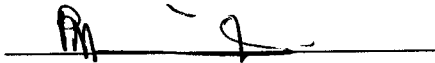


REPORT NO. 193

INVESTIGATION INTO THE ALLEGED DUMPING OF FEED SUPPLEMENTS CONTAINING BY MASS 40% OR MORE LYSINE, WHETHER OR NOT CONTAINING ADDED ANTI BIOTICS 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: FINAL DETERMINATION

The International Trade Administration Commission of South Africa herewith presents its
**Report No.193: INVESTIGATION INTO THE ALLEGED DUMPING OF FEED
SUPPLEMENTS CONTAINING BY MASS 40% 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: FINAL DETERMINATION**



**Ms N P Maimela
CHIEF COMMISSIONER**

PRETORIA

11 / 09 / 2006

1. APPLICATION AND PROCEDURE

- 1.1 This investigation was conducted in accordance with the International Trade Administration Commission Act, 2002, (the ITA Act), the World Trade Organisation Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, 1994 (the Anti-Dumping Agreement) and the International Trade Administration Commission of South Africa Anti-Dumping Regulations (ADR).
- 1.2 The application was lodged by SA Bioproducts (Pty) Ltd (the Applicant), being the only manufacturer of the subject product in the SACU.
- 1.3 The application was accepted by the Commission as being properly documented in accordance with Article 5.2 of the Anti-Dumping Agreement on 15 June 2005. The trade representatives of the countries concerned were advised accordingly.
- 1.4 The Commission formally initiated 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 pursuant to Notice No. 947 which was published in *Government Gazette* No. 27685 on 24 June 2005.
- 1.5 The investigation period for dumping was from 1 January 2004 to 31 December 2004. The injury investigation involved evaluation of data for the period 1 January 2002 to 31 December 2004.
- 1.6 The SACU industry consists of only one producer of the subject product, namely SA Bioproducts (Pty) Ltd, who submitted the information contained in this report.
- 1.7 The following exporter responded to the Commission's exporters questionnaire:

Degussa Corporation
- 1.8 The following SACU importer responded to the Commission's importers questionnaire:

Degussa Africa (Pty) Ltd
- 1.9 After considering all information and parties' comments, the Commission made a preliminary determination that the subject product was being dumped on the SACU market and the SACU industry was suffering material injury but that there were factors other than dumping detracting from the causal link between the dumping of the subject product and the injury.

- 1.10 As the Commission considered that the SACU industry would continue to suffer material injury during the course of the investigation if provisional payments were not imposed, it decided to request the Commissioner for South African Revenue Service to impose provisional payments for a period of twenty-six weeks.
- 1.11 During the process of the investigation, it came to the Commission's attention that, due to an error of calculation, the provisional payment imposed against Degussa Corporation and other exporters from the USA was too high.
- 1.12 On 22 June 2006, the Commission made a decision to request Commissioner for South African Revenue Services to amend the current provisional payments.
- 1.13 Based on the details as contained in the Commission's preliminary report and the comments received on this report, the Commission made a final decision to terminate the investigation.
- 1.14 Essential facts letters were sent to interested parties and their comments were considered by the Commission before making its final recommendation.
- 1.15 After considering all parties' comments in respect of the essential facts letter, the Commission made a final determination, to recommend to the Minister of Trade and Industry to terminate the investigation.
- 1.16 The Commission, therefore, decided to recommended to the Minister of Trade and Industry to terminate the 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.
- 1.17 Special circumstances:

The Commission decided on 14 December 2005 that it wanted to meet with the end-users of the product. The meeting could only be held on 1 February 2006. The Commission could, therefore, only consider the preliminary determination after the meeting with the end-users was held.

2. PRODUCTS, TARIFF CLASSIFICATION AND DUTIES

2.1 IMPORTED PRODUCTS

2.1.1 Description

The subject product is described as 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.

2.1.2 Country of origin/export

The subject product is exported from the United States of America.

2.1.3 Possible tariff loopholes

The Applicant indicated that no tariff classification loopholes are known.

2.1.4 Other applicable duties and rebates

There are no rebate provisions that exist in terms whereof the subject product can be imported with rebate of the duty.

2.1.5 Negligibility test

The following table shows the alleged dumped imports as a percentage of the total imports:

Table 2.1.5: Import volumes

	Import volumes 1/1/ 2002 to 31/12/ 2004 (POI)	Volume as a percentage of total import volume
Alleged dumped imports:		
United States of America	1 153 161	82.78%
Total imports	1 392 971	

The imports from the United States of America amounted to 82.78% of total imports.

The Commission found that the imports from subject country are above the negligibility level.

