

Report No. 171

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 United States of America (USA): Preliminary determination

The International Trade Administration Commission of South Africa herewith presents its
**Report No. 171: 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 UNITED STATES OF AMERICA (USA): PRELIMINARY
DETERMINATION**


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PRETORIA

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INTERNATIONAL TRADE ADMINISTRATION COMMISSION OF SOUTH AFRICA

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 UNITED STATES OF AMERICA (USA): PRELIMINARY DETERMINATION

SYNOPSIS

On 24 June 2005, 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.

The application was lodged on behalf of the Southern African Customs Union (SACU) industry by SA Bioproducts (Pty) Ltd, claiming that the dumped imports from the United States of America were causing it material injury. SA Bioproducts (Pty) Ltd is the sole manufacturer of Lysine and its esters; salts thereof, commonly known as L-Lysine HCL (Feed Grade) 98.5%, in the SACU.

The government representative of the United States of America was advised accordingly as required by Article 5.5 of the Anti-Dumping Agreement.

The investigation was initiated through Notice No.344 in *Government Gazette* No. 27324 on 24 June 2005 after the Commission considered that there was *prima facie* proof of dumping, material injury and causal link between the dumping and the material injury suffered by the SACU industry.

Exporters and importers questionnaires were sent to various known interested parties, including the government representative of the United States of America. The deadline for comments was 15 April 2005.

A producer of the subject product in the USA, Degussa Corporation through its representative in South Africa, Webber Wentzel Bowens responded in full to the Commission's exporter questionnaire and information submitted was subsequently verified.

A response was also received from Degussa Africa and its information was verified on 21 September 2005.

On 29 March 2006, the Commission considered the information submitted and made a preliminary determination that:

- the subject products originating in or imported from the USA is being dumped on the SACU market; and that
- the SACU industry is suffering material injury .
- there is a causal link between the dumping of the subject products and the injury.

In terms of ADR 33.2, the Commission decided to request the Commissioner for South African Revenue Service to impose the following provisional payments for a period of 26 weeks:

Country	Rate of Provisional payments
United States of America:	
Degussa Corporation	34%
All other exporters from the USA	49%

This provisional payment is the amount required to prevent further injury being experienced by the SACU industry as a result of further imports of the subject products at prices that constitute dumping during the course of the investigation and before the Commission makes its final determination.

1. APPLICATION AND PROCEDURE

1.1 APPLICANT

The SACU application was lodged by SA Bioproducts (Pty) Ltd (Applicant), a manufacturer of Lysine and its esters; salts thereof, commonly known as L-Lysine HCL (Feed Grade) 98.5%, in the SACU.

1.2 DATE OF ACCEPTANCE OF APPLICATION

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 representative of the country concerned was advised accordingly.

1.3 ALLEGATIONS BY THE APPLICANT

The Applicant alleged that imports 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)" (subject product), originating in or imported from the USA were being dumped on the SACU market, thereby causing material injury to the SACU industry. The basis of the alleged dumping was that the goods were being exported to the SACU at prices less than the normal value in the countries of origin.

The Applicant further alleged that as a result of the dumping of the subject products from the USA, the SACU industry was suffering material injury in the form of:

- price undercutting
- price depression
- price suppression
- decline in output

- decline in sales
- decline in market share
- decline in productivity
- decrease in profits
- decline in utilisation of production capacity
- decline in return on investments
- negative effect on cash flow
- decline in employment
- decline in wages per employee
- inability to raise capital
- inability to show growth
- increase in inventory levels

1.4 INVESTIGATION PROCESS

The application was submitted on 07 April 2005. A letter of deficiency letter was sent to the Applicant on 19 April 2005 and the application was re-submitted on 16 May 2005. A further deficiency letter was sent to the Applicant on 23 May 2005 and a complete application was submitted on 31 May 2005. The information submitted by the applicant was verified on 26 May 2005. Complete application re-submitted on 31 May 2005. The investigation was initiated on 24 June 2005. Responses from the importer and exporter were received on 17 August 2005. The information provided by the importer was verified on 21 September 2005. The information received from the exporter was verified from 5 to 7 October 2005. Comments on verification report were received on 18 October 2005. There was an oral hearing by the consultant representing the importer and exporter on 14 December 2005. On 01 February 2006, end-users and the Applicant were invited to a special meeting in order to clarify the Commission on the matter of like products.

