 1. Basing its estimate on operating 168 hours per week, 50 weeks per year, ChemDesign reports a current production capability of *** pounds per year. (It reports no production capability for May 1986-May 1989, during which it was redesigning its production process and plant for a more cost-efficient operation). Since beginning production in June 1989, the company has maintained relatively high production levels to maintain maximum efficiency in its cost of operation. Capacity utilization has been correspondingly high. Shipments, however, have been relatively low and are declining (about *** percent from September-November 1989 to March-May 1990), resulting in large quantities of unsold benzyl paraben and an inventory

⁶ According to data published by Diamond Research Corp., *** accounted for about *** of U.S. thermal-imaging paper capacity in 1989. The other firms cited above accounted for *** percent of the remainder.

⁷ As noted earlier, petitioner has specifically alleged "material retardation" in this investigation.

Table 1

Benzyl paraben: ChemDesign's production, average practical capacity, capacity utilization, domestic shipments, exports, end-of-period inventories, average number of production and related workers, and hours worked by and total compensation paid to such workers, June-August 1989, September-November 1989, December 1989-February 1990, and March-May 1990

Item	June- August 89	September- November 89	December 89- February 90	March- May 90
Production (pounds).....	***	***	***	***
Average capacity ¹ (pounds).....	***	***	***	***
Ratio of production to capacity (percent)...	***	***	***	***
Domestic shipments:				
Quantity (pounds).....	***	***	***	***
Value ²	***	***	***	***
Export shipments:				
Quantity (pounds).....	***	***	***	***
Value ²	***	***	***	***
Inventories (pounds).....	***	***	***	***
Ratio of inventories to total shipments during the period (percent).....	***	***	***	***
Average number of pro- duction and related workers producing benzyl paraben.....	***	***	***	***
Hours worked by pro- duction and related workers producing benzyl paraben.....	***	***	***	***
Pounds of benzyl paraben produced per hour worked.....	***	***	***	***
Total compensation paid to production and related workers pro- ducing benzyl paraben	***	***	***	***
Hourly compensation paid to production and related workers pro- ducing benzyl paraben	***	***	***	***

¹ The capacity reported is based on operating 168 hours per week, 50 weeks per year.

² Net sales value, i.e., gross value less all discounts, allowances, rebates, and the value of returned goods.

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

buildup of well over *** percent since its first 3 months of operation. In keeping with its policy of maintaining efficient production levels, ChemDesign has not reduced the number of its employees or the hours worked by them. Of the *** production and related workers at the Fitchburg site, *** are devoted exclusively to benzyl paraben production.

Financial experience of ChemDesign

ChemDesign provided usable income-and-loss data on its benzyl paraben operations and on its Fitchburg (establishment) operations as a whole. Sales of benzyl paraben produced by the company accounted for a relatively low proportion of both its establishment and company sales in 1989, as shown below (in thousands of dollars):

<u>Item</u>	<u>Net sales</u>
Company.....	39,553
Establishment...	***
Benzyl paraben..	***

Overall establishment operations.--Income-and-loss data for the establishment in which benzyl paraben is produced are presented in table 2. Net sales increased by *** percent from *** in 1987 to *** in 1988. In 1989, sales were ***, an increase of *** percent over 1988 sales. Operating income was *** in 1987, *** in 1988, and *** in 1989. Operating income margins as a share of sales were *** percent in 1987, *** percent in 1988, and *** percent in 1989.

Net sales in interim 1990 were ***, an increase of *** percent over interim 1989 sales of ***. Operating income was *** in interim 1989 and *** in interim 1990. Operating income margins were *** percent in interim 1989 and *** percent in interim 1990.

Operations on benzyl paraben.⁸--Data on ChemDesign's benzyl paraben operations in 1989 and January-March 1990 are shown in table 3. Net sales in 1989 were ***; operating income was ***; and operating income, as a share of sales, was *** percent. Net sales in January-March 1990 were ***. ***.

The income-and-loss data reported by the company for benzyl paraben include some questionable cost allocations. These allocations relate to selling, general, and administrative (SG&A) expenses, interest expense, interest income, and other income. The company allocated SG&A expenses on the basis of property, plant, and equipment invested in benzyl paraben relative to its Fitchburg establishment as a whole. A more typical approach is to allocate these expenses on the basis of an activity-based measurement such as sales revenues, cost of goods sold, or in some cases, sales quantities. Although other methods of allocating SG&A expenses may be acceptable, an

⁸ The company sold its purchased benzyl paraben ***; these data were not included in either the establishment or benzyl paraben income-and-loss data.

Table 2

Income-and-loss experience of ChemDesign on the overall operations of its establishment in which benzyl paraben is produced, 1987-89, January-March 1989, and January-March 1990

Item	1987	1988	1989	January-March--	
				1989	1990
Value (1,000 dollars)					
Net sales.....	***	***	***	***	***
Cost of goods sold.....	***	***	***	***	***
Gross profit.....	***	***	***	***	***
Selling, general, and administrative expenses...	***	***	***	***	***
Operating income.....	***	***	***	***	***
Startup or shutdown expense.....	***	***	***	***	***
Interest expense.....	***	***	***	***	***
Other income or (expense), net.....	***	***	***	***	***
Net income or (loss) before income taxes.....	***	***	***	***	***
Depreciation and amorti- zation included above.....	***	***	***	***	***
Cash flow ¹	***	***	***	***	***
Share of net sales (percent)					
Cost of goods sold.....	***	***	***	***	***
Gross profit.....	***	***	***	***	***
Selling, general and administrative expenses...	***	***	***	***	***
Operating income.....	***	***	***	***	***
Net income or (loss) before income taxes.....	***	***	***	***	***

¹ Cash flow is defined as net income or loss plus depreciation and amortization.

