

Notice of initiation of an anti-dumping proceeding concerning imports of tartaric acid originating in the People's Republic of China, limited to one Chinese exporting producer, Hangzhou Bioking Biochemical Engineering Co., Ltd.

(2011/C 223/08)

The European Commission ('the Commission') has received a complaint pursuant to Article 5 of Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community ⁽¹⁾ ('the basic Regulation'), alleging that imports of tartaric acid, originating in the People's Republic of China, and produced by Hangzhou Bioking Biochemical Engineering Co., Ltd. ('Hangzhou Bioking' or 'the exporting producer concerned') are being dumped and are thereby causing material injury to the Union industry.

1. Complaint

The complaint was lodged on 15 June 2011 by the following producers (the complainants): Distillerie Bonollo SpA, Industria Chimica Valenzana SpA, Distillerie Mazzari SpA, Caviro Distillerie S.r.l. and Comercial Quimica Sarasa s.l. representing a major proportion, in this case more than 50 % of the total Union production of tartaric acid.

2. Product under investigation

The product subject to this investigation is tartaric acid, excluding D-(-)- tartaric acid with a negative optical rotation of at least 12,0 degrees, measured in a water solution according to the method described in the European Pharmacopoeia, originating in the People's Republic of China ('the product under investigation').

3. Allegation of dumping ⁽²⁾

The product allegedly being dumped is the product under investigation, originating in the People's Republic of China ('the country concerned'), currently falling within CN code ex 2918 12 00. This CN code is given for information only.

Since, in view of the provisions of Article 2(7) of the basic Regulation, the People's Republic of China is considered to be a non-market economy country, the complainant established normal value for Hangzhou Bioking on the basis of the price in a market economy third country, namely Argentina. The allegation of dumping is based on a comparison of the

normal value thus established with the export price (at ex-works level) of the product under investigation when sold for export to the Union.

On this basis the dumping margins calculated are significant.

4. Allegation of injury

The complainants have provided evidence that imports of the product under investigation from Hangzhou Bioking have increased overall in absolute terms and in terms of market share.

The *prima facie* evidence provided by the complainants shows that the volume and prices of the imported product under investigation have, among other consequences, had a negative impact on the quantities sold, the level of prices charged and the market share held by the Union industry, resulting in substantial adverse effects on the overall performance and the financial situation of the Union industry.

5. Procedure

Having determined, after consulting the Advisory Committee, that the complaint has been lodged by or on behalf of the Union industry and that there is sufficient evidence to justify the initiation of a proceeding, the Commission hereby initiates an investigation pursuant to Article 5 of the basic Regulation.

The investigation will determine whether the product under investigation originating in the country concerned and produced by Hangzhou Bioking is being dumped and whether this dumping has caused or has contributed to the injury to the Union industry. If the conclusions are affirmative, the investigation will examine whether the imposition of measures would not be against the Union interest.

5.1. Procedure for the determination of dumping

The exporting producer ⁽³⁾ concerned of the product under investigation is invited to participate in the Commission's investigation. For this purpose it has to submit a completed questionnaire containing information on, inter alia, the structure of the company, the activities of the company in relation to the

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ Dumping is the practice of selling a product for export ('the product concerned') at a price below its 'normal value'. The normal value is usually taken to be a comparable price for the 'like' product on the domestic market of the country concerned. The term 'like product' is interpreted to mean a product which is alike in all respects to the product concerned or, in the absence of such a product, a product which closely resembles the product.

⁽³⁾ An exporting producer is any company in the country concerned which produces and exports the product under investigation to the Union market, either directly or via third party, including any of its related companies involved in the production, domestic sales or exports of the product concerned. Non-producing exporters are normally not entitled to an individual duty rate.

product under investigation, the cost of production, the sales of the product under investigation on the domestic market of the country concerned and the sales of the product under investigation to the Union.

