



**MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT**
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LABOUR, SCIENCE AND ENTERPRISE
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Canned peaches from South Africa

2019 Sunset Review

17F Report

Trade (Anti-dumping and Countervailing Duties) Act 1988

Non-Confidential

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This Report is entitled “17F Report” because it is provided to the Minister in accordance with section 17F(5) of the Trade (Anti-dumping and Countervailing Duties) Act 1988, which requires the chief executive of MBIE to report the findings of a full review stage 1 to the Minister.

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ABBREVIATIONS

The following abbreviations are used in this Report:

Act (the)	Trade (Anti-dumping and Countervailing Duties) Act 1988
AD Agreement	WTO Agreement on Implementation of Article VI of the GATT 1994
AUD	Australian dollar
BHL	Brooke Holdings Ltd
BOMs	Bill of materials
CFR	Cost and freight
Chief executive	Chief Executive of the Ministry of Business, Innovation and Employment
CIF	Cost, Insurance and Freight
COGS	Cost of goods sold
DAT	Delivered at terminal
DOB	Dealer own brand
EBIT	Earnings Before Interest and Tax
FOB	Free on Board
Foodstuffs	Foodstuffs Own Brands Ltd, Foodstuffs North Island Ltd, Foodstuffs South Island Ltd
HWL	Heinz Wattie's Ltd
kg	Kilogram
L&AF	Langeberg & Ashton Foods, a division of Tiger Consumer Brands Ltd
MBIE	Ministry of Business, Innovation and Employment
MT	Metric ton
NV(VFDE)	Normal Value (Value for Duty Equivalent)
NZD	New Zealand dollars
POR(D)	Period of review (dumping)
POR(I)	Period of review (injury)
RFG	Rhodes Food Group
SACD	South African Container Depot
THC	Terminal handling charge
USD	United States dollar
VAT	Value-added tax

VFD	Value for Duty
VFDE	Value for Duty Equivalent
Woolworths	Woolworths New Zealand Ltd (includes Progressive Enterprises Ltd and General Distributors Ltd)
WTO	World Trade Organisation
ZAR	South African rand

EXECUTIVE SUMMARY

MBIE initiated a full review of canned peaches from South Africa on 27 May 2019.

The purpose of the review is to establish if dumping and injury are likely to continue or recur if anti-dumping duties are removed.

Where it is determined that the continuation of anti-dumping duties is necessary to prevent the recurrence or continuation of injury to the New Zealand industry, a public interest investigation must be undertaken to establish whether the continuation of anti-dumping duties is in the public interest.

Anti-dumping duties were originally imposed in 1996, and this is the fourth sunset review on these goods.

The subject goods are canned peaches (halves, slices and pieces) packed in various concentrations of sugar syrup and in can sizes ranging from 110 grams to 3 kilograms (A10).

A **full review** of the anti-dumping duties that currently apply against imports of canned peaches from South Africa was initiated by the Ministry of Business, Innovation and Employment (MBIE) on 27 May 2019.

The **purpose** of the full review, carried out under sections 17C-17K of the Trade (Anti-dumping and Countervailing Duties) Act 1988 (the Act) is to investigate whether the continued imposition of an anti-dumping duty is necessary to offset dumping and whether material injury or threatened material injury to an industry would be likely to continue or recur if the duty expired or were otherwise removed or varied.

This report (17F report) meets the requirement of section 17F(5) of the Act which requires the chief executive of MBIE to report the findings of a full review stage 1 to the Minister of Commerce and Consumer Affairs (the Minister).

Where a full review stage 1 leads to a determination by the Minister that the continued imposition of anti-dumping duties is necessary to offset dumping and that material injury to an industry would be likely to recur or continue if the duties expired, then the Minister must:

- determine the rate or amount of anti-dumping duty that will form the basis for a full review stage 2, and
- direct MBIE to undertake a full review stage 2 to investigate whether continuing to impose an anti-dumping duty is in the public interest.

Anti-dumping duties on canned peaches from South Africa have been in place since 2 August 1996. Subsequent sunset reviews took place in 2001 and 2007. The last review and reassessment was completed on 28 May 2014, and a new shipper reassessment was completed in December 2014.

The **goods under review** are described as:

Canned peaches (halves, slices and pieces) packed in various concentrations of sugar syrup and in can sizes ranging from 110 grams to 3 kilograms (A10).

This description of the subject goods includes any concentration of sweetness in the medium found in the can and therefore covers media containing both natural and artificial sugars. It therefore includes 'lite' styles of peaches and those in fruit juice as all these styles contain some amount of sweetness in the medium. Peaches in containers other than cans are not covered by the description.

Heinz Wattie's Ltd, the New Zealand industry producing canned peaches, requested that the review be initiated.

MBIE has used information from HWL, South African manufacturers and New Zealand importers, and from its own research.

MBIE has established export prices and normal values for the subject good, and made a fair comparison between them, with due allowance being made for differences which affect price comparability.

MBIE has concluded that, except for A10 can sizes, the removal of anti-dumping duties is likely to lead to a continuation or recurrence of dumping.

MBIE's investigation of the likelihood of material injury recurring or continuing is based on an objective examination of positive evidence available to MBIE, and in the context of an assessment of likelihood.

MBIE's judgement of the likelihood of events occurring in the foreseeable future is based on the circumstances of the case.

MBIE examines the injury

The review was initiated following an application by Heinz Wattie's Ltd (HWL), the sole New Zealand producer of canned peaches, and the **New Zealand industry** for the purposes of the review.

To undertake the review, MBIE has used **information** provided by HWL in its application, as well as information provided by South African manufacturers and New Zealand importers (including HWL) provided in response to questionnaires.

Verification visits were made to the South African manufacturers and to HWL.

MBIE has also used information from its own research.

MBIE's investigation of **dumping** has used information provided by South African manufacturers and New Zealand importers to establish export prices and normal values, and to identify any differences that might affect price comparability.

The comparison was made on the basis of a weighted average-to-weighted average comparison for goods of the can sizes and preserving media exported to New Zealand.

Base prices were established using constructed values for normal value, and export sales data, including invoices, for export prices. Base prices and the adjustments made to ensure a fair comparison were verified by MBIE.

From the information gathered during the review MBIE has established that there is continued dumping of exports of some canned peaches from South Africa, with the A10 can size from one producer and some imports of other can sizes from the other producer not being dumped. MBIE has established that around half of the exports investigated are currently dumped and has **concluded** that the removal of anti-dumping duties is likely to lead to a continuation or recurrence of dumping.

In investigating the likelihood that **material injury** will continue or recur if anti-dumping duties are removed, MBIE has considered what is likely to happen in the foreseeable future. MBIE makes an objective examination of the evidence available in the context of an assessment of likelihood.

The extent to which MBIE is able to make judgements on the likelihood of events occurring in the **foreseeable future** depends on the circumstances of each case and, therefore, the foreseeable future will range from the imminent to longer timeframes. In this case the foreseeable future is considered to be 1-2 years.

In examining injury, MBIE assesses likelihood through consideration of the **injury factors** identified in section 8 of the Act, including volume and price effects, and the consequent impact on the domestic industry. Injury caused by factors other than the dumping of the subject goods must not be attributed to

factors identified in section 8 of the Act.

MBIE has required HWL to provide projections or forecasts in the light of past performance and projected future performance in the presence or absence of anti-dumping duties.

MBIE's conclusion is that anti-dumping duties are necessary to prevent the continuation or recurrence of material injury to the New Zealand industry.

MBIE has proposed ad valorem rates of anti-dumping duties based on the rate necessary to prevent the continuation or recurrence of material injury.

No anti-dumping duties would apply to imports of A10 cans, which are not currently dumped.

An Interim Report provide interested parties with advice of the essential facts and conclusions likely to form the basis for the final determination on the full review stage 1 investigation. Parties were invited to provide comments on the Interim report, and comments received have been taken into account in preparing this 17F Report.

the dumping.

To gauge the extent to which the removal of the anti-dumping duties will likely cause material injury to the domestic industry in the foreseeable future, MBIE generally requires the domestic industry to provide **projections or forecasts** of the injury it considers it will suffer as a result of the removal of the duties. MBIE examines these projections in light of the company's past performance (with the duties in place to prevent injurious dumping) and projected future performance (both with the presence and absence of duties) in order to assist it in making a determination of the likelihood of recurrence of injury.

MBIE's **conclusion** is that on the basis of the information available, the continued imposition of anti-dumping duties is necessary to prevent the continuation or recurrence of dumping and of material injury to the New Zealand industry producing like goods to the subject goods.

MBIE has reviewed the form and rate of **anti-dumping duties** that would be necessary to prevent the continuation or recurrence of material injury, and has proposed that ad valorem rates be set for the South African producer found to be dumping at the level of price undercutting established in the review. The rate for suppliers not investigated would be the weighted average margin of dumping for all goods. Ad valorem rates are proposed instead of the reference price duties used in the past because the evidence shows that reference prices soon become out-of-date.

Anti-dumping duties are not proposed for imports of canned peaches in the A10 can size, because these goods are not currently dumped, or for imports from one of the South African producers where the weighted average margin for that producer indicates there is no overall dumping. It is considered unlikely that there will be a recurrence of dumping of these goods.

An **Interim Report** was provided to interested parties under section 17F(2) of the Act as written advice of the essential facts and conclusions that were likely to form the basis for a determination to be made by the Minister under section 17G of the Act.

Notified parties had until 7 November 2019 to provide comments on the Interim Report.

Comments were received from an importer, also acting on behalf of one of the South African producers, the other South African producer, and HWL. The matters raised and MBIE's response to them are set out in Annex 1 to this Report, and have been taken into account in the preparation of this 17F Report on the full review stage 1.

The 17F Report provides the basis for the Minister to make a determination on whether continued anti-dumping duties are necessary.

If the Minister's determination is affirmative, then a full review stage 2 will be started to investigate whether the imposition of anti-dumping duty at the rate or amount determined by the Minister is in the public interest.

On the basis of this 17F Report, the Minister will make a determination of whether or not the continued imposition of anti-dumping duty is necessary to offset dumping, and that material injury to an industry would be likely to continue or recur if the duty expired or were otherwise removed or varied.

If the Minister makes an affirmative determination then the Minister must determine the rate or amount of anti-dumping duty that will form the basis for a full review stage 2, and must direct the chief executive to immediately start a full review stage 2.

A full review stage 2 requires an investigation of whether continuing to impose an anti-dumping duty at the rate or amount determined is in the public interest.

1. Proceedings

1.1 Introduction

1. On 1 April 2019, the chief executive of MBIE received a properly documented application from HWL for a review of the anti-dumping duties applicable to imports of canned peaches from South Africa.
2. On 27 May 2019, the chief executive initiated a full review of the continued need for the imposition of the anti-dumping duties, pursuant to section 17D of the Act, on the basis of positive evidence submitted by HWL justifying the need for the review.
3. In accordance with section 17C of the Act, the purpose of a full review is to investigate, in relation to an anti-dumping duty, whether continued imposition of the duty is necessary to offset dumping; and material injury would be likely to continue or recur if the duty expired or were otherwise removed or varied.
4. Section 17F(5) of the Act requires the chief executive to report the findings of full review stage 1 to the Minister. This report fulfils that requirement.

1.2 Previous Proceedings

5. The original dumping investigation into canned peaches from South Africa was initiated on 5 February 1996, and a final affirmative determination was made on 2 August 1996, with anti-dumping duties being imposed. A duty reassessment was initiated on 28 August 1996 with the reassessed amended duties being determined on 19 December 1996. A further reassessment of anti-dumping duties was initiated on 25 March 1997, with reassessed duties determined on 9 March 1998.
6. On 11 November 1996 a countervailing duty investigation into canned peaches from South Africa was initiated, and a final affirmative determination was made on 9 May 1997. Following a review initiated on 7 August 1997, the countervailing duties, and an undertaking made in respect of the goods, were terminated on 26 November 1997 because the subsidy programme had been terminated.
7. A sunset review was initiated on 30 July 2001, with the review completed and a reassessment initiated on 25 January 2002. The determination reassessing duties was made on 28 June 2002.
8. A sunset review was initiated on 31 May 2007, with the review completed and a reassessment initiated on 26 November 2007, with the determination reassessing duties made on 11 February 2008. A further reassessment in respect of some of the subject goods was initiated on 17 October 2008 and completed on 9 February 2010.
9. A sunset review was initiated on 11 February 2013 and completed on 9 August 2013. The consequent reassessment of duties was completed on 28 May 2014. A new shipper reassessment was initiated on 7 April 2014 and completed on 18 December 2014.

Foreign Jurisdictions

10. In 2013 the Australian Anti-Dumping Commission investigated the dumping of prepared or preserved peach products from South Africa. The investigation was terminated because the dumping margins were negligible (less than 2 per cent) and the total volume of dumped goods exported to Australia was negligible.

1.3 Sunset Reviews

New Zealand Legislation

11. In terms of section 13A(1)(c) of the Act, the anti-dumping duties relating to canned peaches, in the absence of a review, would have ceased to apply from 28 May 2019. The existing anti-dumping duties will continue to apply pending the outcome of this current review.
12. MBIE is undertaking a sunset review under the provisions of Part 6 of the Act. Section 17C of the Act sets out the purpose of a full review as follows:
- The purpose of a full review is to investigate, in relation to an anti-dumping or a countervailing duty, whether—*
- (a) continued imposition of the duty is necessary to offset dumping or subsidisation; and*
- (b) material injury or threatened material injury to an industry, or material retardation of the establishment of an industry, would be likely to continue or recur if the duty expired or were otherwise removed or varied.*
13. Section 17F of the Act provides that, as stage 1, the chief executive must undertake an investigation of these matters, and goes on to require that the chief executive must, within 150 days of starting a full review stage 1, give the notified parties written advice of the essential facts and conclusions that are likely to form the basis for a determination under section 17G(1) of the Act. Section 17F also requires that the chief executive report the findings of a full review stage 1 to the Minister.
14. Section 17G of the Act provides that within 180 days after the start of the full review stage 1 the Minister must determine whether (a) continued imposition of the duty is necessary to offset dumping or subsidisation; and whether (b) material injury or threatened material injury to an industry, or material retardation of the establishment of an industry, would be likely to continue or recur if the duty expired or were otherwise removed or varied. If this determination is in the affirmative, the Minister must determine the rate or amount of anti-dumping duty, in accordance with section 10E of the Act, that will form the basis for a stage 2 review into whether continuing to impose an anti-dumping duty at the rate determined is in the public interest.

AD Agreement

15. In applying the provisions of section 17F, MBIE has had regard to the provisions of Article 11.3 of the AD Agreement relating to sunset reviews. In interpreting Article 11.3, MBIE takes guidance from New Zealand legal reports, WTO Panel and Appellate Body findings and approaches taken by other WTO member countries.

16. Article 11.3 requires that a duty be terminated 5 years after it was imposed or last reviewed unless an investigating authority determines in a review that “... the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury.” Some guidance regarding the interpretation of the phrase “would be likely” has been provided by the New Zealand Court of Appeal which interpreted the phrase to mean “a real and substantial risk..., a risk that might well eventuate”.¹
17. Guidance can also be found in WTO dispute settlement findings, e.g. *US — Oil Country Tubular Goods Sunset Reviews*,² and *US — DRAMS*.³ In *US — Oil Country Tubular Goods Sunset Reviews*, the Appellate Body stated (at paragraph 308):
- [W]e agree with Argentina that, in US – Corrosion-Resistant Steel Sunset Review, the Appellate Body equated ‘likely’, as it is used in Article 11.3, with ‘probable’. In that case the Appellate Body stated (at paragraph 111), “. . . an affirmative likelihood determination may be made only if the evidence demonstrates that dumping would be probable if the duty were terminated – and not simply if the evidence suggests that such result might be possible or plausible.” We also agree with Argentina that this interpretation of ‘likely’ as ‘probable’ is authoritative in relation to injury as well, given that the term ‘likely’ in Article 11.3 applies equally to dumping and injury.*
18. MBIE has also referred to the approaches to sunset reviews taken by the European Union, United States, Canada and Australia.

Methodology

19. MBIE notes that the consideration of whether duties should be removed does not exist in isolation but is dependent on whether the evidence shows that the continued imposition of the duty is necessary to offset dumping, and whether material injury to an industry would be likely to continue or recur if the duty expired or were otherwise removed or varied. In determining “likelihood”, MBIE considers that regard should be had to the timeframe within which an event may occur. Neither section 17F of the Act nor Article 11.3 of the AD Agreement make express reference to the length of time within which a continuation or recurrence of injury has to take place.
20. Mindful of the particular factors relating to this review, and taking guidance from the sources referred to above, MBIE approaches all investigations and reviews on a case-by-case basis. Based on its interpretation of the Act and the AD Agreement, and in light of the situation of this reconsideration, MBIE adopts the following general principles in considering dumping and injury in sunset reviews:
- The legal requirement is for MBIE to investigate whether the continued imposition of an anti-dumping duty is necessary to offset dumping, and whether

¹ *Commissioner of Police v Ombudsman* [1988] 1 NZLR 385.

² *US — Oil Country Tubular Goods Sunset Reviews*, Report of the Panel, WT/DS268/R, Report of the Appellate Body, WT/DS268/AB/R.

³ *US — DRAMS*, Report of the Panel, WT/DS99/R.

material injury to an industry would be likely to continue or recur if the duty expired or was otherwise removed or varied.

- In order to investigate whether a duty is necessary to offset dumping, MBIE establishes whether there is current dumping, and whether dumping is likely to continue or recur.
- The investigation of current dumping is carried out in accordance with the provisions of the Act relating to the determinations of export price (section 4), normal value (section 5) and the ascertainment of export price and normal value when sufficient information has not been furnished or is not available (section 6).
- When determining whether dumping is likely to continue or recur MBIE needs to be satisfied that, certain events are likely to occur, and that those events mean that dumping is likely to continue or recur.
- The investigation of the material injury to an industry is carried out in accordance with section 8 of the Act
- When determining whether the expiry or removal of the anti-dumping duty would be likely to lead to a continuation or recurrence of injury, MBIE needs to be satisfied that material injury to the industry is likely to continue or recur if the anti-dumping duties expire or are otherwise removed or varied.
- Interpretation of the phrase “would be likely” is guided by a New Zealand Court of Appeal judgment⁴ referring to “a real and substantial risk..., a risk that might well eventuate” and by relevant WTO dispute settlement findings.
- In considering whether removal of the duty would be likely to lead to a recurrence of dumping and injury, MBIE considers what is likely to happen in the foreseeable future. The extent to which MBIE is able to make judgments on the likelihood of events occurring in the foreseeable future will depend on the circumstances of each case and, therefore, the foreseeable future will range from the imminent to longer timeframes. In this case the foreseeable future is considered to be 1-2 years, taking into account in particular the contract periods for the supply of peaches to the domestic industry and for the supply of canned peaches by South African producers.
- To gauge the extent to which the removal of the anti-dumping duties will likely cause material injury to the domestic industry in the foreseeable future, MBIE generally requires the domestic industry to provide projections or forecasts of the injury it considers it will suffer as a result of the removal of the duties. MBIE examines these projections in light of the company’s past performance (with the duties in place to prevent injurious dumping) and projected future performance (both with the presence and absence of duties) in order to assist it in making a determination of the likelihood of recurrence of injury.

