REPORT NO. 248

SUNSET REVIEW OF THE ANTI-DUMPING DUTIES ON LYSINE 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. 248: SUNSET REVIEW OF THE ANTI-DUMPING DUTIES ON LYSINE ORIGINATING IN OR IMPORTED FROM THE UNITED STATES OF AMERICA: FINAL DETERMINATION**

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PRETORIA

04/09/ **2007**

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).

In accordance with the provisions in Article 11.3, of the World Trade Organisation Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, any definitive anti-dumping duty shall be terminated on a date not later than five years from its imposition, unless the authorities determine, in a review initiated before that date on their own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time prior to that date, that the expiry of the duty would likely lead to continuation or recurrence of dumping and injury.

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 Commission formally initiated the sunset review investigation of the anti-dumping duties on lysine originating in or imported from the United States of America (USA) pursuant to Notice No. 6 which was published in *Government Gazette* No. 29521 on 12 January 2007.

1.4 The investigation period for dumping was from 1 July 2005 to 30 June 2006. The injury investigation involved evaluation of data for the period 1 January 1999 to 31 December 2005 and an estimate for the 2006 calendar year if the anti-dumping duties expire.

1.5 The SACU industry consists of only one producer of the subject product, namely the Applicant, who submitted the information contained in this report.

1.6 Only Archer Daniels Midland Company (ADM) in the USA responded to the Commission's exporters questionnaire. The Commission, however, decided that this response was deficient.

1.7 Chemunique responded to the Commission's importers questionnaire and submitted comments with regard to the continuation and recurrence of dumping and material injury.

1.8 After considering all parties' comments, the Commission, for purposes of its final decision, decided that the expiry of the anti-dumping duty is likely to lead to the continuation or recurrence of dumping from the USA and the expiry of the anti-dumping duty is likely to lead to the continuation or recurrence of material injury.

1.9 The Commission sent out letters to all interested parties, informing them in terms of Section 43 of the International Trade Administration Anti-Dumping Regulations and Article 6.9 of the Anti-Dumping Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade of the "essential facts" which were being considered by the Commission. The Commission invited comments from interested parties on these "essential facts" being considered by the Commission.

1.10 After considering all parties' comments in respect of the final decision and the "essential facts" letters, the Commission made a final determination, that the expiry of the anti-dumping duty is likely to lead to the continuation or recurrence of dumping of lysine originating in or imported from the USA and that the expiry of the anti-dumping duty is likely to lead to the continuation or recurrence of material injury.

1.11 Although the Commission found that the margin of dumping was 54 per cent, the Commission noted that the current anti-dumping duties in place are sufficient to prevent any material injury to the SACU industry.

1.12 The Commission therefore decided to recommend to the Minister of Trade and Industry that the anti-dumping duties on lysine originating in or imported from the USA be maintained.

2. PRODUCTS, TARIFF CLASSIFICATION AND DUTIES

2.1 SUBJECT PRODUCTS

2.1.1 Description

The subject products are described as L-Lysine HCl (Feed Grade) min 98.5% (scientific name) or commonly known as lysine powder.

2.1.2 Tariff classification

The subject products are classifiable as follows:

Tariff subheading	Description	Statistical Unit	Rate of customs Duty		
			General	EU	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

The subject product is subject to the following anti-dumping duties:

Tariff subheading	Description	Imported from or originated in	Rate of Anti-dumping Duty
2922.41	Lysine imported from Archer Daniels Midland Company (ADM)	United States of America	33.5%
2922.41	Lysine (excluding that imported from Archer Daniels Midland Company (ADM))	United States of America	48%

2.1.3 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.

In the original investigation the Commission decided that the SACU product and the imported product are like products for the purposes of comparisons, in terms of Article 2.6 of the Anti-dumping Agreement.

3. INDUSTRY STANDING

The Applicant is the only manufacturer of the product in the SACU. The application is therefore supported by 100 per cent of the SACU industry.

The Commission decided 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 THE USA

4.1.1 Information submitted by ADM

A deficient response was received from ADM in the USA. ADM submitted incomplete financial information in response to the Commission's exporters questionnaire.

All the information and comments submitted by ADM, on why the Commission should take its financial information into consideration, were considered by the Commission.