1.5 INVESTIGATION PERIOD

Information with regard to dumping is for the period 01 January 2004 to 31 December 2004, and information with regard to material injury for the period 01 January 2002 to 31 December 2004.

1.6 PARTIES CONCERNED

1.6.1 SACU INDUSTRY

The application was lodged by SA Bioproducts (Pty) Ltd, the only manufacturer of Lysine and its esters; salts thereof, commonly known as L-Lysine HCL (Feed Grade) 98.5%, in the SACU.

1.6.2 Exporters/Foreign Manufacturers

Degussa Corporation, an exporter/manufacturer of the subject product was identified as an interested party. Degussa responded fully to the Commission's exporters questionnaire and its information was verified from 05 to 07 October 2005.

1.6.3 Importers

Degussa Africa, an importer of the subject product also responded fully to the Commission's importers questionnaire and its information was verified from 21 September 2005.

On 14 December 2005, the preliminary submission was submitted to the Commission for its consideration. The Commission decided that a meeting to discuss the likeness of the two products be arranged with end-users. The meeting with end-users took place on 01 February 2006.

2. PRODUCTS, TARIFF CLASSIFICATION AND DUTIES

2.1 IMPORTED PRODUCTS

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)” (subject product).

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

2.1.3 Application/end use

The imported subject product is as an amino acid feed supplement used in animal feed.

2.1.4 Tariff classification

The subject product is classifiable as follows:

Table 2.1.4

TARIFF SUBHEADING	DESCRIPTION	UNIT OF MEASUREMENT	RATE OF CUSTOMS DUTY (‘GENERAL’)
2309	Preparation of a kind used in Animal Feeding:		
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	8%

2.1.5 Production process

The production process used in producing L-Lysine Sulphate (Biolys) is a fermentation process. A sterilised carbohydrate source supplemented with protein and other nutritional ingredients is fermented by inoculating it with a selected strain of bacterium. The resulting whole broth is concentrated by evaporation and dried and packaged.

2.1.7 Imports statistics

The import statistics, as contained in paragraph 5.1 of this report, indicate that the volume of the alleged dumped imports from the United States of America accounted for 97% of the total imports of the like product for the period January 2004 to December 2004.

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%”.

2.2.2 Application/end use

The SACU product, L-Lysine HCL, is an amino acid feed supplement used in animal feed.

2.2.3 Tariff classification

The SACU product is classifiable under tariff subheading 2922.41.

2.2.4 Production process

The production process used in producing the L-Lysine HCL is a fermentation process. A sterilized carbohydrate source supplemented with protein and other nutritional ingredients is fermented by inoculating it 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.

2.3 LIKE PRODUCTS

2.3.1 General

In order to establish the existence and extent of injury to the SACU industry, it is necessary to determine whether the products produced by the SACU industry are like products to those originating in or imported from the USA.

The product manufactured in SACU is Lysine HCL with a Lysine content of 78.8% and the product imported from the USA has a lysine content of 50.7%.

2.3.2 Analysis

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

- (a) raw material used;
- (b) physical appearance and characteristics;
- (c) method of manufacturing;
- (d) customer demand and end use; and
- (e) tariff classification.

(a) Raw material

The main raw materials used for the manufacturing of the domestic product are:

- (a) High Test Molasses (HTM)
- (b) Corn Steep Liquor (CSL)
- (c) Phosphoric Acid
- (d) Caustic soda
- (e) Ammonia
- (f) Sulphuric Acid
- (g) Hydrochloric Acid
- (h) Packaging

The main raw materials used in the production of the imported “like product” are:

- (a) Carbohydrate source
- (b) Protein source
- (c) Various acids
- (d) Caustic soda
- (e) Ammonia
- (f) Trace amino acids
- (g) Packaging

The production process used for the manufacturing of the SACU product is similar to the one used for the manufacturing of the imported product.

(b) Physical appearance and characteristics

The imported and the domestic products have similar physical appearance and characteristics.

