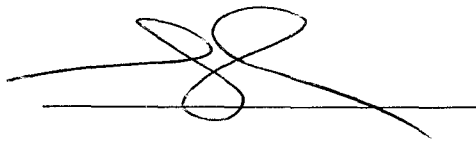


Report No. 250

Investigation into remedial action in the form of safeguards against the increased imports of lysine: Final determination

The International Trade Administration Commission of South Africa herewith presents
its **Report No. 250: INVESTIGATION INTO REMEDIAL ACTION IN THE FORM OF
SAFEGUARDS AGAINST THE INCREASED IMPORTS OF LYSINE: FINAL
DETERMINATION**

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke extending to the right.

Itumeleng Masege
CHIEF COMMISSIONER

PRETORIA

6/09/ 2007

INTERNATIONAL TRADE ADMINISTRATION COMMISSION

INVESTIGATION INTO REMEDIAL ACTION IN THE FORM OF SAFEGUARDS AGAINST THE INCREASED IMPORTS OF LYSINE: FINAL DETERMINATION

SYNOPSIS

On 11 May 2007, the International Trade Administration Commission of South Africa (the Commission) formally initiated an investigation into remedial action in the form of safeguards against the increased imports of lysine. Notice of the initiation of the investigation was published in Notice No. 560 of *Government Gazette* No. 29874 dated 11 May 2007.

The Application was lodged on behalf of the Southern African Customs Union (SACU) industry by SA Bioproducts (Pty) Ltd (the Applicant), being the only producer of L-Lysine HCl in SACU, which claimed that the rapid increase in imports were causing it serious injury.

The investigation was initiated after the Commission considered that there was sufficient evidence to show that there was a surge of imports of the subject product, causing serious injury and threatening to cause serious injury to the SACU industry.

The Commission further made a preliminary determination that there was a surge of imports of the subject product, causing serious injury and threatening to cause serious injury to the SACU industry.

The Commission decided that there are critical circumstances where a delay would cause damage that would be difficult to repair. It further decided that there is clear evidence that the increased imports have caused and are threatening to cause further serious injury to the SACU industry. Based on this decision, the Commission decided to request the Commissioner for South African Revenue Service (SARS) to impose provisional measures for a period of 200 days.

On initiation of the investigation, the Embassies of the countries, which have a significant interest in the exports of the subject products, were notified and invited for consultations.

On 11 May 2007, SARS imposed provisional safeguard measures on the subject product, after the Commission found that there are critical circumstances where delay would cause damage, which would be difficult to repair.

The Commission issued Report No. 237 containing its preliminary determination and invited interested parties to comment on its preliminary determination.

On 29 June 2007 a public hearing was held where interested parties could address the Commission on whether a safeguard measure will be in the public interest.

On 27 July 2007, the Commission made a final determination that there was a surge in the volume of imports, absolute or relative to domestic production, and that these imports were causing serious injury to the SACU industry. The Commission therefore decided to recommend to the Minister of Trade and Industry to impose definitive safeguard measures.

The Commission's decision was conveyed to interested parties in its essential facts letter and all interested parties were invited to comment.

On 31 August 2007, after taking all comments submitted by interested parties into account, the Commission made a final determination that there was a surge in the volume of imports, absolute or relative to domestic production, and that these imports were causing serious injury to the SACU industry. The Commission therefore decided to recommend to the Minister of Trade and Industry to impose definitive safeguard measures for a period of 2 years and 11 months.

1. APPLICATION AND PROCEDURE

1.1 LEGAL FRAMEWORK

This investigation was conducted in accordance with the International Trade Administration Act, 2002 (ITA Act), the World Trade Organization Agreement on Safeguards (the Safeguard Agreement) and the International Trade Administration Commission Safeguard Regulations (SGR).

The Commission considered comments received from interested parties on the initiation of the investigation. Non-confidential versions of these comments are available on the public file.

1.2 APPLICANT

The application was lodged by SA Bioproducts (Pty) Ltd (the Applicant), the sole producer of L-Lysine HCl (Feed Grade) min 98.5% (subject product) in the SACU.

1.3 ALLEGATIONS BY THE APPLICANT

The Applicant alleged that the subject products were being imported into the SACU market in such increasing quantities relative to SACU production and under such conditions, to be causing serious injury to the SACU industry. The Applicant further alleged that a further threat of serious injury exists owing to the overcapacity that manufacturers around the world have created.

The Applicant alleged that as a result of the increased imports of the subject product, the SACU industry was suffering serious injury in the form of:

- decline in sales;
- decline in profit to a loss situation;

- decline in output;
- decline in market share;
- decline in utilisation of production capacity;
- decline in productivity; and
- the retrenchment of employees.

