

PROCEDURES RELATING TO THE IMPLEMENTATION OF THE COMMON
COMMERCIAL POLICY

EUROPEAN COMMISSION

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

(2014/C 434/07)

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 or contributing to material injury to the Union industry.

1. Complaint

The complaint was lodged on 21 October 2014 by Distillerie Bonollo S.r.l., Caviro Distillerie S.r.l., Industria Chimica Valenzana S.p.a. and Distillerie Mazzari S.p.a. ('the complainants'), representing more than 25 % 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 ('the product under investigation').

3. Allegation of dumping

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

The complainants have established a normal value for the imports from the People's Republic of China in accordance with Article 2(7) of the basic Regulation 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 margin calculated is significant.

4. Allegation of injury and causation

The complainants have provided evidence that imports of the product under investigation from the country concerned and produced by the exporting producer concerned have increased overall in absolute terms and in terms of market share.

The complainants provided *prima facie* evidence that the volume and the prices of the imported product under investigation have had, among other consequences, a negative impact on the quantities sold 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 informing the Member States, 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.

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

The investigation will determine whether the product under investigation originating in the country concerned and produced by the exporting producer concerned is being dumped and whether the dumped imports have caused or have contributed to 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 ⁽¹⁾ concerned is invited to participate in the Commission investigation.

5.1.1. Investigating the exporting producer concerned

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

5.1.1.1. Selection of a market economy third country

Subject to the provisions of section 5.1.1.2 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 will be determined on the basis of the price or constructed value in a market economy third country. For this purpose, the Commission will select an appropriate market economy third country. The Commission has provisionally chosen Argentina as it was selected in previous investigations relating to the same product and country. 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*. According to the information available to the Commission, other market economy suppliers of the Union are, inter alia, Australia, Brazil and Chile. With the aim of finally selecting the market economy third country the Commission will examine whether there is production and sales of the product under investigation in those market economy third countries for which there are indications that the production of the product under investigation is taking place.

5.1.1.2. Treatment of the exporting producer concerned in the non-market economy country concerned

In accordance with Article 2(7)(b) of the basic Regulation, if the exporting producer concerned 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 market economy treatment claim to this effect ('MET claim'). 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 ⁽²⁾ are fulfilled. The dumping margin of the exporting producer concerned, 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 its own normal value and export prices in accordance with Article 2(7)(b) of the basic Regulation.

The Commission will send a MET claim form to the exporting producer concerned 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 21 days of the date of publication of this Notice in the *Official Journal of the European Union*, unless otherwise specified.

5.1.2. Investigating unrelated importers ⁽³⁾ ⁽⁴⁾

Unrelated importers of the product under investigation from the People's Republic of China to the Union, which is produced by the exporting producer concerned, are invited to participate in this investigation.

⁽¹⁾ 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 a third party, including any of its related companies involved in the production, domestic sales or exports of the product under investigation.

⁽²⁾ 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) firm(s) 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.

⁽³⁾ Only importers not related to exporting producer can be sampled. Importers that are related to exporting producer have to fill in the questionnaire in the Annex for this exporting producer. 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.

⁽⁴⁾ The data provided by unrelated importers may also be used in relation to aspects of this investigation other than the determination of dumping.

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 parties must 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 information on their company(ies) requested in the Annex to this Notice.

In order to obtain 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 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.

5.2. Procedure for the determination of injury and investigating Union producers

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 the situation of the EU industry, Union producers of the product under investigation are invited to participate in the Commission investigation.

In view of the large number of Union producers involved in this proceeding and in order to complete the investigation within the statutory 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.

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). Other Union producers, or representatives acting on their behalf, that consider that there are reasons why they should be included in the sample must contact the Commission 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 other 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 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.

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 not 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 must 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 must 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**

Information submitted to the Commission for the purpose of trade defence investigations shall be free from copyrights. Interested parties, before submitting to the Commission information and/or data which is subject to third party copyrights, must request specific permission to the copyright holder explicitly allowing (a) the Commission to use the information and data for the purpose of this trade defence proceeding and (b) to provide the information and/or data to interested parties to this investigation in a form that allows them to exercise their right of defence.

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' ⁽¹⁾.

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 information may be disregarded.