5.1.1. Investigating exporting producer

In order to obtain the information it deems necessary for its investigation, the Commission will send a questionnaire to the exporting producer concerned and to the authorities of the People's Republic of China.

5.1.2. Selection of a market economy third country

Subject to the provisions of Section 5.1.2.2 below, in accordance with Article 2(7)(a) of the basic Regulation, in the case of imports from the People's Republic of China normal value shall be determined on the basis of the price or constructed value in a market economy third country. For this purpose the Commission shall select an appropriate market economy third country. The Commission has provisionally chosen Argentina. Interested parties are hereby invited to comment on the appropriateness of this choice within 10 days of the date of publication of this notice in the *Official Journal of the European Union*.

5.1.2.1. Treatment of exporting producers in the non-market economy country concerned

In accordance with Article 2(7)(b) of the basic Regulation, in the event that Hangzhou Bioking considers that market economy conditions prevail for it in respect of the manufacture and sale of the product under investigation, it may submit a properly substantiated claim to this effect ('MET claim'). Market economy treatment ('MET') will be granted if the assessment of the MET claim shows that the criteria laid down in Article 2(7)(c) of the basic Regulation⁽⁴⁾ are fulfilled. The dumping margin of Hangzhou Bioking, if granted MET, will be calculated, to the extent possible and without prejudice to the use of facts available pursuant to Article 18 of the basic Regulation, by using their own normal value and export prices in accordance with Article 2(7)(b) of the basic Regulation.

Hangzhou Bioking may also, or as an alternative, claim individual treatment ('IT'). To be granted IT, Hangzhou Bioking must provide evidence that it fulfils the criteria set out in

⁽⁴⁾ The exporting producers have to demonstrate in particular that: (i) business decisions and costs are made in response to market conditions and without significant State interference; (ii) firms have one clear set of basic accounting records which are independently audited in line with international accounting standards and are applied for all purposes; (iii) there are no significant distortions carried over from the former non-market economy system; (iv) bankruptcy and property laws guarantee legal certainty and stability; and (v) exchange rate conversions are carried out at market rates.

Article 9(5) of the basic Regulation⁽⁵⁾. The dumping margin of Hangzhou Bioking, if granted IT, will be calculated on the basis of its own export prices. The normal value for Hangzhou Bioking, if granted IT, will be based on the values established for the market economy third country selected as outlined above.

(a) Market economy treatment (MET)

The Commission will send a MET claim form to Hangzhou Bioking as well as to the authorities of the People's Republic of China. If the exporting producer concerned decides to claim MET, it should submit the completed MET claim form within 15 days of the date of publication of this notice in the *Official Journal of the European Union*, unless otherwise specified.

(b) Individual treatment (IT)

To apply for IT, Hangzhou Bioking should submit the MET claim form with the sections relevant for IT duly completed within 15 days of the date of publication of this notice in the *Official Journal of the European Union*, unless otherwise specified.

5.1.3. Investigating unrelated importers⁽⁶⁾ ⁽⁷⁾

In view of the potentially large number of unrelated importers involved in this proceeding and in order to complete the investigation within the statutory time limits, the Commission may limit to a reasonable number the unrelated importers that will be investigated by selecting a sample (this process is also referred to as 'sampling'). The sampling will be carried out in accordance with Article 17 of the basic Regulation.

In order to enable the Commission to decide whether sampling is necessary and, if so, to select a sample, all unrelated importers, or representatives acting on their behalf, are hereby requested to make themselves known to the Commission. These

⁽⁵⁾ The exporting producers have to demonstrate in particular that: (i) in the case of wholly or partly foreign owned firms or joint ventures, exporters are free to repatriate capital and profits; (ii) export prices and quantities and conditions and terms of sale are freely determined; (iii) the majority of the shares belong to private persons. State officials appearing on the Board of Directors or holding key management positions shall either be in a minority or it must be demonstrated that the company is nonetheless sufficiently independent from State interference; (iv) exchange rate conversions are carried out at the market rate; and (v) State interference is not such as to permit circumvention of measures if individual exporters are given different rates of duty.

