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560 International Trade Administration Commission: Initiation of an investigation and preliminary determination in the investigation for remedial action in the form of safe guards against the increased imports of lysine . 3 29874

GENERAL NOTICE

NOTICE 560 OF 2007

INTERNATIONAL TRADE ADMINISTRATION COMMISSION

NOTICE OF INITIATION OF AN INVESTIGATION AND PRELIMINARY DETERMINATION IN THE INVESTIGATION FOR REMEDIAL ACTION IN THE FORM OF SAFEGUARDS AGAINST THE INCREASED IMPORTS OF LYSINE

The International Trade Administration Commission of South Africa (the Commission) decided to proceed with an investigation for remedial action against the increased imports of lysine.

Based on the information submitted, the Commission decided that evidence was submitted to indicate that a surge in imports has taken place, causing serious injury and threatening to cause further serious injury to the Southern African Customs Union (SACU) industry.

THE APPLICANT

The application was lodged by SA Bioproducts (Pty) Ltd, the only producer of L-Lysine HCl in SACU.

A non-confidential version of the application is available for inspection at the Commission's offices.

DESCRIPTION OF THE SUBJECT PRODUCTS UNDER INVESTIGATION

The subject products are described as L-Lysine HCl (scientific name) or commonly known as lysine powder, 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 (scientific name) or commonly known as L-Lysine sulphate

and its byproducts from fermentation or Biolys or Protein Lysine, classifiable under tariff subheading 2309.90.65.

DESCRIPTION OF THE LIKE OR DIRECTLY COMPETITIVE SACU PRODUCT

The SACU product is described as L-Lysine HCl (scientific name) or commonly known as lysine powder.

FINDING OF SERIOUS INJURY OR A THREAT THEREOF AND CAUSAL LINK

The Applicant's information indicated a decline in sales volume, profit margin to a loss situation, output, market share, productivity and capacity utilisation. It further indicated that employees were retrenched in light of the serious situation in which the Applicant finds itself.

The Applicant's information further indicated that there is significant freely disposable capacity at the exporters of the subject products, that there is a significant increase in imports of the subject products and that the subject products are exported to the SACU at prices, which will have a further significant depressing and suppressing effect on the Applicant's prices and are likely to increase the demand for the imported product.

It was also evident that the decrease in market share has been at the expense of a corresponding significant increase in the market share of the imported products.

On this basis the Commission found that the SACU industry was suffering serious injury and that there is a further threat of serious injury, which could be causally linked to the rapid increase in the imported subject products.

UNFORESEEN DEVELOPMENTS

The Applicant indicated that the expansion of capacity and the oversupply in the world, which occurred after the negotiation of the relevant tariff concessions, could not have been foreseen at the time the concessions were negotiated and therefore represents the unforeseen developments, in accordance with Article XIX of the General Agreement on Tariffs and Trade (GATT).

CRITICAL CIRCUMSTANCES AND PROVISIONAL MEASURES

The Commission found that the subject imports increased with 70 per cent from 2005 to 2006, indicating a rapid and significant increase. It was further demonstrated that as a direct result of this increase, the SACU industry suffered a loss of more than 60 per cent compared to its profit situation during 2002 to 2004. It was further demonstrated that based on the loss figures, the decrease in sales volumes, output, market share and the retrenchment of employees, that it is threatened with closure.

Based on this information, the Commission made a determination that there are critical circumstances where a delay would cause damage that would be difficult to repair and that there is clear evidence that the increased imports have caused and are threatening to cause further serious injury to the SACU industry.

Therefore, the Commission decided to request the Commissioner for the South African Revenue Service, in terms of section 57A of the Customs and Excise Act, 91 of 1964, to impose provisional measures, to the amount of 160 per cent, for a period of 200 days.

PROCEDURAL FRAMEWORK

This investigation will be conducted in accordance with the International Trade Administration Act, 2002 (ITA Act), the World Trade Organization Agreement on Safeguards (the Safeguard Agreement) and the International Trade Administration

Commission Safeguard Regulations (SGR).

CONFIDENTIAL INFORMATION

Please note that if any information is considered to be confidential, a non-confidential version of the information must be submitted for the public file, simultaneously with the confidential version. In submitting a non-confidential version, the following rules are strictly applicable and parties must indicate:

- where confidential information has been omitted and the nature of such information;
- reasons for such confidentiality;
- a summary of the confidential information which permits a reasonable understanding of the substance of the confidential information; and
- in exceptional cases, where information is not susceptible to summary, reasons must be submitted to this effect.

This rule applies to all parties and to all correspondence with and submissions to the Commission, which unless indicated to be confidential and filed together with a non-confidential version, will be placed on the public file and be made available to other interested parties.

If a party considers that any document of another party, on which that party is submitting representations, does not comply with the above rules and that such deficiency affects that party's ability to make meaningful representations, the details of the deficiency and the reasons why that party's rights are so affected must be submitted to the Commission in writing forthwith (and at the latest 14 days prior to the date on which that party's submission is due). Failure to do so timeously will seriously hamper the proper administration of the investigation, and such party will not be able to subsequently claim an inability to make meaningful representations on the basis of the failure of such other party to meet the requirements.

Subsection 33(1) of the ITA Act provides that any person claiming confidentiality of information should identify whether such information is *confidential by nature* or is *otherwise confidential* and any such claims must be supported by a written statement, in each case, setting out how the information satisfies the requirements of the claim to confidentiality. In the alternative, a sworn statement should be made, setting out reasons why it is impossible to comply with these requirements.

ADDRESS

Any information regarding this matter must be submitted in writing to the following address:

Physical address

Senior Manager: Trade Remedies I
International Trade Administration Commission
Block E - The OTI Campus
77 Meintjies Street
SUNNYSIDE
PRETORIA
SOUTH AFRICA

Postal address

Senior Manager: Trade Remedies I
Private Bag X753
PRETORIA
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SOUTH AFRICA

PROCEDURES AND TIME LIMITS

Interested parties are invited to submit comments on the initiation of the investigation and the preliminary determination made by the Commission.

All information submitted, including non-confidential copies thereof, should be received by the Senior Manager: Trade Remedies I not later than 20 days from the date hereof. Late submissions will not be accepted.

Any interested party may request an oral hearing provided that reasons are given for not relying on written submissions only. No request for an oral hearing will be considered more

than 60 days from the date of this publication. The Commission may refuse an oral hearing if granting such hearing will unduly delay the finalisation of the investigation.

Parties requesting an oral hearing shall provide the Commission with a detailed agenda for, and a detailed version, including a non-confidential version, of the information to be discussed at the oral hearing at the time of the request.

Enquiries may be directed to the investigating officers, Ms Carina **Grové** at telephone +27 12 394-3594 and Ms Mandie Wagner at +27 12 394-3593 or at fax +27 12 394-0518.
