

PUBLIC VERSION

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 REVIEW 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 review an initial determination (“ID”) (Order No. 31) of the presiding administrative law 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 & Bioressources 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

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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 Anarctic 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.

After considering the ID and the relevant portions of the record, the Commission has determined to review the ID.

The parties should brief their positions on the issues under review with reference to the applicable law and the evidentiary record. In connection with its review, the Commission is particularly interested in responses to the following questions:

[CONFIDENTIAL BUSINESS INFORMATION REDACTED]

WRITTEN SUBMISSIONS: The parties to the investigation are requested to file written submissions on the issues identified in this notice. The written submissions must be filed no later than close of business on December 11, 2013. The written submissions must be no longer than 20 pages. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must do so in accordance with Commission rule 210.4(f), 19 C.F.R. § 210.4(f), which requires electronic filing. The original document and 8 true copies thereof must also be filed on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 C.F.R. § 210.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

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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.

A handwritten signature in black ink, appearing to read "Lisa R. Barton". The signature is stylized and cursive, with a large initial "L" and "B".

Lisa R. Barton
Acting Secretary to the Commission

Issued: December 4, 2013