⁽⁶⁾ Only importers not related to exporting producers can be sampled. Importers that are related to exporting producers have to fill in Annex 1 to the questionnaire for these exporting producers. For the definition of a related party see footnote 8.

⁽⁷⁾ The data provided by unrelated importers may also be used in relation to aspects of this investigation other than the determination of dumping.

parties should do so within 15 days of the date of publication of this notice in the *Official Journal of the European Union*, unless otherwise specified, by providing the Commission with the following information on their company or companies:

- name, address, e-mail address, telephone and fax numbers and contact person,
- the precise activities of the company with regard to the product under investigation,
- total turnover during the period 1 July 2010 to 30 June 2011,
- the volume in tonnes and value in EUR of imports into and resales made on the Union market during the period 1 July 2010 to 30 June 2011 of the imported product under investigation originating in the country concerned and produced by Hangzhou Bioking,
- the names and the precise activities of all related companies⁽⁸⁾ involved in the production and/or sales of the product under investigation, and
- any other relevant information that would assist the Commission in the selection of the sample.

By providing the above information, the company agrees to its possible inclusion in the sample. If the company is selected to be part of the sample, this will imply completing a questionnaire and accepting a visit at its premises in order to verify its response ('on-spot verification'). If the company indicates that it does not agree to its possible inclusion in the sample, it will be deemed not to have cooperated in the investigation. The Commission's findings for non-cooperating

importers are based on the facts available and the result may be less favourable to that party than if it had cooperated.

In order to obtain the information it deems necessary for the selection of the sample of unrelated importers, the Commission may also contact any known associations of importers.

All interested parties wishing to submit any other relevant information regarding the selection of the sample, excluding the information requested above, must do so within 21 days of the publication of this notice in the *Official Journal of the European Union*, unless otherwise specified.

If a sample is necessary, the importers may be selected based on the largest representative volume of sales of the product under investigation in the Union which can reasonably be investigated within the time available. All known unrelated importers and associations of importers will be notified by the Commission of the companies selected to be in the sample.

In order to obtain the information it deems necessary for its investigation, the Commission will send questionnaires to the sampled unrelated importers and to any known association of importers. These parties must submit a completed questionnaire within 37 days from the date of the notification of the sample selection, unless otherwise specified. The completed questionnaire will contain information on, inter alia, the structure of their company(ies), the activities of the company(ies) in relation to the product under investigation and on the sales of the product under investigation.

5.2. Procedure for the determination of injury

Injury means material injury to the Union industry, or threat of material injury to the industry, or material retardation of the establishment of such an industry. A determination of injury is based on positive evidence and involves an objective examination of the volume of the dumped imports, their effect on prices on the Union market and the consequent impact of those imports on the Union industry. In order to establish whether the Union industry is materially injured, Union producers of the product under investigation are invited to participate in the Commission investigation.

5.2.1. Investigating Union producers

In view of the large number of Union producers involved in this proceeding and in order to complete the investigation within the set time limits, the Commission has decided to limit to a reasonable number the Union producers that will be investigated by selecting a sample (this process is also referred to as 'sampling'). The sampling is carried out in accordance with Article 17 of the basic Regulation.

⁽⁸⁾ In accordance with Article 143 of Commission Regulation (EEC) No 2454/93 concerning the implementation of the Community Customs Code, persons shall be deemed to be related only if: (a) they are officers or directors of one another's businesses; (b) they are legally recognised partners in business; (c) they are employer and employee; (d) any person directly or indirectly owns, controls or holds 5 % or more of the outstanding voting stock or shares of both of them; (e) one of them directly or indirectly controls the other; (f) both of them are directly or indirectly controlled by a third person; (g) together they directly or indirectly control a third person; or (h) they are members of the same family. Persons shall be deemed to be members of the same family only if they stand in any of the following relationships to one another: (i) husband and wife; (ii) parent and child; (iii) brother and sister (whether by whole or half blood); (iv) grandparent and grandchild; (v) uncle or aunt and nephew or niece; (vi) parent-in-law and son-in-law or daughter-in-law; (vii) brother-in-law and sister-in-law (OJ L 253, 11.10.1993, p. 1). In this context 'person' means any natural or legal person.