(c) Method of manufacturing

The imported and the domestic products are manufactured using the same method.

(d) Customer demand and end use

The demand and the end use of the products sold domestically and those imported are the same for purposes of comparison.

(e) Tariff classification

The products sold domestically and those imported are classifiable under the same six-digit tariff subheading.

(f) The substitutability of the product with the product under investigation

According to information at the Commission's disposal, the SACU product and the imported product are highly substitutable.

The Commission considered all comments regarding "like product" and these comments are available on the public file.

The Commission found that the SACU product and the imported product were "like products", for purposes of comparison in terms of Article 2.6 of the Anti-Dumping Agreement.

3. SACU INDUSTRY

3.1 INDUSTRY STANDING

The Applicant is the sole manufacturer of L-Lysine HCL (Feed Grade) 98.5% in the SACU.

The Commission made a preliminary determination that the Application can be regarded as being made “by or on behalf of the domestic industry” and, therefore, was eligible for initiation under the above provisions of the Anti-Dumping Agreement.

4. DUMPING

4.1 METHODOLOGY IN THIS INVESTIGATION FOR THE UNITED STATES OF AMERICA

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.

Like products to that exported to the SACU are sold in the domestic market in the USA in the ordinary course of trade.

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.

Adjustment to the normal value

The following adjustments to the normal value, which were verified, were claimed by the exporter. These adjustments were allowed by the Commission as it was satisfied that there were differences in costs between domestic and export sales, which was demonstrated to have affected price comparability at the time of setting the prices:

Credit adjustments:

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

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.

Insurance

Degussa Corporation claimed transport insurance paid on its domestic sales.

Early payment discounts and rebates

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

Packaging

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

Ex-factory selling price

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

4.2 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.

Ex-factory Prices

The ex-factory export price was calculated based on a cost and price build-up, using ADR 10.2 and 10.3 as the basis.

4.3 Dumping margin

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 34 per cent was calculated.

4.4 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 49 per cent was calculated.

4.8 SUMMARY – DUMPING

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

For purposes of its preliminary determination, the Commission considered all the comments from interested parties and found that the subject product originating in the USA was being dumped into the SACU market.

5. MATERIAL INJURY

5.1 DOMESTIC INDUSTRY FOR PURPOSES OF DETERMINING MATERIAL INJURY

The following injury analysis relates to SA Bioproducts (Pty) Ltd, the Applicant, constituting 100% of the total SACU production of L-Lysine HCL (Feed Grade) 98.5%.

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

5.2 IMPORT VOLUMES AND EFFECT ON PRICES

5.2.1 Import volumes

In any dumping investigation, the Commission normally uses audited import statistics from SARS to determine the volume of the subject product entering the SACU from the countries under investigation and other countries. It considers these statistics to be the most reliable.

The following table shows the volume of imports of L-Lysine HCL from the USA prior to the imposition of the anti-dumping duty in 2002 and the volumes subsequent to the imposition of the duty:

TABLE 5.2.1.1

Imports of Lysine HCL (kg)	2001	2002	2003	2004
USA	1 502 090	14	73	86

The information in the table above shows that the imports of L-Lysine HCL from the USA decreased drastically since 2001. The Commission attributed this to the anti-dumping duty recommended and implemented during the first half of 2002.

An examination of import statistics of Biolys since 1998 indicates that there were no imports of the subject products. Information on the import statistics further indicates that the importation of Biolys only started in 2002, after the anti-dumping duties were imposed on L-Lysine HCL.

The product manufactured in SACU is Lysine HCl with a lysine content of 78.8% and the product imported from the USA has a lysine content of 50.7%. It was stated that 1 ton of Lysine equals 1554.2 kilograms of Biolys and therefore 1 ton of Biolys equals 643.4 kilogram of Lysine. Using this conversion rate, the volumes of Biolys imported were converted to the equivalent of Lysine HCL imports, to enable a fair comparison between the two products.

