

## **Report No. 237**

# **Investigation into remedial action in the form of safeguards against the increased imports of lysine: Preliminary determination**

The International Trade Administration Commission of South Africa herewith presents it **Report No. 237: INVESTIGATION INTO REMEDIAL ACTION IN THE FORM OF SAFEGUARDS AGAINST THE INCREASED IMPORTS OF LYSINE: PRELIMINARY DETERMINATION**



**Itumeleng Masege**  
**ACTING CHIEF COMMISSIONER**

**PRETORIA**

11/05/ 2007

# **INTERNATIONAL TRADE ADMINISTRATION COMMISSION**

## **INVESTIGATION INTO REMEDIAL ACTION IN THE FORM OF SAFEGUARDS AGAINST THE INCREASED IMPORTS OF LYSINE: PRELIMINARY 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 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.

## **1. APPLICATION AND PROCEDURE**

---

### **1.1 LEGAL FRAMEWORK**

This investigation is 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).

### **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 alleges that the subject products are 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**

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.

#### **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
<b>Country:</b>						
United Kingdom	1 000	1 001	500	450	1 427	0.0%
Belgium	0	0	6	40	52	0.0%
Germany	311	79	250	58	37 663	0.8%
Slovak Republic	0	287 000	0	0	0	0.0%
USA	261 114	337 273	1 189 186	1 829 275	1 420 503	29.7%
Brazil	0	0	140 420	280 000	332 500	6.9%
China	2 200	291 818	357 513	605 091	2 441 861	51.0%
Australia	0	0	0	2 970	0	0.0%
Netherlands	96 000	0	0	0	33 000	0.7%
France	214 000	488 500	364 132	96 000	128 000	2.7%
Switzerland	0	0	0	13	16 745	0.3%
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	7.8%
Total imports	575 730	1 407 576	2 105 513	2 814 802	4 786 986	

The information in the table indicates that the import volumes increased significantly from 2005 to 2006 by 70 per cent.

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

<b>Metric tons</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>
<b>Imports as a % of the Applicant's output</b>	100	229	320	555	1 637

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 in 2002 to 1 637 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 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**

<b>Metric tons</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>
<b>Applicant's sales volume (tons)</b>	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)	(301)

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

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	90	77	72	53
Imports	100	219	361	418	639
SACU market	100	111	101	117	130

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**

<b>Metric tons</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>
<b>Employee productivity (units per employee)</b>	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**

<b>Metric tons</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>
<b>Capacity</b>	100	116	122	122	122
<b>Applicant's output</b>	100	107	114	88	51
<b>Utilisation of capacity</b>	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
<b>Number of production employees</b>	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 preliminary 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 overshoot 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**

	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>
Total imports (tons)	576	1 408	2 106	2 815	4 787

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
<b>Average price of imported product</b>	13.55	14.25	12.62	6.43	7.00
<b>Applicant's ex-factory selling price</b>	100	110	110	58	60
<b>Cost as a % of selling price</b>	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 preliminary 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 70 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

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

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.

#### **7.4 CONCLUSION ON CAUSAL LINK**

After considering all relevant factors and information, 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 and the attitude of the Applicant's workforce, that could be causing serious injury and decided that these did not detract from the causal link.

## **8. CRITICAL CIRCUMSTANCES**

---

### **8.1 Requirements of Safeguard Agreement**

In accordance with Article 6 of the Safeguard Agreement as member may take a provisional safeguard measure pursuant to a preliminary determination in critical circumstances where delay would cause damage, which would be difficult to repair.

### **8.2 Information submitted by the Applicant**

The Applicant stated that in summary it would like to state that the WTO's important prerequisite for the imposition of safeguard measures, namely that the competing imported product must cause or threaten to cause serious injury to the domestic industry, is fully met in this instance. The Applicant stated that the actual serious injury is borne out by the information submitted, the most important of which is the volume of imports, which increased with 127 per cent from 2004 to 2006 and the price of imports, which decreased from R12.62 per kg in 2004 to R7.00 per kg in 2006, a decrease of 45 per cent.

The Applicant stated that this impacted on it in that production decreased substantially between 2004 and 2006, its market share declined substantially from 2004 to unsustainable levels in 2006, its net profit in 2004 turned into a threatening loss in 2006 and the staff complement had to be reduced aggressively in 2006 in order to survive.

The Applicant stated that the consequences of its closure are not confined to the loss of jobs and economic activity in the region. It stated that it is presently the only meaningful industrial biotechnology company in South Africa and represents a skills base that is thus unique in the country. The Applicant 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 materially discouraged.

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

The Applicant stated that it would clearly be in public interest to impose safeguard duties for a period of time to enable the SACU industry, which has no problem competing globally in normal situations, to consolidate and restructure, something it cannot do while the SACU market literally is flooded with ridiculously priced highly disruptive imports.

The Applicant stated that in view of the parlous state of the industry, urgent action is required. The Applicant stated that it implores the Commission to initiate the investigation with due haste. It stated that the Commission would agree that the situation is so critical and injury so severe that everything should be done to put provisional safeguard measures in place at the earliest opportunity.

### **8.3 Commission decision**

The Commission decided that there are critical circumstances where delay would cause damage, which would be difficult to repair, in accordance with Article 6 of the Safeguard Agreement.

## **9. SUMMARY OF FINDINGS**

---

### **9.1 Unforeseen Developments**

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.

### **9.2 Serious injury**

The Commission made a preliminary 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.

### **9.3 Threat of serious injury**

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

### **9.4 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 and the attitude of the Applicant's workforce, that could be causing serious injury and decided that these did not detract from the causal link.

## **9.5 Critical circumstances**

The Commission decided that there are critical circumstances where delay would cause damage, which would be difficult to repair, in accordance with Article 6 of the Safeguard Agreement.

## **9. PROVISIONAL PAYMENTS**

---

### **9.1 Duration of provisional measures**

In accordance with Article 6 of the Safeguard Agreement, the duration of the provisional measures shall not exceed 200 days. The duration of such provisional measures shall be counted as part of the overall time frame of the safeguard measures.

### **9.2 Calculation of provisional measures**

The Commission decided to determine the provisional measures based on the price disadvantage experienced by the Applicant.

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

The Commission calculated the Applicant's unsuppressed selling price to allow the Applicant the same profit margin as that of 2002. The landed cost was calculated based on the fob price of the imported product, as obtained from the import statistics, and by adding 15 per cent to the fob import price.

The price disadvantage was calculated to be 160%.

## 10. PRELIMINARY DETERMINATION

---

The Commission made a preliminary 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.

As the Commission considers that there are critical circumstances where delay would cause damage to the SACU industry, which would be difficult to repair, it decided to request the Commissioner for South African Revenue Service to impose provisional measures on further imports of the subject products, for a period of 200 days, and to the extent as listed below, being the price disadvantage:

- 160 per cent *ad valorem* on L-Lysine HCl classifiable under tariff subheading 2922.41 and L-Lysine Sulphate classifiable under tariff subheading 2309.90.65.

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

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.

Interested parties will be invited to submit comments and make representations on the preliminary determination within the specified time periods, which the Commission will consider prior to making its final determination and recommendation to the Minister of Trade and Industry.