The Commission has provisionally selected a sample of Union producers. Details can be found in the file for inspection by interested parties. Interested parties are hereby invited to consult the file (for this they should contact the Commission using the contact details provided in Section 5.6 below) and to comment on the appropriateness of this choice within 15 days of the date of publication of this notice in the *Official Journal of the European Union*.

All interested parties wishing to submit any relevant information regarding the selection of the sample must do so within 21 days of the publication of this notice in the *Official Journal of the European Union*, unless otherwise specified.

All known Union producers and/or associations of Union producers will be notified by the Commission of the companies finally selected to be in the sample.

In order to obtain the information it deems necessary for its investigation, the Commission will send questionnaires to the sampled Union producers and to any known association of Union producers. These parties must submit a completed questionnaire within 37 days from the date of the notification of the sample selection, unless otherwise specified. The completed questionnaire will contain information on, inter alia, the structure of their company(ies), the financial situation of the company(ies), the activities of the company(ies) in relation to the product under investigation, the cost of production and the sales of the product under investigation.

5.3. *Procedure for the assessment of Union interest*

Should the existence of dumping and injury caused thereby be established, a decision will be reached, pursuant to Article 21 of the basic Regulation, as to whether the adoption of anti-dumping measures would be against the Union interest. Union producers, importers and their representative associations, users and their representative associations, and representative consumer organisations are invited to make themselves known within 15 days of the date of publication of this notice in the *Official Journal of the European Union*, unless otherwise specified. In order to participate in the investigation, the representative consumer organisations have to demonstrate, within the same deadline, that there is an objective link between their activities and the product under investigation.

Parties that make themselves known within the above deadline may provide the Commission with information on the Union interest within 37 days of the date of publication of this notice in the *Official Journal of the European Union*, unless otherwise specified. This information may be provided either in a free format or by completing a questionnaire prepared by the Commission. In any case, information submitted pursuant to Article 21 will only be taken into account if supported by factual evidence at the time of submission.

5.4. *Other written submissions*

Subject to the provisions of this notice, all interested parties are hereby invited to make their views known, submit information and provide supporting evidence. Unless otherwise specified, this information and supporting evidence should reach the Commission within 37 days of the date of publication of this notice in the *Official Journal of the European Union*.

5.5. *Possibility to be heard by the Commission investigation services*

All interested parties may request to be heard by the Commission investigation services. Any request to be heard should be made in writing and should specify the reasons for the request. For hearings on issues pertaining to the initial stage of the investigation the request must be submitted within 15 days of the date of publication of this notice in the *Official Journal of the European Union*. Thereafter, a request to be heard should be submitted within the specific deadlines set by the Commission in its communication with the parties.

5.6. *Instructions for making written submissions and sending completed questionnaires and correspondence*

All written submissions, including the information requested in this notice, completed questionnaires and correspondence provided by interested parties for which confidential treatment is requested shall be labelled 'Limited' ⁽⁹⁾.

Interested parties providing 'Limited' information are required to furnish non-confidential summaries of it pursuant to Article 19(2) of the basic Regulation, which will be labelled 'For inspection by interested parties'. These summaries should be sufficiently detailed to permit a reasonable understanding of the substance of the information submitted in confidence. If an interested party providing confidential information does not furnish a non-confidential summary of it in the requested format and quality, such confidential information may be disregarded.