⁴ *Commissioner of Police v Ombudsman* [1988] 1 NZLR 385

1.4 Grounds for the Review

21. In its application for a review, HWL provided evidence to support its contention that it will suffer a recurrence of material injury if the current anti-dumping duties are removed due to the likely significant increase in lower-priced imports of canned peaches from South Africa. HWL claimed that imports of South African canned peaches will be dumped if the anti-dumping duties are removed and that material injury to the company will recur through:

- Price undercutting, price depression, and price suppression;

resulting in:

- a decline in output and sales;
- a decline in market share;
- a decline in profits and return on investments;
- a decline in productivity and utilization of production capacity; and
- adverse effects on cash flow; inventories; employment and growth.

1.5 Review Stages

Full Review

22. The purpose of a full review is to investigate whether the continued imposition of a duty is necessary to offset dumping and whether material injury to an industry would be likely to continue or recur if the duty expired or were otherwise removed or varied. At the end of stage 1 of a full review, the Minister must make a determination of whether the continued imposition of the duty is necessary to offset dumping and whether material injury to an industry is likely to continue or recur if the duty expired or were otherwise removed or varied.

Determination of Anti-Dumping Duties

23. Where the outcome of a review indicates that anti-dumping duties should continue to be applied, then in accordance with section 17G(2)(a) of the Act the Minister must determine the rate or amount of duty that will form the basis for a stage 2 public interest review.

Public Interest Investigation

24. Where the outcome of a stage 1 review indicates that anti-dumping duties should continue to be applied, then in accordance with section 17G(2)(b) of the Act the Minister must direct the chief executive to immediately start a stage 2 public interest investigation, as provided for in sections 17H to 17K of the Act.

1.6 Treatment of Information

Availability of information

25. Confidential information is defined in section 3F(5) of the Act:

In this section, confidential information means information about which the submitter of the information has shown a good reason for the chief executive to believe 1 or more of the following:

- (a) that making the information available would give a significant competitive advantage to a competitor of the submitter of confidential information;*
- (b) that making the information available would have a significantly adverse effect on—*
 - (i) the submitter of confidential information; or*
 - (ii) the person from whom the information was acquired by the submitter of the information; or*
 - (iii) any person to whom the information relates;*
- (c) that the information should be treated as confidential for reasons other than the reasons described in paragraphs (a) and (b).*

26. A recent report from the WTO Appellate Body noted:

Under Article 6.5, an investigating authority is required to assess objectively whether the request for confidential treatment has been sufficiently substantiated such that "good cause" has been shown. The fact that the investigating authority has conducted this objective assessment must be discernible from its published report or related supporting documents.⁵

27. The Appellate Body also upheld the Panel's findings with regard to summaries of confidential information:

In the present dispute, the Panel found that, "[i]n the complete absence of data, and with no narrative summary with respect to the deleted information, the 'Disclosed' versions of the three communications identified by Japan cannot be said to contain a summary in sufficient detail to 'permit a reasonable understanding of the substance of the information submitted in confidence'."⁶

28. In seeking information from interested parties, MBIE points out that where a party requests that information be treated as confidential it should provide a non-confidential version, or a non-confidential summary of the information, or if the information is not susceptible to summarisation, an explanation of the reasons why not, and provide justification for the information being treated as confidential. MBIE points out to parties that section 3F of the Act allows the chief executive to disregard any information for which a satisfactory non-confidential version (or summary or satisfactory statement of why such a summary cannot be given) is not provided.
29. Section 3F(1) of the Act provides that an interested party may ask the chief executive to provide copies of information relevant to trade remedy proceedings, but this provision does not apply to confidential information, or information that would be withheld if it was requested under the Official Information Act 1982.

⁵ *Korea – Pneumatic Valves*, WT/DS504/AB/R, at paragraph 6.29.

⁶ *Ibid*, at paragraph 6.31.

30. MBIE has made available all non-confidential information via the public file for this review. Any interested party has been able to request both a list of the documents on this file and copies of the documents on it.
31. In this 17F Report, detailed information relating to the calculation of the dumping margins has been included in Confidential Annexes for each of the South African producers. The information is considered to be confidential for the reasons set out in section 3F(5) of the Act. In particular, MBIE is satisfied that documentation relating to transactions, such as invoices, information relating to costs and prices, information relating to commercial relationships, and non-public financial information, will generally come within the meaning of confidential information. Much of this information is not susceptible of summarisation except in broad descriptive terms.
32. Information relating to the domestic industry and the analysis of injury is considered to be confidential, and in this 17F Report the analysis is presented as a summary of information analysed, with tables and charts used to assist in the summarisation of the material. The domestic industry's application and the Verification Report of the visit to applicant's premises include non-confidential summaries of the information provided.

Assessment of information

33. The foundation of MBIE's approach to the assessment of information is the relevant provisions of the Act and the AD Agreement, assisted by the interpretation of the AD Agreement provided in WTO dispute settlement proceedings.
34. Sections 4 and 5 of the Act set out the bases for establishing export prices and normal values for the purposes of determining the existence and extent of dumping, while section 6 of the Act provides as follows:

Where the chief executive is satisfied that sufficient information has not been furnished or is not available to enable the export price of the goods to be ascertained under section 4, or the normal value of goods to be ascertained under section 5, the normal value or export price, as the case may be, shall be such amount as is determined by the chief executive having regard to all available information.

For the purposes of subsection (1), the chief executive may disregard any information that the chief executive considers to be unreliable.

35. Articles 6.6 and 6.8 of the AD Agreement provide as follows:

6.6 Except in circumstances provided for in paragraph 8, the authorities shall during the course of an investigation satisfy themselves as to the accuracy of the information supplied by interested parties upon which their findings are based.

...

6.8 In cases in which any interested Member or interested party refuses access to, or otherwise does not provide necessary information within a reasonable period or significantly impedes the investigation, preliminary and final determinations, affirmative or negative, may be made on the basis of the facts available. The provisions of Annex II shall be observed in the application of this paragraph.

36. Annex II to the AD Agreement sets out the basis on which investigating authorities can use the best information available in terms of Article 6.8. Article 11 of the AD Agreement,

which addresses reviews, provides in Article 11.4, that “The provisions of Article 6 regarding evidence and procedure shall apply to any review carried out under this Article.” Information relating to those parties which have not provided information is based on the facts available that MBIE considers to be reliable according to the provisions of the Act and the AD Agreement.

37. In an investigation or review MBIE seeks and obtains information directly relevant to that proceeding, and satisfies itself as to the accuracy of the information provided. Such primary information includes questionnaire responses from interested parties; laws, regulations and other official documents; relevant WTO documents, such as notifications; Customs and statistical data; and other relevant data such as exchange rates, interest rates and prices. MBIE can use verification visits and the review of evidence available to substantiate the information provided by interested parties and to assess its reliability.
38. Where MBIE is not satisfied as to the accuracy of the information provided, or where information is not available, other primary information can be used, or secondary information can be used as “facts available”. The use of “facts available”, including secondary information, is limited to instances where information is not available because an interested party refuses access to, or otherwise does not provide the necessary information within a reasonable period or significantly impedes the investigation. In such circumstances, the normal value and export price are to be ascertained having regard to all available information that MBIE considers to be reliable. MBIE is required by the AD Agreement to take due account of any difficulties experienced by interested parties, in particular small companies, in supplying information requested.
39. In considering “facts available” MBIE can take into account secondary information, such as the application (in relation to dumping); information from previous MBIE investigations or reviews; information from investigations undertaken by counterpart authorities in other jurisdictions; and information from reports and publications covering matters related to the subject matter of the investigation or review. In using secondary information, MBIE undertakes a process of reasoning and evaluating which “facts available” constitute reasonable replacements for missing information that can be considered reliable. In this context, MBIE notes that secondary information that is not based on positive evidence but relies on inferences and assumptions may not be considered to be reliable.
40. Where information is not available because a party has not provided information requested, and where that information is required in order to make a determination of the existence and extent of dumping or injury, MBIE can have recourse to secondary sources of information to replace the missing information.

Interim Report

41. An Interim Report was sent to parties in accordance with section 17F(2) of the Act, and Interested parties were invited to make written submissions to MBIE on the essential facts and conclusions contained in the Interim Report.
42. Submissions were received from Brooke Holdings Ltd (on behalf of both Brooke Holdings Ltd and Langeberg & Ashton Foods, a division of Tiger Consumer Brands Ltd), HWL, and

Rhodes Food Group Pty Ltd. A summary of the submissions and MBIE's responses to them are set out in Annex 1 to this Report.

43. The main issues raised in submissions related to:
- The basis for the determination of normal value and the comparison with export prices.
 - Specific issues relating to the calculation of the constructed normal value for Rhodes Food Group, and for both South African producers the basis for profits used in constructed values.
 - The basis for the determination of injury, including the effect of imports by the New Zealand industry and the basis for calculating price undercutting.
 - The relevance of current export prices relative to the existing anti-dumping duties in assessing the impact on the industry.
44. MBIE has addressed these comments in Annex 1 of the 17F Report, and where necessary has ensured that the text of this 17F Report reflects the points raised and the responses to them.

1.7 Report Details

45. The period of review for dumping (POR(D)) is 1 January 2018 to 31 December 2018, while the period of review for injury (POR(I)) is January 2014 to December 2018, and involves an evaluation of the data submitted by HWL for the financial years 1 January 2017 to 31 December 2021. HWL provided forecast information for 2019, 2020 and 2021, in terms of the impact on HWL's domestic operation, for the scenarios where duties are imposed to meet the margin of price undercutting, and where duties are not imposed. It should be noted that in a review, involving as it does the consideration of the likelihood of the continuation or recurrence of dumping and injury, MBIE has regard to any dumping that may have been occurring prior to the POR(D). MBIE also takes account of forecasts of both dumping and injury based on past experience and future scenarios.
46. Dollar values are in New Zealand Dollars (NZD) unless otherwise specified. In tables, column totals may differ from individual figures due to rounding. The term VFD refers to value for duty for New Zealand Customs Service purposes.
47. All volumes are expressed on a metric ton/tonne (MT) or kilogram (kg) basis unless otherwise stated. Exports to New Zealand were generally invoiced in US dollars (USD) or Australian dollars (AUD), while domestic sales were in South African rand (ZAR). The exchange rates used are those relating to specific transactions, where available, or the Customs exchange rates for the relevant time or shipment, or the rate that MBIE considers most appropriate in the circumstances.

2. Subject Goods and New Zealand Industry

2.1 Subject Goods

48. The imported goods that are the subject of the review are described as:

Canned peaches (halves, slices and pieces) packed in various concentrations of sugar syrup and in can sizes ranging from 110 grams to 3 kilograms (A10).

49. This description includes any concentration of sweetness in the medium found in the can and therefore covers mediums containing both natural and artificial sugars. It therefore includes 'lite' styles of peaches and those in fruit juice as all these styles contain some amount of sweetness in the medium. Peaches in containers other than cans are not covered by the description.

2.2 Tariff Description

50. The subject goods are classified in the Working Tariff of New Zealand under tariff item and statistical key 2008.70.09.00L. Imports of the subject goods from South Africa are currently subject to the Normal rate of Customs duty of 5 percent.

51. During the POR(D), the subject goods entered under the Customs tariff item and statistical key set out below. The tariff description is broader than the description of the subject goods.

Figure 2.1: Tariff Heading

20.08 Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included:					
Number	Statistical key		Goods	Rate of Duty	
	Code	Unit		Normal	Pref.
2008.70			– Peaches, including nectarines:		
2008.70.09	00L	Kg	-- Other [than cooked and preserved by freezing, not containing added sugar]	5	Free *See Below CA Free

*Unless otherwise indicated, AAN, AU, CN, CPT, HK, KR, LLDC, MY, Pac, SG, TH, TPA and TW rates in the Preferential Tariff are Free.

52. Previous tariff concessions, requested by HWL, provided for concessional entry of preserved peaches during particular periods when there was a shortfall of fresh peaches for its canning operation. There have been no tariff concessions of this nature for preserved peaches since 2008.

53. There are no tariff concessions under tariff item 2008.70.09 applying to goods of the description of the subject goods.

2.3 Imports of Subject Goods

54. Table 2.1 below shows import volumes of canned peaches into New Zealand in the period 2014-2018. These figures have been sourced from Customs data that cover the goods imported into New Zealand under the tariff item and statistical key shown in the previous section. The tariff item and statistical key covers a wider range of goods than those under investigation, but where possible MBIE has excluded goods that are not subject to the review from the data. The figures include HWL's imports.

Figure 2:2: Imports of Canned Peaches (MT)

	2014	2015	2016	2017	2018
Australia	238	56	91	156	77
China	803	1085	651	756	584
Spain	17	52	17	52	37
Greece	0	1	0	0	0
South Africa	1728	1537	2378	1672	2260
Other	2	21	76	10	2
Total	2787	2752	3212	2646	2961

55. The volumes reported in this table may differ from the equivalent table in the Interim Report and from those presented in other proceedings involving preserved peaches, since some imports included in the earlier report may not have been subject goods in the context of the South African review, and other proceedings may have included different subject goods. In addition to items entering under the concessions noted above, these non-subject goods included peach puree, peaches in jelly, dried peaches, salted peaches, and pie fillings, as well as preserved peaches in containers of over 3 kg and peaches in containers other than cans.
56. Imports from South Africa made up 76 per cent of total imports of the subject goods in the POR(D). The provisions of Article 5.8 of the AD Agreement relating to the termination of an investigation where imports are negligible (less than 3 per cent of total imports) do not apply to sunset reviews.
57. During the POR(D), imports of the subject goods from South Africa included peaches in 410g/415g cans, 820g/825g cans and 2.95kg/3kg (A10) cans, and including halves, slices and diced peaches in syrup and in juice.

2.4 Like Goods and New Zealand Industry

58. Section 3A of the Act provides that for the purposes of the Act, the term **industry**, in relation to any goods, means:
- the New Zealand producers of like goods, or
 - such New Zealand producers of like goods whose collective output constitutes a major proportion of the New Zealand production of like goods.

Section 3(1) of the Act defines **like goods**, in relation to any goods, as:

- other goods that are like those goods in all respects, or

- b. in the absence of goods referred to in paragraph (a), goods which have characteristics closely resembling those goods.

2.4.1 Like Goods

59. To establish the existence and extent of the New Zealand industry for the purposes of an investigation into injury, and having identified the subject goods, it is necessary to determine whether there are New Zealand producers of goods which are like those goods in all respects, or have characteristics which closely resemble the subject goods.
60. HWL produces a range of styles of canned peaches, for example, sliced and halved, and suspended in syrup; or in a 'lite' medium (artificial sweetener in water), or in fruit juice. HWL produces preserved peaches only in cans. The peaches are packaged in three sizes, 400g/410g, 820g, and 2.95kg/3kg, under the brands Wattie's, Oak and Weight Watchers. In previous proceedings, because of differences in can size, varieties of peaches used, the use of juice, and variations in the concentrations of sugar syrup, MBIE concluded that the canned peaches produced by HWL, while not alike in all respects, had characteristics closely resembling the subject goods and were therefore like goods to the subject goods.
61. The Weight Watchers brand and canned peaches in "lite" media were not produced by HWL at the time of the original investigation but were produced at the time of the 2002 and 2007 reviews. Both the 2002 and 2007 reviews concluded that canned peaches in "lite" media were like goods but that the Weight Watchers brand canned peaches were not like goods.
62. In a questionnaire response, an importer claimed that diced peaches in A10 cans sold to food manufacturers as an ingredient were not produced by the New Zealand industry. HWL produces slices in A10 cans but it is claimed that these require further processing in order to be incorporated into food products as an ingredient.
63. In considering whether domestic goods are like the imported subject goods, MBIE considers physical characteristics, function and usage, pricing structures, marketing, and any other relevant considerations. In particular, where the domestic goods are not like the imported goods in all respects, MBIE must determine whether the domestic goods have characteristics closely resembling the imported goods.
64. With regard to the imports of diced peaches in A10 cans imported for sale to food manufacturers, MBIE notes that the primary question is the nature of the product – diced – which is not currently produced by HWL. MBIE has previously addressed similar issues relating to the domestic production of like goods to the imported subject goods, and has concluded that any physical differences between domestic and imported goods were not significant enough to suggest that the preserved peaches produced by HWL were not like goods to those imported. In the context of this review, MBIE does not consider that it should revisit the consideration of like goods, but does note that while differences may not be sufficient to allow a conclusion that there is no domestic production of like goods, they may be relevant to a consideration of the extent to which dumped imports are causing injury to the domestic industry.

2.4.2 New Zealand industry

65. The application for review was submitted by HWL, which is a limited liability company and subsidiary of H.J. Heinz Company (New Zealand) Limited, and ultimately held by The Kraft Heinz Company, an entity incorporated in the United States.
66. MBIE understands that HWL remains the sole manufacturer of canned peaches in New Zealand.
67. MBIE notes that Article 4.1(1) of the AD Agreement provides that when producers are themselves importers of the allegedly dumped products, the term “domestic industry” may be interpreted as referring to the rest of the producers.
68. In its application, HWL noted that in times of short supply it is compelled to import preserved peaches which may be subject to trade remedies. HWL stated that its imports of preserved peaches, apart from country of origin declarations, are labelled the same as New Zealand products and are sold at the same regular price. According to HWL, the sale of these products in the New Zealand market protects the market share, shelf space and consumer goodwill for New Zealand preserved peaches in a time of shortage and does not cause injury to HWL.
69. MBIE has noted the points made by HWL and has taken the fact and circumstances of HWL’s imports into account in considering dumping and the likelihood of dumping and the likelihood of injury, as noted in the relevant sections of this 17F Report. MBIE is satisfied that with regard to the AD Agreement, HWL’s imports would not exclude it from consideration as the domestic industry.
70. In terms of section 3A of the Act, MBIE is satisfied that HWL’s output constitutes all of the New Zealand output of canned peaches, and HWL therefore constitutes the New Zealand industry for the purpose of this review.

