

**NOTICE 947 OF 2005****INTERNATIONAL TRADE ADMINISTRATION COMMISSION****NOTICE OF INITIATION OF AN INVESTIGATION INTO THE ALLEGED DUMPING OF  
FEED SUPPLEMENTS, CONTAINING, BY MASS, 40 PER CENT OR MORE LYSINE,  
WHETHER OR NOT CONTAINING ADDED ANTIBIOTICS OR ADDED MELENGESTROL  
ACETATE COMMONLY KNOWN AS "L-LYSINE SULPHATE AND ITS BYPRODUCTS  
FROM FERMENTATION (BIOLYS)" ORIGINATING IN OR IMPORTED FROM THE  
UNITED STATES OF AMERICA (USA)**

The International Trade Administration Commission (the Commission) accepted an application alleging that feed supplements, containing, by mass, 40 per cent or more lysine, whether or not containing added antibiotics or added melengestrol acetate commonly known as "L-Lysine sulphate and its byproducts from fermentation (Biolys)" originating in or imported from the USA is being dumped on the Southern African Customs Union (SACU) market, causing or threatening to cause material injury to the SACU industry concerned.

**THE APPLICANT**

The application was lodged by SA Bioproducts (Pty) Ltd (Applicant), being the only manufacturer of the product under investigation in the SACU. The Applicant alleges that it cannot compete with the low prices charged by the importers and that the allegedly dumped products are causing it or threatening to cause it material injury. The Applicant submitted sufficient evidence and established a prima facie case to enable the Commission to arrive at a reasonable conclusion that an investigation should be initiated on the basis of dumping, material injury and/or threat of material injury and causality.

## THE PRODUCT

The product allegedly being dumped is feed supplements, containing, by mass, 40 per cent or more lysine, whether or not containing added antibiotics or added melengestrolacetate commonly known as L-Lysine sulphate and its byproducts from fermentation (Biolys), classifiable under tariff subheading 2309.90.65, originating in or imported from the USA.

The SACU product is described as "Lysine and its esters; salts thereof commonly known as L-Lysine HCL (Feed Grade) **98.5%**", classifiable under tariff subheading **2922.41**.

The Applicant alleges that the imported product and the SACU product are substitutes. In substantiating its claim the Applicant submitted a report titled: "Comparing different sources L-Lysine for animal feed (Summary-popular science level) by Dr LG Ekermans, DSc (Animal Science). The Applicant also submitted a letter from Prof. Rob Gous, Head of Discipline for Animal Science and Poultry Science, at the University of Natal, who also confirmed that **Biolys** is a substitute product for L-Lysine HCL.

Furthermore, the Applicant submitted a report conducted by the Department of Trade Industry's Enterprise Industry Development Division comparing the technical characteristics of L-Lysine and Biolys.

Based on the information contained in the above documents the Commission decided that the Applicant Submitted prima facie information that the imported product (Biolys) and the SACU product (L-Lysine HCL) are substitutes and therefore "like products" in terms of Article 2.6 of the Anti-Dumping Agreement and the Commission's Anti-Dumping Regulation 1.

## THE ALLEGATION OF DUMPING

The allegation of dumping is based on the comparison between the normal value in the USA and the export price from the USA. The normal value for L-Lysine Sulphate was determined based on information obtained from a source in the USA.

The export price was determined based on the official import statistics for the period January 2004 to December 2004 obtained from the South African Revenue Service. On this basis, the Commission found that there was *prima facie* proof of dumping.

#### **THE ALLEGATION OF MATERIAL INJURY AND/OR THREAT OF MATERIAL INJURY**

The Applicant alleges and submitted sufficient evidence to show that there is price undercutting and that the imports in question are depressing and suppressing its selling prices. The Applicant's information indicated a decline profit margins, market share and capacity utilisation. It also indicated an increase in inventories. It further indicated that there is a negative effect on cash flow, return on investment, growth, the ability to raise capital and employment. It was also evident that the decrease in market share has been at the expense of a corresponding increase in the market share of the allegedly dumped goods.

The Applicant also alleges and submitted sufficient evidence to show that there was a significant increase of the dumped imports, that the exporter has a freely disposable capacity and that the exporter holds large amounts of stock.

On this basis the Commission found that there was *prima facie* proof of material injury and /or threat of material injury and causal link.

#### **PERIOD OF INVESTIGATION**

The period of investigation for purposes of determining the dumping margins in the respective exporting country or country of origin will be from January 2004 to December 2004. The period of investigation for purposes of determining injury will be from January 2002 to December 2004. If there are subsequent events that are relevant to injury, the Commission may later request and consider further, more recent information.

## PROCEDURAL FRAMEWORK

Having decided that there is sufficient evidence and a *prima facie* case to justify the initiation of an investigation, the Commission has begun an investigation in terms of section 16 of the International Trade Administration Act, 2002 (the ITA Act). The Commission will conduct its investigation in accordance with the relevant sections of the ITA Act, the World Trade Organisation Agreement on Implementation of Article VI of the GATT 1994 (the Anti-Dumping Agreement) and the Anti-Dumping Regulations of the International Trade Administration Commission of South Africa (ADR). Both the ITA Act and the ADR are available on the Commission's website ([www.itac.org.za](http://www.itac.org.za)) or from the Trade Remedies section, on request.

In order to obtain the information it deems necessary for its investigation, the Commission will send non-confidential versions of the petition and questionnaires to all known importers and exporters, and known representative associations. The trade representative of the exporting country has also been notified. Importers and other interested parties are invited to contact the Commission as soon as possible in order to determine whether they have been listed and were furnished with the relevant documentation. If not, they should immediately ensure that they are sent copies. The questionnaire has to be completed and any other representations must be made within the time limit set out below.