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

allocation based on investment in this case does not reflect current production activity. The petitioner acquired most of the benzyl paraben assets ***. If the petitioner had used the same SG&A ratios (SG&A expenses as a share of net sales) for benzyl paraben that were reported for the establishment (*** percent for 1989 and *** percent for January-March 1990) rather than the asset-based allocations reported in table 3 (*** percent

Table 3
Income-and-loss experience of ChemDesign on its benzyl paraben operations,
1989 and January-March 1990

Item	1989	<u>January-March--</u> 1990
	<u>Value (1,000 dollars)</u>	
Net sales.....	***	***
Cost of goods sold.....	***	***
Gross profit.....	***	***
Selling, general, and administrative expenses...	***	***
Operating income or (loss)..	***	***
Startup or shutdown expense.....	***	***
Interest expense.....	***	***
Other income or (expense), net.....	***	***
Net income or (loss) before income taxes.....	***	***
Depreciation and amorti- zation included above.....	***	***
Cash flow ¹	***	***
	<u>Share of net sales (percent)</u>	
Cost of goods sold.....	***	***
Gross profit.....	***	***
Selling, general and administrative expenses...	***	***
Operating income.....	***	***
Net income before income taxes.....	***	***

¹ Cash flow is defined as net income or loss plus depreciation and amortization.

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

in 1989 and *** percent in January-March 1990), its SG&A expenses and operating income or (loss) for benzyl paraben would change significantly. These adjustments are shown below (in thousands of dollars):

<u>Item</u>	<u>1989</u>		<u>January-March 1990</u>	
	<u>Reported</u>	<u>Adjusted</u>	<u>Reported</u>	<u>Adjusted</u>
SG&A expenses.....	***	***	***	***
Operating income or (loss).....	***	***	***	***

The operating income (loss) margins, as a share of net sales would be as follows (in percent):

<u>Item</u>	<u>1989</u>		<u>January-March 1990</u>	
	<u>Reported</u>	<u>Adjusted</u>	<u>Reported</u>	<u>Adjusted</u>
Operating income or (loss).....	***	***	***	***

Interest income and all other income reported by the company were not allocated to the subject product. In addition, the interest expense for benzyl paraben reported by the petitioner reflected the estimated cost of carrying extra inventory for unsold benzyl paraben. The amount of interest was an imputed expense rather than an accrual or an actual cash outlay.

The company's 1989 annual report, 10-Q statement for the period ended March 31, 1990, and questionnaire response reported the following items for the two periods under review (in thousands of dollars):

<u>Item</u>	<u>1989</u>			
	<u>Interest expense</u>	<u>Interest income</u>	<u>Other income</u>	<u>Net effect on net income</u>
Company.....	627	736	1,916	2,025
Establishment.....	***	***	***	***
Benzyl paraben.....	***	***	***	***
	<u>January-March 1990</u>			
Company.....	36	172	0	136
Establishment.....	***	***	***	***
Benzyl paraben.....	***	***	***	***

The income-and-loss experience of benzyl paraben, on a dollars-per-pound basis, at the gross margin level is presented in table 4.

Table 4
Income-and-loss experience of ChemDesign on its operations producing benzyl paraben, 1989 and January-March 1990

<u>Item</u>	<u>(Per pound)</u>	
	<u>1989</u>	<u>January-March-- 1990</u>
Net sales.....	***	***
Cost of goods sold:		
Raw materials.....	***	***
Labor.....	***	***
Factory overhead.....	***	***
Total.....	***	***
Gross profit.....	***	***

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

Investment in productive facilities.--ChemDesign's reported investment in property, plant, and equipment and return on investment are shown in table 5. Returns on investment are not shown for benzyl paraben because 1989 operations were not for a complete year and annual rates of return based only on January-March 1990 data are not reliable.

Table 5
Value of property, plant, and equipment of ChemDesign, as of the end of 1987-89, March 1989, and March 1990

Item	End of year--			End of March--	
	1987	1988	1989	1989	1990
	Value (1,000 dollars)				
All products of establishment:					
Fixed assets:					
Original cost.....	***	***	***	***	***
Book value.....	***	***	***	***	***
Total assets ¹	***	***	***	***	***
Benzyl paraben:					
Fixed assets:					
Original cost.....	***	***	***	***	***
Book value.....	***	***	***	***	***
Total assets ²	***	***	***	***	***
	Return on book value of fixed assets (percent)				
All products of establishment:					
Operating return ³	***	***	***	(⁴)	(⁴)
Net return ⁵	***	***	***	(⁴)	(⁴)
	Return on total assets (percent)				
All products of establishment:					
Operating return ⁶	***	***	***	(⁴)	(⁴)
Net return ⁷	***	***	***	(⁴)	(⁴)

¹ Defined as book value of fixed assets plus current and noncurrent assets.

² Total establishment assets were apportioned to benzyl paraben on the basis of the ratio of the respective book values of fixed assets.

³ Defined as operating income or loss divided by asset value.

⁴ Not applicable.

⁵ Defined as net income or loss divided by asset value.

⁶ Defined as operating income or loss divided by total assets.

⁷ Defined as net income or loss divided by total assets.

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

Capital expenditures.--ChemDesign's capital expenditures for benzyl paraben are shown in table 6. During the period that ChemDesign was not producing benzyl paraben (1987 through May 1989), capital expenditures were nevertheless allocated to benzyl paraben because the product train that would eventually be used to produce benzyl paraben benefitted from these expenditures. Expenditures include expenditures in connection with environmental compliance.

Table 6
Capital expenditures of ChemDesign, 1987-89, January-March 1989, and January-March 1990

(In thousands of dollars)

Item	1987	1988	1989	January-March--	
				1989	1990
All products of establishment:					
Land and land improvements.....	***	***	***	***	***
Building and leasehold improvements.....	***	***	***	***	***
Machinery, equipment, and fixtures.....	***	***	***	***	***
Total.....	***	***	***	***	***
Benzyl paraben:					
Land and land improvements.....	***	***	***	***	***
Building and leasehold improvements.....	***	***	***	***	***
Machinery, equipment, and fixtures.....	***	***	***	***	***
Total.....	***	***	***	***	***

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

Research and development expenses.--ChemDesign's reported research and development expenses for all products and for benzyl paraben are shown in the tabulation below (in thousands of dollars):

Item	1987	1988	1989	January-March--	
				1989	1990
All products of establishment.....	***	***	***	***	***
Benzyl paraben.....	***	***	***	***	***

Capital and investment.--The Commission requested ChemDesign to describe any actual or potential negative effects of imports of benzyl paraben from Japan on its growth, investment, ability to raise capital, or existing development efforts (including efforts to develop a derivative or improved version of benzyl paraben). ChemDesign's response is presented in appendix C.