2. PRODUCTS, TARIFF CLASSIFICATION AND DUTIES

2.1 IMPORTED SUBJECT PRODUCTS

2.1.1 Description

The subject products are described as L-Lysine HCl (scientific name) or commonly known as lysine powder and feed supplements containing by mass 40% or more lysine, whether or not containing added antibiotics or added melengestrol acetate (scientific name) or commonly known as L-Lysine sulphate and its byproducts from fermentation or Biolys (USA product) or Protein Lysine (PRC product).

2.1.2 Tariff classification

The subject product is classifiable as follows:

Tariff subheading	Description	Statistical Unit	Rate of customs Duty			
			General	EU	EFTA	SADC
2922.4	- Amino-acids (excluding those containing more than one kind of oxygen function), and their esters; salts thereof:					
2922.41	-- Lysine and its esters: salts thereof	kg	free	free	free	free
2309	Preparations of a kind used in animal feeding:					
2309.90	- Other:					
2309.90.65	-- Feed supplements, containing, by mass, 40 per cent or more lysine, whether or not containing added antibiotics or added melengestrol acetate	kg	free	free	free	free

2.1.3 Application/end use

The imported products are used as an amino acid feed supplement for use in animal feed.

2.1.4 Production process

Both the L-Lysine HCl and the L-Lysine Sulphate are produced by a fermentation process. A sterilized carbohydrate source supplemented with protein and other nutritional ingredients is fermented by inoculating with a selected strain of bacterium. In the case of the protein lysine, the resulting broth is concentrated by evaporation and then dried and packaged. In the case of Lysine HCl, the lysine is recovered on ion exchange columns, concentrated, reacted with HCl and crystallized or granulated and packaged.

2.2 SACU PRODUCT

2.2.1 Description

The SACU product is described as L-Lysine HCl (scientific name) or commonly known as lysine powder.

2.2.2 Application/end use

The SACU product is also used as an amino acid feed supplement for use in animal feed.

2.2.3 Tariff classification

The SACU product is classifiable under tariff subheading 2922.41.

2.2.4 Production process

L-Lysine HCl is a fermentation process, inoculating with a selected strain of bacterium ferments a sterilized carbohydrate source supplemented with protein and other nutritional ingredients. The resulting broth is purified through an ion exchange process before being hydro chlorinated, concentrated via evaporation and then granulated and packaged.

2.3 LIKE OR DIRECTLY COMPETITIVE PRODUCTS

The Commission considered comments received from interested parties with regard to the SACU product and the like product analysis. Non-confidential versions of these comments are available on the public file.

Based on its decisions on like production in the sunset review of the anti-dumping duties on lysine originating in or imported from the USA and the investigation into the alleged dumping of biolys originating in or imported from the USA, the Commission was satisfied that the SACU product and the imported products are "like products", for purposes of comparison in this investigation.

3. SACU INDUSTRY

3.1 SACU INDUSTRY

The Applicant, SA Bioproducts (Pty) Ltd, is the only producer of lysine in the SACU.

The Commission decided that the application can be regarded as being made “by or on behalf of the domestic industry” and, therefore, is eligible for initiation under Section 7.1 of the Safeguard Regulations and provisions of the Safeguard Agreement.

4. UNFORESEEN DEVELOPMENTS

4.1 Requirements of Article XIX of GATT

Article XIX of the GATT provides as follows:

"If, as a result of unforeseen developments and of the effect of obligations incurred by a contracting party under this Agreement, including tariff concessions, any product is being imported into the territory of that contracting party in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers in that territory of like or directly competitive products, the contracting party shall be free, in respect of such product, and to the extent and for such time as may be necessary to prevent or remedy such injury, to suspend the obligation in whole or in part or to withdraw or modify the concession."

In terms of the WTO this is interpreted to mean that the developments in the market should have been unforeseen at the time of negotiation of the relevant tariff concessions.

4.2 Information submitted by the Applicant

The Applicant stated that at the time of the negotiation of the tariff concessions, the PRC was not a significant player in the subject product field nor was it a member of the WTO.

The Applicant stated that up to 2003, the PRC was a net importer of some 65 000 tons of lysine and had 100 000 tons of the installed capacity for lysine (12% of the world capacity of 800 000 tons). The Applicant stated that by 2006, it had increased its installed capacity to 480 000 out of approximately 1.25 million tons of world capacity.

