

**UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.**

In the Matter of

**CERTAIN MODIFIED VACCINIA
ANKARA (“MVA”) VIRUSES AND
VACCINES AND PHARMACEUTICAL
COMPOSITIONS BASED THEREON**

Investigation No. 337-TA-550

NOTICE OF INVESTIGATION

AGENCY: U.S. International Trade Commission

ACTION: Institution of investigation pursuant to 19 U.S.C. § 1337

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on August 19, 2005 under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, on behalf of Bavarian Nordic A/S. A letter supplementing and amending the complaint was filed on September 9, 2005. The complaint, as supplemented and amended, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain Modified Vaccinia Ankara viruses and vaccines and pharmaceutical compositions based thereon by reason of infringement of claims 1, 4, 5, and 34 of U.S. Patent No. 6,761,893 and claims 1, 2-9, and 13-16 of U.S. Patent No. 6,913,752, and misappropriation of trade secrets. The complaint further alleges that there exists an industry in the United States as required by section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and a permanent cease and desist order.

ADDRESSES: The complaint and supplemental letter, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Room 112, Washington, D.C. 20436, telephone 202-205-2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the

Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

FOR FURTHER INFORMATION CONTACT: Erin D.E. Joffre, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202-205-2550 or Thomas S. Fusco, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202-205-2571.

AUTHORITY: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.10 (2005).

SCOPE OF INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on September 19, 2005, ORDERED THAT --

- (1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine:
 - (a) whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain Modified Vaccinia Ankara ("MVA") viruses and vaccines and pharmaceutical compositions based thereon by reason of infringement of claims 1, 4, 5, or 34 of U.S. Patent No. 6,761,893 or claims 1, 2-9, 13-15 or 16 of U.S. Patent No. 6,913,752, and whether an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337; and
 - (b) whether there is a violation of subsection (a)(1)(A) of section 337 in the importation of certain MVA viruses and vaccines and pharmaceutical compositions based thereon or in the sale of such articles by reason of misappropriation of trade secrets, the threat or effect of which is to destroy or substantially injure an industry in the United States, and whether an industry in the United States.
- (2) Pursuant to Commission Rule 210.50(b)(1), 19 C.F.R. § 210.50(b)(1), the presiding administrative law judge shall take evidence or other information and hear arguments from the parties and other interested persons with respect to the public interest in

this investigation, as appropriate, and provide the Commission with findings of fact on this issue.

- (3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

- (a) The complainant is –

Bavarian Nordic A/S
Bogeskovvej 9
DK-3490 Kvistgard
Denmark

- (b) The respondent is the following company alleged to be in violation of Section 337 and upon which the complaint is to be served –

Acambis, Plc
Peterhouse Technology Park
100 Fulbourne Road
Cambridge, CB1 9PT
United Kingdom

- (c) Erin D.E. Joffre and Thomas S. Fusco, Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, S.W., Room 401, Washington, D.C. 20436, who shall be the Commission investigative attorneys, party to this investigation;

- (4) For the investigation so instituted, the Honorable Robert L. Barton, Jr. is designated as the presiding administrative law judge.

A response to the complaint and the notice of investigation must be submitted by the named respondent in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.13. Pursuant to 19 C.F.R. §§ 201.16(d) and 210.13(a), such response will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and notice of investigation. Extensions of time for submitting a response to the complaint will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to

appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Marilyn Abbott
Secretary to the Commission

Issued: September 19, 2005