Consideration of the Alleged Threat of Material Injury

Section 771(7)(F)(i) of the Tariff Act of 1930 (19 U.S.C. 1677(7)(F)(i)) provides that--

In determining whether an industry in the United States is threatened with material injury by reason of imports (or sales for importation) of any merchandise, the Commission shall consider, among other relevant factors⁹--

(I) If a subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy (Particularly as to whether the subsidy is an export subsidy inconsistent with the Agreement),

(II) any increase in production capacity or existing unused capacity in the exporting country likely to result in a significant increase in imports of the merchandise to the United States,

(III) any rapid increase in United States market penetration and the likelihood that the penetration will increase to an injurious level,

(IV) the probability that imports of the merchandise will enter the United States at prices that will have a depressing or suppressing effect on domestic prices of the merchandise,

(V) any substantial increase in inventories of the merchandise in the United States,

(VI) the presence of underutilized capacity for producing the merchandise in the exporting country,

(VII) any other demonstrable adverse trends that indicate the probability that the importation (or sale for importation) of the merchandise (whether or not it is actually being imported at the time) will be the cause of actual injury,

(VIII) the potential for product-shifting if production facilities owned or controlled by the foreign manufacturers, which can be used to produce products subject to investigation(s) under section 701 or 731 or to final orders under section 706 and 736, are also used to produce the merchandise under investigation,

⁹ Section 771(7)(F)(ii) of the act (119 U.S.C. 1677(7)(F)(ii)) provides that "Any determination by the Commission under this title that an industry in the United States is threatened with material injury shall be made on the basis of evidence that the threat of material injury is real and that actual injury is imminent. Such a determination may not be made on the basis of mere conjecture or supposition."

(IX) in any investigation under this title which involves imports of both a raw agricultural product (within the meaning of paragraph (4)(E)(iv)) and any product processed from such raw agricultural product, the likelihood that there will be increased imports, by reason of product shifting, if there is an affirmative determination by the Commission under section 705(b)(1) or 735(b)(1) with respect to either the raw agricultural product or the processed agricultural product (but not both), and,

(X) the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the like product.¹⁰

Available information on the volume, U.S. market penetration, and pricing of imports of the subject merchandise (items (III) and (IV) above) is presented in the section entitled "Consideration of the Causal Relationship Between the Alleged LTFV Imports and the Alleged Material Injury;" and information on the effects of imports of the subject merchandise on U.S. producers' existing development and production efforts (item (X)) is presented in appendix C. Available information on U.S. inventories of the subject product (item (V)); foreign producers' operations, including the potential for "product-shifting" (items (II), (VI), and (VIII), above); and any other threat indicators, if applicable (item (VII) above), follows.

Although Ueno (USA) has a warehouse facility in Hawthorne, NJ, most imports of benzyl paraben have either been sold or committed prior to entering the United States and are sent directly to ***. Having a relatively small and known market, benzyl paraben has not been imported for inventory.

At least one firm other than Ueno--Yoshitomi Pharmaceuticals Industries, Ltd., Osaka--is known to produce, or to have produced, benzyl paraben in Japan, but only for domestic consumption and in very small quantities. Ueno's production, domestic shipments, and exports *** (table 7).

¹⁰ Section 771(7)(F)(iii) of the act (19 U.S.C. 1677(7)(F)(iii)) further provides that, in antidumping investigations, "...the Commission shall consider whether dumping in the markets of foreign countries (as evidenced by dumping findings or antidumping remedies in other GATT member markets against the same class or kind of merchandise manufactured or exported by the same party as under investigation) suggests a threat of material injury to the domestic industry."

Table 7

Benzyl paraben: Ueno's production, domestic shipments, and exports, 1987-89, January-May 1989, and January-May 1990

Item	1987	1988	1989	January-May--	
				1989	1990
Production (1,000 pounds).....	***	***	***	***	***
Domestic shipments (1,000 pounds)....	***	***	***	***	***
Exports to--					
United States (1,000 pounds).....	***	***	***	***	***
All other countries (1,000 pounds).	***	***	***	***	***
Share of total shipments that was exported (percent).....	***	***	***	***	***
Share of total exports to--					
United States (percent).....	***	***	***	***	***
All other countries (percent).....	***	***	***	***	***

Source: Compiled from data submitted in Ueno's post-conference brief, exhibit 1.

Consideration of the Causal Relationship Between the Alleged LTFV Imports and the Alleged Material Injury

Imports

Since 1987, Japan and the United Kingdom have been the only foreign suppliers of commercial quantities of benzyl paraben to the United States. Total imports *** from 1987 to 1989, but then fell by *** percent from January-March 1989 to January-March 1990 (table 8). Imports from Japan constitute the bulk of total imports and reflect the trend for the aggregate. From 1987 to 1989, imports from Japan increased by *** percent from about *** pounds, valued at ***, to *** pounds, valued at ***. In January-March 1990 the quantity of imports from Japan was about *** percent lower than that in the corresponding period of the previous year. Of total imports from Japan and the United Kingdom from 1987 to January-March 1990, ChemDesign accounted for about *** percent and *** percent, respectively, or about *** percent of the aggregate.

U.S. imports declined by *** percent from June-August 1989, when ChemDesign began producing, to December 1989-February 1990 (table 9). There were no imports in the following March-May period. ***.