The Applicant stated that this excessive over investment was mainly aimed at taking advantage of the rapidly growing Chinese market, but clearly it has overshot significantly. The Applicant stated that to make things worse, it is known that the PRC market was virtually static in 2006, with little or no growth (one source even claims that the PRC market contracted). The Applicant

stated that this clearly encouraged the PRC producers to dispose of their surplus capacity in the world, impacting on the world prices and forcing other exporters to export at very low prices.

The Commission considered comments from interested parties with regard to unforeseen developments. Non-confidential versions of these comments are available on the public file.

4.3 Decision by Commission

The Commission decided that the expansion of capacity and the oversupply in the world, which occurred after the negotiation of the relevant tariff concessions, could not have been foreseen at the time the concessions were negotiated and therefore represents the unforeseen developments, in accordance with Article XIX of the GATT.

5. SERIOUS INJURY

5.1 DOMESTIC INDUSTRY – MAJOR PROPORTION OF PRODUCTION

The following injury analysis relates to SA Bioproducts (Pty) Ltd, the Applicant, which constitutes 100 percent of the total domestic production of lysine.

The Commission decided that this constitutes “a major proportion” of the total domestic production, in accordance with Article 4.1 of the Safeguard Agreement.

5.2 THE RATE AND VOLUME OF THE INCREASE IN IMPORT VOLUMES

The following table shows the volume of the imports from 2002 to 2006.

Table 5.2: Import volumes

Import volumes in kg	2002	2003	2004	2005	2006	2006 Percentage of total imports
Country:						
United Kingdom	1 000	1 001	500	450	1 400	0.0%
Belgium	0	0	4	28	33	0.0%
Germany	311	79	179	58	24 255	0.6%
Slovak Republic	0	184 656	0	0	0	0.0%
USA	168 006	217 028	765 154	1 177 928	913 963	21.4%
Brazil	0	0	127 939	280 000	332 500	7.8%
The PRC	2 200	274 166	357 513	569 788	2 435 977	57.2%
Australia	0	0	0	1 911	0	0.0%
Netherlands	96 000	0	0	0	33 000	0.8%
France	214 000	488 500	364 132	96 000	128 000	3.0%
Switzerland	0	0	0	13	16 745	0.4%
Spain	25	5	5	5	5	0.0%
Japan	1 080	1 900	2 501	900	1 230	0.0%
Republic of Korea	0	0	34 000	0	374 000	8.8%
Total imports	482 622	1 167 335	1 668 927	2 127 080	4 261 108	

The information in the table indicates that the import volumes increased significantly from 2005 to 2006 by 100 per cent.

The following table shows the import volumes relative to domestic production:

Metric tons	2002	2003	2004	2005	2006
Imports as a % of the Applicant's output	100	227	302	500	1 741

This table was indexed due to confidentiality using 2002 as the base year.

The information in the table indicates that the imports as a percentage of the SACU industry's output increased significantly from 100 basis points from 2002 to 1 741 basis point in 2006.

The Applicant stated that the table shows a surge in imports in 2006. The Applicant stated that the surge in imports can be directly linked to the over supply of the subject product in the world as a result of the huge increased capacity in the PRC that was totally unforeseen. The Applicant stated that the information shows that the imports doubled from 2005 to 2006, while the SACU market grew only 14 per cent. The Applicant stated that it is expected that the sharply upward trend in imports will continue unabated causing further serious injury to the SACU industry.

The Commission considered comments from interested parties with regard to surge in volume of imports. Non-confidential versions of these comments are available on the public file.

The Commission decided that the subject product is being imported in significantly increased quantities, both in absolute terms and relative to domestic production.

5.3 SIGNIFICANT CHANGES IN THE PERFORMANCE OF THE SACU INDUSTRY

5.3.1 Sales volume

The following table shows the Applicant's sales volume of lysine:

Table 5.3.1: Sales volume

Metric tons	2002	2003	2004	2005	2006
Applicant's sales volume (tons)	100	100	78	85	69

This table was indexed due to confidentiality using 2002 as the base year.

The information in the table indicates that the Applicant's sales volumes decreased by 31 basis points from 2002 to 2006.

The Applicant stated that the aggressive undercutting of its prices by the imported products led to substantial erosion of the Applicant's market share.

The Applicant stated that while the sales volumes of lysine in its various forms are largely not cyclical, the demand for the product is strongly influenced by the prices for major agricultural commodities, such as maize and soya meal. The Applicant stated that these commodity prices are cyclical in nature and hence the demand and pricing of lysine products are also cyclical. The Applicant stated that prices in SACU are closely linked to the international prices. The Applicant stated that it should be stressed that the depressed prices forced on them, are attributable to the huge world oversupply, which has nothing to do with normal cycles.

