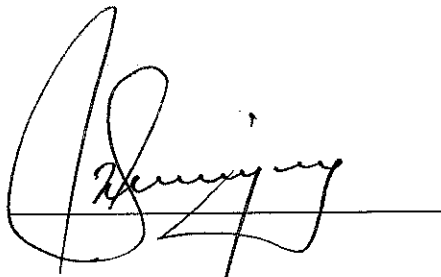


**REPORT NO. 286**

**EXTENSION OF EXISTING SAFEGUARD DUTY ON LYSINE TO  
INCLUDE IMPORTS OF LYSINE FROM INDONESIA**

The International Trade Administration Commission of South Africa herewith presents its **Report No. 286: EXTENSION OF EXISTING SAFEGUARD DUTY ON LYSINE TO INCLUDE IMPORTS OF LYSINE FROM INDONESIA**

A handwritten signature in black ink, appearing to read 'Siyabulela Tsengiwe', is written over a horizontal line.

**Siyabulela Tsengiwe**  
**CHIEF COMMISSIONER**

**PRETORIA**  
28/10/ 2008

# INTERNATIONAL TRADE ADMINISTRATION COMMISSION OF SOUTH AFRICA

## 1. INTRODUCTION

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During 2007, the International Trade Commission of South Africa (the Commission) conducted a safeguard investigation against the increased imports of lysine.

In this original safeguard investigation, the Commission recommended to the Minister of Trade and Industry that the following final safeguard measures be imposed for a period of 2 years and 11 months:

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

The Commission recommended that the safeguard measure be implemented against all countries, except the following developing countries, which were excluded from the safeguard duty on condition that imports from a developing country would not increase to a level higher than 3 per cent of the total imports prevailing during the period of investigation:

Afghanistan, Algeria, Antigua and Barbuda, Angola, Argentina, American Samoa, Anguilla, Antarctica, Aruba, Azerbaijan, Barbados, Bangladesh, Burkina Faso,

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

The Commission's final recommendation was contained in Report No. 250.

On 14 December 2007 final safeguard measures on products imported under tariff subheadings 2309.90.65 and 2922.41 originating from all countries, excluding developing countries with imports of less than 3% of total imports were imposed.

On 19 June 2008, International Trade Services (ITS), on behalf of the Applicant, SA Bioproducts (Pty) Ltd, requested that the safeguard duty currently in place, be

amended to include the imports from Indonesia.

In the original safeguard investigation, the Commission decided that developing countries with exports less than 3% of total imports into SACU, be excluded from the safeguard duty, in accordance with Article 9.1 of the Safeguard Agreement. Indonesia was one of the developing countries with imports of less than 3% of total imports and therefore excluded from the safeguard duty.

ITS indicated that since the imposition of the safeguard duty, the imports from Indonesia increased to above the threshold level of 3 per cent of total imports in the original period of investigation and requested that imports from Indonesia be made subject to the safeguard duty.

The International Trade Administration Commission of South Africa Amended Safeguard Regulations (SGR) provides as follows in Section 21.20:

“A developing country exempted from the application of a safeguard measure in terms of subsection 18 may become subject to such safeguard measure without a new investigation being conducted if, subsequent to the imposition of the safeguard measure, its share of the imports increases to a level that exceeds three percent of the total import volume in the original investigation period.”

The imports in the original investigation period, i.e. 1 January 2006 to 31 December 2006, was used to determine whether the current imports of lysine from Indonesia (1 June 2007 to 31 May 2008) increased to a level higher than 3 per cent of total imports in the original investigation period.

On 1 September 2008, the Commission published a notice in the Government Gazette requesting comments on its provisional decision that the imports from Indonesia increased to a level higher than 3 per cent of total imports and that imports from Indonesia be made subject to the safeguard duty.

The WTO Safeguard Committee was notified of the Commission's provisional determination on 1 September 2008 and an opportunity was provided to the Government of Indonesia for consultations on this issue.

Comments were received from the following parties:

- Lynn Phillips Consulting CC (LPC)
- Animal Feed Manufacturers Association (AFMA)
- Chemunique International (Chemunique)

The Commission considered all the comments from Lynn Philips Consulting CC and from Chemunique International. The Commission decided not to take the comments submitted by AFMA into consideration as these comments were submitted after the deadline of 15 September 2008.

All the non-confidential versions of the comments are available at the Commission's office for inspection.

The Indonesian Government did not request consultations with the South African Government.

## 2. THE APPLICATION

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On 19 June 2008, International Trade Services (ITS), on behalf of the Applicant, SA Bioproducts (Pty) Ltd, requested that the safeguard duty currently in place, be amended to include the imports from Indonesia.

The SGR provides as follows in Section 21.20:

"A developing country exempted from the application of a safeguard measure in terms of subsection 18 may become subject to such safeguard measure without a new investigation being conducted if, subsequent to the imposition of the safeguard measure, its share of the imports increases to a level that exceeds three percent of the total import volume in the original investigation period."

The following table shows the import volume from Indonesia for the period 1 June 2007 to 31 May 2008 and the total import volume during the original period of investigation, i.e. 1 January 2006 to 31 December 2006:

**Table 2.1: Import volume for the period 1 June 2007-31 May 2008 as a percentage of total imports in the original investigation period (1 January 2006 – 31 December 2006)**

Import volumes	Kilograms
Imports from Indonesia (1 June 2007-31 May 2008)	201 541
Total imports (1 January 2006-31 December 2006)	4 261 108
Indonesia imports as a % of total imports	4.7%

In terms of the SGR, the Indonesian share of the imports increased to a level exceeding three percent of the total import volume in the original investigation period.

If the imports for the period 1 January 2008 – 31 May 2008 (140 000kg) are used to do the calculation, the Indonesian imports account for 3.3% of the total imports in the original period of investigation.

### **3. FINDINGS**

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The Commission decided not to take the comments submitted by AFMA into consideration as they were received after the deadline of 15 September 2008.

The Commission considered all the comments submitted by LPC and Chemunique. All the non-confidential versions of the comments are available at the Commission's office for inspection.

The Commission considered the comments submitted, but indicated that similar comments were already considered in the original investigation. The Commission further confirmed that the current question is only whether the imports from Indonesia increased to above 3 per cent when expressed as a percentage of total imports.

The Commission considered all the comments submitted by Chemunique and noted that Chemunique confirmed that the imports of lysine from Indonesia increased to a level higher than 3% of the total imports of lysine in the original period of investigation.



## **4. FINAL RECOMMENDATION**

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The Commission made a final determination that the imports from Indonesia increased to a level higher than 3 per cent of total imports for the original period of investigation.

The Commission decided to recommend to the Minister of Trade and Industry to make imports of the subject product from Indonesia subject to the safeguard duty, in terms of Section 21.20 of the Amended Safeguard Regulations.