Table 8
Benzyl paraben: U.S. imports, by principal sources, 1987-89, January-March
1989, and January-March 1990

Source	1987	1988	1989	January-March--	
				1989	1990
	<u>Quantity (pounds)</u>				
Japan.....	***	***	***	***	***
--of which purchased by ChemDesign.....	***	***	***	***	***
United Kingdom.....	***	***	***	***	***
--of which purchased by ChemDesign.....	***	***	***	***	***
Total.....	***	***	***	***	***
--of which purchased by ChemDesign.....	***	***	***	***	***
	<u>Value, landed, duty-paid (1,000 dollars)</u>				
Japan.....	***	***	***	***	***
--of which purchased by ChemDesign.....	***	***	***	***	***
United Kingdom.....	***	***	***	***	***
--of which purchased by ChemDesign.....	***	***	***	***	***
Total.....	***	***	***	***	***
--of which purchased by ChemDesign.....	***	***	***	***	***

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

Table 9

Benzyl paraben: U.S. imports, by principal sources, June-August 1989, September-November 1989, December 1989-February 1990, and March-May 1990

Source	June- August 89	September- November 89	December 89- February 90	March- May 90
	Quantity (pounds)			
Japan.....	***	***	***	***
--of which purchased				
by ChemDesign.....	***	***	***	***
United Kingdom.....	***	***	***	***
--of which purchased				
by ChemDesign.....	***	***	***	***
Total.....	***	***	***	***
--of which purchased				
by ChemDesign.....	***	***	***	***
	Value, landed, duty-paid (1,000 dollars)			
Japan.....	***	***	***	***
--of which purchased				
by ChemDesign.....	***	***	***	***
United Kingdom.....	***	***	***	***
--of which purchased				
by ChemDesign.....	***	***	***	***
Total.....	***	***	***	***
--of which purchased				
by ChemDesign.....	***	***	***	***

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

U.S. consumption and market penetration

Data on U.S. consumption of benzyl paraben shown in table 10 show a 185.5 percent increase from 1987 to 1989 and a 22.7 percent increase from January-March 1989 to January-March 1990. The data belie a more recent trend. Data shown for June-August 1989 through March-May 1990, during which the U.S.-produced product has been available on the market, show a sharp decline after December 1989-February 1990 (table 11). The decline largely reflects a decision by a major fax paper manufacturer (***) to switch to a cheaper coating formula using bisphenol-A. *** percent of the fax paper it manufactures now uses the latter chemical, and ***. Throughout 1990 *** has ***. Declining prices for fax paper have pressured fax paper manufacturers to seek lower cost methods of production. A more detailed discussion of the benzyl-paraben and bisphenol-A markets and markets from which they are derived is presented in the following section.

As a share of consumption, imports from Japan declined from *** percent in 1987 to *** percent in January-March 1990 (table 10). Total imports' share of consumption declined from 100 percent to *** percent in the same period. If imports from Japan are reduced by the amount purchased by ChemDesign, the

Table 10

Benzyl paraben: Apparent U.S. consumption and ratio of imports to consumption, 1987-89, January-March 1989, and January-March 1990

(Quantity in pounds; value in 1,000 dollars)

Period	Apparent U.S. con- sumption ¹	Ratio (percent) of imports to consumption				
		For Japan	For Japan, less ChemDesign's purchases from Japan	For UK	Total	Total, less ChemDesign's purchases from Japan and UK
Quantity						
1987.....	***	***	***	***	***	***
1988.....	***	***	***	***	***	***
1989.....	***	***	***	***	***	***
Jan.-Mar.--						
1989....	***	***	***	***	***	***
1990....	***	***	***	***	***	***
Value						
1987.....	***	***	***	***	***	***
1988.....	***	***	***	***	***	***
1989.....	***	***	***	***	***	***
Jan.-Mar.--						
1989....	***	***	***	***	***	***
1990....	***	***	***	***	***	***

¹ Domestic shipments plus imports. Shipments are prorated by month from table 1.

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

ratio of imports to consumption for Japanese-produced benzyl paraben decreases slightly from *** percent in 1987 to *** percent in 1989, and then increases to *** percent in January-March 1990. The increase reflects ***. The declining ratio of imports to consumption shown in table 11 reflects declining imports from all sources since June-August 1989.

Table 11

Benzyl paraben: Apparent U.S. consumption and ratio of imports to consumption, June-August 1989, September-November 1989, December 1989-February 1990, and March-May 1990

(Quantity in pounds; value in 1,000 dollars)

Period	Apparent U.S. con- sumption ¹	Ratio (percent) of imports to consumption				
		For Japan	For Japan, less ChemDesign's purchases from Japan	For UK	Total, less ChemDesign's purchases from Japan and UK	
<u>Quantity</u>						
Jun.-Aug.--						
1989....	***	***	***	***	***	***
Sep.-Nov.--						
1989....	***	***	***	***	***	***
Dec.-Feb.--						
1990....	***	***	***	***	***	***
Mar.-May--						
1990....	***	***	***	***	***	***
<u>Value</u>						
Jun.-Aug.--						
1989....	***	***	***	***	***	***
Sep.-Nov.--						
1989....	***	***	***	***	***	***
Dec.-Feb.--						
1990....	***	***	***	***	***	***
Mar.-May--						
1990....	***	***	***	***	***	***

¹ Domestic shipments plus imports.

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

Prices

Market characteristics.--Domestic and imported benzyl paraben are manufactured to a single specification; the quality of the domestic and imported products appears to be similar. Benzyl paraben is used primarily as an input in a patented process to produce a coating for thermal papers used in reprographic systems such as fax machines.

The demand for benzyl paraben is derived from the demand for benzyl paraben-coated paper, which, in turn, is affected chiefly by competition from

thermal papers with other chemical-based coatings¹¹ and secondarily by non-thermal papers that are used in alternative reprographic systems.¹² Hence, prices of benzyl paraben are affected by prices of alternative chemical-based coatings and by prices of non-thermal paper. Such competition is based on new and rapidly developing technologies for reprographic systems in which paper-product requirements may shift suddenly in the face of new developments.

Benzyl paraben is priced in dollars per pound, with the U.S. product shipped in 100-pound quantities and the subject imported product shipped in 50-kilogram quantities (about 110 pounds). Fiber drums are used to ship both domestic and imported benzyl paraben. Container costs average less than 2 percent of selling prices of both the domestic and subject imported products and are included in the prices of these products. The fiber drums are usually discarded by end users.¹³

* * * * *

Shipping costs in the United States reportedly are about 1 percent of the net U.S. f.o.b. selling price of the domestic or imported benzyl paraben and are not considered important factors in the sourcing decisions of end users. Transportation factors are discussed more fully later in this report.

Questionnaire price data.--The product for which pricing data were requested is described below.

Benzyl 4-hydroxybenzoate (benzyl paraben).--Chemical formula $C_{14}H_{12}O_3$, white to off-white crystalline powder, molecular weight of 228.25, melting point of 110-113 degrees centigrade, maximum of 0.1 percent ash loss on incineration (LOI), maximum of 0.5 percent loss on drying (LOD), and 99.0 percent pure.