5.3.2 Profit and Loss

The following table shows the Applicant's profit and loss situation for lysine:

Table 5.3.2: Profit

	2002	2003	2004	2005	2006
Net profit margin	100	136	133	(158)	(311)
Gross profit on SACU consumption	100	120	126	47	22

This table was indexed due to confidentiality using 2002 as the base year.

The Applicant stated that profits were stable during the period 2002 to 2003. It stated that, however, the combination of the collapse in the international and hence domestic lysine prices in 2005, mainly owing to the Chinese oversupply, which severely eroded its market share over the past two years, resulted in a substantial loss in profits in 2006 compared to 2004. The Applicant stated that the surge in low priced imports depressed its prices, forcing the company to absorb raw material cost increases. It stated that provided that some remedy allows it to recover much of the lost market share in 2007, the company has budgeted to still make a substantial loss for the year. It stated that if the market share is not regained it is likely that the company will close.

5.3.3 Output

The following table shows the Applicant's output.

Table 5.3.3: Output

Metric tons	2002	2003	2004	2005	2006
Applicant's output	100	107	114	88	51
Output for SACU consumption	100	100	78	85	69

This table was indexed due to confidentiality using 2002 as the base year.

The Applicant stated that it can be seen that the total output of the plant increased year on year until 2005, with an almost catastrophic drop in 2006. The Applicant stated that the reduction in output in 2006 was a direct result of the significant loss of domestic market share caused by the sudden surge in ridiculously priced imports.

5.3.4 Market share

The following table shows the market share for lysine.

Table 5.3.4: Market share – Percentage share held by:

	2002	2003	2004	2005	2006
Applicant	100	91	81	78	56
Imports	100	224	364	410	718
SACU market	100	109	96	109	124

This table was indexed due to confidentiality using 2002 as the base year.

The Applicant stated that it is clear from the figures in the table that the aggressive undercutting from the imported products, has led to a substantial erosion of its market share. The Applicant stated that the market share erosion has worsened to the extent that it is estimated that it presently (January and February 2007) holds only a small portion of the domestic market, while the market share of total imports surged to significant levels in 2006.

5.3.5 Productivity

The following table shows the productivity of the Applicant:

Table 5.3.5: Productivity

Metric tons	2002	2003	2004	2005	2006
Employee productivity (units per employee)	100	107	114	88	68

This table was indexed due to confidentiality using 2002 as the base year.

The Applicant stated that it substantially reduced its workforce following the sudden surge in imports in 2006, which wreaked havoc on sales and production. It stated that productivity was also negatively influenced and would have been very low if it did not retrench workers.

The Commission noted that if the Applicant did not retrench any workers, the units per employee would have been on 50 basis points for 2006 and not 68.

5.3.6 Utilization of production capacity

The following table provides the Applicant's capacity and production for lysine:

Table 5.3.6: Utilization of production capacity

Metric tons	2002	2003	2004	2005	2006
Capacity	100	116	122	122	122
Applicant's output	100	107	114	88	51
Utilisation of capacity	100	93	94	72	41

This table was indexed due to confidentiality using 2002 as the base year.

The Applicant stated that as a result of the tremendous surge in imports, its capacity utilization decreased to unsustainable levels in 2006. The Applicant stated that should the imports continue to increase at the same rate as in 2006, its sales would decline further and production may have to stop.

The Applicant stated that the company's lysine capacity was increased in 2004 by the introduction of a new high performance bacterial strain. It stated that there is no production limit that prevents the company from producing at this level, provided that it has a market.

5.3.7 Employment

The following table provides the Applicant's employment figures:

Table 5.3.7: Employment

	2002	2003	2004	2005	2006
Number of production employees	100	100	100	100	75

This table was indexed due to confidentiality using 2002 as the base year.

The Applicant stated that it substantially reduced its workforce following the sudden surge in imports in 2006, which wreaked havoc on sales and production.

5.3.8 Any other relevant factors

The Applicant stated that owing to the loss of local market share to very low priced imports, the company's borrowings rose to a level in 2006 that resulted in its bankers threatening to put the company into liquidation. The Applicant stated that securing a new equity investor averted the threat. However, it stated that the loss of local market share to unreasonably low priced imports continues and indeed is more severe than in 2006. It stated that consequently, the threat that the company may be closed down remains very real.

The Applicant stated that the consequences of the closure of it are not confined to the loss of jobs and economic activity in the region, but that it is presently the only meaningful industrial biotechnology company in South Africa and represents a skills base that is unique in the country. It stated that if the company should close, 14 years of industrial biotechnology knowledge and experience would be lost and prospective investors in biotechnology in South Africa would be materially discouraged.