2.2 SACU PRODUCT

2.2.1 Description

The SACU product is described as “Lysine and its esters; salts thereof commonly known as L-Lysine HCL (Feed Grade) 98.5%”.

2.3 LIKE PRODUCTS ANALYSIS

In determining the likeness of products, the Commission used the following criteria:

Table 2.3: Like product determination

	Imported product	SACU product
Raw materials	Carbohydrate source, protein source, various acids, Ammonia, sulfate source, other salts, trace amino acids, and packaging materials.	High-test molasses (HTM), corn steep liquor (CSL), phosphoric acid, caustic soda, ammonia, sulphuric acid, hydrochloric acid, packaging.
Physical appearance	is in the form of free flowing, dust free, light brown coloured granulate with bulk density of +/- 0.68g/cm ³ .	is in the form of free flowing, dust free beige coloured granules. Bulk density 0.5-0.6g/cm ³ .
Tariff classification	2309.90.65	2922.41
Production process	A sterilized carbohydrate source supplemented with protein and other nutritional ingredients is fermented by inoculating with a selected strain of bacterium. The resulting whole broth is concentrated by evaporation and dried and packaged.	A sterilized carbohydrate source supplemented with protein and other nutritional ingredients is fermented by inoculating with a selected strain of bacterium. The resulting broth is purified through an ion exchange process before being hydrochlorinated, concentrated via evaporation and then granulated and packaged.
Application or end use	Amino acid feed supplement used in animal feed.	Amino acid feed supplement used in animal feed

Substitutability	Can be substituted	Can be substituted
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The Commission considered all comments regarding “like product” and these comments are available on the public file.

After considering all the above factors and the comments received, the Commission was satisfied that the SACU product and the imported product were “like products” for purposes of comparison in this investigation, in terms of Article 2.6 of the Anti-Dumping Agreement.

3. INDUSTRY STANDING

The Applicant is the sole manufacturer of the like product in the SACU.

The Commission considered all comments regarding “industry standing” and these comments are available on the public file.

The Commission made a final determination that the application could be regarded as being made “by or on behalf of the domestic industry” under the above provisions of the Anti-Dumping Agreement.

4. DUMPING

4.1 METHODOLOGY IN THIS INVESTIGATION FOR DEGUSSA CORPORATION IN THE UNITED STATES OF AMERICA

4.1.1 Normal Value

Type of economy

The United States of America is considered to be a country with a free market economy and therefore section 32(2)(b)(i) of the ITA Act (Act 71/2002) was used as a basis.

Calculation of normal value

The normal value was based on sales made to customers in the domestic market. Based on this information a normal value per kilogram was calculated.

Adjustments to the normal value

The following adjustments to the normal value were claimed by the Exporter and allowed by the Commission as it was shown that there was a difference in costs, which was demonstrated to have affected price comparability at the time of setting the prices:

(i) Credit adjustments:

The adjustment for payment terms was calculated by dividing the cost of payment terms for domestic US sales into the domestic volume.

(ii) Delivery charges:

An adjustment for delivery charges was determined based on the total delivery charge for 2004, in respect of the subject product in the domestic market.

(iii) Insurance:

Degussa Corporation claimed transport insurance paid on its domestic sales.

(iv) **Early payment discounts and rebates:**

During the period of investigation, Degussa Corporation allowed discounts for early payments.

(v) **Packaging:**

An adjustment was made for packing. The domestic packaging costs per kilogram were verified and deducted from the invoiced selling price.

Ex-factory Prices

After taking the above adjustments into consideration an ex-factory price per kilogram was calculated.

4.1.2 Export price

Calculation of export price

Like products to those sold in the domestic market in the USA were exported to the SACU area during the period of investigation. However, as the exporter and the importer are related, the export price was determined using section 32(5)(a) of the ITA Act (Act 71 of 2002) as a basis.

The export price was calculated based on a cost and price build-up, using ADR 10.2 and 10.3 as the basis. Sales from Degussa Africa to the first independent buyer were used as a starting point in the cost build-up.

Adjustments to the export price

As the export price was constructed, no adjustments were taken into account.

4.1.3 Margin of dumping

The margin of dumping was determined by comparing the ex-factory normal value to the constructed ex-factory export price. Based on the information, a margin of dumping of 2.2 per cent was calculated.

4.1.4 Residual dumping margin

Since there may be other manufacturers of the subject product in the USA, a residual dumping margin was calculated. The Commission calculated the residual dumping margin by comparing the normal value of Degussa Corporation before adjustments to its constructed export price.

Based on the information, a residual dumping margin of 13.7 per cent was calculated.