3. Interested Parties

3.1 Legal Requirements

71. Interested parties are those parties who have an interest in the investigation and may provide information to defend their interests.
72. Section 3 of the Act defines “notified parties” as including the Government of the country of export; exporters and importers known to have an interest in the goods; and the applicant in relation to the goods. Section 3E of the Act sets out the provisions relating to the giving of notice and written advice to notified parties.
73. Section 17F(2) requires that within 150 days from starting a full review stage 1, notified parties are to be given written advice of the essential facts and conclusions that are likely to form the basis for a determination to be made by the Minister under section 17(G)(1).
74. Section 17F(2) provides that the chief executive must give interested parties a reasonable opportunity to present evidence
75. Article 6.11 of the AD Agreement describes interested parties who shall be included, covering the same parties as those referred to in the Act as “notified parties,” but adding trade associations of importers, exporters or domestic industry. Article 6.12 provides opportunities for some other parties, such as industrial users of the product under investigation and representative consumer organisations, to participate in an investigation or review.

3.2 New Zealand Industry

76. As set out in section 2.4.2, HWL constitutes the New Zealand industry.
77. In addition to the information provided in its application for the review, HWL was invited to provide a response to an Importer’s Questionnaire because it was a significant importer of subject goods from South Africa during the POR(D).
78. A verification visit was carried out at HWL’s premises to verify the information supplied by it in its application for a review and in its response to MBIE’s requests for further information. A copy of the verification report relating to the company visit was provided to the company and a non-confidential version was placed on the public file.

3.3 South African Producers

79. There are two companies from South Africa that exported canned peaches to New Zealand over the POR(D) - Langeberg & Ashton Foods, a division of Tiger Foods Ltd (L&AF) and Rhodes Food Group Pty Ltd (RFG). Very small volumes of exports were provided by other traders.
80. Information was requested from both of the South African companies. MBIE received comprehensive responses from the two foreign manufacturers. Verification visits were made to RFG and L&AF in August and September 2019 and verification reports on the visits were completed.

L&AF

81. L&AF is an independently registered company that is wholly owned by a distribution company, Tiger Brands Limited, which is listed on the South African stock exchange. L&AF purchases deciduous fruits from local producers and manufactures canned, dried and aseptic puree products, including peaches. L&AF's canned peaches are sold domestically as well as to export markets in North America, Australia, Europe, Asia and New Zealand.
82. L&AF cooperated with MBIE by providing detailed information in its foreign manufacturer questionnaire response, and provided further information at the verification visit by MBIE.
83. Over the POR(D) L&AF exported canned peaches to New Zealand in a range of product styles, and brands.

RFG

84. RFG is a company listed on the Johannesburg stock exchange. It produces canned fruits, fruit cups, juices, purees and concentrates to food service, industrial supply and global retail markets.
85. RFG cooperated with MBIE by providing a reasonable amount of detailed information in its foreign manufacturer questionnaire response, and provided further information at the verification visit by MBIE.
86. In this review RFG was represented by Trade Law Chambers, an international trade law firm in South Africa.
87. Over the POR(D) RFG exported canned peaches to New Zealand in a range of product styles and brands.

3.4 Importers

88. Importers were identified from Customs data and invited to respond to Importer's Questionnaires. Three of the four importers provided some information during the review. Some information on these companies was also obtained from publicly available sources.

Brooke Holdings Ltd (BHL)

89. BHL is a supplier of imported bulk food products in New Zealand. It generally sells to the food service industry or food processing industry. BHL also acts as an agent for L&AF, taking a commission on sales to other importers.
90. BHL provided a response to MBIE's importer questionnaire.

Foodstuffs Own Brands Ltd (Foodstuffs)

91. Foodstuffs is jointly owned by two cooperatives: Foodstuffs North Island Ltd and Foodstuffs South Island Ltd. The Foodstuffs companies are the franchisors of New World, Pak n Save, Four Square and the Gilmours brand. Foodstuffs is responsible for negotiating terms of sourcing and marketing of private label products, and then the terms are passed on to the cooperatives to contract with the supplier directly.

92. Foodstuffs companies sell canned peaches from South Africa under the Pams brand.
93. Foodstuffs provided a general response to MBIE’s importer questionnaire, and the North Island and South Island cooperatives provided supplementary information relating to their transactions with canned peach suppliers in South Africa. The cooperatives purchased the subject goods from South Africa during the POR(D) in a range of product styles and sizes.

HWL

94. HWL imported canned peaches from South Africa during the POR(D) to supplement its Wattie’s and Oak brands.
95. HWL provided information on its imports in a response to MBIE’s Importer Questionnaire and at MBIE’s verification visit to its office in Auckland.

Woolworths New Zealand Ltd (Woolworths)

96. Woolworths operates Countdown supermarkets in New Zealand.
97. During the POR(D), Woolworths imported canned peaches from South Africa in a range of product styles and sizes.
98. Woolworths did not provide a response to MBIE’s importer questionnaire.

4. Review of Dumping

4.1 Dumping

Purpose

99. As set out in section 1.3, the legal requirement is for MBIE to investigate whether the continued imposition of an anti-dumping duty is necessary to offset dumping, and whether material injury to an industry would be likely to continue or recur if the duty expired or was otherwise removed or varied.
100. In order to investigate whether a duty is necessary to offset dumping, MBIE establishes whether there is current dumping, and whether dumping is likely to continue or recur.
101. The investigation of current dumping is undertaken in accordance with the provisions of the Act relating to the determinations of export price (section 4), normal value (section 5) and the ascertainment of export price and normal value when sufficient information has not been furnished or is not available (section 6).
102. When determining whether dumping is likely to continue or recur, MBIE needs to be satisfied that certain events are likely to occur, and that those events mean that dumping is likely to continue or recur.

Current Dumping

103. Section 3(1) of the Act states:
- “Dumping”, in relation to goods, means the situation where the export price of goods imported into New Zealand or intended to be imported into New Zealand is less than the normal value of the goods as determined in accordance with the provisions of this Act, and “dumped” has a corresponding meaning.*
104. A review of dumping establishes the export price in accordance with section 4 of the Act, and the normal value in section 5 of the Act, with adjustments made to ensure that there is a fair comparison, in order to determine the existence and extent of any dumping, and whether there is a likelihood that dumping will continue or recur.
105. **Export prices** are determined in accordance with section 4 of the Act. Export prices are the prices at which canned peaches are exported from the country of export to New Zealand, that are arm’s length transactions.
106. In accordance with section 4(1)(a) of the Act, deductions are made from transaction prices where appropriate to cover costs, charges and expenses incurred in preparing the goods for shipment to New Zealand that are additional to those costs, charges, and expenses generally incurred on sales for home consumption in the country of export, and any other costs, charges and expenses resulting from the exportation of the goods, or arising after shipment from the country of export.
107. **Normal values** are determined in accordance with section 5 of the Act. The normal value is usually the price at which the canned peaches manufacturers sell canned peaches in their domestic market. The types of sales that can be used to determine normal values

- can generally be described as arm's length sales of like goods in the ordinary course of trade for home consumption in the country of export.
108. Footnote 2 to Article 2.2 of the AD Agreement provides that sales of the like product destined for consumption in the domestic market of the exporting country shall normally be considered a sufficient quantity for the determination of the normal value if such sales constitute 5 per cent or more of the sales of the product under consideration to the importing Member, provided that a lower ratio should be acceptable where the evidence demonstrates that domestic sales at such lower ratio are nonetheless of sufficient magnitude to provide for a proper comparison.
109. Section 5(6) of the Act provides that where sales of the like product in the domestic market of the exporting country or sales to a third country have been made for an extended period of time and in respect of a substantial quantity of like goods at prices below the cost of production plus administrative, selling and general costs they shall be deemed to be not in the ordinary course of trade. Article 2.2.1 of the AD Agreement provides that such sales may be disregarded in determining normal value only if the authorities determine that such sales are made within an extended period of time (normally one year but in no case be less than six months) in substantial quantities (not less than 20 per cent of the volume sold in transactions under consideration for the determination of the normal value) and are at prices which do not provide for the recovery of all costs within a reasonable period of time. If prices which are below per unit costs at the time of sale are above weighted average per unit costs for the period of investigation, such prices shall be considered to provide for recovery of costs within a reasonable period of time.
110. Export prices and normal values are **compared** at the same level of trade, normally at the ex-factory level, and in respect of sales made at as nearly as possible the same time. In making the comparison, due allowance is to be made, as appropriate, for differences which affect price comparability, including differences in conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics, and any other differences which are also demonstrated to affect price comparability.
111. Article 2.4.2 of the AD Agreement requires that the existence of margins of dumping shall normally be established on the basis of a comparison of a weighted average normal value with a weighted average of prices of all comparable export transactions or by a comparison of normal value and export prices on a transaction-to-transaction basis. MBIE determines which comparison method it will use based on the circumstances of each case. For the current review, MBIE has chosen to use the weighted average-to-weighted average approach in light of the number of transactions involved and the nature of the goods traded.
112. The general principles concerning MBIE's approach to sunset reviews are set out in section 1 of this report. A sunset review is intended to determine whether the expiry of the existing anti-dumping duties after five years would likely lead to a continuation or recurrence of dumping and injury and therefore whether there is a continued need for the imposition of anti-dumping duties.

113. In respect to dumping, MBIE has followed its usual approach of establishing if canned peaches from South Africa are currently being dumped into New Zealand, the extent of any dumping and then analysing whether there is a likelihood of a continuation or recurrence of dumping, if the anti-dumping duties were to be removed.

4.2 Previous Proceedings

114. Anti-dumping duties have been applied to imports of canned peaches from South Africa since July 1996. The original duties were based on reference prices calculated as Normal Value (Value for Duty Equivalent) prices for identified can sizes and product types. For other imports, a residual ad valorem rate of 20 per cent was applied.
115. In May 1997, countervailing duties were imposed on canned peaches from South Africa, but were revoked in December 1997 since the subsidy programme concerned was terminated.
116. Reassessed levels of anti-dumping duty were applied in March 1998, which amended the reference prices for L&AF, and the ad valorem rates for other suppliers to 3 per cent. In July 2002, following a sunset review, revised reference prices by grade and size were established for L&AFs exports, with different reference prices applied to other exporters.
117. In February 2008, following a sunset review, reassessed reference prices were established for L&AF and for other exporters. In February 2010, reassessed reference prices were established for L&AF for “Choice” grade goods.
118. In February 2013 a sunset review was initiated, with reassessed reference prices applied from June 2014. In December 2014 a new shipper reassessment of RFG resulted in reference prices being established for RFG. Following these proceedings, the residual rate was 11 per cent.
119. MBIE has assessed the effect of inflation on the reference prices established in December 2014. Based on Consumer Price Index information from Statistics South Africa,⁷ MBIE has established that from 2014 to 2018 the South African CPI increased by 22.5 per cent. The reference prices were established on the basis of a Normal Value (Value For Duty Equivalent) (NV(VFDE)) approach which is, in effect, the normal value adjusted by adding the export price adjustments from a VFD level to the normal value established by investigation. Given the level of inflation it is likely that the reference price levels established in 2014 are now out-of-date.

4.3 Current Dumping

Information Used

120. MBIE based its analysis of dumping on the information provided by the South African producers, both of which were cooperative, through their questionnaire responses and

⁷<http://www.statssa.gov.za/publications/P0141/CPIHistory.pdf?>

the verification visits undertaken to their premises. The analysis also took into account information provided by those importers that provided questionnaire responses.

121. In its application, HWL made an assessment of normal value for a 410g can based on retail price information it had obtained for Cape Town area retailers, with adjustments made for value-added tax (VAT), retail margins (based on HWL’s assessment of the retail margin it has estimated to apply in New Zealand), and an adjustment for freight from the producer to the customer. MBIE notes that the prices used related to February 2019, outside the POR(D), included prices for other can sizes, and used adjustments for margins and costs that do not reflect the information verified by MBIE as applying in South Africa.
122. MBIE is satisfied that the information provided by the South African producers and verified by MBIE is reliable, and provides a reliable basis for determining export prices and normal values.

Price Comparisons

123. The price comparisons have been undertaken on the basis of weighted average prices, by can size, at the ex-factory level. Where relevant, adjustments have been made to reflect physical differences arising from different canning media (juice or syrup), and for cost differences arising from grade differences. Adjustments have also been made to take account of differences in terms and conditions of sale, such as freight costs, payment terms and discounts. Prices are compared net of any taxation. No allowance has been made for differences between forms as diced, slices or halves, or for branded versus distributor own brand (DOB), since it has been established that these differences have not affected price comparability.
124. The can sizes and product weights are as follows:

Figure 4.1: Can sizes

Standard Description	Nominal Net Weight
N1M	410g/415g/420g
A2.5	820g/825g
A10	2.95kg/3.06kg

125. The dumping analysis has considered can sizes as defining the two broad categories for comparison. This reflects the fact that A10 cans are provided primarily to the food service, manufacturing and institutional markets, while the other can sizes are sold through retail outlets, primarily supermarkets.

4.3.1 L&AF

126. The detailed considerations relating to L&AF for the establishment of export prices and normal values, and any due allowances made to ensure a fair comparison are at Confidential Attachment 1.

4.3.1.1 Export Price

127. The information used for establishing export prices was verified by MBIE at L&AF's premises.

Base prices

128. In the current review, MBIE was satisfied that on the basis of the information available, subject goods were exported to New Zealand by L&AF in arm's length transactions, and that prices charged to New Zealand importers provided a base price for the calculation of export prices.

Adjustments

129. Adjustments to the base price were made as necessary for commissions, cost of credit, handling and packing, inland transport and overseas freight and insurance, arising from exportation, to determine the export price on an ex-factory basis.

4.3.1.2 Normal Value

130. The information used for establishing normal values was verified by MBIE at L&AFs premises.

Base prices

131. In determining whether L&AF's domestic sales were in the ordinary course of trade, MBIE checked whether sales were profitable. On the basis of information provided by L&AF regarding its costs to produce the domestic products to be used in the price comparison, and information from L&AF's financial records for the POR(D), MBIE has established that domestic sales were made within an extended period of time – one year; in substantial quantities – 96 per cent of sales under consideration; at prices that did not provide for the recovery of all costs within a reasonable period of time.

132. In light of these findings, MBIE has established normal values on the basis of constructed values. On the basis of information provided by L&AF, MBIE has been able to ascertain the cost to make the goods being compared with export transactions. These costs include the costs of goods sold (COGS), including material costs (fruit, sugar/juice, chemicals, cans and lids, cartons, labels); direct labour costs for production and labelling; and manufacturing overheads. Selling and administration and distribution costs, and fixed overheads, were similarly established from the information provided by L&AF. The amount for profit was calculated on the basis of the profit levels achieved by L&AF for sales of canned fruit generally, as established from the relevant Income Statement provided by L&AF.

133. MBIE has established that the volume of sales used in the determination of normal value constitutes more than 5 per cent of the volume of the export sales being investigated. For the sales compared, domestic sales made up 274 per cent of export sales to New Zealand.

Adjustments

134. Adjustments to the base price were made in order to effect a fair comparison with export prices, were made where necessary, for physical differences affecting prices. These

adjustments include differences between the costs of syrup and juice, and the difference between the material costs for choice and standard grade goods as opposed to sub-standard and irregular grade goods.

4.3.1.3 Dumping Margin

135. MBIE has compared the export price and normal value established for L&AF on a weighted average-to-weighted average basis, with adjustments made in each case for differences affecting price comparability and to ensure a fair comparison, and with appropriate exchange rates used. MBIE has established that exports of A10/2.95kg cans of diced peaches in juice are not dumped. The weighted average dumping margin for other can sizes is 45 per cent. MBIE has also established that the weighted average dumping margin for all exports by L&AF (with the non-dumped A10 cans included to avoid the possibility of zeroing⁸), is 41 per cent.

4.3.2 RFG

136. The detailed considerations relating to RFG for the establishment of export prices and normal values, and any due allowances made to ensure a fair comparison are at Confidential Attachment 2.

4.3.2.1 Export Price

137. The information used for establishing export prices was verified by MBIE at RFG's premises.

Base prices

138. In the current sunset review, MBIE was satisfied that on the basis of the information available, subject goods were exported to New Zealand by RFG in arm's length transactions, and that prices charged to New Zealand importers provided a base price for the calculation of export prices.

Adjustments

139. Adjustments to the base price were made by deductions for overseas freight (where relevant), inland freight, packaging costs, handling and credit costs arising from exportation, to determine the export price on an ex-factory basis.

4.3.2.2 Normal Value

140. The information used for establishing normal values was verified by MBIE at RFG's premises.

⁸ "Zeroing" is the practice of attributing a zero value as the export price of any goods that are above the normal value when calculating a weighted average. This inflates the dumping margin and has been found to be inconsistent with the AD Agreement in a number of dispute settlement proceedings.

Base prices

141. In the current sunset review, MBIE was not satisfied that domestic sales were made in the ordinary course of trade. On the basis from information provided by RFG regarding its costs to produce the domestic products to be used in the price comparison with exports to New Zealand, and information from RFG's financial records, MBIE established that domestic sales were made within an extended period of time – one year, in substantial quantities – 85 per cent of sales under consideration, at prices that did not provide for the recovery of all costs within a reasonable period of time.
142. In light of these findings, MBIE has established normal values on the basis of constructed values. On the basis of information provided by RFG on its factory costs for domestic sales, MBIE has been able to ascertain the cost to make the goods being compared with export transactions. These costs include material costs (fruit, sugar/juice, chemicals, cans and lids, cartons, labels); direct labour costs for production and labelling; warehouse spoils; and manufacturing overheads.
143. In the Interim Report, MBIE noted that selling and administration and distribution costs and fixed plant overheads were similarly established from the information provided by RFG. The amount for profit was calculated on the basis of the overall profit achieved by RFG for sales of goods in same general category.
144. In its comments on the Interim Report, RFG pointed out that in relation to administration costs MBIE had effectively duplicated the provision for this factor. Also, RFG pointed out that the expenses making up the selling and distribution costs provided in its cost information would normally be adjusted for in making a fair comparison with export prices at the ex-factory level.
145. MBIE has reviewed the matters raised, and has accepted both points made by RFG. The consequence is that the duplication of administration costs was removed from the constructed value. The provision for selling and distribution costs was also removed because the information provided by RFG confirmed that these were transaction-related expenses that would be subject to adjustments to ensure fair comparison.
146. In ensuring that the correct factors and amounts were included in the constructed value, MBIE has clarified the basis on which the percentage allocations for administration costs and profits were applied to the cost to make for each of the product types for which normal values were constructed.