The following table shows the volume of the alleged dumped imports of Biolys converted to the equivalent of Lysine HCL, in kilograms for the subject product as obtained from SARS:

TABLE 5.2.1.2

IMPORT VOLUMES (kg)	2002	2003	2004
USA	168 452	217 548	767 161
Imports from other countries	0	217 097	22 713
Total imports	168 452	434 645	789 874
Alleged dumped imports as % of total imports -USA	100%	50%	97%

The information in the table indicates that, during 2002, imports of the subject products (converted to equivalent of Lysine HCL) were imported only from the USA. However, during 2003, other countries started exporting the products into the SACU. The volume of the alleged dumped imports from the USA, as a percent of total imports was still significantly high at 50 per cent. The information further shows that the volume of the alleged dumped imports from the USA as a percentage of total imports increased in 2004 from 2003 by 47 per cent.

5.2.2 Effect on Domestic Prices

Price undercutting

Price undercutting is the extent to which the landed cost of the imported product is lower than the ex-factory selling price per unit price of the SACU product.

The landed cost of the subject product from the USA was calculated by adding ocean freight, insurance, landing costs, customs duty and storage

cost to the fob export price. This was converted using the exchange rate 1US=R6.45881. The landed cost was then converted to Lysine HCL by multiplying by the relative lysine content of Lysine HCL / Biolys i.e. 78.8/50.7.

When comparing the average ex-factory selling price of the Applicant with the landed costs of the imported subject product from Degussa Corporation, the Commission found that the price of the imported product from Degussa Corporation was undercutting the Applicant's selling price.

Price Depression

Price depression occurs when the domestic industry experiences a decrease in its selling prices over time. The table below shows the SACU industry's domestic selling prices:

Table 5.2.2.1

Price depression (kg)	2002	2003	2004
SA Bioproducts	100	110	110

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

The information in the above table shows that the Applicant was able to increase its selling prices since 2002, although the increase in 2004 from 2003 was marginal. The information shows that the Applicant did not experience price depression.

Price suppression

Price suppression is the extent to which increases in the cost of production of the product concerned, cannot be recovered in selling prices. To determine price suppression, a comparison is made of the percentage increase in cost with the percentage increase in selling price (if any), and

whether or not the selling prices have increased by at least the same margin as which the cost of production increased.

The following table shows the costs of production and ex-factory selling prices for the Applicant:

Table 5.2.2

Price suppression	2002	2003	2004
SA Bioproduct ex-factory price per kilogram	100	110	110
SA Bioproduct unit cost (production)	100	114	130
Cost as % of price	100	104	118

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

The information in the table clearly illustrates that the Applicant's prices are significantly suppressed, especially when compared to the situation in 2002.

5.2.3 Consequent Impact of The Dumped Imports on The Industry

5.2.3.1 Actual and potential decline in sales

The following tables show the applicant's sales volumes and values of the subject product for three years:

Table 5.2.3.1.1

Sales Volume (Tons)	2002	2003	2004
SACU Sales	100	100	78
Exports	100	117	118
Total Sales	100	107	94

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

The above table indicates that the SACU sales of the subject product have decreased since 2002. Export sales increased from 2002 to 2004 by 18 index points, while total sales declined from 2002 to 2004 by 6

index points.

5.2.3.2 Profit

The following table shows the Applicant's profit before interest and tax:

Table 5.2.3.2.1

Rand	2002	2003	2004
Total gross profit	72	100	73
Total net Profit	(185)	100	(89)

This table was indexed due to confidentiality using 2003 as the base year.

5.2.3.3 Output

The following table outlines the Applicant's domestic production volume:

Table 5.2.3.3

Tons	2002	2003	2004
Output	100	107	114

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

The information in the above table indicates that the Applicant's output has increased by 13.8 index points since 2002.

5.2.3.4 Market share

The information on market share shows that the total market share of the Applicant decreased over the investigation period.

Table 5.2.3.4

	2002	2003	2004
% Share held by domestic sales	100	91	82
% Share held by alleged dumped imports: -USA	100	118	503

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

Imports of Biolys were converted to be the equivalent of the imports of Lysine HCL and were included in the analysis of the market share.

The information in the table illustrates that the Applicant's market share has been on the decline since 2002, whilst the market share of the alleged dumped imports from the USA increased.