4.3 CONCLUSION - DUMPING

The Commission considered all comments regarding “dumping” and these comments are available on the public file.

For purposes of its final determination, the Commission considered all the comments from interested parties and found that the subject product originating in the United States of America was being dumped into the SACU market with the following dumping margins:

Exporter	Dumping margin expressed as a percentage of the fob export price
The USA:	
Degussa Corporation	2.2%
All other exporters from the USA	13.7%

5. MATERIAL INJURY

5.1 DOMESTIC INDUSTRY – MAJOR PROPORTION OF PRODUCTION

The following injury analysis relates to SA Bioproducts (Pty) Ltd, the Applicant, which constitutes 100 per cent of the total domestic production of the subject product.

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

5.2 CUMULATIVE ASSESSMENT

This investigation was initiated against one country.

5.3 IMPORT VOLUMES AND EFFECT ON PRICES

Basic Data Set

Year	Unit	Subject Imports	Other imports	Imports of Lysine	Applicant's production	Inventories	Applicant's sales volumes
2002	kg	100	0	100	100	100	100
2003	kg	129	100	233	107	111	100
2004	kg	455	10	280	114	431	78

The information in this table was indexed due to confidentiality using 2002 as the base year except other imports where 2003 was used as base year

Examination under Article 3.2

Growth of Subject Imports

Variable	Unit of Measurement	Year			Change
		2002	2003	2004	2002/2004
Subjects imports/domestic production	%	100	120	399	299
Subjects imports/domestic consumption	%	100	129	583	483

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

Price Effects of Subject Imports

Variable	Unit of Measurement	Year			Change
		2002	2003	2004	2002/2004
Price undercutting	(%)	When comparing the selling price of the Applicant to the landed cost of the subject product from the USA, the Commission found that the price of the subject product was undercutting the Applicant price			
Average price of domestic product (ex-factory) (price depression)	Rand per kilogram	100	110	110	10
Cost as % of selling price (Suppression)	Percentage	100	104	119	19

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

5.4 CONSEQUENT IMPACT OF THE DUMPED IMPORTS ON THE INDUSTRY

Examination under Article 3.4

Variable	Unit of Measurement	Year			Change
		2002	2003	2004	2002/2004
Sales:					
In value terms	Rand	100	109	86	(14)
Quantities	Tons	100	100	78	(22)
Inventories (quantities)	Tons	100	111	431	(331)

Output (quantities)	Tons	100	107	114	14
Market share of SACU producers	Percentage	100	91	82	(18)
Market share of alleged dumped imports	Percentage	100	118	503	403
Market share of other imports	Percentage	0	100	12	(88)
Capacity utilization	Percentage	100	93	94	(6)
Employment	Number	100	113	119	19
Wages (total wage bill, monthly average)		100	120	151	51
Productivity (output/worker)	Units per worker	100	94	96	(4)

The information in this table was indexed due to confidentiality using 2002 as the base year except market share of other imports where 2003 was used as base year.

Variable	Unit of Measurement	Year			Change
		2002	2003	2004	2002/2004
Total Net Profit *	Percentage	(185)	100	(89)	(52)
Cash flow	Rand	100	139	(278)	(378)
Return on investment	Percentage	100	254	157	57
Ability to raise capital (capital expenditure)	Rand	100	145	113	(13)
Growth in SACU market	Kg	100	109	96	(4)
Growth of Applicant	Percentage	100	91	82	(18)
Factors affecting domestic prices (cost of raw material per unit)	Rand/unit	100	114	130	(30)

Variable	Unit of Measurement	Year			Change
		2002	2003	2004	2002/2004
Magnitude of the margin of dumping:					
Degussa Corporation				2.2%	
All other exporters				13.7%	

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

5.5 CONCLUSION - MATERIAL INJURY

The Commission considered all comments regarding “material injury” and these comments are available on the public file.

After considering all relevant factors and taking all comments into account, the Commission made a final determination that the Applicant, and therefore the SACU industry was suffering material injury.

6. THREAT OF MATERIAL INJURY

6.1 THREAT OF MATERIAL INJURY

Indicator	2002	2003	2004
Alleged dumped imports (volumes)	168 452	217548	767 161
Alleged dumped imports (price per unit)			12.53
Prices of Applicant (price depression)	100	110	110
Cost as a % of selling price of Applicant (price suppression)	100	104	118

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

6.2 CONCLUSION - THREAT OF MATERIAL INJURY

The Commission considered all comments regarding “threat of material injury” and these comments are available on the public file.

The Commission considered all the information and comments submitted by interested parties and made a final determination that there was not sufficient evidence of a threat of injury to the SACU industry.