Interested parties are invited to make all submissions and requests by e-mail including scanned powers of attorney and certification sheets, with the exception of voluminous replies which shall be submitted on a CD-ROM or DVD by hand or by registered mail. By using e-mail, interested parties express their agreement with the rules applicable to electronic submissions contained in the document 'CORRESPONDENCE WITH THE EUROPEAN COMMISSION IN TRADE DEFENCE CASES' published on the website of the Directorate-General for Trade: http://trade.ec.europa.eu/doclib/docs/2011/june/tradoc_148003.pdf The interested parties must indicate their name, address, telephone and a valid e-mail address and they should ensure that the provided e-mail address is a functioning official business e-mail which is checked on a daily basis. Once contact details are provided, the Commission will communicate with interested parties by e-mail only, unless they explicitly request to receive all documents from the Commission by another means of communication or unless the nature of the document to be sent requires the use of a registered mail. For further rules and information concerning correspondence with the Commission including principles that apply to submissions by e-mail, interested parties should consult the communication instructions with interested parties referred to above.

⁽¹⁾ 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).

Commission address for correspondence:

European Commission
Directorate-General for Trade
Directorate H
Office: CHAR 04/039
1040 Bruxelles/Brussel
BELGIQUE/BELGIË

E-mail: TRADE-AD614-TARTARIC-DUMPING@ec.europa.eu
TRADE-AD614-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, 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.

Failure to give a computerised response shall not be deemed to constitute non-cooperation, provided that the interested party shows that presenting the response as requested would result in an unreasonable extra burden or unreasonable additional cost. The interested party should immediately contact the Commission.

7. **Hearing Officer**

Interested parties may request the intervention of the Hearing Officer in trade proceedings. 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 regarding 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 other things, 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 findings.

For further information and contact details interested parties may consult the Hearing Officer's web pages on DG Trade's website:

http://ec.europa.eu/trade/trade-policy-and-you/contacts/#_hearing-officer

8. **Schedule of the investigation**

The investigation will be concluded, pursuant 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*. In accordance with 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 ⁽¹⁾.

⁽¹⁾ OJ L 8, 12.1.2001, p. 1.

ANNEX

<input type="checkbox"/>	'Limited' version ⁽¹⁾
<input type="checkbox"/>	Version 'For inspection by interested parties' (tick the appropriate box)

**ANTI-DUMPING PROCEEDING CONCERNING IMPORTS OF TARTARIC ACID ORIGINATING IN THE PEOPLE'S
REPUBLIC OF CHINA AND PRODUCED BY HANGZHOU BIOKING BIOCHEMICAL ENGINEERING CO. LTD**

INFORMATION FOR THE SELECTION OF THE SAMPLE OF UNRELATED IMPORTERS

This form is designed to assist unrelated importers in responding to the request for sampling information made in point 5.1.2 of the notice of initiation.

Both the 'Limited' version and the version 'For inspection by interested parties' should be returned to the Commission as set out in the notice of initiation.

1. IDENTITY AND CONTACT DETAILS

Supply the following details about your company:

Company name	
Address	
Contact person	
E-mail address	
Telephone	
Fax	

2. TURNOVER AND SALES VOLUME

Indicate the total turnover in EUR of the company, and the turnover and weight or volume for imports into the Union ⁽²⁾ and resales on the Union market after importation from the People's Republic of China, during the period 1 October 2013-30 September 2014, of tartaric acid as defined in the notice of initiation and the corresponding weight or volume. State the unit of weight or volume used.

	Quantity in kilograms (kg)	Value in EUR
Total turnover of your company in EUR		
Imports of the product under investigation into the Union		
Resales on the Union market after importation from the People's Republic of China of the product under investigation		
Resales on the Union market after importation from the People's Republic of China of the product under investigation corresponding to products manufactured by Hangzhou Bioking Biochemical Engineering Co. Ltd		

⁽¹⁾ This document is for internal use only. It is 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). It is a confidential document 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).

⁽²⁾ The 28 Member States of the European Union are: Belgium, Bulgaria, Czech Republic, Denmark, Germany, Estonia, Ireland, Greece, Spain, France, Croatia, Italy, Cyprus, Latvia, Lithuania, Luxembourg, Hungary, Malta, Netherlands, Austria, Poland, Portugal, Romania, Slovenia, Slovakia, Finland, Sweden and United Kingdom.

3. ACTIVITIES OF YOUR COMPANY AND RELATED COMPANIES ⁽¹⁾

Give details of the precise activities of the company and all related companies (please list them and state the relationship to your company) involved in the production and/or selling (export and/or domestic) of the product under investigation. Such activities could include but are not limited to purchasing the product under investigation or producing it under sub-contracting arrangements, or processing or trading the product under investigation.

Company name and location	Activities	Relationship

4. OTHER INFORMATION

Please provide any other relevant information which the company considers useful to assist the Commission in the selection of the sample.

5. CERTIFICATION

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 involve completing a questionnaire and accepting a visit at its premises in order to verify its response. 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 company than if it had cooperated.

Signature of authorised official:

Name and title of authorised official:

Date:

⁽¹⁾ 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.