5.2.3.5 Productivity

Using the production and employment figures sourced from the Applicant, its productivity in respect of the subject product was as follows:

Table 5.2.3.5

PRODUCTIVITY	2002	2003	2004
Production/Employee	100	107	114

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

The information in the above table indicates that the Applicant's units per employee have increased by 13.7 index points during 2004 when compared to 2002.

5.2.3.6 Return on investment

Return on investment is normally regarded by the Commission as being the profit before interest and tax as a percentage of the net value of

assets.

The following table provides the Applicant's return on net assets:

Table 5.2.3.6

RETURN ON INVESTMENT (Rand)	2002	2003	2004
Return on net assets	100	254	157

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

The above table shows that the Applicant's return on investment (ROI) increased by 57 index points from 2002 to 2004.

5.2.3.7 Utilisation of production capacity

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

Table 5.2.3.7

CAPACITY UTILISATION	2002	2003	2004
Capacity (tons)	100	116	122
Actual production (tons)	100	107	114
% Utilization	100	93	94

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

The Applicant stated that the capacity increases from 2002 to 2004 were obtained by de-bottlenecking various limiting stages in production.

5.2.3.8 The magnitude of the margin of dumping

In Section 4 of this report, it was found that the subject product was imported at dumped prices into the SACU during the investigation period. The margin of dumping calculated for Degussa Corporation was 34 per cent. The margin of dumping calculated for the rest of the USA was 49 per cent.

5.2.3.9 Actual and potential negative effects on cash flow

The table below shows the Applicants calculation of the cash flow over the comparative period.

Table 5.2.3.9

CASH FLOW (Rand million)	2002	2003	2004
Net cash flow	100	139	(277)

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

The above table illustrates that the Applicant's net cash flow has decreased drastically since 2002.

5.2.3.10 Inventories

The Applicant provided the following inventory levels. These figures are listed in the table below:

Table 5.2.3.10

INVENTORIES	2002	2003	2004
Volumes (tons)	100	111	431

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

The above table indicates that Applicant's inventories increased significantly by 331 index points since 2002.

5.2.3.11 Employment

The following table shows the Applicant's employment level for the years stated:

Table 5.2.3.11

EMPLOYMENT	2002	2003	2004
Direct labour: Production	100	100	100
Indirect labour: Production	100	150	175

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

The above table shows that the Applicant's direct labour units remained constant over the period 2002 to 2004, whilst the indirect labour units increased throughout the period of analysis.

5.2.3.12 Wages

The information in the table shows the Applicant's total wages for the comparative period:

Table 5.2.3.12

WAGES (Rand)	2002	2003	2004
Total Wages: Production	100	120	151

This table was indexed due to confidentiality using 2001 as the base year.

The above table shows that the applicant's total wages increased since 2002.

5.2.3.13 Growth

The table below shows the Applicant's growth analysis for the comparative period:

Table 5.2.3.13

Mt per annum	2002	2003	2004
Size of the SACU market	100	109	96
Growth from previous year(%)		9	(13)
Applicant's sales volume	100	100	78
Applicant's growth (%)		0	(22)
Alleged dumped imports	100	129	455
Alleged dumped imports growth (%)		29	326

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

The information in the above table indicates that the Applicant has experienced negative growth since 2002, whilst the alleged dumped imports have shown significant growth in a declining market.

5.2.3.14 Ability to raise capital or investments

The following table provides the Applicant's total investment in the product and the capital expenditure for the product:

Table 5.2.3.14

Rand	2002	2003	2004
Total investment in product (Rand)	100	102	105
Capital expenditure	100	146	113

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

The above table illustrates that the Applicant's total investment in the SACU product has increased since 2002.

5.3 SUMMARY - MATERIAL INJURY

The Commission considered all comments regarding "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 preliminary determination that the Applicant and therefore the SACU industry were suffering material injury.

6. CAUSAL LINK

6.1 VOLUME OF IMPORTS AND MARKET SHARE

One 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 allegedly dumped products.

The market share table in paragraph 5.2.3.4 of this submission shows the market share for the subject product since 2002 to 2004. The information with regard to market share shows that the Applicant's market share has decreased since 2002. The market share table in paragraph 5.2.3.4 of this submission further shows that the market share of the alleged dumped imports from the USA increased from 2002 to 2004.