7. CAUSAL LINK

7.1 GENERAL

In order for the Commission to impose final anti-dumping duties, it must be satisfied that there is sufficient evidence to indicate that the material injury experienced by the SACU industry is as a result of the dumping of the subject products.

7.2 VOLUME OF IMPORTS AND MARKET SHARE

An indication of causality is the extent of the increase of volume 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 dumped product.

The following table compares the market share of the SACU industry with that of the alleged dumped imports:

Table 7.2.1: Market share

	2002	2003	2004
Percentage market share held by:			
Total SACU	100	91	82
Alleged dumped imports	100	118	503

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

The following table shows the volume of imports:

Table 7.2.2: Import volumes

	2002	2003	2004
Alleged dumped imports	168 452	217 548	767 161
Other imports	0	217 097	22 713
Total imports	168 452	434 645	789 874
Alleged dumped imports as a % of total imports	100%	50%	97.12%

7.3 EFFECT OF DUMPED IMPORTS ON PRICES

The following table shows the price effects of the Applicant:

Table 7.3.1: Price undercutting, price depression and price suppression

Rand/unit	2002	2003	2004
Price undercutting (%)	When comparing the selling price of the Applicant to the landed cost of the subject product from the USA, the Commission found that the price of the subject product was undercutting the Applicant price.		
Applicant's ex-factory selling price (R/unit)	100	110	110
Cost as a % of selling price (%)	100	104	119

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

7.4 CONSEQUENT IMPACT OF DUMPED IMPORTS

Material injury indicator	Analysis (2002 – 2004)
Sales volume	Decreased
Profit	Increased
Output	Increased
Market share	Decreased
Productivity	Decreased
Return on investment	Increased
Utilisation of capacity	Decreased
Cash flow	Decreased
Inventories	Increased
Employment	Increased
Wages	Increased

Growth	Decreased
Ability to raise capital	Increased

7.5 FACTORS OTHER THAN THE DUMPING CAUSING INJURY

7.5.1 Examination of causality under Article 3.5

Variable	Unit of Measurement	Year			Change (%)
		2002	2003	2004	2002/2004
Prices of imports not sold at dumping prices (fob price)	Rand	0	100	115	15
Volume of imports not sold at dumping	Kilograms	0	100	10	(90)
• GDP growth rate	Percentage	100	86	124	24
• Growth rate for subject product industry	Rand	100	109	96	(4)
Changes in the patterns of consumptions	The Applicant stated that the market has remained relatively static over the past three years.				
Trade-restrictive practices of foreign and domestic producers	No information was provided in this regard.				
Competition between foreign and domestic producers	The Applicant is the only producer of the product in the SACU.				
Developments in technology	According to information at the disposal of the Commission, the technology used to produce Biolys is similar to the one used by the SACU manufacturer.				
Export performance of the domestic industry	tons	100	117	118	18
Productivity of the domestic industry	The Applicant stated that its productivity is on a par with that of exporting countries. The productivity of the SACU industry increased during the period of investigation				

The information in this table was indexed due to confidentiality using 2002 as the base year except prices of imports and volume of imports where 2003 was used as base year.

7.6 CONCLUSION ON CAUSAL LINK

The Commission considered all comments regarding “causal link” and these comments are available on the public file.

After considering all relevant factors and comments, the Commission made a final

determination that there are factors other than dumping, including the Applicant's export performance, escalation in the prices of raw materials, and strength and decline in the international price of lysine, that sufficiently detracted from the causal link between the dumping and the material injury.

8. SUMMARY OF FINDINGS

8.1 Dumping

The Commission found that the subject product originating in or imported from the United States of America was dumped into the SACU market in the following margins:

Exporter	Country of origin	Dumping margin expressed as a percentage of the fob export price
Degussa Corporation	USA	2.2%
All other exporters	USA	13.7%

8.2 Material injury

The Commission found that the Applicant suffered material injury in the form of price undercutting, price suppression, the decline in sales, market share, productivity, capacity utilization, negative effect on cash flow, growth, and an increase in inventories.

8.3 Threat of material injury

The Commission decided that the information submitted by the Applicant and the exporters was not sufficient to find that there was a threat of material injury to the SACU industry.

8.4 Causal link

The Commission considered all the comments received from interested parties and decided that there were factors other than dumping that sufficiently detracted from the causal link between the dumping and the material injury.

9. FINAL DETERMINATION

The Commission made a final determination that

- The subject product originating in or imported from the United States of America was being dumped into the SACU market and
- the SACU industry suffered material injury, but
- there were other factors detracting from the causal link between the dumping of the subject product and the material injury.

The Commission therefore decided to recommend to the Minister of Trade and Industry that the 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 be terminated.