The Applicant stated that, in addition, it has committed to sharing its industrial fermentation know-how with new industry entrants via the Department of Science and Technology's (DST) Biotechnology Innovation Centre, located adjacent to its factory. The Applicant stated that the failure of the company would thus have a great negative impact on the whole biotechnology initiative being promoted by the DST.

5.4 CONCLUSION – SERIOUS INJURY

After considering all relevant factors, the Commission made a final determination that the Applicant was suffering serious injury in that:

- the volume of imports increased significantly;
- its profit declined to a loss situation;
- its sales volumes declined;
- its output declined;

- its market share declined;
- its utilisation of production capacity declined;
- its productivity declined; and
- it retrenched some of its employees.

6. THREAT OF SERIOUS INJURY

6.1 Freely disposable capacity of the exporters

The Applicant stated that in 2003, the PRC was a net importer of some 65 000 tons of lysine and had 100 000 tons of the installed capacity for lysine (12 per cent of the world capacity of 800 000 tons). The Applicant stated that by 2006, it had increased its installed capacity to 480 000 out of approximately 1.25 million tons of world capacity.

The Applicant stated that this excessive over investment was mainly aimed at taking advantage of the rapidly growing PRC market, but clearly it has overshot significantly. The Applicant stated that to make things worse, it is known that the PRC market was virtually static in 2006, with little or no growth (one source even claims that the PRC market contracted). The Applicant stated that this clearly encouraged the PRC producers to dispose of their surplus capacity in the world, impacting on the world prices and forcing other exporters to export at very low prices.

6.2 Significant increase in imports

Table 6.2: Volume of imports

	2002	2003	2004	2005	2006
Total imports (tons)	483	1 167	1 669	2 127	4 261

The Applicant stated that the table clearly shows a huge surge in imports in 2006. It stated that the surge of imports could be directly linked to the over supply of the subject product in the world as a result of the substantially increased capacity in the PRC that was totally unforeseen.

The Applicant stated that imports grew at a much higher rate than the SACU market during 2006. The Applicant stated that while the SACU market expanded slightly in 2006, imports grew by no less than 98 per cent. The Applicant stated that serious injury has been sustained already. The Applicant stated that, however, the evidence of the activity of exporters in the first quarter of 2007, where the Applicant will sell a limited tonnage of lysine indicates that

there is a very real threat of even greater injury.

6.3 Prices of imports, which will have a significant depressing or suppressing effect on domestic prices and are likely to increase the demand for the imported products

Table 6.3.1: Price depression and price suppression

	2002	2003	2004	2005	2006
Average price of imported product	16.17	17.18	15.92	8.50	7.86
Applicant's ex-factory selling price	100	110	110	58	60
Cost as a % of selling price	100	89	93	166	174

The Applicant's information in this table was indexed due to confidentiality using 2002 as the base year.

The Applicant stated that the information in the table indicates that its prices are under tremendous pressure from imports. It stated that since 2005, the company has had no option but to sell at severely depressed prices to try and retain at least some of its market share. The Applicant stated that it is not viable to continue to sell at such hugely unprofitable prices. It stated that unless assistance in the form of an appropriate safeguard measure is forthcoming, closure of the plant might have to be considered. The Applicant stated that its declining sales are indicative of the fact that its customers' sourcing is price driven and they will continue to import at these low, and no doubt highly profitable prices, unless the Commission urgently addresses the issue.

6.4 Other information relevant to the allegation of threat of serious injury

The Applicant stated that serious injury is not only imminent, but also as substantiated above, it has become so serious that urgent intervention is required to stave off the closure of the plant.

The Applicant stated that in the first two months of 2007, the imports surged to 1 102 tons, compared to the same period in 2006 where it was 585 tons. The Applicant stated that if the two months of 2007 are extrapolated, it can be expected that the whole SACU market would be taken over by the imports as at least 13 224 tons would be imported in 2007.

6.5 CONCLUSION - THREAT OF SERIOUS INJURY

The Commission made a final determination that a threat of serious injury to the SACU industry exists.

7. CAUSAL LINK

7.1 VOLUME OF IMPORTS AND MARKET SHARE

An indication of causality is the extent of the increase of volume of imports and the extent to which the market share of the domestic industry has decreased since the commencement of injury, with a corresponding increase in the market share of the imported subject product.

The market share table in paragraph 5.3.4 of this report shows the market share for the subject product since 2002. The information in the table indicates that the Applicant's market share decreased significantly from 2002 to 2006, with a corresponding increase in imports.

The information with regard to the volume of imports is found in paragraph 5.2 of this report. The information in the table shows a significant increase in the volume of imports of the subject product from 2002 to 2006, with an increase of 100 per cent from 2005 to 2006.