6.2 EFFECT OF DUMPED IMPORTS ON PRICES

It has been indicated in section 5 of this submission that there was price suppression. Costs of production increased from 2002 to 2004 whilst prices increased more slowly.

The information clearly indicates that despite significant price suppression, the dumped imports still undercut the Applicant's prices. When the landed costs are compared to the Applicant's undepressed/unsuppressed price, the margin of undercutting/price disadvantage is large.

6.3 CONSEQUENT IMPACT OF DUMPED IMPORTS

The Applicant stated that the information it provided clearly indicates that the alleged dumped Biolys from the USA has aggressively entered the SACU market and that it has increased its market share significantly within a period of only three years, whilst the market share of the SACU producers decreased.

6.4 FACTORS OTHER THAN THE DUMPING CAUSING INJURY

6.4.1 The volume and price of imports not sold at dumping prices

The following table shows the volume and price of the alleged dumped imports and imports from other countries:

Table 6.5.1

	2002		2003		2004	
	Volume/ kg	Price R/kg	Volume Kg	Price R/kg	Volume kg	Price R/kg
Allegedly dumped imports: USA	168 452	8.21	217 548	11.10	767 161	10.05
Imports from other countries	0	0	217 097	11.70	22 713	13.43
Total imports	168 452		434 645		789 874	

The information in the table above indicates that the volume of imports from other countries started from a zero base and increased to 217 097 kilograms in 2003 from 2002. However, during 2004, imports from other countries decreased.

The information further shows that the price of imports from other countries increased from R11.70 in 2003 to R13.43 in 2004, whilst the price of the alleged dumped imports from the USA decreased from R11.10 in 2003 to R10.05 in 2004.

6.4.2 Competition between domestic producers

The Applicant is the only producer of the product in the SACU.

6.4.3 Developments in technology

According to information at the disposal of the Commission, the technology used to produce Biolys is similar to that used by the SACU manufacturer.

6.4.4 Contraction in demand or changes in the patterns of consumption

The Applicant stated that the market has remained relatively static over the past three years.

6.4.4 Export performance

The Applicant indicated that products not sold in the local market are exported, unless export returns are too low to warrant this. In the past year this has been a characteristic of the export market where export prices do not cover variable costs, and it has been forced to build stock rather than export.

6.4.6 Competition between foreign and domestic producers

The exporter submitted that its overall product offering is superior to that of the Applicants. The exporter stated that essentially all that the Applicant offers its customers is the actual L-Lysine HCl itself. The exporter offers its customers the benefit of a wealth of technical information, equipment and support through various means including:

- a magazine/publication which is published quarterly called AminoNews™ and which provides the customer with up to the minute research and information relevant to the industry.
- the installation of machinery known as AminoSys™ (machinery facilitating automatic control of the amino acid additions).
- pre-installation survey of the customer's business prior to installation of the AminoSys™ to determine which pieces of equipment should be delivered;
- training of the customer's staff to use the equipment;
- the facilitation of on-site consultations to determine the best system for that particular customer;
- provision of full after-installation service including software upgrades, spare parts and telephone support with on-site support available when required;
- technical service managers offer raw material analysis and mixer profiling to ensure accurate formulation of the finished feed;
- maintenance requirements are minimised through the quick supply of parts from a local spare parts inventory;

- where appropriate, customers are furnished with various software programmes on computer disc such as AminoVAR™ (an application made for the quality management of feed ingredients), AminoDat™ 2.0 (an application designed to support the optimisation of amino acid nutrition in feed industry operations and for feeding trial research), Pork Production Calculator (a fast and reliable economic benefits calculator providing user-specific economics), the DL-Methionine Benefit Calculator; QuickConvert (a unit conversion tool for a variety of everyday weights and measures).
- It was stated that it is important to note that the abovementioned equipment, know-how and technical support ("the support") is offered to customers which purchase significant quantities of either DL-Methionine or L-Threonine or both, which are the major products sold by the exporter in South Africa in addition to Biolys. It was stated that one of the advantages to customers of the exporter in South Africa is that the exporter, unlike the Applicant, offers Biolys as well as DL-Methionine, L-Threonine, L-Tryptophan and Nicotinamide –a so-called "one-stop shop". The same support is also offered to customers of Degussa US in the United States on the same basis.
- It was stated that the exporter's overall product offer is only suitable to end users in the market who require amino acids other than Biolys alone and who appreciate the benefit of what the exporter has to offer.