The Commission requested the U.S. producer and importers to report net U.S. f.o.b. and delivered selling prices and quantities of benzyl paraben produced in the United States and imported from Japan and the United Kingdom.¹⁴ The price data were requested for the largest sale and for total

¹¹ Based on the questionnaire response of Ueno and Commission staff conversations with *** (July 10, 1990), manufacturing costs of thermal paper using bisphenol-A were *** to *** percent lower than production costs of thermal paper using benzyl paraben. Both firms also indicated that bisphenol-A-based thermal paper was higher in quality because it eliminated image fading that is associated with benzyl paraben-based thermal paper.

¹² Such as laser fax machines.

¹³ The empty fiber drums range in weight from 7 to 12 pounds. The responding U.S. producer, importers, and one end user, ***, reported in their questionnaire responses that they did not consider the drums a factor in selling benzyl paraben.

¹⁴ The Commission also requested purchase prices and quantities for benzyl paraben from the two major U.S. end users, *** and ***. *** purchased ***, whereas *** purchased ***. *** responded but was not able to identify the country of origin of its purchases of benzyl paraben from ***; *** did not return the questionnaire.

sales of the specified product to end users and to distributors, by quarters, during January 1987-June 1990. ChemDesign was also requested to provide pricing data for its U.S. sales of imported benzyl paraben.¹⁵

ChemDesign reported the requested selling price data of U.S.-produced benzyl paraben to ***, ***, but only for the periods beginning in mid-1989 when the firm restarted production of the product after a 3-year production hiatus. Ueno and Nipa reported selling price data of their imported benzyl paraben sold directly to U.S. end users.¹⁶ *** are shown in appendix D.

Price trends.--Price trends based on net U.S. f.o.b. selling prices of ChemDesign's sales of its domestically-produced benzyl paraben and the foreign products imported and sold by Ueno and Nipa to end users are shown in table 12. Price trends of sales by Ueno and Nipa of their imported benzyl paraben sold to distributors¹⁷ and purchase price trends of *** benzyl paraben by ChemDesign for resale are shown in table 13. ***.

Based on limited direct sales, trends in quarterly prices to end users of the domestic and imported benzyl paraben were mixed. Selling prices of the U.S.-produced product fell during the periods reported, while prices of the imported Japanese product reported by Ueno remained unchanged and prices of the imported British product reported by Nipa fluctuated but generally rose. ***.

United States.--ChemDesign's reported quarterly net f.o.b. selling prices of its U.S.-produced benzyl paraben sold to *** fell from *** per pound in *** to *** per pound in ***, or by almost *** percent, and stayed at this level in *** (table 12). As explained later in this section and in the lost revenue/sales sections, *** was requesting price concessions from its suppliers of benzyl paraben during this period to meet competition from lower-priced bisphenol-A-based thermal paper.

Japan.--Ueno's net U.S. f.o.b. quarterly prices of Japanese benzyl paraben sold to ***, remained unchanged at *** per pound during *** (table 12). On the other hand, its net U.S. f.o.b. quarterly weighted-average selling prices to distributors increased from *** per pound in *** to *** per pound during ***, or by almost *** percent (table 13).¹⁸ During the period that Ueno sold Japanese benzyl paraben to both *** customers, ***, its

¹⁵ Although the Commission's investigation concerning imports of benzyl paraben from the United Kingdom was discontinued, the available information on prices of imports from that source is discussed in this report to present as complete a record as possible. As indicated previously, only two countries--Japan and the United Kingdom--supplied benzyl paraben to the United States during the period of this investigation.

¹⁶ ChemDesign, the lone U.S. producer of benzyl paraben, accounted for virtually all domestic shipments of the U.S.-produced product during January 1987-June 1990. ***.

¹⁷ ***.

¹⁸ ***.

Table 12

Price indexes and net U.S. f.o.b. selling prices to end users of U.S.-produced and imported benzyl paraben, by country of origin and by quarters, January 1987-June 1990

* * * * *

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

Table 13

Price indexes and net U.S. f.o.b. selling prices to distributors of imported benzyl paraben, by country of origin and by quarters, January 1987-June 1990

* * * * *

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

prices to *** were lower than those to ***,¹⁹ although the margin of difference narrowed. During ***, Ueno's quarterly selling prices to *** rose from *** per pound to *** per pound, or by about *** percent, whereas its selling prices to *** rose from *** per pound to *** per pound or by *** percent.²⁰

The United Kingdom. --Nipa's net U.S. f.o.b. quarterly prices of its imported British benzyl paraben sold to ***, fluctuated but increased from *** per pound during *** to *** per pound by ***, or by approximately *** percent, and remained at this latter level during *** (table 12). Nipa's net U.S. f.o.b. quarterly selling prices of the imported product to distributors (***) increased from *** per pound in *** to *** per pound during ***, or by about *** percent, and remained at this latter level through *** (table 13). ***.

Price comparisons. --Price comparisons between U.S.-produced and imported benzyl paraben products sold to end users were developed from net delivered selling prices reported by the U.S. producer and importers. Price comparisons were based on sales of the U.S.-produced product by ChemDesign and the Japanese and British products by the two importers, Ueno and Nipa. Two

¹⁹ ***.

²⁰ ***.

quarterly price comparisons were possible during July 1989-June 1990 between U.S.-produced benzyl paraben and the imported product from Japan.²¹

Japan--Quarterly price comparisons between U.S.-produced and Japanese benzyl paraben are based on net U.S. delivered selling prices of the domestic and imported product sold to *** during October 1989-March 1990. ChemDesign reported selling prices of the domestic product²² and Ueno reported selling prices of the Japanese product. In both quarterly price comparisons the imported product was priced lower than the domestic product, by *** percent during *** and *** percent during *** (table 14).

* * * * *

The United Kingdom--Quarterly price comparisons between U.S.-produced and imported British benzyl paraben are based on net U.S. delivered selling prices of the domestic product sold to *** and the imported product sold to *** during July 1989-March 1990. ChemDesign reported selling prices of the domestic product²³ and Nipa reported selling prices of the British product.²⁴ In two of the three quarterly price comparisons during *** 1989 the imported product was priced approximately *** and *** percent below the domestic product, but during January-March 1990 the imported product was priced *** percent higher than the domestic product (table 14).