Adjustments

147. Adjustments were made where necessary to reflect the higher cost of using juice in exported goods compared with syrup, where there were no equivalent domestic sales of peaches in juice.

4.3.2.3 Dumping Margin

148. MBIE has compared the export prices and normal values established for RFG for the can sizes exported on a weighted average-to-weighted average basis, with any necessary adjustments made in each case for differences affecting price comparability and to

ensure a fair comparison. MBIE has established that during the POR(D) the normal value exceeded the export price for one of the product lines, but the overall weighted average margin for RFG showed no dumping.

149. MBIE has examined shipments made in 2018 to assess the relationship between the value of imports and the reference price values established in December 2014 as a basis for anti-dumping duties to be calculated. The examination indicates that weighted average prices were around 25 per cent above the reference price. This tends to confirm that the reference prices established in 2014 may be out-of-date.

4.4 Findings Relating to Current Dumping

150. MBIE has found the following dumping margins:

Figure 4.2: Dumping Margins

	Dumping Margins
L&AF	
A10/2.95kg cans	No dumping
All other can sizes	45%
Weighted average	41%
RFG	
Weighted average	No dumping
All other suppliers	
Weighted average	16%

151. Article 9.4(i) of the AD Agreement provides that where the examination of exporters has been limited to particular exporters, the anti-dumping duty to be applied to exporters or producers not included in the examination shall not exceed the weighted average margin of dumping established with respect to the selected producers. The “All other suppliers” rate noted above reflects this requirement.

HWL Imports

152. HWL is a significant importer of canned peaches from South Africa. In accordance with section 8(2)(f) of the Act, in examining whether or not any material injury is caused by dumping, the chief executive must have regard to the nature and extent of importations of dumped goods by New Zealand producers of like goods. In assessing matters relating to dumping, therefore, and in particular in relation to the establishment of export prices and the likelihood of a continuation or recurrence of dumping, MBIE has had regard to the nature and extent of importations by HWL.
153. MBIE notes that prices from HWL’s imports for the POR(D) were negotiated with the South African suppliers. The evidence indicates that over the course of the negotiation HWL sought and achieved lower prices than those offered by the exporters. While this could be expected in a commercial negotiation, MBIE notes that HWL has had a long experience of participating in anti-dumping investigations involving South Africa and other suppliers. Based on HWL’s understanding of the normal value, the negotiated price could well have been dumped. The dumping margins established by MBIE show that the

dumping margins for goods imported by HWL are higher than the weighted average dumping margins for all of the goods imported.

154. In these circumstances, MBIE considered whether it would be unsafe to include HWL's imports from South Africa in its investigation and the determination of dumping margins, in order to remove any possibility that it could be argued that HWL is contributing to the dumping. While imports by HWL have been included in the margins established for each of the exporters, this factor has been taken into account in assessing the likelihood of a continuation of dumping and in the assessment of the likelihood of a recurrence or continuation of injury.

4.5 Likelihood of Continuation or Recurrence of Dumping

155. MBIE has reviewed the likelihood that dumping will continue or recur on the basis set out in section 1.3, in the light of the information provided and verified during the review. In particular, when determining whether dumping is likely to continue or recur MBIE needs to be satisfied that, based on positive evidence, certain events are likely to occur, and that those events mean that dumping is likely to continue or recur

156. The events that MBIE needs to consider in order to determine the likelihood that dumping will continue or recur, include:

- whether dumping is currently occurring and the magnitude and the scope of the dumping in terms of the goods affected
- recent behaviour in terms of pricing in the context of the existing reference prices and the payment of anti-dumping duties
- the commercial arrangements governing the pricing of exports to New Zealand from South Africa
- possible developments in the market in South Africa which could affect the normal values of the goods and their availability for export to New Zealand.

Current dumping

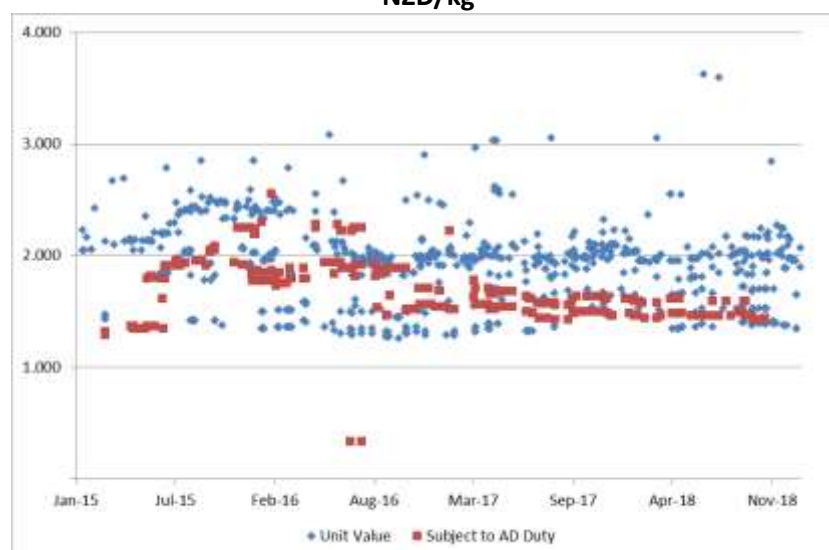
157. MBIE has determined that, exports of A10 cans of diced peaches, and most exports by RFG, were not dumped, but all other exports of canned peaches from South Africa to New Zealand are dumped, with margins for individual product types and exporters ranging from 31-62 per cent. The dumping is not limited to the goods imported by HWL. The overall weighted average margin of dumping is 16 per cent.
158. The conclusion is that current dumping at the levels determined is a clear indication that it is likely that in the absence of any anti-dumping duties, the dumping will continue.

Price behaviour

159. MBIE has reviewed the pricing of imports of the subject goods from South Africa by using Customs data from the period 2015-2018 to identify trends in pricing behaviour. It should be noted that the data used in this analysis provides broad indications only.
160. Figure 4.3 indicates that prices have generally been at or above the reference price levels established in the December 2014 reassessment, suggesting that the current reference price duties are having some effect in providing a lower limit on prices. It also appears

that there are two distinct price bands. Nevertheless, it should also be noted that given the findings relating to dumping, and the fact that the current reference prices are almost five years old, many of the shipments which did not pay any duty are likely to have been dumped when compared with current normal values.

Figure 4.3: Price behaviour
NZD/kg



161. The current VFDE amounts, based on the FOB levels, are generally 24-27 per cent above the reference price levels set in December 2014. However, inflation in South Africa has increased by 22.5 per cent since then, meaning that current VFDE levels are only slightly above the reference price levels adjusted for inflation. If the reference price was adjusted for inflation, then it is likely that significantly higher number of transactions would have been liable to pay anti-dumping duty.
162. The conclusion to be drawn is that the reference price levels have been successful to an extent in providing a floor price, but the significant number of sales above the reference price levels which are at dumped prices, suggests that if the duties were removed it is likely that there would be a continuation or recurrence of dumping.

Commercial arrangements

163. Prices for exports to New Zealand are negotiated with the importers for each season's crop. The South African exporters have advised MBIE that they did not take account of the anti-dumping duty reference prices in reaching agreement on price, but were seeking to maintain sales at commercial prices. MBIE notes that New Zealand importers have sourced canned peaches from a number of countries, and while South Africa is currently the major source, the main New Zealand importers – Foodstuffs, Woolworths and HWL – are able to use competition between the two South African producers, and the prospect of sourcing from other countries, in their price negotiations with the South African producers.
164. MBIE considers that the price negotiations between South African suppliers and New Zealand importers have contributed to the price levels, including reductions in prices over the POR(D), which are currently at dumped levels.

165. The conclusion is that the commercial nature of the price negotiations affecting exports of the subject goods to New Zealand means that if anti-dumping duties are not continued, it is likely that dumping will continue.

South African market

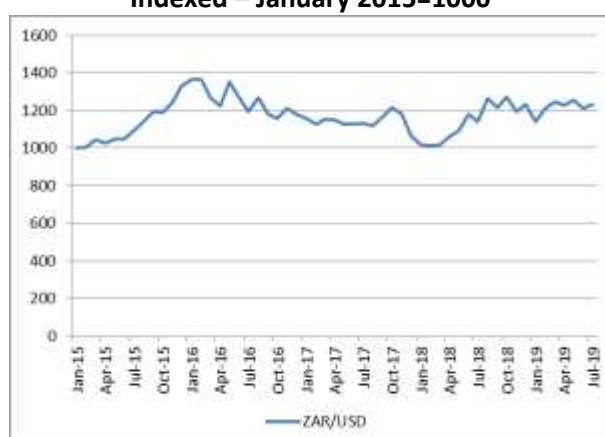
Costs and sales at a loss

166. Normal values in South Africa are also part of the equation in a dumping determination. The normal value levels established by MBIE are based on constructed values, so any significant reduction in those levels would require a significant reduction in production costs and administrative, selling and general costs. Constructed values were used because domestic sales were not considered to be in the ordinary course of trade because sales were made at a loss, so there would need to be a return to profitability of canned peach sales for normal values to be based on prices in the ordinary course of trade.
167. MBIE's assessment is that it is unlikely that there will be significant reductions in costs or a return to profitability in the near term, so unless export prices increase significantly it is likely that dumping will continue.

Exchange rates

168. The determination of dumping can be affected by movements in exchange rates. The effect of exchange rate movements for AUD and USD in relation to the NZD is shown in Figure 5.4 in section 5.2.1.5 of this 17F Report. This suggests that it is not possible to conclude that these exchange rate movements involving the NZD will encourage an increase in imports.
169. A similar analysis is shown below in a chart of the ZAR/USD exchange rate movements indexed from January 2015.

**Figure 4.4: Monthly exchange rates
Indexed – January 2015=1000**



170. The analysis indicates that over the period the ZAR has generally decreased in value against the USD over the period 2015-2018. This indicates that exports are likely to be more attractive in that the return in ZAR will be higher, or alternatively, that prices denominated in USD can be reduced while maintaining ZAR levels of return.

Product availability

171. The other factor in relation to the South African market is the availability of subject goods. MBIE understands that there is a global decline in consumption of canned peaches, while raw material availability in South Africa was affected by the recent drought (but is now recovering) and the move by some farmers to other crops providing a better return.
172. MBIE does not consider that product availability will be a significant indicator of the extent to which dumping of canned peaches exported to New Zealand is likely to continue or recur.

Conclusion

173. MBIE concludes that any significant reduction in costs or increased returns to South African producers are not likely in the near future; exchange rate movements tend to favour an increase in exports, and it is unlikely that there will be increased product availability in South Africa that will put downwards pressure on prices.

Conclusions

174. MBIE has assessed the likelihood that there will be a continuation or recurrence of dumping if anti-dumping duties are not continued. There is currently dumping of the subject goods, except for A10 cans and most imports from RFG, and in light of the commercial arrangements for pricing of imports and conditions in the South African market, MBIE considers that it is unlikely that there will be any significant changes to normal values and export prices which would remove the prospect of continued dumping. MBIE notes that imports established as dumped in section 4 of this 17F Report made up over half of total imports in 2018.
175. MBIE's conclusion is that dumping is likely to continue for all subject goods except for A10 cans and imports from RFG.

4.6 Conclusions Relating to Dumping

176. MBIE has established that there is current dumping of some exports of canned peaches from South Africa, and has concluded that it is likely that the removal of anti-dumping duties will lead to a continuation or recurrence of dumping of canned peaches from South Africa.
177. MBIE notes that imports of A10/2.95kg cans from South Africa, and imports from RFG, are not currently dumped, and it is not likely that the removal of duty applicable to these goods will lead to a continuation or recurrence of dumping.

5. Review of Injury

5.1 Basis for consideration of likelihood of injury

5.1.1 Legal basis and methodology

178. As set out in section 1.3, the legal requirement is for MBIE to investigate whether the continued imposition of an anti-dumping duty is necessary to offset dumping, and whether material injury to an industry would be likely to continue or recur if the duty expired or was otherwise removed or varied.
179. The investigation of the material injury to an industry is based on an examination of the matters set out in section 8 of the Act.
180. When determining whether the expiry or removal of the anti-dumping duty would be likely to lead to a continuation or recurrence of injury, MBIE needs to be satisfied, based on positive evidence, that material injury to the industry is likely to continue or recur if the anti-dumping duties expire or are otherwise removed or varied.

New Zealand legislation

181. The basis for considering material injury is set out in section 8(1) of the Act:
- (1) In determining for the purposes of this Act whether or not any material injury to an industry has been or is being caused or is threatened or whether or not the establishment of an industry has been or is being materially retarded by means of the dumping or subsidisation of goods imported or intended to be imported into New Zealand from another country, the chief executive shall examine—*
- (a) the volume of imports of the dumped or subsidised goods; and*
 - (b) the effect of the dumped or subsidised goods on prices in New Zealand for like goods; and*
 - (c) the consequent impact of the dumped or subsidised goods on the relevant New Zealand industry.*
182. The Act goes on to set out a number of factors and indices which the chief executive shall have regard to, although noting that this is without limitation as to the matters the chief executive may consider. These factors and indices set out in section 8(2)(a) to (d) of the Act include:
- The extent to which there has been or is likely to be a significant increase in the volume of dumped goods, either in absolute terms or relative to production or consumption;
 - The extent to which the prices of dumped goods represent significant price undercutting in relation to prices in New Zealand;
 - The extent to which the effect of the dumped goods is or is likely significantly to depress prices for like goods of New Zealand producers or significantly to prevent price increases for those goods that otherwise would have occurred;
 - The economic impact of the dumped goods on the industry, including actual or potential decline in output, sales, market share, profits, productivity, return on investments, and utilisation of production capacity; factors affecting domestic prices; the magnitude of the margin of dumping; and actual and potential effects

on cash flow, inventories, employment, wages, growth, ability to raise capital, and investments.

183. In addition, the chief executive must have regard to factors other than dumped imports which may be injuring the industry, since in accordance with Article 3.5 of the AD Agreement, it must be demonstrated that the dumped imports are, through the effects of dumping, causing material injury, and injury caused by other known factors must not be attributed to the dumped imports. These other factors, set out in section 8(2)(e) of the Act, include the volumes and prices of non-dumped imports of the goods; contraction in demand or changes in the patterns of consumption; trade restrictive practices of and competition between the foreign and domestic producers; developments in technology; and the export performance and productivity of the domestic industry.
184. The chief executive is also required by section 8(2)(f) of the Act to have regard to the nature and extent of importations of dumped goods by New Zealand producers of like goods, including the value, quantity, frequency, and purpose of any such importation.
185. In accordance with section 8(3) of the Act, the chief executive may disregard any information that the chief executive considers to be unreliable.

AD Agreement

186. Reviews are addressed in Article 11 of the AD Agreement, and require findings relating to the likelihood of injury. The relationship between Article 11 and Article 3 of the AD Agreement which addresses injury in an investigation, has been the subject of dispute settlement in the WTO.
187. In *US — Oil Country Tubular Goods Sunset Reviews*, the Appellate Body upheld the Panel's finding that the obligations set out in Article 3 (in relation to the determination of injury) do not apply to likelihood-of-injury determinations in sunset reviews.⁹ However, the Appellate Body also noted that this was not to say that in a sunset review determination, an investigating authority is never required to examine any of the factors listed in Article 3. The Appellate Body considered that certain of the analyses mandated by Article 3 and necessarily relevant to the original investigation may prove to be probative, or possibly even required, in order for an investigating authority in a sunset review to arrive at a reasoned conclusion. The Appellate Body stated that, in this respect, it was of the view that the fundamental requirement of Article 3.1 that an injury determination be based on "positive evidence" and an "objective examination" would be equally relevant to a likelihood determination under Article 11.3. It seemed to the Appellate Body that factors such as the volume, price effects, and the impact on the domestic industry of dumped imports, taking into account the conditions of competition, may be relevant to varying degrees in a given likelihood-of-injury determination. An investigating authority may also, in its own judgement, consider other factors contained in Article 3 when making a likelihood-of-injury determination, but that determination results from the

⁹ WTO document WT/DS268/AB/R, paragraph 285.

requirements of Article 11.3, not Article 3, and must rest on a “sufficient factual basis” that allows the agency to draw “reasoned and adequate conclusions.”¹⁰

MBIE Approach

188. Bearing in mind the views of the Appellate Body, as outlined above, MBIE notes that with regard to an injury determination, section 8 of the Act sets out a number of factors and indices which the chief executive shall have regard to, although noting that this is without limitation as to the matters that may be considered. These factors and indices are considered under the relevant headings below. Furthermore, the demonstration of a causal relationship between dumped imports and any current or likely injury must be based on an examination of all relevant evidence and any known factors other than the dumped imports which are causing injury, or are likely to cause injury to the domestic industry. Any injury, or likely continuation or recurrence of injury, caused by factors other than dumping must not be attributed to the dumped imports.

5.1.2 Previous Review

189. The last sunset review commencing in 2013 found that:
- There may be an increase in imports from South Africa, as it is common for importers to switch sources of supply without much difficulty if there is a price advantage, compared to other sources.
 - It was likely that the amount of price undercutting of the New Zealand industry’s prices would be greater, and it is likely that as a result HWL’s prices would be depressed and suppressed.
 - Consequent upon the likely volume and price effects, it was likely that sales volume would be maintained but as a result of a decline in prices, HWL’s net sales revenue would significantly decline.
 - If HWL reduced its prices its market share may not be affected but other consequences would need to be considered.
 - Based on the likely price effects, HWL’s profits would likely decline.
 - As a consequence of the adverse economic impacts set out above, there was likely to be an adverse impact on return on investment and cash flow, as lower prices cause a decline in sales revenue.
 - In relation to the following factors there was unlikely to be an adverse impact in relation to productivity, utilisation of production capacity, inventories, employment and wages, growth, ability to raise capital and investments.
190. On the basis of these considerations, MBIE concluded that if the anti-dumping duties were to be removed, material injury to the industry due to dumped imports of canned peaches from South Africa was likely to recur.