The Applicant stated that it generally sets its prices for lysine at the prevailing international price and significantly below the competition's prices. It stated that during 2006 the company lost business to importers who were selling at prices that were lower than the Applicant's price and thus by inference lower than the prevailing world price. The Applicant stated that that it should be stressed that ever since superfluous global capacity was commissioned, world prices dropped to a level below the cost of production.

The Applicant stated that not only did the huge import volumes at irrational prices depress its prices severely, but also the significant loss of local market share caused serious and near fatal injury. The Applicant stated that it was not possible to export the surplus product that could not and cannot be sold in the SACU market, owing to low international prices. The Applicant stated that as a consequence the plant was only operated to produce enough of the product for the reducing share of the local market. The Applicant further

stated that to limit fixed costs and given the company's uncertain financial future, it was obliged to retrench a large staff complement. The Applicant stated that the rapid and sudden increase in imports at obscenely low prices is causing ongoing serious injury to the company and putting its very existence in jeopardy. It stated that if no remedy is found in the short term, the risk of closure remains real, as the rise in imports is accelerating.

7.2 CONSEQUENT IMPACT OF INCREASED IMPORTS

Material injury indicator	Analysis (2002 – 2006)
Sales volume	Decrease
Profit	Decrease
Output	Decrease
Market share	Decrease
Productivity	Decrease
Utilisation of capacity	Decrease
Employment	Decrease

The information in the table indicates that there was a negative impact on all the serious injury factors. The profit situation of the company changed to a loss situation from 2005, while the imports more than doubled from 2004 to 2006. The significant increase in imports from 2005 to 2006 caused the loss of the Applicant to increase significantly. With the sudden increase in imports from 2005 to 2006, the Applicant retrenched some of its employees, which can be seen in the decrease in employment figures.

Although the productivity showed a decrease from 2002 to 2006, the decrease would have been even more severe if the retrenchment of employees is not taken into consideration.

The Commission decided that from the information in this table and the table with the import volumes, it is clear that the significant increase in the volume of imports directly caused the serious injury experienced by the Applicant.

7.3 FACTORS OTHER THAN THE INCREASE IN IMPORTS CAUSING INJURY

7.3.1 Contraction in demand for the product

The Applicant stated that from the market share table, it is clear that the demand for the product grew from 2002 to 2006. However, the Applicant's market share and sales volumes decreased over the same period.

7.3.2 Developments in technology

The Applicants stated that the key element of the lysine production process is the bacterial strain used. It stated that it introduced a new strain in 2004 that was benchmarked in 2006 to be world competitive and better than most. The Applicant stated that as evidence of this the company has licensed its technology abroad.

7.3.3 Productivity of the domestic industry

The Applicant stated that as indicated above, it is on a level playing field with the exporters. It stated that its technology and productivity in general is comparable with the best. The Applicant stated that this was confirmed in 2006 when prospective purchasers of the business from within the industry assessed the company. The Applicant stated that this benchmarking confirmed that the company's technology was world class.

7.3.4 View of the Applicant's clients regarding quality, delivery times, service and after sales service

The Applicant stated that it is certified in terms of ISO 9001/2000. It stated that in addition, the company has recently obtained the FAMI-QS certification from the Danish Standards certification authority. The Applicant stated that this latter certification is a feed additives quality certification, recently introduced by the European Union Authorities, and is required of all manufacturers within and exporters of feed additives to the European Union. The Applicant stated that thus the company complies with the highest and most modern quality standards applicable to feed additives. It stated that the

companies' customers, who have approved the company as a supplier of feed amino acids, acknowledge this.

The Applicant stated that as a local supplier, who carries stock, the company is able to deliver product to any local customer within 24 hours of order. The Applicant stated that the company runs 24 hours a day, 7 days a week, and therefore always has staff available to deal with any customer requirement.

The Applicant stated that it deals with any customer queries in terms of its quality management system. It stated that analytical certificates of compliance accompany all deliveries of the company's products. It stated that in addition, feed trials are carried out from time to time with a number of the leading universities in the country. The Applicant stated that the majority of its customers have been buying from the company since its start up 12 years ago.

7.3.5 Attitude of the workforce towards the company

The Applicant stated that although it was obliged to reduce the workforce substantially in 2006, the employees were fully informed about the reasons for the retrenchments and a constructive attitude remains among all the staff. The Applicant stated that as all the employees are members of staff, salaries are set individually and the unions have no role in setting salaries.

The Applicant stated that notwithstanding the constructive attitude, the company continues to lose skilled staff owing to the ever-present threat of closure. It stated that the latter is seen solely now as a potential consequence of lost market share to unconscionable world pricing flowing from indiscriminate global expansion.