Transportation factors

ChemDesign, Ueno, and Nipa responded to questions on transportation factors in the producer and importer questionnaires. ChemDesign sells both U.S.-produced and foreign benzyl paraben²⁵ in the U.S. market from its plant in Fitchburg, MA. Ueno and Nipa sell Japanese and British benzyl paraben from warehouses in Hawthorne and Port Elizabeth, NJ, respectively. Most domestically-produced and imported benzyl paraben is shipped by truck to U.S. customers.

²¹ As indicated previously, although imports of benzyl paraben from the United Kingdom are no longer subject to investigation, the available price information concerning such imports is discussed here to present as complete a record as possible.

²² *** estimated freight of *** per pound to deliver domestically produced benzyl paraben from ChemDesign's factory to the end user's location. *** transported the domestic product in its own trucks.

²³ *** estimated freight of *** per pound to deliver domestically produced benzyl paraben from ChemDesign's factory to the end user's location. *** transported the domestic product in its own trucks.

²⁴ *** estimated freight of *** per pound to deliver imported British benzyl paraben from Port Elizabeth, NJ, to ***. *** arranges freight from the importer's U.S. warehouse ***.

²⁵ ***.

Table 14

Net U.S. delivered selling prices to end users of benzyl parabaen produced in the United States and imported from Japan and the United Kingdom, and margins of under/(over) selling, by quarters, July 1989-March 1990

* * * * * * *

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

ChemDesign sells its domestic and imported benzyl paraben to ***, located in ***. Importers reported selling from their U.S. warehouses to customers located in the northeastern United States, primarily Massachusetts, New Hampshire, and New Jersey. *** uses its own trucks to transport the benzyl paraben that it buys. Importers selling from U.S. warehouses sometimes arrange the freight and other times the customer arranges the U.S.-inland freight to its location.

ChemDesign and the importers reported that U.S. inland freight costs are about 1 percent of the net U.S. f.o.b. selling prices. ChemDesign, Ueno, ***, and *** indicated that U.S. inland freight costs were not an important factor in customers' sourcing decisions.

Exchange rates

Quarterly data reported by the International Monetary Fund indicate that values of the currencies of Japan and the United Kingdom appreciated in real terms relative to the U.S. dollar during January 1987-March 1990.²⁶ Exchange rate changes for the two countries are shown in table 15 and discussed below.

Japan.--The nominal value of the Japanese yen appreciated relative to the U.S. dollar by about 4 percent during January 1987-March 1990. Approximately 3 percent inflation in Japan compared to about 14 percent inflation in the United States during this period resulted in depreciation of the Japanese yen in real terms compared to appreciation in nominal terms. In real terms, the Japanese yen depreciated against the U.S. dollar during the period by almost 6 percent.

The United Kingdom.--The nominal value of the British pound appreciated relative to the U.S. dollar by approximately 8 percent during January 1987-March 1990. Almost 15 percent inflation in the United Kingdom compared with about 14 percent inflation in the United States during this period resulted in somewhat more appreciation of the British pound in real terms than in nominal terms. In real terms, the British pound appreciated against the U.S. dollar by almost 9 percent.

²⁶ International Financial Statistics, June 1990.

Table 15

Exchange rates:¹ Indexes of the nominal and real exchange rates between the U.S. dollar and currencies of Japan and the United Kingdom, and indexes of producer prices in the foreign countries and the United States,² by quarters, January 1987-March 1990

Period	Japan			The United Kingdom			U.S. producer price index
	Nominal exchange-rate index	Producer price index	Real exchange-rate index ³	Nominal exchange-rate index	Producer price index	Real exchange-rate index ³	
1987:							
Jan.-Mar...	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Apr.-June..	107.4	99.2	104.8	106.6	101.0	105.9	101.6
July-Sept..	104.3	100.5	101.9	104.9	101.6	103.7	102.8
Oct.-Dec...	112.8	100.1	109.5	113.8	102.7	113.2	103.3
1988:							
Jan.-Mar...	119.7	99.0	114.1	116.5	103.8	116.5	103.9
Apr.-June..	121.9	98.6	113.9	119.5	105.3	119.3	105.5
July-Sept..	114.6	99.5	106.5	110.0	106.5	109.5	107.1
Oct.-Dec...	122.3	98.7	112.2	116.1	107.8	116.3	107.6
1989:							
Jan.-Mar...	119.2	99.2	107.6	113.4	109.3	112.7	109.9
Apr.-June..	110.9	101.8	101.1	105.6	110.6	104.4	111.9
July-Sept..	107.6	102.6	99.2	103.6	112.0	104.1	111.5
Oct.-Dec...	107.1	102.4	98.1	102.8	113.4	104.2	111.9
1990:							
Jan.-Mar...	103.6	102.9	93.9	107.5	115.0 ⁴	108.9 ⁴	113.5

¹ Based on exchange rates expressed in U.S. dollars per unit of foreign currency.

² The producer price indexes are aggregate measures of inflation at the wholesale level in the United States and the above foreign countries. Quarterly producer prices in the United States rose by 13.5 percent during January 1987-March 1990. Producer prices in Japan rose more slowly during this period, by 2.9 percent, while producer prices in the United Kingdom rose somewhat faster, by 15.0 percent.

³ The real values of the foreign currencies are the nominal values adjusted for the difference between inflation rates as measured by the producer price indexes in the individual foreign countries and the United States.

⁴ Based on data for January-February.

Note.--January-March 1987=100.0

Source: International Monetary Fund, International Financial Statistics, June 1990.

Lost revenues

ChemDesign identified one purchaser in lost revenue allegations involving competition with benzyl paraben from Japan; no lost revenue allegations involving imported British benzyl paraben were reported. The Staff's discussion with the purchaser is shown below.

