

**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 DECISION NOT TO REVIEW INITIAL DETERMINATION  
GRANTING THE COMMISSION INVESTIGATIVE ATTORNEY’S  
MOTION TO TERMINATE THE INVESTIGATION WITH  
RESPECT TO COMPLAINANT’S TRADE SECRET ALLEGATIONS**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review the administrative law judge’s (“ALJ”) initial determination (“ID”) (Order No. 26) granting the Commission investigative attorney’s (“IA”) motion to terminate the investigation with respect to complainant’s trade secret allegations.

**FOR FURTHER INFORMATION CONTACT:** Michelle Walters, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-5468. Copies of non-confidential documents filed in connection with this investigation are or will be 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., Washington, D.C. 20436, telephone (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>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205-1810.

**SUPPLEMENTARY INFORMATION:** This investigation was instituted on September 23, 2005, based on a complaint filed by Bavarian Nordic A/S (“BN”) of Denmark. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) 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 (“MVA”) viruses and vaccines and pharmaceutical compositions based thereon by reason of infringement of various claims of United States Patent Nos. 6,761,893 and 6,913,752. The complaint also alleges violations 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. The complaint named a single respondent, Acambis PLC (“Acambis”) of the United Kingdom.

On March 20, 2006, the IA filed, pursuant to 19 C.F.R. § 210.21(a)(2), a motion to terminate the trade secret portion of this investigation based on an arbitration agreement between BN and Acambis. Acambis supported the IA’s motion to terminate. BN filed an opposition to the IA’s motion, asserting that the IA did not have standing to file the motion.

On April 14, 2006, the ALJ issued an ID (Order No. 26) granting the IA’s motion to terminate the investigation with respect to complainant’s trade secret allegations. The ALJ rejected BN’s assertion that the IA lacked standing to bring this motion, because, pursuant to Commission Rule 210.21(a)(2) (19 C.F.R. § 210.21(a)(2)), any party may move to terminate the investigation based on an agreement to arbitrate the matter. Moreover, the ALJ concluded that termination of the trade secret allegations was appropriate in this case, because the agreement between BN and Acambis includes a mandatory arbitration provision that covers the trade secret claims. No petitions for review of this ID were filed.

Having examined the record of this investigation, the Commission has determined not to review the ALJ’s ID granting the IA’s motion to terminate the investigation with respect to complainant’s trade secret allegations.

The authority for the Commission’s determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and in section 210.42 of the Commission’s Rules of Practice and Procedure (19 C.F.R. § 210.42).

By order of the Commission.

Marilyn R. Abbott  
Secretary to the Commission

Issued: May 9, 2006