6.4.7 Trade restrictive practices

No information was provided by the Applicant in this regard.

6.5.8 Productivity of the domestic industry

The Applicant stated that its productivity is on a par with that of exporting countries. However as a small producer with only one product, it does not have the financial resources of the multinational, multi-product companies competing in this industry.

6.5.9 Other factors considered by the Commission

The following factors other than dumping were considered by the Commission:

Decline in international price of L-Lysine HCl

The exporter stated that the fact that the Applicant has suffered injury over the Investigation period was due to the decline in international prices of L-Lysine HCl worldwide.

Rand strength

The exporter stated that the Applicant suffered losses with respect to its export market sales due to the strengthening of the Rand and that the strengthened Rand also resulted in imports becoming far more competitive. It stated that the extent to which the Applicant's profitability has been negatively affected over the Investigation period must also be attributed to this factor.

Escalation of raw materials

The exporter stated that the fact that over the Investigation period the cost of the Applicant's raw material, molasses, escalated by 6% would have impacted upon the Applicant's profitability.

Increase in salaries and technical staff

The exporter stated that the increase in technical staff and salaries were extreme and would have contributed to a large extent to any injury suffered by the Applicant over the Investigation period.

6.6 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 taking all comments into account, the Commission made a preliminary determination that there is a causal link between the alleged dumped products and the material injury suffered by the SACU industry. In arriving at the conclusion the Commission considered comments in paragraph 6.5.9 above, and concluded that these factors did not sufficiently detract from the causal link.

7. SUMMARY OF FINDINGS

7.1 Dumping

There is sufficient evidence that the subject product originating in or imported from the USA was imported at dumped prices into the SACU market. The following dumping margins were calculated:

Table 7.1

Company	Dumping Margin
Degussa Corporation	34%
Other manufacturers/exporters excluding Degussa Corporation	49%

7.2 Material injury

The Commission made a preliminary determination that the Applicant and therefore the SACU industry suffered material injury.

7.3 Causal link

The Commission made a preliminary determination that there is a causal link between the alleged dumped products and the material injury suffered by the SACU industry.

8. PROVISIONAL PAYMENTS

8.1 Calculation of duty

In accordance with Article 9.1 of the Anti-Dumping Agreement, the provisional payment should be less than the dumping margin if such lesser duty would be adequate to remove the injury to the domestic industry. The provisional payment should therefore not be more than the amount of the price disadvantage experienced by the SACU industry. If this is lower than the dumping margin it can be considered to be the amount of duty required to prevent further injury to the SACU industry during the investigation as a result of the further importation of the subject product at the dumping margins that were found by the Commission.

8.3 Price disadvantage

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

It is the Commission's policy that the price disadvantage is only applied when both the exporter and the Importer responded in the investigation.

The unsuppressed selling price was calculated based on the European price, as anti-dumping tariffs are currently in place in the US against large producers of Lysine HCL. It was stated that the local unsuppressed price has been based on import parity of European sourced lysine and that import parity has traditionally determined the South African lysine price as a few large international export producers dominate the lysine market.

Amount of duty:

The amount of duty was concluded to be the following, being the dumping margin:

Table 8.4

Company	Dumping margin
Degussa Corporation	34%
Other manufacturers	49%

9. DETERMINATION

The Commission made a preliminary determination that:

- the subject products originating in or imported from the USA are being dumped on the SACU market; and that
- the SACU industry is suffering material injury .
- There is a causal link between the dumping of the subject products and the injury;

In terms of ADR 33.2, the Commission decided to request the Commissioner for South African Revenue Service to impose the following provisional payments for a period of 26 weeks:

Table 9.1

Country	Rate of Provisional payments
United States of America:	
Degussa Corporation	34%
All other exporters from the USA	49%

These provisional payments should be the amount required to prevent further injury being experienced by the SACU industry as a result of further imports of the subject products at prices that constitute dumping during the course of the investigation and before the Commission makes its final determination.

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.