The Commission decided that the difference in levels of trade can be addressed by making an adjustment to the normal value or export price or both. The Commission decided that there is no requirement that if the sales are not on the same level of trade that they should be disregarded, as indicated by ADM.

The Commission decided that all the sales information from ADM to related and unrelated customers, on both the domestic and export market, should have been submitted to the Commission, in order for the Commission to decide whether the sales were in the ordinary course of trade and whether it should be included in the normal value and export price calculation.

However, the Commission decided not to accept the financial information submitted by ADM in accordance with the Anti-Dumping Regulations, as the response was deficient at the deadline set out in the deficiency letters. Therefore, the Commission decided not to calculate an individual margin of dumping for ADM. The Commission, however, decided to take all the comments submitted by ADM into consideration.

4.1.2 Normal Value

Type of economy

The definition of section 32 (2)(b)(i) of the ITA Act applies.

The Commission noted that comments submitted by ADM on the methodology used in other investigations and found that St Gobain's information was not taken into account by the Commission to calculate an individual margin of dumping for St Gobain. The Commission found that St Gobains information was used as best information to calculate the normal value and the export price and that no adjustments were made to the normal value, as claimed by St Gobain.

Calculation of normal value

ADM indicated that even if the Commission does not take its information into consideration for purposes of calculating an individual margin of dumping for ADM, its information should be taken into consideration as the best information available.

The Commission decided to use the incomplete information submitted by ADM into consideration as the best information available to decide whether there will be a continuation or recurrence of dumping.

The Commission decided to use the domestic sales information submitted by ADM to all unrelated parties, without any adjustments, to calculate the normal value. This methodology is in line with that use in other investigations by the Commission.

4.1.3 Export price

The Commission considered all the information and comments submitted by interested parties on the calculation of the export price.

The Commission indicated that ADM is correct in submitting that the Commission will choose a comparable country to use in calculating the export price, but that the Commission will not be in a position to choose this country if all the information was not submitted.

Calculation of export price

The Commission decided that the best information available to determine the export price, in this investigation, is the information submitted by ADM. The Commission decided to calculate the export price based on the information submitted by ADM on its export sales to unrelated parties. The export price was calculated based on this information and making all the adjustments, as submitted by ADM, to the export price.

4.1.3 Margin of dumping

Based on the normal value and export price calculation as indicated above, a dumping margin, expressed as a percentage of the export price, was calculated to be 54 per cent.

4.2 CONCLUSION - DUMPING

For purposes of its final determination, the Commission considered all the comments from interested parties and found that the expiry of the anti-dumping duties would likely lead to the continuation or recurrence of dumping.

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 INFORMATION SUBMITTED ON PERIOD OF INVESTIGATION

The Commission considered the comments submitted on the period of investigation submitted by interested parties.

The Commission noted that the ADR refers to the period of investigation for dumping when it states that the information should not be older than 6 months and not the POI for material injury as indicated by the importer. The Commission indicated that in a sunset review investigation, the POI for material injury does not only cover the actual material injury information, but also an estimate in the event of the expiry of the anti-dumping duties. The Commission indicated that the POI for determining the likelihood of the continuation or recurrence of material injury is 1 January 1999 to 31 December 2005, with an estimate for the year 2006 if the anti-dumping duties expire. The investigation was initiated on 12 January 2007, only 12 days after the end of the POI for material injury.

5.3 IMPORT VOLUMES AND EFFECT ON PRICES

Import volumes:

Import volumes	1999	2000	2001	2002	2003	2004	2005	Estimate if the duties expire
USA imports	1 928	2 445	1 422	96	0	0	0	1 057
USA imports as % of total imports	55%	60%	79%	31%	0%	0%	0%	79%

Effect on prices:

Applicant's information	2002	2003	2004	2005	Estimate if the duties expire
Price depression (Applicant's selling prices)	100	110	110	58	68
Cost as a % of selling price	100	89	93	165	164
Price undercutting	The Applicant estimated that the dumped product will undercut its price by more than 25% if the anti-dumping duties expire.				