¹⁰ Ibid, paragraph 284.

5.1.3 Injury Information Submitted by HWL

- 191. As stated in section 2.4.2 above, MBIE is satisfied that HWL’s output constitutes the total New Zealand output of like goods in terms of section 3A of the Act, and therefore HWL constitutes the New Zealand industry for the purpose of this review.
- 192. HWL provided financial information for the purpose of the injury analysis. The information provided is in line with HWL’s financial year which ends 31 December, which matches the POR(D) and POR(I).
- 193. As there are anti-dumping duties in place it would not be expected that the industry would currently be suffering material injury from dumped goods. The focus of the injury analysis is therefore on the likelihood of material injury recurring if the duties were removed.

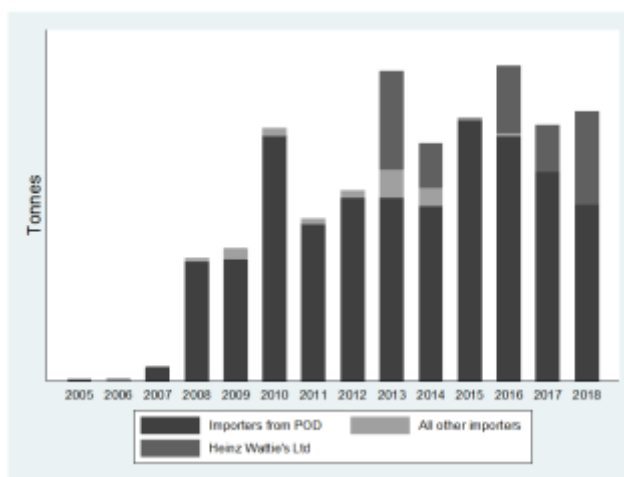
HWL Imports

- 194. MBIE notes that HWL is itself a significant importer of the subject goods from South Africa, and has also imported from other countries. In examining the volume and prices of imports and the consequent impact on the domestic industry, MBIE has, to the extent possible, taken into account the effects of HWL’s imports. The assessment of the matters covered by section 8(2)(f) relating to imports by the industry is addressed in more detail in section 5.6 of this 17F Report.

5.2 Volume Effects

- 195. Section 8(2)(a) of the Act provides that the chief executive shall have regard to the extent to which there has been or is likely to be a significant increase in the volume of imports of dumped or subsidised goods either in absolute terms or in relation to production or consumption in New Zealand.
- 196. As noted in Section 2.2, the tariff item covering the subject goods also includes products outside the definition of the goods subject to review. MBIE has therefore where possible removed from the data any goods not obviously covered by the subject goods description.

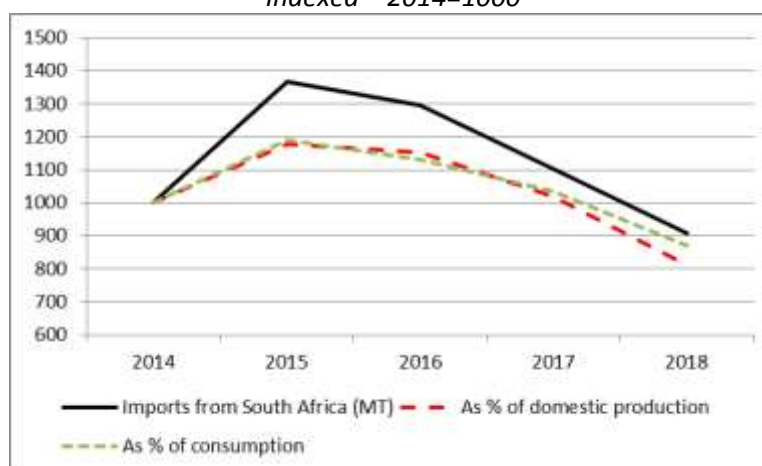
Figure 5.1: Import volumes of canned peaches from South Africa, 2005-2018
Y-axis values withheld



197. Figure 5.1 shows that import volumes of South African canned peaches into New Zealand (excluding imports by HWL) during the period 2015-2018 have declined in absolute terms.
198. Figure 5.2 shows that import volumes of South African canned peaches into New Zealand during the period 2014-2018 are lower than in 2014 relative to both production and consumption in New Zealand. The indexed figures exclude imports by HWL.

Figure 5.2: Import volumes, 2014-2018

Indexed – 2014=1000



5.2.1 Likely import volumes

199. The likelihood of a recurrence of significant volumes of dumped imports sufficient to cause material injury is related to factors such as:
- the price advantage (in the absence of anti-dumping duties) which such imports may hold
 - the capacity and intent of the South African canned peach industry to substantially increase its exports to New Zealand
 - the ease of entry into the New Zealand market
 - the ability and intent of importers to handle a significant increase in imports from South Africa
 - exchange rates
 - evidence from previous behaviour.

5.2.1.1 Price advantage held by the imported products

200. An indication of the price advantage of subject goods from South Africa over HWL goods has been assessed by comparing the weighted average landed value of all imports (including cost, ocean freight, insurance, landing costs, and Customs duty, but excluding anti-dumping duty) based on Customs data, with the average ex-factory value for the Oak brand provided by HWL. It should be noted that this comparison does not take account of the difference in product mixes, and is indicative only.

Figure 5.3: Price Comparisons
Indexed – Oak 2015=1000

	2015	2016	2017	2018
Imports from South Africa	1054	952	952	918
Oak	1000	1015	1026	980

201. This analysis shows that, except for 2015, average prices of imports from South Africa have been consistently lower than Oak prices. This confirms that imports from South Africa appear to have a price advantage over domestic production. A more detailed analysis of price undercutting is summarised in section 5.3.1.
202. MBIE has analysed the price responsiveness of current importers of preserved peaches from China and South Africa through simple regression techniques. The analysis shows that imports from South Africa are highly price elastic, indicating that demand is sensitive to a change in the price of imports. In a market situation where importers are strongly influenced by the price of the good, this evidence indicates that it is likely that importers will source a lower-priced alternative should an economic incentive be present.
203. The extent to which any price advantage can be attributed to dumping is affected by the fact that current anti-dumping duties are in the form of reference prices, so if exports are priced up to or above the reference price level then no anti-dumping duties are collected. The reference prices were at NV(VFDE) amounts which are intended to remove the impact of dumping by setting the export price at the level of the normal value. An analysis of Customs data has shown that in the period 2015-2018, when the current duties have been in place, the value of imports affected by duties collected was small, with 1.6 per cent of total imports in 2015 and 0.3 per cent in 2018. In 2018 average prices were significantly above the reference prices established in 2014. This suggests that prices have been above the dumped levels established in previous proceedings, and have not simply been priced up to the reference price level.

5.2.1.2 Capacity and Intent of the South African industry

204. In its application for the sunset review, HWL noted its understanding that many of the importers and exporters previously involved in the export of preserved peaches from South Africa to New Zealand remain active, and if anti-dumping duties were removed “it is almost without question” that these parties would be able to use the unfair advantage of dumped prices to increase imports.
205. HWL also claimed that a threat of injury would exist immediately if anti-dumping duties were removed due to the high volume of imports from South Africa and the reasonable expectation that cost savings from the removal of the duty would be passed on. HWL considers that it only takes a relatively small volume of imports to cause injury.
206. South African exporters noted that contracted volumes for 2019 were lower than for the previous year, and were unlikely to increase since the production season was over until January 2020. In the absence of duties, increased sales volumes were not anticipated, given that growth in the market seems unlikely. In view of the inflationary conditions in South Africa, any price increases would be welcome so there was no intention to reduce prices if anti-dumping duties were removed. Information provided also indicated that

production capacity in South Africa had been reduced, while the 2019 peach crop was down compared with previous years because of drought (although this had more recently improved). Import volumes and prices were ultimately determined by the importing retailers, while exchange rate fluctuations would affect the prices received by South African exporters.

207. There appears to be a limited capability in the South African industry to provide substantially increased volumes of canned peaches to New Zealand. However, MBIE accepts the claim by the New Zealand industry that relatively small increases in imports could contribute to a recurrence of material injury.

5.2.1.3 Ease of entry into the New Zealand market

208. MBIE is satisfied that the canned peach market in New Zealand is highly competitive. HWL does not have any exclusive customers, and the market is always open to new sources of supply. MBIE has concluded in previous investigations and reviews into preserved peaches that barriers to entry to the New Zealand market are extremely low. This includes the ability of house brand customers to terminate contracts and switch suppliers at short notice, and the ability of brokers to source subject goods from anywhere in the world to take advantage of market opportunities.

209. MBIE also notes that while the applied Customs rate of duty is 5 per cent, the availability of preferential rates at Free, means that for many potential sources of the subject goods there is no tariff protection.

210. MBIE continues to conclude that there is easy entrance to the New Zealand market.

5.2.1.4 The ability and intent of importers to manage an increase in imports

211. Currently, the bulk of imports into New Zealand from South Africa are made by the supermarket chains and HWL. Imports by the supermarket chains are for private label lines, which HWL no longer supplies. Demand is seen as being influenced by the ability of canned peaches to compete against other forms of fruit, as well as other product forms. Any increase in price through increased anti-dumping duties would be unlikely to have an adverse effect on the sales volume of imported goods. Currently, the overall retail canned peach market appears to be declining, although it does appear that Wattie's brand sales are increasing.

212. Any increase in imports of private label brands by supermarkets from South Africa would be affected by the size of the South African peach crop and the consequent availability of product, the prices that could be negotiated in the context of international prices, and trends in the size of the New Zealand market.

213. MBIE concludes that the removal of anti-dumping duties is unlikely to be a major factor in determining the extent of any increase in imports from South Africa, although importers do have systems and relationships in place to manage any increase in imports.

5.2.1.5 Exchange rates

214. A further consideration in assessing the likelihood of an increase in import volumes of the subject goods from South Africa is the movement of the NZD against the USD and AUD, which are the currencies in which imports from South Africa are invoiced.

Figure 5.4: Monthly exchange rates Indexed – January 2015=1000



215. The chart shows indexed monthly exchange rates for AUD and USD compared with the NZD over the period January 2015-July 2019. The information shows the movement of the NZD in relation to the invoice currencies over the period, and indicates that NZD costs for AUD shipments would have fluctuated during the period but are now closer to 2015 levels. For shipments invoiced in USD, however, the cost in NZD would have been higher for most of the period. The information suggests that for much of the period from 2015 to 2018 exchange movements did not favour importers. It is not possible to conclude that exchange rate movements involving the NZD will encourage an increase in imports.
216. In its comments on the Interim Report, RFG noted that its prices are fixed when sales are concluded for a 12-month period prior to the start of the canning season. This means that prices during the contract period are not affected by movements in exchange rates. MBIE considers that this situation supports the conclusion that exchange rate movements will not encourage an increase in imports.

5.2.1.6 Evidence from previous behaviour

217. Because anti-dumping duties have been in place since 1996 on imports of canned peaches from South Africa, there is an absence of information on previous behaviour to inform conclusions on the likelihood of an increase in imports in the absence of anti-dumping duties.
218. The evidence available, as illustrated in Figure 4.3, suggests that the existing anti-dumping duty, applied in the form of reference prices, has had the effect of providing a floor on pricing, but has not been adjusted for inflation in South Africa since 2014 and has not prevented the continued dumping of imports.
219. MBIE has assessed the price responsiveness of current importers of preserved peaches from Spain, South Africa and China through simple regression techniques. MBIE notes

that data on imports of the subject goods from Spain is too limited for a representative analysis, but the analysis shows that imports from South Africa are highly price elastic; demand in this market is sensitive to a change in price, and imports from China also indicate a high degree of price elasticity of demand. In a market situation where importers are strongly influenced by the price of the good, this evidence indicates that it is likely that importers will source a lower priced alternative should an economic incentive be present. The expiry of anti-dumping duties from South Africa could provide such an incentive.

5.2.2 Conclusion on Import Volumes

220. MBIE notes that prices of imports from South Africa have maintained a price advantage over HWL's goods in the New Zealand market, even when priced to remove the dumping margin established in previous proceedings. MBIE also notes that its analysis has established that demand is elastic and that lower prices would provide an incentive for importers to source goods from the cheapest supplier. The level of additional imports that would lead to a recurrence of injury is not high.

221. However, MBIE also notes that the availability of canned peaches from South Africa is affected by the peach crop in that country, which limits the capacity of producers to increase their exports. The New Zealand market does not appear to be growing. The main drivers of imports from South Africa are the purchasing decisions by the New Zealand supermarket chains.

222. Current imports are priced at levels that do not attract payment of anti-dumping duty at existing reference price levels, which are pitched to remove the impact of dumping. A combination of the decline in demand in the New Zealand market for own-brand goods, and the price ambitions of South African exporters, suggests that significantly increased quantities driven by lower prices are not likely.

223. MBIE's conclusion is that the removal of anti-dumping duties is not likely to see a significant increase in the level of imports from South Africa.

5.3 Price Effects

224. Section 8(1)(b) of the Act provides that the chief executive shall examine the effect of the dumped goods on prices in New Zealand for like goods. Section 8(2) of the Act goes on to identify price undercutting, price depression and price suppression as matters the chief executive shall have regard to.

5.3.1 Price undercutting

225. The purpose of the price undercutting comparison is to establish whether or not there is price undercutting attributable to dumping. The determination that price undercutting exists is not by itself a determination of the extent of injury, that is, the margin of price undercutting is not a measure of the extent of the economic impact on the industry. Any impact is measured in terms of the factors and indices set out in section 8(2)(d) of the Act.

226. Section 8(2)(b) of the Act provides that the chief executive shall have regard to the extent to which the prices of the dumped or subsidised goods represent significant price undercutting in relation to prices in New Zealand (at the relevant level of trade) for like goods of New Zealand producers. Where possible (and if sufficient information is available), the level of trade is determined for each importer and therefore the prices may be considered at different points in the supply chain for different importers. The significance of price undercutting can relate to the extent of any undercutting as well as to the frequency and effect of price undercutting.
227. MBIE will normally seek to compare prices at the first point of competition in New Zealand, i.e. the first point of sale in the New Zealand market. This will normally be at the ex-factory and ex-wharf or ex-importer's store levels, to ensure that differences in distribution costs and margins do not confuse the impact of dumping.
228. In its application for the sunset review, HWL calculated an import cost per kg based on information from TradeData for South African exports to all destinations for December 2018, converted to NZD and with provision for freight and insurance to give an ex-wharf import price to compare with separate weighted averages for HWL's ex-factory prices for Wattie's and Oak branded goods. HWL then compared the prices and found significant undercutting margins. HWL has based all of its injury forecasts on competition at this price level. HWL also compared its ex-factory prices to average import costs, and found a lower but still significant level of price undercutting.
229. MBIE notes that the South African prices derived by HWL from trade data may include non-subject goods and sales to markets other than New Zealand with differing product forms and product mixes. MBIE has been able to use actual data from exporters and importers, and from HWL, to establish price comparisons which provide a proper basis for assessing the existence and extent of any price undercutting. Also, the figures used by HWL do not appear to include Customs duty.
230. The historical sales data provided by HWL for this review was inclusive of HWL's imports. MBIE has sought to use data excluding imports where possible, but where this has not been feasible MBIE has taken this factor into account in its assessment of the impact of the pricing of imports, including price undercutting. The analysis of the effect of price undercutting, in terms of price depression and price suppression, and the consequent economic impact of the price effects, is therefore based on weighted averages including imported goods, with estimates for the Wattie's and Oak brands being separated. This follows the approach taken by HWL. Given that price impacts differ for each brand, reflecting the premium for the Wattie's brand, MBIE believes it is appropriate to address them separately, with the focus on undercutting of the Oak brand as the defining point for price undercutting and hence injury.
231. For the purposes of establishing price undercutting margins, MBIE has calculated the ex-wharf equivalent prices for imports from South Africa from both L&AF and RFG. Weighted average prices for each product category have been established from invoice data, with additional amounts where necessary for overseas freight and insurance, port clearance and Customs charges, plus Customs duty of 5 per cent applicable to South African-origin

goods. On this basis, a weighted average level of price undercutting of Oak brand goods was 4 per cent.

232. In its submission on the Interim Report, HWL considered that the correct comparison for price undercutting should use the average revenue per kg obtained from the industry manufacturing preserved peaches of all types and sizes, i.e. the weighted average for Wattie's brand and Oak brand sales. The undercutting level against Oak brand goods has been used in the injury assessment in this 17F Report because the Wattie's brand goods operate at a premium over Oak brand goods, and price pressures on Oak brand goods will put pressure on the Wattie's brand prices. This means that the maintenance of a sustainable price differential is important, and is driven by the pricing of Oak brand goods. With this in mind, there is no price undercutting of Oak brand prices for the A10 can size exports by L&AF (which are not dumped), and no price undercutting of Oak brand prices by any RFG exports. The level of price undercutting for other can sizes exported by L&AF is 12.5 per cent.
233. The undercutting analysis is based on export prices. The revised dumping findings for RFG discussed in Chapter 4 relate to the normal value only and do not affect the undercutting analysis.

5.3.2 Price depression

234. Section 8(2)(c) of the Act provides that the chief executive shall have regard to the extent to which the effect of the dumped or subsidised goods is or is likely significantly to depress prices for like goods of New Zealand producers.
235. Price depression occurs when prices are lower than those in a market unaffected by dumping, usually in a previous period and refers to reductions in prices used by domestic producers in order to deal with competition from dumped goods.