## CONFIDENTIAL INFORMATION

Please note that if any information is considered to be confidential then a non-confidential version of the information must be submitted for the public file, simultaneously with the confidential version. In submitting a non-confidential version the **following** rules are strictly applicable and parties must indicate:

- X where confidential information has been omitted and the nature of such information;
- X reasons **for** such confidentiality;
- X a summary of the confidential information which permits a reasonable

- understanding of the substance of the confidential information; and
- X in exceptional cases, where information is not susceptible to summary, reasons must be submitted to this effect.

This rule applies to all parties and to all correspondence with and submissions to the Commission, which unless indicated to be confidential and filed together with a non-confidential version, will be placed on the public file and be made available to other interested parties.

If a party considers that any document of another party, on which that party is submitting representations, does not comply with the above rules and that such deficiency affects that party's ability to make meaningful representations, the details of the deficiency and the reasons why that party's rights are so affected must be submitted to the Commission in writing forthwith (and at the latest 14 days prior to the date on which that party's submission is due). Failure to do so timeously will seriously hamper the proper administration of the investigation, and such party will not be able to subsequently claim an inability to make meaningful representations on the basis of the failure of such other party to meet the requirements.

Subsection 33(1) of the ITA Act provides that any person claiming confidentiality of information should identify whether such information is confidential *by nature* or is ***otherwise confidential*** and, any such claims must be supported by a written statement, in each case, setting out how the information satisfies the requirements of the claim to confidentiality. In the alternative, a sworn statement should be made setting out reasons why it is impossible to comply with these requirements.

Section 2.3 of the ADR provides as follows:

*"The following list indicates "information that is by nature confidential" as per section 33(1)(a) of the Main Act, read with section 36 of the Promotion of Access to Information Act (Act 2 of 2000):*

- (a) management accounts;*
- (b) financial accounts of a private company;*
- (c) actual and individual sales prices;*
- (d) actual costs, including cost of production and importation cost;*

- (e) *actual sales volumes;*
- (f) *individual sales prices;*
- (g) *information, the release of which could have serious consequences for the person that provided such information; and*
- (h) *information that would be of significant competitive advantage to a competitor;*

*Provided that a party submitting such information indicates it to be confidential."*

## ADDRESS

The response to the questionnaire and any information regarding this matter and any arguments concerning the allegation of dumping and the resulting material injury and/or threat of material injury must be submitted in writing to the following address:

### Physical address

The Director : Trade Remedies  
International Trade Administration Commission  
**Block E – The DTI Campus**  
77 Meintjies Street  
SUNNYSIDE  
PRETORIA  
SOUTH AFRICA

### Postal address

The Director: Trade Remedies  
Private Bag **X753**  
PRETORIA  
0001  
SOUTH AFRICA

## PROCEDURES AND TIME LIMITS

All responses, including non-confidential copies of the responses, should be received by the Director: Trade Remedies not later than 30 days from the date hereof, or from the date on which the letter accompanying the abovementioned questionnaire was received. The said letter shall be deemed to have been received seven days after the day of its dispatch.

Late submissions will not be accepted except with the prior written consent of the Commission. The Commission will give due consideration to written requests for an extension of not more than **14** days on good cause shown (properly motivated and substantiated), if received prior to the expiry of the original 30-day period. Merely citing insufficient time is not an acceptable reason for extension. Please note that the Commission will not consider requests for extension by the Embassy on behalf of exporters.

The information submitted by any party may need to be verified by the Investigating Officers in order for the Commission to take such information into consideration. The Commission may verify the information at the premises of the party submitting the information, within a short period after the submission of the information to the Commission. Parties should therefore ensure that the information submitted will subsequently be available for verification. It is planned to do the verification of the information submitted by the exporters within three to five weeks subsequent to submission of the information. This period will only be extended if it is not feasible for the Commission to do it within this time period or upon good cause shown, and with the prior written consent of the Commission, which should be requested at the time of the submission. It should be noted that unavailability of, or inconvenience to consultants will not be considered to be good cause.

Parties should also ensure when they engage consultants that they will be available at the requisite times, to ensure compliance with the above time frames. Parties should also ensure that all the information requested in the applicable questionnaire is provided in the specified detail and format. The questionnaires are designed to ensure that the Commission is provided with all the information required to make a determination in accordance with the rules of Anti-Dumping Agreement. The Commission may therefore refuse to verify information that is incomplete or does not comply with the format in the questionnaire, unless the Commission has agreed in writing to a deviation from the required format. A failure to submit an adequate non-confidential version of the response that complies with the rules set out above under the heading *Confidential Information* will be regarded as an incomplete submission.

Parties who experience difficulty in furnishing the information required, or submitting in the format required, are therefore urged to make written applications to the Commission at an early stage for permission to deviate from the questionnaire or provide the information in an alternative format that can satisfy the Commission's requirements. The Commission will give due consideration to such a request on good cause shown.

Any interested party may request an oral hearing at any stage of the investigation in accordance with Section 5 of the ADR, provided that the party indicates reasons for not relying on written submission only. The Commission may refuse an oral hearing if granting such hearing will unduly delay the finalisation of a determination. Parties requesting an oral hearing shall provide the Commission with a detailed agenda for, and a detailed version, including a non-confidential version, of the information to be discussed at the oral hearing at the time of the request.

If the required information and arguments are not received in a satisfactory form within the time limit specified above, or if verification of the information cannot take place, the Commission may disregard the information submitted and make a finding on the basis of the facts available to it.

**Enquiries may be directed to the investigating officers, Mr Ephraim Mogashoa at telephone +27 12 394-3595, Miss Selma Takacs at telephone +27 12 394-3596 and Ms Portia Mphahlele at +27 12 394-3630, or at fax no +27 12 394 0518.**