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

5.4 CONSEQUENT IMPACT OF THE DUMPED IMPORTS ON THE INDUSTRY

Applicant's information	1999	2000	2001	2002	2003	2004	2005	Estimate if the duties expire
Sales volumes	100	100	168	197	197	154	167	125
Profit margin on selling price	(100)	(65)	4	25	35	24	(95)	(116)
Output	100	99	109	108	114	121	94	38
Market share: Applicant (%)	100	93	156	196	185	175	177	156
Market share: Dumped products – USA (%)	100	118	68	5	0	0	0	68
Productivity	100	99	109	107	114	122	94	46
Return on net assets	(100)	(75)	29	14	34	21	(54)	(31)
Utilisation of production capacity	100	100	109	107	99	100	76	31
Inventories (volume)	100	202	211	104	116	450	165	76
Employment	100	100	100	100	100	100	100	83
Wages	100	105	117	128	159	187	181	189
Magnitude of the margin of dumping								54%

This table was indexed due to confidentiality using 1999 as the base year.

5.5 DISCUSSION ON CONTINUATION OR RECURRENCE OF MATERIAL INJURY

The Commission considered all the comments submitted by all the interested parties on the continuation or recurrence of material injury.

The Commission confirmed that the information submitted as "Estimate if the duties expire" refers to the situation if there is no anti-dumping duty in place. This will always be the case, as the ADR provides that the anti-dumping duties will stay in place for the duration of the sunset review investigation.

The Commission noted that many of the comments submitted by Chemunique relates to causal link issues. In a sunset review investigation, the Commission only considers whether there is a likelihood of continuation or recurrence of dumping and material injury. The causal link factors are not considered as would be in a normal anti-dumping investigation.

The Commission noted the comments submitted on "double counting" and indicated that it should be noted that GATT specifically provides that authorities should not double count between the two unfair trade remedies, i.e. dumping and countervailing. The safeguard measure, however, is against fairly traded products and not an unfair trade remedy.

The Commission noted that, although ADM indicated that it was running close to capacity in 2006, the spare capacity is significant if compared to the SACU lysine market. The Commission found that this is an indication that it could cause material injury to the SACU market if exported at dumped prices.

The Commission noted that ADM and Chemunique indicated that the subject product, in this sunset review investigation, should be both lysine and biolys, as the Commission already found that these two products are like products. The Commission, however, found that as this is a sunset review, the Commission can only review the anti-dumping duty in place and therefore the scope of the investigation will be only the product subject to the anti-dumping duty, i.e. lysine.

The Commission found that the impact of the other product manufactured by the Applicant is minimal and accepted the information submitted by the Applicant in respect of material injury.

The Commission confirmed that the information submitted on material injury relates only to the SACU domestic market and not the export market.

The Commission noted the comments submitted on the verification of the information submitted by the Applicant in both the sunset review investigation and the safeguard investigation and confirmed that the information submitted in the lysine safeguard investigation was verified prior to initiation of the investigation during a desk audit.

The Commission noted that information submitted by interested parties on the

Applicant's loss on its Danish venture. The Commission found that the loss on the Applicant's Danish venture was not included in any of the material injury information and was therefore excluded from the sunset review investigation.

5.6 CONCLUSION - MATERIAL INJURY

After considering all relevant factors and taking all comments into account, the Commission made a final determination that the expiry of the anti-dumping duties on lysine will likely lead to the continuation or recurrence of material injury.

6. SUMMARY OF FINDINGS

6.1 Dumping

The Commission found that the expiry of the anti-dumping duties on lysine originating in or imported from the USA will likely lead to the recurrence of dumping of the subject product.

6.2 Material injury

The Commission found that the expiry of the anti-dumping duties on lysine originating in or imported from the USA will likely lead to the continuation or recurrence of material injury to the SACU industry.

7. FINAL DETERMINATION

The Commission made a final determination that

- the expiry of the anti-dumping duty is likely to lead to the continuation or recurrence of dumping of lysine originating in or imported from the USA, and
- the expiry of the anti-dumping duty is likely to lead to the continuation of material injury.

Although the Commission found that the margin of dumping was 54 per cent, the Commission noted that the current anti-dumping duties in place are sufficient to prevent any material injury to the SACU industry.

The Commission therefore decided to recommend to the Minister of Trade and Industry that the anti-dumping duties on lysine originating in or imported from the USA be maintained.