

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN OMEGA-3 EXTRACTS FROM
MARINE OR AQUATIC BIOMASS AND
PRODUCTS CONTAINING THE SAME**

Investigation No. 337-TA-877

**NOTICE OF COMMISSION DETERMINATION TO AFFIRM AN INITIAL
DETERMINATION GRANTING A JOINT MOTION TO TERMINATE THE
INVESTIGATION WITH RESPECT TO RIMFROST USA, LLC,
OLYMPIC SEAFOOD AS, AVOCA, INC., BIORIGINAL FOOD & SCIENCE CORP.,
AND OLYMPIC BIOTEC LTD.**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to affirm an initial determination (“ID”) (Order No. 31) of the presiding administrative law judge (“ALJ”) granting a joint motion to terminate the investigation with respect to Rimfrost USA, LLC, Olympic Seafood AS, Avoca, Inc., Bioriginal Food & Science Corp., and Olympic Biotec Ltd. in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: James A. Worth, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3065. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on April 17, 2013, based on a complaint filed on January 29, 2013, as amended on March 21, 2013, and supplemented on April 1, 2013, on behalf of Neptune Technologies & Bioresources Inc. of Laval, Québec, Canada (“Neptune”) and Acasti Pharma Inc., also of Laval, Québec, Canada (collectively, “Complainants”). 78 *Fed. Reg.* 22898 (April 17, 2013). The complaint alleged violations of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, in the sale for importation, importation, or sale within the United States after importation of omega-3 extracts from marine or aquatic biomass and products containing the same by reason of infringement of one or more of claims 1-46 and 94 of U.S. Patent No. 8,278,351 (“the ‘351 patent”) and claim 1

of the U.S. Patent No. 8,383,675. The Commission's notice of investigation named as respondents Aker BioMarine AS of Oslo, Norway; Aker BioMarine Antarctic USA Inc. of Issaquah, Washington; Aker BioMarine Antarctic AS of Stamsund, Norway; Enzymotec Limited of Industrial Zone K'far Baruch, Israel; Enzymotec USA, Inc. of Morristown, New Jersey; Olympic Seafood AS of Fosnavåg, Norway; Olympic Biotec Ltd. of New Zealand; Avoca, Inc. of Merry Hill, North Carolina; Rimfrost USA, LLC of Merry Hill, North Carolina ("Rimfrost"); and Bioriginal Food & Science Corp. of Saskatoon, Saskatchewan, Canada (collectively, "Respondents").

On October 24, 2013, Complainants and respondents Rimfrost USA, LLC, Olympic Seafood AS, Avoca, Inc., Bioriginal Food & Science Corp., and Olympic Biotec Ltd. (collectively, "the Olympic Respondents") filed a motion to terminate the investigation with respect to the Olympic Respondents on the basis of a settlement agreement. On November 4, 2013, the Commission investigative attorney filed a response in support of the motion. On November 5, 2013, the ALJ issued the subject ID, granting Complainants' motion.

On December 4, 2013, the Commission issued notice of its determination to review the ID and solicited briefing from the parties. On December 11, 2013, the Complainants, the Olympic Respondents, and the Commission investigative attorney each submitted briefing in response to the Commission notice.

After considering the ID and the relevant portions of the record, the Commission has determined to affirm the ID. The Commission agrees with the ALJ that the motion for termination complies with the requirements of Commission rule 210.21 and that the settlement does not adversely affect the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, and U.S. consumers.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 C.F.R. Part 210).

By order of the Commission.



Lisa R. Barton
Acting Secretary to the Commission

Issued: December 17, 2013