7.3.6 Export performance

The following table shows the Applicant's export volumes and value for the period of investigation:

	2002	2003	2004	2005	2006
Export volumes	100	100	102	111	41
Export values	100	111	105	61	27
Price per kilogram	100	112	104	55	64

The information in this table was indexed due to confidentiality using 2002 as the base year.

The information in the table indicates that the Applicant's export volumes decreased from 2002 to 2006 and significantly decreased from 2005 to 2006.

7.5 CONCLUSION ON CAUSAL LINK

The Commission considered comments received from interested parties on causal link. Non-confidential versions of these comments are available on the public file.

After considering all relevant factors and information submitted by interested parties on causal link, the Commission found that there was a causal link between the increase in imports of the subject product and the serious injury suffered by the Applicant and the further threat of serious injury to the SACU industry. In coming to this conclusion, the Commission considered relevant factors other than the increase in imports, such as the productivity of the Applicant, developments in technology, view of the Applicant's clients, the attitude of the Applicant's workforce and the Applicant's export performance, that could be causing serious injury and decided that these did not detract from the causal link.

8. PUBLIC INTEREST

Section 20.2 of the SGR provides as follows:

“In determining whether a safeguard measure would be in the public interest the need to take note of the trade distorting effect of the surge in imports and the need to restore effective competition shall be given special consideration.”

On 8 June 2007, the Commission, through Notice No. 734 of *Government Gazette* No. 29981, invited interested parties to attend and address the Commission on whether it will be in the public interest to impose definitive safeguard measures on the subject products, in accordance with Section 20.2 of the SGR.

Interested parties submitted comments and the Commission indicated to parties that only information relating to public interest could be discussed during the hearing.

The Commission considered all comments received from interested parties with regard to public interest. Non-confidential versions of these comments are available on the public file.

The Commission considered submissions made that the Applicant has achieved commercial success with large-scale bioprocess technology and is the only plant in South Africa approved for large scale operation using genetically modified organisms (3rd generation biotechnology).

Submissions were further received indicating that if the Applicant close down it would have a severe negative impact on the government's biotechnology strategy and on the growth and development of the next generation of bio-entrepreneurs, which are dependant on to commercialize projects.

The Commission decided that it will be in the public interest to impose a safeguard measure.

9. APPLICANT'S DEVELOPMENT PLAN

Section 21 of the SGR, a safeguard measure shall, amongst others, only be applied to facilitate adjustment of the SACU industry.

It is therefore required from the Applicant to submit a plan indicating how it would adjust to increase its competitiveness.

9.1 Applicant's development plan

The Applicant submitted a development plan, indicating its plans and efforts to increase its competitiveness over the next two to three years. On request from the Commission, information was submitted by the Applicant on the targets and time frames to reach these targets in the development plan.

9.2 Commission decision

The Commission made a final determination that the Applicant submitted sufficient information in its development plan to indicate that it will adjust to increase its competitiveness.

10. SAFEGUARD MEASURES

10.1 Calculation of definitive safeguard measures

For purposes of the preliminary determination, the Commission calculated the provisional measures based on the price disadvantage experienced by the Applicant.

Based on the comments submitted by interested parties, the Commission decided to change its methodology and determine the safeguard measures to be equal to the price undercutting experienced by the Applicant during 2006.

The price undercutting is the extent to which the price of the imported product (landed cost) is lower than the ex-factory selling price of the SACU product.

10.2 Landed cost calculation

The landed cost was calculated by using the 2006 FOB price as obtained from the import statistics. An adjustment was made to the FOB price per kilogram of biolys to be able to compare it to the FOB price per kilogram of lysine.

An amount equal to 15 per cent of FOB was added to this price for international freight, clearing costs and insurance.

10.3 Price undercutting

The price undercutting was calculated to be 27 per cent.

10.4 Liberalization of the safeguard measure

Section 21.8 of the SGR provides as follows:

"Where a definitive safeguard measure is imposed for a period exceeding one year the Commission shall recommend how the measure should be liberalized at regular intervals over the period that the measure is applied."

The Commission decided to recommend that the measures be liberalized as follows:

Period	Rate of safeguard measure
11 May 2007 – 10 May 2008	27%
11 May 2008 – 10 May 2009	18%
11 May 2009 – 11 April 2010	9%

The Commission further decided to recommend that the safeguard measure be imposed for 2 years and 11 months, in order to avoid any compensation to be granted if measures are imposed for a period of 3 years.