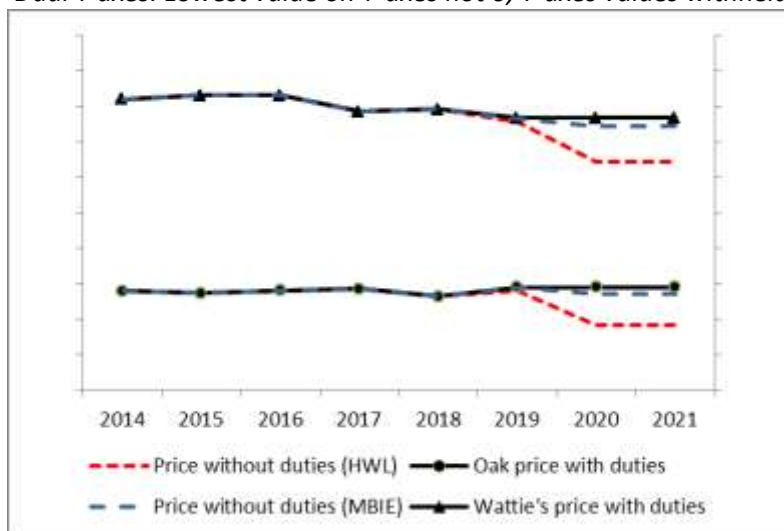
Likely impact of the removal of anti-dumping duties

236. In its application HWL set out its pricing strategy and the effect on prices for both the Wattie's and Oak brands when dumped imports enter the market. HWL argued that in the absence of anti-dumping duties importers and retailers would be able to command retail price points well below NZD 1.00 per unit, for a 410g can of preserved peaches. At this price point, HWL would face a clear and imminent threat of having to decrease wholesale prices to customers. HWL suggested that on the basis of TradeData information for December 2018 exports, with added insurance and freight, retailers could even sell a 410g can at 69 cents and make a profit.
237. MBIE has assessed the data provided by HWL but has included in the analysis the level of price undercutting it has established for South African imports compared with Oak brand goods when compared with average net ex-factory costs for each of Wattie's brand and Oak brand goods.
238. The data using MBIE's price undercutting conclusions, shows that Oak prices were reasonably stable for 2014-2017 but declined in 2018, and despite recovering in 2019 would decline back to 2014-2017 levels on the basis of current undercutting levels. Prices of Wattie's brand goods have, however, declined since 2014-15, and will continue to

decline on the basis of the price undercutting levels established by MBIE. Prices based on duties that would remove the effects of undercutting would maintain the average prices of Oak brand goods at levels generally above those achieved in 2014-2018, and would halt the decline in average prices for Wattie’s brand goods.

Figure 5.5: Price Depression

Dual Y axes. Lowest value on Y-axes not 0, Y-axes values withheld



5.3.3 Price suppression

239. Section 8(2)(c) of the Act also provides that the chief executive shall have regard to the extent to which the effect of the dumped or subsidised goods is or is likely significantly to prevent price increases for those goods that otherwise would have been likely to have occurred.

240. Price suppression occurs when price increases for the domestic product that would otherwise have occurred are prevented due to dumped imports. Such price increases could be in response to increases in costs, or changes in supply or demand of a product.

241. MBIE generally bases its assessment of price suppression on positive evidence, in particular the extent to which cost increases have not been recovered in prices. Cost increases not able to be recovered by price increases will be reflected in an increased ratio of costs to sales revenue. Where cost savings have been made, the lack of any price increase will not normally be regarded as price suppression.

Likely impact of the removal of anti-dumping duties

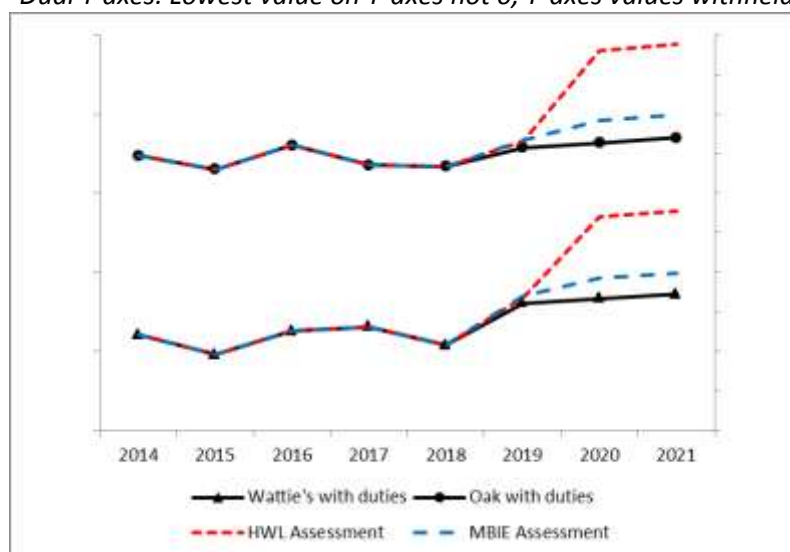
242. In its application, HWL argued that the effects of dumped preserved peaches from South Africa would be price suppression as HWL would be unable to offset price undercutting by cost savings and price increases elsewhere. HWL suggested that the dumped imports would cause cost increases as increased market share taken by dumped imports would lead to increased processing costs per tonne that could not be recovered.

243. MBIE has assessed the data provided by HWL but has included in the analysis the level of price undercutting it has established for South African imports compared with Oak brand goods when compared with average net ex-factory costs for each of Wattie’s brand and Oak brand goods.

244. The data using MBIE's price undercutting conclusions shows that Oak costs as a proportion of revenue were reasonably stable for 2014-2018 but are expected to continue to increase slowly even if anti-dumping duties remove the injurious effect of price undercutting. Similarly, the continuation of anti-dumping duties would limit, but not reduce, the price suppression for Wattie's brand goods.
245. If anti-dumping duties are not continued at levels that remove the effect of price undercutting, it is likely that costs as a proportion of revenue will continue to increase, demonstrating the price suppression effect of the price undercutting in that HWL will not be able to recover increases in costs.

**Figure 5.6: Price Suppression
COGS as % of revenue**

Dual Y axes. Lowest value on Y-axes not 0, Y-axes values withheld



5.3.4 Conclusion on price effects

246. In considering the effect of the dumped goods on prices in New Zealand for like goods, MBIE has established that:
- dumped imports of the subject goods are undercutting prices of domestic like goods, but there is limited price undercutting of Oak brand prices
 - in the absence of effective anti-dumping duties, prices for all domestic like goods are likely to continue to decline as a result of the price undercutting levels established by MBIE
 - If anti-dumping duties are not continued at levels that remove the effect of price undercutting, it is likely that there will be continuing price suppression in that HWL will not be able to recover increases in costs for all domestic like goods.
247. MBIE's overall conclusion regarding price effects is that the continued dumping of the subject goods from South Africa is likely to result in continued price undercutting, with consequent price depression and price suppression.

5.4 Economic Impact

248. Section 8(2)(d) of the Act provides that the chief executive shall have regard to the economic impact of the dumped or subsidised goods on the industry, including—

- Actual and potential decline in output, sales, market share, profits, productivity, return on investments, and utilisation of production capacity; and
- Factors affecting domestic prices; and
- The magnitude of the margin of dumping; and
- Actual and potential effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investments.

5.4.1 Output

249. The Act and the AD Agreement require that impacts on output be considered as an injury factor. Dumped imports can affect the industry's production volume through increased supply of goods to the market through price competition.

250. HWL's output is dependent on the size and quality of the peach crop and its contracts with growers. HWL processes the entire raw peach crop available each year from its contracted growers.

Likely impact of the removal of anti-dumping duties

251. In light of HWL's contractual obligations its output over the next few years is unlikely to be affected by the presence of the subject goods on the market. In its forecasts of the effects of dumping, HWL has maintained output at constant levels for 2019-2021.

252. MBIE notes that according to information published by Horticulture New Zealand in "Fresh Facts"¹¹ the peach crop volume in 2018 was significantly down from 2017 after having shown some increase over the previous five years.

253. In the circumstances outlined, MBIE considers that output is unlikely to be a useful indicator of the likelihood of injury attributable to dumped goods.

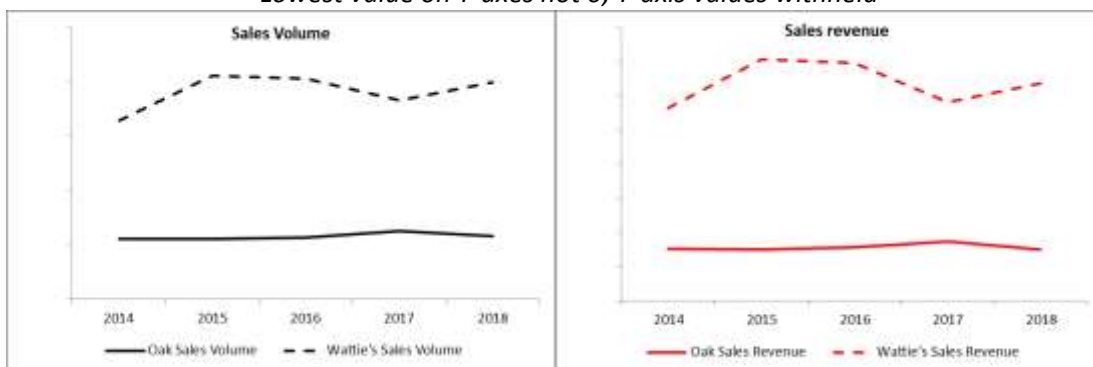
5.4.2 Sales volume and revenue

254. The Act and the AD Agreement require that impacts on sales be considered as an injury factor. Movements in sales revenue reflect changes in volumes and prices of goods sold. Dumped imports can affect both of these factors through increased supply of goods to the market and through price competition.

255. As shown in Figure 5.7, sales volumes and revenue for Oak brand goods have remained steady, and while there has been more fluctuation in sales volume and revenue for Wattie's brand goods, with a decline in 2017, 2018 has shown an upturn.

¹¹ See <https://www.freshfacts.co.nz/>.

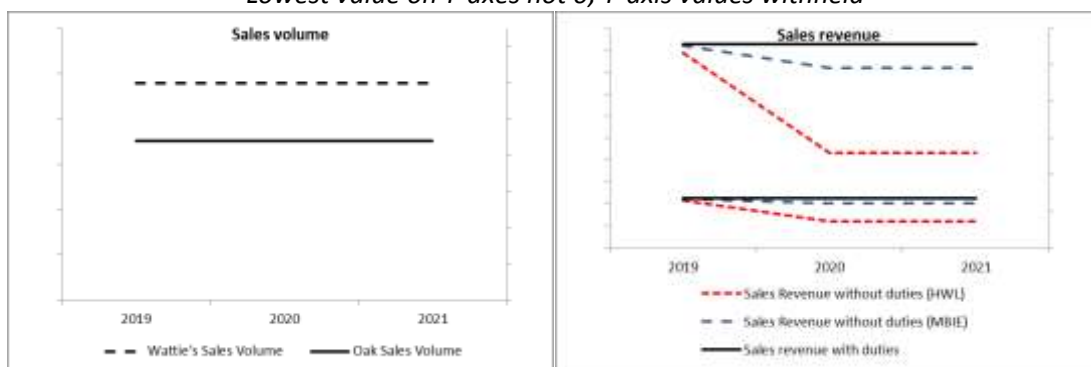
Figure 5.7: Sales Volume and Revenue
 Lowest value on Y-axes not 0; Y-axis values withheld



Likely impact of the removal of anti-dumping duties

- 256. In its application, HWL provided forecasts of its expected revenue both with and without anti-dumping duties. The forecasts were based on an assumption that importers would pass cost saving from the removal of duty on to consumers. The import price used by HWL was based on December 2018 price levels for imports compared with the average cost, insurance, freight (CIF) import price from all sources. HWL sales data does not differentiate between domestic production and its own imports. HWL considered that if it had been able to increase its prices, based on the increase in average VFD prices for imports from South Africa, then in the absence of effective anti-dumping duties, HWL would be suffering a loss of sales revenue.
- 257. MBIE has applied the level of price undercutting against Oak products to HWL’s forecast sales volumes to provide a forecast of the impact on revenues if anti-dumping duties are not continued. Sales volumes are forecast as continuing at current levels, while there is a small reduction in revenue for Oak brand goods and a larger reduction for Wattie’s brand goods. HWL has forecast no changes in sales volumes.

Figure 5.8: Impact on Sales Volume and Revenue
 Lowest value on Y-axes not 0; Y-axis values withheld

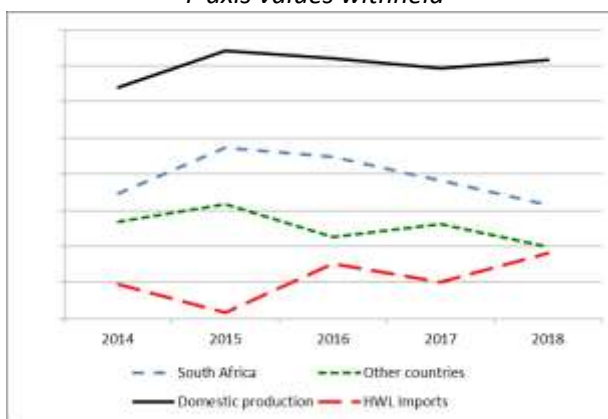


- 258. MBIE concludes that if anti-dumping duties are not continued there is likely to be a reduction in sales revenue.

5.4.3 Market share

259. The Act and the AD Agreement require that impacts on market share be considered as an injury factor. The analysis of market share must take account of changes in the growth of the market as a whole. A decline in the share of the market held by the domestic industry in a situation where the market as a whole is growing will not necessarily indicate that injury is being caused to the domestic industry, particularly if the domestic industry’s sales are also growing.
260. HWL advised that the preserved peach market in New Zealand is a mature market meaning demand is reasonably static. The market is not segmented by grade as in some overseas markets. HWL cited evidence from previous investigations involving China and Spain when imports had significantly affected market shares in some regional markets for periods of time.

Figure 5.9: Market Share 2014-2018, %
Y-axis values withheld



261. The evolution of the market in recent years is shown in Figure 5.9. The data shows both HWL’s domestic production and HWL’s imports of the subject goods. Imports from South Africa and from other countries exclude HWL’s imports. This information indicates that there has been no actual decline in the market share held by the New Zealand industry over the period indicated.

Likely impact of the removal of anti-dumping duties

262. While there may have been no actual decline in market share, MBIE must consider what the situation might be if anti-dumping duties are removed. In this context, MBIE notes that in addition to the current sunset review of canned peaches from South Africa, a reconsideration of the dumping of preserved peaches from Spain has recently been completed with reassessed anti-dumping duties imposed; a reconsideration of the dumping of preserved peaches from China is currently under way; and a sunset review of canned peaches from Greece is due to take place in 2020. In this context, it is difficult to draw any definitive conclusions for market shares. However, MBIE notes that it has concluded that the removal of anti-dumping duties is not likely to see a significant increase in imports from South Africa.
263. MBIE concludes that on the basis of its assessment of likely import volumes of imports from South Africa, and the level of price undercutting established for those imports, it is

not likely that there will be any significant effect on HWL’s market share if anti-dumping duties are not continued.

5.4.4 Profits

264. The Act and the AD Agreement require that impacts on profits be considered as an injury factor. Changes in net profit reflect changes in prices, sales volumes or costs. Dumped imports can impact on any or all of these.

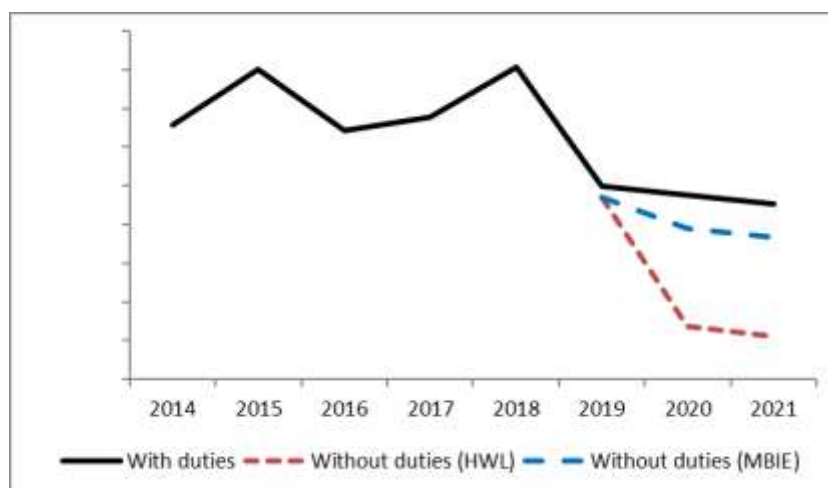
265. Information provided by HWL shows that earnings before interest and taxation (EBIT) increased between 2014 and 2018.

Likely impact of the removal of anti-dumping duties

266. In its application HWL noted that the forecast decrease in sales revenue, coupled with the need to incur more trade marketing activity to protect its volume market share, would directly impact profit. HWL considered that the current reference prices on which current anti-dumping duties are based are outdated, but effectively set the market price and the premium price for Wattie’s brand goods. Forecasts of the impact on EBIT were provided, indicating that in the absence of anti-dumping duties there would be significant reductions in EBIT. The level of anti-dumping duty included in the forecasts was based on HWL’s own calculations.

267. MBIE has made its own assessment on the basis of the dumping margins and price undercutting margins that it has established through investigation.

Figure 5.10: EBIT
Y-axis values withheld



268. The information summarised in Figure 5.10 indicates that in the absence of anti-dumping duties EBIT is likely to reduce further, and also indicates that the current anti-dumping duties may not be adequate to prevent continuing reductions in profits.

5.4.5 Productivity

269. The Act and the AD Agreement require that impacts on productivity be considered as an injury factor. Productivity is the relationship between the output of goods and the input of resources used to produce them. Changes in productivity are affected by output levels and by the level of capacity utilisation.

270. In the short term, HWL's productivity is not directly affected by whether anti-dumping duties are in place or not. Any measure of productivity is mainly affected by the level of seasonal labour employed when the crop needs processing, so total labour costs are variable, depending on the total size of the crop, the size of the fruit, yield and factory efficiency in processing.

Likely impact of the removal of anti-dumping duties

271. In its application, HWL noted that currently imports of preserved peaches from South Africa are not having an adverse effect on HWL's productivity because the anti-dumping duties in place are partially addressing the magnitude of dumping. HWL also noted that it has commitments to contracted growers to take their crop for 2020 and 2021, but should dumped import pricing be passed on to consumers then HWL would need to consider whether none or all of the crop would be processed, and whether any loss from not processing the crop could be recovered through importing cheaper product in order to retain market share.
272. MBIE considers that production depends on the total size of the crop, yield and finished tonnage. As this causes production volume to vary, productivity is not a particularly useful factor in this case when assessing injury caused by dumped imports.