*** was named in an allegation of lost revenues of *** on *** pounds of benzyl paraben in *** because of competition with imports from Japan.²⁷ ChemDesign alleged that it offered *** U.S.-produced benzyl paraben for *** per pound f.o.b. its Fitchburg, MA, plant but had to meet the price of the imported Japanese product of *** per pound delivered to ***. *** indicated that ChemDesign's initial offer price of *** per pound was on a delivered basis but the U.S. producer had to lower its price to help *** lower its costs so it could compete more successfully with other U.S. and foreign producers of thermal paper products. *** also noted that *** had already paid this lower price for the Japanese product in its efforts to be more competitive in the thermal paper market. During this period, *** reported purchasing a total of *** pounds of benzyl paraben, at *** per pound, with *** pounds purchased from *** and *** pounds purchased from ***. ***.

Lost sales

ChemDesign identified two purchasers in lost sales allegations involving competition from benzyl paraben imported from Japan and the United Kingdom.²⁸ The purchasers indicated using benzyl paraben solely for the production of thermal paper products. The staff's discussions with the purchasers are shown below.

ChemDesign identified *** in lost sales allegations involving benzyl paraben from Japan. ChemDesign allegedly lost sales of U.S.-produced benzyl paraben amounting to *** pounds during ***, and *** pounds during **. These figures were based on estimated total requirements (according to ChemDesign) for benzyl paraben by *** of about *** pounds during *** and about *** pounds per month during ***.²⁹ The agreed upon purchase price in *** and *** delivered to *** was *** per pound according to ChemDesign. *** stated that his firm's actual requirements for benzyl paraben during the periods cited were much less than expected, largely because of intense competition with other U.S. and foreign producers of thermal paper products. *** calculated that of his firm's total purchases of benzyl paraben during ***, it bought from *** to *** pounds of benzyl paraben per *** from ChemDesign at *** per pound delivered, while it purchased *** pounds of the Japanese product during this *** period at *** per pound delivered. *** stated that of his firm's total purchases of benzyl paraben during ***, *** pounds was purchased from ChemDesign and *** pounds of the Japanese product was purchased, both at ***

²⁷ The lost revenue figure was based on ChemDesign's expected sales of about *** pounds per month, which, ***.

²⁸ ***.

²⁹ ***.

per pound delivered. He rated the quality of the domestic and Japanese benzyl paraben about the same.

*** of *** indicated that *** informed Ueno and ***, during *** that *** was losing sales of its benzyl paraben-based thermal paper to lower-cost thermal paper using bisphenol-A, despite lowering other material and processing costs.³⁰ *** informed these suppliers that they would have to reduce their prices of benzyl paraben to sell any of the product to ***, enabling the firm to compete with thermal paper made with bisphenol-A.³¹ *** further indicated that *** did not prompt the suppliers with any price figures.

* * * * *

30 ***.

31 ***.

APPENDIX A

COMMERCE'S AND COMMISSION'S FEDERAL REGISTER NOTICES

**INTERNATIONAL TRADE
COMMISSION**

[Investigations Nos. 731-TA-462-463
(Preliminary)]

**Benzyl Paraben From Japan and the
United Kingdom**

AGENCY: United States International
Trade Commission.

ACTION: Institution of preliminary
antidumping investigations and
scheduling of a conference to be held in
connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigations Nos. 731-TA-462-463 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that 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 from Japan and/or the United Kingdom of benzyl p-hydroxybenzoate (benzyl paraben), provided for in subheading 2918.29.50 of the Harmonized Tariff Schedule of the United States (previously reported under item 404.47 of the former Tariff Schedules of the United States), that are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by August 13, 1990.

For further information concerning the conduct of these investigations and rules

of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATE: June 29, 1990.

FOR FURTHER INFORMATION CONTACT: Larry Reavis (202-252-1185), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20438. Hearing-impaired individuals are advised that information on this matter can be obtained by contracting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted in response to a petition filed on June 29, 1990, by ChemDesign Corp., Fitchburg, MA.

Participation in the investigations.—Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the Federal Register. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Public service.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each public document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the public service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited disclosure of business proprietary information under a protective order and business proprietary information service list.—

Pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)), the Secretary will make available business proprietary information gathered in these preliminary investigations to authorize applicants

under a protective order, provided that the application be made not later than seven (7) days after the publication of this notice in the Federal Register. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been served on all the parties that are authorized to receive such information under a protective order.

Conference.—The Director of Operations of the Commission has scheduled a conference in connection with these investigations from 9:30 a.m. on July 20, 1990, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Larry Reavis (202-252-1185) not later than July 18, 1990, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written submissions.—Any person may submit to the Commission on or before July 24, 1990, a written brief containing information and arguments pertinent to the subject matter of the investigations, as provided in section 207.15 of the Commission's rules (19 CFR 207.15). If briefs contain business proprietary information, a nonbusiness proprietary version is due July 25, 1990. A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled, "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of sections 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7).

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a))

may comment on such information in their written brief, and may also file additional written comments on such information no later than July 27, 1990. Such additional comments must be limited to comments on business proprietary information received in or after the written briefs. A non-business proprietary version of such additional comments is due July 30, 1990.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

Issued: July 5, 1990.

Kenneth R. Mason,

Secretary.

[FR Doc. 90-16153 Filed 7-10-90; 8:45 am]

BILLING CODE 7020-C2-M

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce (the Department), we are initiating an antidumping duty investigation to determine whether imports of benzyl p-hydroxybenzoate (benzyl paraben) from Japan are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of benzyl paraben are materially injuring, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before August 13, 1990. If that determination is affirmative, we will make a preliminary determination on or before December 8, 1990.

EFFECTIVE DATE: July 27, 1990.

FOR FURTHER INFORMATION CONTACT: Vincent Kane or Roy Malmrose, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-2815 or 377-5414.

SUPPLEMENTARY INFORMATION:**The Petition**

On June 29, 1990, we received a petition filed in proper form by the ChemDesign Corporation, Fitchburg, Massachusetts. In compliance with the filing requirements of the Department's regulations (19 CFR 353.12), petitioner alleges that imports of benzyl paraben 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 (the Act), and that these imports are materially injuring, or threaten material injury to, a U.S. industry.

Petitioner has stated that it has standing to file the petition because it is an interested party, as defined under section 771(9)(C) of the Act, and because it has filed the petition on behalf of the U.S. industry producing the product that is subject to this investigation. If any interested party, as described under paragraphs (C), (D), (E), (F), or (G) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, please file a written notification with the Assistant Secretary for Import Administration.