For this investigation, the Commission will use an electronic document management system. Interested parties are requested to make all submissions and requests in electronic format (the non-confidential submissions via e-mail, the confidential ones on CD-R/DVD), and must indicate the name, address, e-mail, address, telephone and fax numbers of the interested party. However, any Powers of Attorney and signed certifications accompanying questionnaire replies or any updates thereof shall be submitted on paper, i.e. by post or by hand, at

⁽⁹⁾ A 'Limited' document is a document which is considered confidential pursuant to Article 19 of Council Regulation (EC) No 1225/2009 (OJ L 343, 22.12.2009, p. 51) and Article 6 of the WTO Agreement on Implementation of Article VI of the GATT 1994 (Anti-Dumping Agreement). It is also a document protected pursuant to Article 4 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council (OJ L 145, 31.5.2001, p. 43).

the address below. Pursuant to Article 18(2) of the basic Regulation if an interested party cannot provide its submissions and requests in electronic format, it must immediately inform the Commission. For further information concerning correspondence with the Commission, interested parties may consult the relevant web page on the website of Directorate-General for Trade: <http://ec.europa.eu/trade/tackling-unfair-trade/trade-defence/>

Commission address for correspondence:

European Commission
Directorate-General for Trade
Directorate H
Office: N105 04/092
1049 Bruxelles/Brussel
BELGIQUE/BELGIË

Dumping team:

Fax +32 22920480
E-mail: TRADE-AD-TARTARIC-DUMPING@ec.europa.eu

Injury team:

Fax +32 22921022
E-mail: TRADE-AD-TARTARIC-INJURY@ec.europa.eu

6. Non-cooperation

In cases where any interested party refuses access to or does not provide the necessary information within the time limits, or significantly impedes the investigation, provisional or final findings, affirmative or negative, may be made on the basis of facts available, in accordance with Article 18 of the basic Regulation.

Where it is found that any interested party has supplied false or misleading information, the information may be disregarded and use may be made of facts available.

If an interested party does not cooperate or cooperates only partially and findings are therefore based on facts available in accordance with Article 18 of the basic Regulation, the result may be less favourable to that party than if it had cooperated.

7. Hearing Officer

Interested parties may request the intervention of the Hearing Officer of Directorate-General for Trade. The Hearing Officer

acts as an interface between the interested parties and the Commission investigation services. The Hearing Officer reviews requests for access to the file, disputes on the confidentiality of documents, requests for extension of time limits and requests by third parties to be heard. The Hearing Officer may organise a hearing with an individual interested party and mediate to ensure that the interested parties' rights of defence are being fully exercised.

A request for a hearing with the Hearing Officer should be made in writing and should specify the reasons for the request. For hearings on issues pertaining to the initial stage of the investigation the request must be submitted within 15 days of the date of publication of this notice in the *Official Journal of the European Union*. Thereafter, a request to be heard must be submitted within specific deadlines set by the Commission in its communication with the parties.

The Hearing Officer will also provide opportunities for a hearing involving parties to take place which would allow different views to be presented and rebuttal arguments offered on issues pertaining, among others, to dumping, injury, causal link and Union interest. Such a hearing would, as a rule, take place at the latest at the end of the fourth week following the disclosure of provisional findings.

For further information and contact details interested parties may consult the Hearing Officer's web pages on Trade DG's website (http://ec.europa.eu/trade/tackling-unfair-trade/hearing-officer/index_en.htm).

8. Schedule of the investigation

The investigation will be concluded, according to Article 6(9) of the basic Regulation within 15 months of the date of the publication of this notice in the *Official Journal of the European Union*. According to Article 7(1) of the basic Regulation, provisional measures may be imposed no later than 9 months from the publication of this notice in the *Official Journal of the European Union*.

9. Processing of personal data

Any personal data collected in this investigation will be treated in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data ⁽¹⁰⁾.

⁽¹⁰⁾ OJ L 8, 12.1.2001, p. 1.