5.4.6 Return on investments

273. The Act and the AD Agreement require that impacts on the return on investments be considered as an injury factor. Return on investments measures profit against the value of the investment in a business. A decline in return on investments will result from a decline in returns with or without a relative increase in the investment factor being used. Movements in the return on investments affect the ability of the industry to retain and attract new investment.
274. HWL produces a range of seasonal and non-seasonal fruit and vegetable products that use its production plant. HWL's position in previous reviews is that it is difficult to provide any meaningful information on the return on investments that is specific to canned peaches, which take up a very small share of the total production capacity.

Likely impact of the removal of anti-dumping duties

275. HWL has indicated that the main impact on the return on investments is through the impact of the removal of anti-dumping duties on EBIT. Returns would diminish accordingly, with other flow-on effects, including for the return on investments.
276. MBIE concludes there is no evidence that the rate of return on investments has been adversely affected over the POR(I). MBIE further concludes that should duties not be in place, and should there be a resumption of dumped imports, there would likely be a decline in the rate of return on investments corresponding with the decline in profits.

5.4.7 Utilisation of production capacity

277. The Act and the AD Agreement require that impacts on utilisation of production capacity be considered as an injury factor. The utilisation of production capacity reflects changes in the level of production, although in some cases it will arise from an increase or

decrease in production capacity. In either case, a decline in the utilisation of production capacity will lead to an increase in the unit cost of production, and a consequent loss of profit.

278. HWL's production capacity is constrained by the size of the crop that its contracted orchardists can deliver.
279. In previous peach investigations, MBIE has taken the view that production capacity is not a useful measure of injury, given that capacity utilisation is dependent on other factors, including the quantity of raw peaches available, competition for parts of the canning line which are common to other fruit and vegetable products, and the storage life of the raw fruit.

Likely impact of the removal of anti-dumping duties

280. The impact of dumped imports on the utilisation of production capacity will depend on the extent to which increases in such imports reduce throughput in the New Zealand industry. MBIE does not consider it to be a useful measure in this case, since the level of production is dependent on factors such as the supply of raw peaches, and will be maintained at that level.

5.4.8 Factors affecting domestic prices

281. The Act and the AD Agreement require that factors affecting domestic prices be considered as an injury factor.
282. In its application, HWL did not provide specific comments on this factor. In the Spanish peaches reconsideration, HWL noted that the main influence is from retailers, since competition between retailers wanting to increase profits and gain customers was the main driver of prices. Any dumped canned peaches or indeed lower priced canned fruit would have a direct effect on prices achieved by HWL.

Likely impact of the removal of anti-dumping duties

283. MBIE notes that the market for canned peaches is mature, and lower prices would not significantly increase total sales. Rather, the effect would be to redistribute market shares. The removal of anti-dumping duties could therefore contribute to a lower market share for the domestic production through price competition.

5.4.9 Magnitude of the margin of dumping

284. The Act and the AD Agreement require that the impact of the magnitude of the margin of dumping be considered as an injury factor. The magnitude of the margin of dumping can be a useful indicator of the extent to which injury can be attributed to dumping, particularly when it is compared with the level of price undercutting.
285. HWL's application identified significant margins of dumping, which led to its conclusions relating to price effects and the consequent injury to the industry.
286. For the POR(D), MBIE has found no dumping of A10/2.95kg cans or for RFG's exports on an overall basis, while for other subject goods found to be dumped the weighted average dumping margin was 45 per cent, with margins of price undercutting at lower levels.

Likely impact of the removal of anti-dumping duties

287. The analysis of the likelihood of a continuation or recurrence of dumping is set out in section 4.7, with the conclusion in section 4.8 that it is likely that the removal of anti-dumping duties will lead to a continuation or recurrence of dumping of canned peaches from South Africa. MBIE's analysis of the volume effects of dumping is set out in section 5.2, and MBIE's conclusion is that the removal of anti-dumping duties is not likely to see a significant increase in imports from South Africa.
288. MBIE's analysis of the price effects of the dumping, set out in section 5.3, is that the continued dumping of subject goods from South Africa is likely to result in continued price undercutting, with consequent price depression and price suppression.
289. The effect of the magnitude of the margin of dumping is that it permits price undercutting of like goods produced by the domestic industry. The level of price undercutting in this case is less than the margin of dumping. Nevertheless, the magnitude of the margin of dumping contributes to the injurious effect of the dumped goods.

5.4.10 Other adverse effects

290. The Act and the AD Agreement require that impacts on cash flow, inventories, employment, wages, growth, ability to raise capital and investments be considered as injury factors.

Cash flow

291. HWL has indicated that the effect of the removal of duties would be decreased cash flow, which taken with the impact of sales revenue from increased trade marketing would affect profits.
292. MBIE notes that there are potential negative effects on cash flow, which arise from the impact on sales revenue and profits.

Inventories

293. HWL has noted that its commitments to purchase the peach crop require it to maintain a raw material inventory.
294. As indicated by HWL in the Spanish peaches reconsideration, canning of peaches over a relatively short period once a year means that inventory is at its peak soon after production and then declines as inventory is sold down over the next 12 months.
295. MBIE considers that, because of the way HWL manages its inventory level, the amount of inventories on hand is not a good indication of injury.

Employment and wages

296. HWL noted the effects on employment of material injury to the industry.
297. In the reconsideration of Spanish peaches, it was noted that HWL employs seasonal staff on an "as required" basis, and that year-on-year the number required depend on the volume of peaches to be processed. Wage rate data provided by HWL indicated that the average annual wage rate had steadily increased over time.

298. MBIE has concluded that the removal of anti-dumping duties would not be likely to lead to a significant increase in the level of imports from South Africa. In this circumstance, it is unlikely that there could be any adverse effects on employment and wages directly relating to the production of canned peaches. In effect, HWL's employment and wage levels do not appear to be a good indication of injury in the near future.

Growth

299. HWL's application noted only that the return of dumped imports would have significant adverse effects on a range of factors, including growth, as a result of the serious impact on the industry.
300. MBIE considers that any detrimental effects on growth would be reflected in other injury indicators such as sales, profits and return on investment. As noted in sections 5.4.2, 5.4.4 and 5.4.6, MBIE considers that these factors are likely to be adversely affected if anti-dumping duties are not continued.

Ability to raise capital and investments

301. HWL did not provide any information on comment on the ability to raise capital and investments. In the Spanish peaches reconsideration, HWL noted that its ability to raise capital and make investments was dependent on the restoration or continuation of anti-dumping duties in the various proceedings involving preserved peaches.
302. MBIE has reached no conclusions on this factor.

Conclusion on other adverse effects

303. MBIE concludes that:
- There are potential negative effects on cash flow, which arise from the impact on sales revenue and profits.
 - The amount of inventories on hand is not a good indication of injury.
 - Employment and wage levels do not appear to be a good indication of injury in the near future.
 - Any detrimental effects on growth would reflect other injury indicators such as sales, profits and return on investment.
 - It has no conclusions on ability to raise capital and investments.

5.5 Other Causes of Injury

304. Section 8(2)(e) of the Act provide that the chief executive shall have regard to factors other than the dumped goods which have injured, or are injuring, the industry, including—
- The volume and prices of goods that are not sold at dumped prices; and
 - Contraction in demand or changes in the patterns of consumption; and
 - Restrictive trade practices of, and competition between, overseas and New Zealand producers; and
 - Developments in technology; and
 - Export performance and productivity of the New Zealand producers.

305. Article 3.5 of the AD Agreement provides as follows:

It must be demonstrated that the dumped imports are, through the effects of dumping, as set forth in paragraphs 2 and 4, causing injury within the meaning of this Agreement. The demonstration of a causal relationship between the dumped imports and the injury to the domestic industry shall be based on an examination of all relevant evidence before the authorities. The authorities shall also examine any known factors other than the dumped imports which at the same time are injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the dumped imports. Factors which may be relevant in this respect include, inter alia, the volume and prices of imports not sold at dumping prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry.

5.5.1 Non-dumped imports

306. Imports that are not dumped also have the potential to cause injury to the New Zealand industry.

307. HWL was not aware of any material injury being caused through fairly traded competitor branded product.

308. There was a significant presence of Australian preserved peaches in the market until 2012, and it appears that some Australian goods are re-entering the market. In addition to preserved peaches of Spanish origin, there are currently anti-dumping duties payable on canned peaches from Greece. MBIE consequently considers that imports from these sources enter New Zealand at the equivalent of non-dumped prices. Goods from Australia have free access to the New Zealand market under the Closer Economic Relations Agreement and no anti-dumping action can be taken against Australian imports.

Figure 5.11: Comparative imports – MT



309. The major source of imports, after South Africa, has been China. Imports from China are currently subject to a reconsideration based on an order from the High Court, with the termination of anti-dumping duties in February 2018 having been quashed. Imports from China of preserved peaches have included a reasonable proportion of product presentations and packaging other than those of the subject goods from South Africa

either currently or in the past. Information previously provided by HWL suggests that global prices of Chinese exports tend to be higher than those from South Africa.

310. MBIE concludes that there does not appear to be any significant increased competition from non-dumped imports.

5.5.2 Changes in consumption or demand

311. Changes in the pattern of consumption or a reduction in demand can also be a potential cause of material injury to the New Zealand industry.
312. HWL stated that there did not appear to be any contraction in demand or changes in the patterns of consumption.
313. MBIE notes that the view of exporters is that New Zealand is a well-established market where the consumer focus is on quality rather than price. MBIE understands that demand in New Zealand for canned fruit is decreasing, but this is not at a rate that would contribute to material injury to the New Zealand industry in the near future.

5.5.3 Restrictive trade practices of, and competition between, overseas and New Zealand producers

314. HWL was not aware of any further restrictive trade practices that are currently affecting the New Zealand industry.
315. Restrictive trade practices of overseas or New Zealand producers, such as price ceilings, other statutory measures, or exclusive dealer arrangements, can negatively affect the financial position of New Zealand manufacturers when they are not the beneficiaries of the restrictions. Competition between overseas and New Zealand producers of preserved peaches can be a cause of material injury independent of any dumping. For example, the existence of a price war or the constant threat of new competitors to the New Zealand market can cause a fiercely competitive environment where it is difficult for a New Zealand manufacturer to make a positive return. While this will generally be reflected in the price effects outlined in section 5.3 above, there may be factors other than straight pricing that can reflect competition between domestic and imported goods.
316. MBIE notes that while HWL is in a monopoly position in relation to the production of preserved peaches in New Zealand, the openness of the market to imports ensures that there is adequate competition.
317. MBIE is satisfied that there is no evidence of any restrictive trade practices which might be operating to advantage imports or disadvantage the New Zealand industry, or that competition goes beyond price effects.

5.5.4 Developments in technology

318. HWL did not believe that there was any evidence of a technology development relevant to a consideration of material injury. HWL's method of processing peaches is similar to that of other processors.
319. MBIE notes that there are products entering the market in plastic containers, rather than in cans, but this has been going on for some time, and does not necessarily reflect any

significant development in technology. HWL does not have the capacity to produce peaches in plastic pottles and plastic jars.

320. MBIE is satisfied that there has been no significant change in technology that could contribute to or cause material injury to the domestic industry.

5.5.5 Export performance and productivity

321. HWL exports a small volume of preserved peaches to Australia and the Pacific Islands.

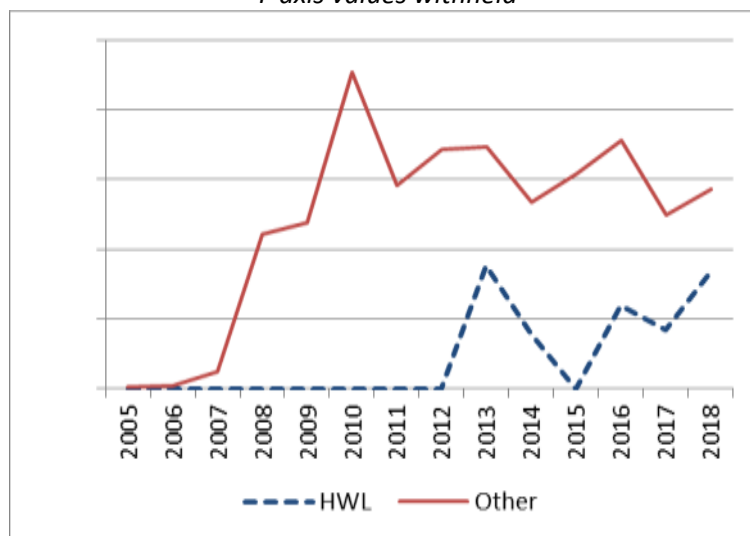
322. MBIE considers that such a small export volume would not have a negative effect on HWL’s profitability. Productivity would not be adversely affected either, as these peaches are produced at the same time as the rest of preserved peach production.

5.6 Imports by the Industry

323. Section 8(2)(f) of the Act requires the chief executive to have regard to the nature and extent of importations of dumped or goods by New Zealand producers of like goods, including the value, quantity, frequency and purpose of any such importations.

324. MBIE has identified that in recent years HWL has been a major importer of canned peaches from South Africa.

Figure 5.12: Imports from South Africa by HWL – MT
Y-axis values withheld



325. The domestic sales data provided by HWL included imports, so the weighted average prices used in the price undercutting comparison does include imported goods, with consequences for the overall price levels established. However, the use of weighted averages is considered to be appropriate to address the difficulties that arise if the comparison tries to encompass like-for-like comparisons between can sizes, product styles and grades.

326. Another factor relating to HWL’s imports arises from the determination of export prices through negotiation, and the price levels achieved by HWL. MBIE’s considerations in this regard are set out in sections 4.6 and 4.7, where it is noted that the dumping margins established by MBIE show that the dumping margins for goods imported by HWL are higher than the weighted average dumping margins for all of the goods imported.

327. In its conclusion relating to dumping, MBIE noted that there is currently dumping of the subject goods, except for A10 cans and most exports by RFG. In light of the commercial arrangements for pricing of imports and conditions in the South African market, MBIE considers that it is unlikely that there will be any significant changes to normal values and export prices which would remove the prospect of continued dumping.
328. MBIE considers that the value, quantity, frequency and purpose of imports by HWL are contributing to the continuation of dumping and affect the evaluation of the injury factors that MBIE is required to examine. However, the effect of the imports has been taken into account in the evaluation of the price effects of the dumped imports, which will in turn be reflected in the consideration of the levels of anti-dumping duty in terms of section 10E(2)(a)(i) of the Act, which requires the Minister to have regard to the desirability of ensuring that the rate or amount of duty is not greater than is necessary to prevent material injury or a recurrence of material injury.

5.7 Conclusions on the Continuation or Recurrence of Injury

329. In relation to the likelihood of a recurrence of material injury should anti-dumping duties expire, and in the order of the matters to be examined as set out in section 8 of the Act, MBIE concludes that:
- The removal of anti-dumping duties is not likely to see a significant increase in imports from South Africa.
 - Continued dumping of subject goods from South Africa is likely to result in continued price undercutting, with consequent price depression and price suppression.
 - Consequent upon the likely price effects and if duties are not continued:
 - output is unlikely to be a useful indicator of the likelihood of injury attributable to dumped goods
 - there is likely to be a small reduction in sales revenue
 - it is not likely that there will be any significant effect on HWL's market share if anti-dumping duties are not continued
 - in the absence of anti-dumping duties EBIT is likely to reduce further
 - any effect on productivity and return on investments will be the outcome of other effects that can be attributed to the continuation or recurrence of dumping and injury
 - utilisation of production capacity is not a useful measure in this case.
 - The removal of anti-dumping duties could contribute to a lower market share for the domestic production through price competition.
 - The magnitude of the margin of dumping contributes to the injurious effect of the dumped goods.
 - Potential negative effects on cash flow and growth arise from the impact on sales revenue and profits.
 - Inventories, employment and wages, and ability to raise capital and investments are not relevant injury factors.

330. MBIE has reviewed other causes of injury and is satisfied that the likelihood of injury arising from other causes has not been attributed to the dumped goods.
331. MBIE has noted that imports by HWL have been significant in both volume terms and in their effect on prices, but has had regard to those effects in the assessment of injury.
332. On the basis of the above considerations, MBIE concludes that if the anti-dumping duties expire, dumped imports of canned peaches from South Africa are likely to result in the continuation and recurrence of material injury to the domestic industry.

6. Rate or Amount of Anti-dumping Duty

6.1 Legal Basis

333. Section 17G(2)(a) of the Act requires that if the Minister makes an affirmative determination under section 17G(1) of the Act that the continued imposition of anti-dumping duty is necessary to offset dumping and that material injury to an industry would be likely to continue or recur if the duty expired or were otherwise removed or varied, then the Minister must determine the rate or amount of anti-dumping duty, in accordance with section 10E of the Act, that will form the basis for full review stage 2.

334. Section 10E(1) of the Act provides as follows:

- (1) The Minister may, in respect of dumped or subsidised goods,—*
 - (a) determine different rates or amounts of duty for named exporters;*
 - (b) determine a residual rate or amount of duty for all other exporters from the same country as a named exporter.*
- (2) The Minister must, in determining the rate or amount of the duty, have regard to—*
 - (a) the desirability of ensuring that the rate or amount is not greater than is necessary to—*
 - (i) prevent the material injury or a recurrence of the material injury; or*
 - (ii) remove the threat of material injury to an industry; or*
 - (iii) prevent the material retardation to the establishment of an industry;*
 - and*
 - (b) New Zealand’s obligations as a party to the WTO Agreement.*
- (3) The rate or amount must not exceed,—*
 - (a) in the case of dumped goods, the difference between the export price of the goods and their normal value; and*
 - (b) in the case of subsidised goods, the amount of the subsidy on the goods.*

335. In this part of the 17F Report, MBIE outlines the conclusions reached on the proposed form and rate of anti-dumping duties, as a basis for interested parties to make submissions on this matter.

6.2 Dumping and Injury

336. MBIE has established that there is continuing dumping of exports of canned peaches from South Africa, and has concluded that it is likely that the removal of anti-dumping duties will lead to a continuation or recurrence of injury attributable to dumping of canned peaches from South Africa. MBIE has therefore concluded that the continued imposition of anti-dumping duties is necessary.

337. MBIE notes that imports of A10/2.95kg cans from South Africa, and import from RFG on an overall basis, are not currently dumped, and it is not likely that the removal of duty applicable to these goods will lead to a continuation or recurrence of injury attributable to them.