Under the Department's regulations, any producer or reseller seeking

International Trade Administration
(A-588-616)

Initiation of Antidumping Duty Investigation: Benzyl P-Hydroxybenzoate From Japan

AGENCY: Import Administration, International Trade Administration, Commerce

exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in § 353.14 of the Department's regulations.

United States Price

Petitioner bases its estimate of United States price on pricing information received from a U.S. purchaser of benzyl paraben from Japan. Petitioner adjusted the delivered price in the United States for credit costs, other direct selling expenses, indirect U.S. inland freight, U.S. import duty, handling charges, ocean freight and insurance.

Foreign Market Value

Petitioner's estimate of foreign market value is based on pricing information which is received from sources in Japan. Petitioner adjusted the home market price for credit costs, other direct selling expenses, indirect selling expenses up to the amount of the selling expenses in the United States, and Japanese inland freight.

Petitioner calculated margins of sales at less than fair value for the highest and the lowest home market prices to illustrate the range of possible margins. For purposes of the initiation, the Department has accepted the methodology used by petitioner in calculating margins of sales at less than fair value. Based on a comparison of United States price and foreign market value, petitioner has estimated dumping margins ranging from 50 to 125 percent.

Initiation of Investigation

Pursuant to section 732(c) of the Act, the Department must determine, within 20 days after a petition is filed, whether the petition sets forth allegations necessary for the initiation of an antidumping duty investigation, and whether the petition contains information reasonably available to petitioner supporting the allegations.

We have examined the petition and found that it complies with the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of benzyl paraben from Japan are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by December 6, 1990.

Scope of Investigation

The United States has developed a

system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the Harmonized Tariff Schedules (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered or withdrawn from warehouse for consumption on or after this date will be classified solely according to the appropriate HTS subheadings. The HTS subheadings are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive.

The product covered in this investigation is benzyl p-hydroxybenzoate (benzyl paraben). Benzyl paraben is currently classifiable under HTS item number 2918.29.50 (previously classified under item 404.47 of the Tariff Schedules of the United States).

ITC Notification

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in the Department's files, provided the ITC confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Deputy Assistance Secretary for Investigations, Import Administration.

Preliminary Determination by ITC

The ITC will determine by August 13, 1990, whether there is a reasonable indication that imports of benzyl paraben from Japan are materially injuring, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act.

Dated: July 19, 1990.

Francis J. Sailer,
Acting Assistant Secretary for Import
Administration.

[FR Doc. 90-17908 Filed 7-28-90; 8:45 am]

BILLING CODE 3510-06-0

[Investigation No. 731-TA-463
(Preliminary)]

**Benzyl Paraben From the United
Kingdom**

AGENCY: United States International
Trade Commission.

ACTION: Notice of withdrawal of petition
in antidumping investigation.

SUMMARY: On July 16, 1990, the U.S.
Department of Commerce and the U.S.
International Trade Commission
received a letter from petitioner in the
subject investigation (ChemDesign
Corp., Fitchburg, MA) withdrawing its
petition. We are informed that
Commerce will not initiate an
investigation as provided in section
732(c) of the Tariff Act of 1930 (19 U.S.C.
1673a(c)). Accordingly, the Commission
gives notice that its antidumping
investigation concerning benzyl p-
hydroxybenzoate (benzyl paraben) from
the United Kingdom (investigation No.
731-TA-463 (Preliminary)) is
discontinued.

EFFECTIVE DATE: July 16, 1990.

FOR FURTHER INFORMATION CONTACT:
Larry Reavis (202-252-1185), Office of
Investigations, U.S. International Trade
Commission, 500 E Street SW.,
Washington, DC 20436. Hearing-
impaired individuals are advised that
information on this matter can be
obtained by contacting the
Commission's TDD terminal on 202-252-
1810. Persons with mobility impairments
who will need special assistance in
gaining access to the Commission
should contact the Office of the
Secretary at 202-252-1000.

Issued: July 24, 1990.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 90-17930 Filed 7-31-90; 8:45 am]

BILLING CODE 7020-02-0

)

APPENDIX B

LIST OF WITNESSES AT THE COMMISSION'S CONFERENCE

CALENDAR OF PUBLIC CONFERENCE

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

Subject: Benzyl Paraben from Japan

Inv. No. 731-TA-462 (Preliminary)

Date and time: July 20, 1990 - 9:30a.m.

Sessions were held in connection with the investigation in the hearing room of the U.S.
International Trade Commission, 500 E Street SW, Washington, DC.

In support of the imposition of antidumping duties

Cleary, Gottlieb, Steen & Hamilton--Counsel
Washington, DC
on behalf of

ChemDesign Corp., Fitchburg, MA

Richard E. T. Brooks, Chairman and Chief Executive Officer
Steven E. Borgeson, General Counsel and Secretary
Bruce P. Malashevich, Economic Consulting Services Inc.

Giovanni P. Prezioso)
Michael J. Sussman)--OF COUNSEL
Richard deC. Hinds)

In opposition to the imposition of antidumping duties

Graham & James--Counsel
Washington, DC
on behalf of

Ueno Fine Chemicals Industry, Ltd., Japan, and
Ueno Fine Chemicals Industry (USA), New York NY

Yoshihiko Katsuyama, General Manager (Ueno USA)

Lawrence R. Walders)
Jeffrey L. Snyder)--OF COUNSEL
Anjali Karina Singh)

APPENDIX C

COMMENTS RECEIVED FROM CHEMDESIGN ON THE IMPACT OF IMPORTS
OF BENZYL PARABEN FROM JAPAN ON ITS GROWTH, INVESTMENT, ABILITY TO
RAISE CAPITAL, OR EXISTING DEVELOPMENT AND PRODUCTION EFFORTS

*

*

*

*

*

*

*

APPENDIX D

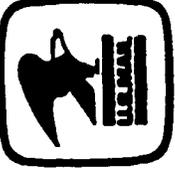
* * * * *

UNITED STATES
INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C. 20436

OFFICIAL BUSINESS

ADDRESS CORRECTION REQUESTED

Postage And Fees Paid
U.S. International Trade Commission



ADDRESS CHANGE

- Remove from List
- Change as Shown
- Please detach address label and mail as shown