As the safeguard measure is substantially lower than the provisional measure and a period of consultation still has to be allowed after the Minister has made its decision, the Commission decided to request the Commissioner for South African Revenue Service to reduce the provisional measure to 27 per cent *ad valorem* with immediate effect.

11. FINAL DETERMINATION

The Commission made a final determination that:

- There was a rapid and significant increase in imports of the subject product into the SACU market;
- The increase in the volume of imports was as a result of unforeseen circumstances;
- The SACU industry is suffering serious injury and there is a further threat of serious injury;
- There was a causal link between the increase in imports of the subject product and the serious injury.

The Commission therefore decided to recommend to the Minister of Trade and Industry that the following final safeguard measures be imposed for a period of 2 years and 11 months:

- 27 per cent *ad valorem* on lysine classifiable under tariff subheading 2922.41 and feed supplements containing by mass 40% or more lysine, whether or not containing added antibiotics or added melengestrol acetate classifiable under tariff subheading 2309.90.65, for the period 11 May 2007 to 10 May 2008.
- 18 per cent *ad valorem* on lysine classifiable under tariff subheading 2922.41 and feed supplements containing by mass 40% or more lysine, whether or not containing added antibiotics or added melengestrol acetate classifiable under tariff subheading 2309.90.65, for the period 11 May 2008 to 10 May 2009.
- 9 per cent *ad valorem* on lysine classifiable under tariff subheading 2922.41 and feed supplements containing by mass 40% or more lysine, whether or not containing added antibiotics or added melengestrol acetate classifiable under tariff subheading 2309.90.65, for the period 11 May 2009 to 11 April 2010.

The safeguard measure will be implemented against all countries, except the following developing countries, which should be excluded from the duty:

Afghanistan, Algeria, Antigua and Barbuda, Angola, Argentina, American Samoa, Anguilla, Antarctica, Aruba, Azerbaijan, Barbados, Bangladesh, Burkina Faso, Bahrain, Burundi, Benin, Belarus, Bolivarian Republic of Venezuela, Brunei Darussalam, Bolivia, Bahamas, Bhutan, Belize, Bermuda, Bouvet Island, British Virgin Islands, British Indian Ocean Territory, Democratic Republic of Congo, Central African Republic, Congo, Côte d'Ivoire, Cameroon, Chad, Colombia, Costa Rica, Cuba, Cape Verde, Cayman Islands, Chile, Christmas Islands, Cocos Islands, Cook Islands, Djibouti, Dominican Republic, Ecuador, Egypt, Eritrea, Ethiopia, Fiji, Federated States of Micronesia, Falkland Islands, French Polynesia, French Southern Territories, Gabon, Grenada, Ghana, Gambia, Georgia, Greenland, Guinea, Equatorial Guinea, Guatemala, Guinea-Bissau, Gibraltar, Guam, Honduras, Haiti, Heard Island and McDonald Islands, Indonesia, Iraq, Iran (Islamic Republic of), Jamaica, Jordan, Kazakhstan, Kenya, Cambodia, Kiribati, Comoros, St Kitts and Nevis, Kuwait, Kyrgyzstan, Laos, Lebanon, St Lucia, Sri Lanka, Liberia, Libyan, Arab Jamahiriya, Morocco, Madagascar, Marshall Islands, Mali, Moldova, Mongolia, Mauritania, Mauritius, Malaysia, Maldives, Malawi, Mozambique, Macao, Mayotte, Mexico, Montserrat, Niger, Nigeria, Nicaragua, Nepal, Nauru, Netherlands Antilles, New Caledonia, Niue Island, Norfolk Island, Northern Mariana Islands, Oman, Panama, Peru, Papua New Guinea, Philippines, Pakistan, Palau, Paraguay, Pitcairn, Qatar, Russian Federation, Rwanda, Samoa, Saudi Arabia, Solomon Islands, Seychelles, Sudan, Sierra Leone, Senegal, Somalia, Suriname, Sao Tomé and Príncipe, El Salvador, Syrian Arab Republic, South Georgia and South Sandwich Islands, St Helena and dependencies, St Pierre and Miquelon, Tajikistan, Togo, Tunisia, Tonga, East Timor, Trinidad and Tobago, Turkmenistan, Tuvalu, Tanzania, Tokelau, Turks and Caicos Islands, Ukraine, United Arab Emirates, United States Minor outlying islands, Uganda, Uruguay, Uzbekistan, St Vincent, Vietnam, Vanuatu, Virgin Islands of USA, Wallis and Futuna Islands, Yemen, Zambia and Zimbabwe.

The Commission decided that it would monitor the Applicant's progress against its project plan and reserves the right to recommend the termination of the safeguard duty should the progress not be satisfactory.