338. On the basis of its examination of the volume of imports, the effect of the dumped imports on prices, and the consequent impact of the dumped goods on the New Zealand industry, MBIE concludes that if the anti-dumping duties are not in place, dumped

imports of canned peaches from South Africa are likely to result in the continuation and recurrence of material injury to the domestic industry.

6.3 Form of Anti-dumping Duty

339. An anti-dumping duty may take one of three main forms:

- ad valorem duty rate
- a specific duty
- reference prices.

6.3.1 Ad valorem duty rates

340. An ad valorem duty is a duty based on the margin of dumping or the margin of injury (if the margin of injury is less than the margin of dumping), and is expressed as a percentage of the VFD of the goods.

341. Ad valorem duty rates can usually be provided to all parties, and therefore are transparent. They are also convenient to apply and are unlikely to be substantially affected by exchange rate movements.

342. Ad valorem rates of duty can be evaded if invoice values of goods subject to duty are manipulated, particularly if imported in conjunction with similar goods which are not subject to anti-dumping duties. MBIE considers that the likelihood of invoice manipulation is low for the subject goods.

6.3.2 Specific duties

343. A specific duty is a set amount per unit of products based on the monetary value of a margin of dumping. It has the advantages of being convenient to apply, impossible to evade by incorrectly stating the value for duty, and clearly indicates to the importer the amount of duty payable.

344. However, a specific duty can operate effectively only when prices and exchange rates are consistent and stable, otherwise duty amounts could be collected that are either greater than or less than required to remove either injury or dumping.

345. MBIE considers that specific duty amounts are not the best way of applying duties in the circumstances of the current case, because there is a history of exchange rate and pricing changes.

6.3.3 Reference prices

346. A reference price approach imposes duty based on the difference between the transaction price and a benchmark price. Where the transaction price is lower than the benchmark price, the amount of the difference is the duty payable. A reference price can be based on either a domestic price (in the exporting country) or the New Zealand domestic industry's non-injurious price (a lesser duty).

347. Reference price duties have the advantage of clearly signalling to particular exporters and importers what non-dumped or non-injurious prices are. Additionally they are collected only when goods are priced below the reference price. Therefore, duty is only collected to the extent necessary to remove either injury or dumping.

348. Reference prices are most suitable when dealing with movements in export price and exchange rates (if expressed in the currency of the normal value). A NV(VFDE) is set in the currency of the normal value, but Non-Injurious FOBs (NIFOBs) are expressed in the currency of the importing country.
349. Reference prices usually remain confidential to parties other than the particular importer due to the use of confidential information in their calculation, except NIFOB amounts may be released to the domestic industry because they are based on the domestic industry's unsuppressed selling prices in the absence of price undercutting.
350. Reference prices are particularly useful for dealing with situations where a lesser duty is applicable, that is, a duty set at less than the margin of dumping but at a level that would still not be injurious to the industry.
351. The reference prices approach does however have several disadvantages. It is claimed that duties are more easily evaded than other forms of duty, by overstating the VFD of the goods. They are set at a fixed level based on a snapshot of prices and costs, which usually changes over time and becomes less accurate. While significant changes which may occur over time in prices and exchange rates can be addressed by a reassessment of reference prices, the duties may not be functioning effectively for some time before the duties are reassessed.
352. Reference prices may also be less transparent, as they may be set using confidential information from the domestic industry or exporters which require the amounts to be suppressed as confidential. At the end of the 2011 investigation, all of the NIFOB and alternative NV(VFDE) amounts for all exporting manufacturers were suppressed as confidential. A NV(VFDE) amount for other suppliers was however published.

6.4 Original Imposition of Duties

353. The original investigation and subsequent reviews and reassessments established anti-dumping duties on the basis of reference prices, in the form of NV(VFDE) values in ZAR.

6.5 Proposed Rates or Amounts of Anti-dumping duties

354. On the basis of its investigation, MBIE considers that it would be appropriate to determine rates of anti-dumping duty that address the injury to the domestic industry caused by price undercutting.
355. No dumping has been found for exports of the A10 can size from South Africa, nor is it considered likely that dumping will recur, so no duty should be applied to those goods. For the remainder of the subject goods imported from South Africa, it is proposed that ad valorem anti-dumping duties be set, for each South African producer, for all can sizes involved, taken together as weighted average at the level of price undercutting established for those goods.
356. In order to remove the injurious effects of price undercutting at the ex-wharf level, it is necessary to calculate the rate of duty that would be required at the VFD equivalent level, which is the basis for Customs to assess the duty payable on import shipments. Because the VFD equivalent level is a lower number than the ex-wharf price, the

percentage rate of duty needs to be pitched at a rate that returns the amount of price undercutting established on the basis of the ex-wharf price. Accordingly, the price undercutting level of 12.5 per cent for other can sizes exported by L&AF is equivalent to 16.4 per cent at the VFD level.

357. In accordance with section 10E(2)(b) of the Act and Article 9.4(i) of the AD Agreement, the rate applicable to any non-investigated South African producers is set at the weighted average margin of dumping established for the investigated producers. The use of a price undercutting related duty is not appropriate since those duties are based on export prices of investigated producers.

358. On the basis proposed, anti-dumping duties would be determined as follows:

South African Producer	Goods	Duty
Langeberg & Ashton Foods	A10 (e.g. 2.95kg/3kg/3.06kg)	No duty
	Other can sizes (e.g. 410g/415g/420g/820g/825g)	16.4%
Rhodes Food Group	All can sizes	No duty
All other producers	All can sizes	16%

7. Conclusions

359. On the basis of the information available, MBIE's conclusions on the matters it is required to investigate in a full review stage 1 are:
- That the continued imposition of anti-dumping duties on the subject goods is necessary to offset dumping, and
 - That material injury to an industry would be likely to continue or recur if the duty on the subject goods expired or were otherwise removed or varied.
360. In light of these conclusions, MBIE has assessed the rate or amount of anti-dumping duty that would be appropriate, and has reached the conclusion that ad valorem rates of anti-dumping duty should be applied to address the injury to the domestic industry caused by price undercutting by imports of dumped goods from South Africa.
361. MBIE notes that if the Minister makes an affirmative determination under section 17G(1) of the Act, then in accordance with section 17G(2) of the Act the Minister must determine the rate or amount of anti-dumping duty that will form the basis for a full review stage 2, and direct the chief executive to immediately start a full review stage 2.

8. Recommendations

It is recommended that with regard to the imposition of anti-dumping duty on imports of canned peaches from South Africa:

- a. that the Minister make an affirmative determination under section 17G(1) of the Act that that the continued imposition of the duty is necessary to offset dumping; and that material injury to an industry would be likely to continue or recur if the duty expired or were otherwise removed or varied;
- b. that the Minister determine, in accordance with section 17G(2)(a) of the Act, that the rate of anti-dumping duty in accordance with section 10E that will form the basis for full review stage 2 should be on the basis of the rates set out below:

South African Producer	Goods	Duty
Langeberg & Ashton Foods	A10 (e.g. 2.95kg/3kg/3.06kg)	No duty
	Other can sizes (e.g. 410g/415g/420g/820g/825g)	16.4%
Rhodes Food Group	All can sizes	No duty
All other producers	All can sizes	16%

- c. that the Minister direct, in accordance with section 17G(2)(b) of the Act, that the chief executive immediately start a full review stage 2 under sections 17H, 17I and 17J of the Act.

ANNEX 1: COMMENTS RECEIVED ON THE INTERIM REPORT

Comments on the Interim report were received from:

- A. Brooke Holdings Limited (BHL), made on behalf of both BHL and L&AF
- B. Heinz Wattie’s Limited (HWL)
- C. Rhodes Food Group (RFG)

A. BHL Submission (on behalf of BHL and L&AF)	MBIE Comments
A1 Dumping	
<p>BHL noted the reference in the Interim Report to the 2013 ADC investigation of canned peaches from South Africa, and its conclusion that dumping was negligible, whereas the New Zealand review of the same period found a dumping margin of 11 per cent. BHL suggested that since the same companies were involved, the difference in dumping margin may have been the result of methodology.</p>	<p>The ADC investigation found that there were sales in the ordinary course of trade in South Africa (as did the earlier MBIE review), and compared those sales with export prices. MBIE does not have access to the confidential information used by the ADC, but the difference in the dumping margins established could simply reflect the fact that Australia and New Zealand are different markets.</p>
<p>BHL noted that in the current investigation MBIE has worked on a weighted average whereas in previous investigations the calculation has been applied to each grade and a reference price set for each of the three grades: Choice, Standard and Sub-standard.</p>	<p>MBIE notes that although a weighted average-to-weighted average approach was relied on for the current review, adjustments were made to the constructed value base price for the differences between the material costs for choice and standard grade as opposed to sub-standard and irregular grade goods, as specified in paragraph 131. MBIE also noted in the Interim Report that no allowance has been made for differences between forms such as diced, slices or halves, since it established that these differences would not affect price comparability.</p>
<p>BHL noted that in the investigation, normal values were determined on the basis of constructed values, and that an amount for the rate of profit was determined. BHL suggested that MBIE calculate normal values based on the sales of similar grades made to an unrelated domestic customer.</p>	<p>As explained in the Interim Report, MBIE considered relying on sales to an unrelated domestic customer, but concluded that sales through Tiger Brands were the most appropriate basis for determining normal values. MBIE reached this conclusion as the volume of sales to the unrelated</p>

<p>BHL also requested that MBIE give consideration to comparing the export price to third countries in order to arrive at a clear determination on the extent of dumping margin (if any) on the sales of similar grades of sliced peaches. BHL provided details of the transaction of the same goods with a third country.</p>	<p>domestic customer in 2018 did not meet the threshold of 5 per cent of export sales provided for in the AD Agreement.</p> <p>The consideration of sales to third countries is an option, but presents some difficulties in obtaining reliable information, since it can be unclear how representative those sales are, and whether they constitute like goods. Additionally, there is no assurance that sales to a third country aren't also dumped. MBIE notes that information was available to it which allowed the construction of normal values, and considered it appropriate to rely on this approach.</p>
<p>BHL noted that HWL provided its view in document 163 of the public file to mean that it accepts the current remedies are set at an appropriate level, and that it is not being negatively impacted, i.e., that the playing field is level.</p> <p>BHL noted that the fact that FOB levels are generally 24-27 per cent above the reference pricing and the South African CPI had increased 22.5 per cent during the intervening period between investigations disproves the conjecture that if anti-dumping controls were removed, South African exporters would cut prices and start dumping.</p>	<p>MBIE reiterates that its conclusion in the Interim Report was that dumping is currently happening. The implication of this is that if anti-dumping duties were removed, South African exporters would not have to cut prices for dumping to happen, since by simply continuing sales in the same way as during the POR(D), dumping would continue. If South African exporters were to cut prices, dumping would increase, not start.</p> <p>The point about price increases and inflation was to illustrate that reference prices can quickly lose their validity.</p>
<p>A2 Injury</p>	
<p>BHL considered that it is difficult to determine in the interim report that material injury has been occurring, and that the issue is whether material injury will occur if anti-dumping controls are removed.</p> <p>BHL noted that in paragraph 181 of the Interim Report MBIE set out the conclusions of the last sunset review commencing in 2013. BHL noted that none of these economic impacts eventuated. Further, BHL noted that the decline in the importation of South African canned peaches into New Zealand isn't due to the imposition of anti-dumping controls, as export prices are above the reference prices and continue to rise, but is instead</p>	<p>MBIE would like to clarify that the findings of the last sunset review, as set out in paragraph 181, were those likely to eventuate <u>should anti-dumping duties not be continued</u>. The 2013 sunset review concluded that anti-dumping duties should continue, which explains why these economic impacts never eventuated.</p> <p>MBIE notes that anti-dumping duties are not intended to restrict the importation of South African canned peaches into New Zealand, rather they operate to remove unfair or injurious pricing of the goods by the exporters. MBIE fully reviewed the volume effects in Section 5.2 of the Interim Report, including the likely import volumes, in accordance with a</p>

<p>reflective of supply and demand.</p>	<p>range of considerations.</p>
<p>BHL noted HWL’s claim that if anti-dumping controls are removed there is a “reasonable” expectation that the costs savings from the removal of the duties would be passed on, but pointed out that current imports of South African canned fruits do not attract an import duty, resulting in the removal of anti-dumping duties having no effect, and consequently, that there is no threat of injury.</p>	<p>Imports of canned peaches from South Africa are currently subject to anti-dumping duty if the prices are less than the reference prices. The fact that anti-dumping duties may not have been collected may well reflect the failure of the reference price to keep pace with inflation and other price pressures, but this does not mean that imports are not dumped or that dumped prices are not injurious.</p>
<p>BHL claims that the significant variations in import volumes between the reviews have not led to a reoccurrence of material injury, and notes the point made in paragraph 203 of the Interim Report that while the current retail canned peach market in New Zealand appears to be declining it does appear that Wattie’s brand sales are increasing. It is suggested that this supports BHL’s argument that prices are determined by international trends and that L&AF will shift sales to the most lucrative markets</p> <p>BHL noted that MBIE’s statement about importers sourcing a lower priced alternative, should an economic incentive be present, doesn’t acknowledge that pricing of South African canned peaches has risen and will continue to rise. BHL noted that this results in the imposition of anti-dumping duties not being influential, and that it would not be likely that importers will find an economic incentive to purchase South African canned peaches.</p>	<p>The injury analysis undertaken by MBIE has covered the effects of import volumes, price effects, and the consequent impact on the New Zealand industry established through the examination of the economic impact. This examination is not limited to import volumes alone but takes into account price effects as well as other possible causes of injury.</p> <p>MBIE notes that based on the evidence available to it, and when excluding any variations due to exchange rates and inflation, pricing of South African canned peaches has not been increasing (as indicated by Figure 4.3 of the Interim Report). The economic incentive to purchase South African canned peaches arises from the assessment indicated in Figure 5.3 of the Interim Report, where it is noted that average prices from South Africa have been consistently lower than Oak prices. South African imports appear to have a price advantage over domestic production, which provides the incentive to source canned peaches from South Africa.</p>
<p>A3 Price Undercutting and Price Depression</p>	
<p>BHL noted that MBIE concluded that there is no price undercutting of the Oak brand prices by RFG. BHL considers that it was difficult for HWL to contend that there is undercutting.</p> <p>BHL considered HWL’s estimate that importers could retail a 410g can of peach at \$0.69c and make a profit flawed. BHL’s considers that this statistic includes a composite of pack sizes, grades and mediums. BHL’s notes that</p>	<p>MBIE notes BHL’s comments in respect to HWL’s assessments.</p>

<p>its data indicates that the best a retailer could retail a 410g can of peaches for is \$0.92c including GST but no profit. BHL further noted that Figure 5.6 demonstrates the flaw in HWL’s argument, and the margin of price suppression would be eliminated when the price increases of the South African exporters are factored in.</p>	
<p>BHL’s noted that Figure 5.5 does not strongly support the conclusion that MBIE drew from it, as Figure 5.5 shows a slight decline in pricing but nothing of any magnitude.</p>	<p>On Figure 5.5, MBIE notes that the data has been scaled and axes have been withheld to protect the confidentiality of the information provided by the domestic industry. MBIE’s conclusion in regards to this figure is that Oak prices declined in 2018, recovered in 2019, and are forecasted to decrease again on the basis of current undercutting levels. Prices of Wattie’s brand goods are forecast to continue to decline. These trends can be identified in Figure 5.5, but the magnitude of change is not to be ascertained through a graph where axes and scales have been withheld.</p>
<p>BHL pointed out that:</p> <ul style="list-style-type: none"> • Oak is HWL’s ‘fighting brand’ and so will constantly influence the price of the Wattie’s brand, • L&AF is contracted to supply both canned peaches, and • It is claimed that price undercutting was occurring in 2014 and 2015 when the revised anti-dumping remedies were re-installed. 	<p>MBIE notes BHL’s points in terms of Oak influencing the price of the Wattie’s brand, L&AF’s contracts to supply peaches, and the claim that price undercutting was occurring in 2014 and 2015 when the revised anti-dumping remedies were re-installed.</p>
<p>BHL noted that in assessing the likely impact of the removal of anti-dumping duties, MBIE did not take into account the progressive increases in the price of South African canned peaches and the fact that this process allows HWL to increase its prices accordingly.</p>	<p>BHL did not provide evidence supporting its claim. The information available to MBIE indicates the opposite to be the case (Figures 4.3 and 5.3 of the Interim Report).</p>
<p>BHL’s challenges MBIE’s overall conclusion that continued dumping is likely to result in continued price undercutting with consequent price depression and price suppression. BHL contends that if MBIE was to apply a like goods methodology to its appraisal of the question of dumping by L&AF, the</p>	<p>MBIE notes that BHL challenges the overall conclusion that continued dumping is likely to result in continued price undercutting, with consequent price depression and price suppression. MBIE does not consider that this conclusion is incorrect. It is unclear what is meant by</p>

<p>result would indicate that dumping was not occurring.</p>	<p>BHL’s request to MBIE to “apply a like goods methodology to its appraisal of the question of dumping by L&AF”, as this is the exercise that MBIE carried out, as explained in section A1 above.</p>
<p>BHL noted that the price undercutting argument is skewed by the importations by HWL from South Africa.</p>	<p>MBIE addressed the issue of HWL imports in the Interim Report. For example in section 2.4.2 relating to the identification of the New Zealand industry; section 4.4 relating to the findings on current dumping; section 5.1.3 relating to injury information provided by HWL; section 5.3.1 (paragraph 221) relating to price undercutting; and in section 5.6 which addressed the requirement in section 8(2)(f) of the Act to have regard to the nature and extent of importations of dumped goods by New Zealand producers of like goods, including the value, quantity, frequency and purpose of any such importations. The price undercutting assessment included HWL’s imports on both sides of the equation, that is, in calculating the ex-wharf price and the HWL ex-factory price. MBIE considers this to be appropriate.</p>
<p>A4 Profits</p>	
<p>BHL noted that HWL’s EBIT increased between 2014 and 2018, making it difficult to argue injury on this basis. BHL further noted that HWL’s argument that it will suffer significant reductions in EBIT if anti-dumping controls are removed is promoted with every sunset review, but hasn’t happened, and instead the opposite has occurred and HWL’s EBIT continues to improve.</p> <p>BHL noted that it cannot see how EBIT can be reduced further when it has increased, and that if profit is reducing whilst EBIT is increasing, then this points to a situation that is not related to the importation of South African canned peaches.</p>	<p>MBIE notes that BHL’s interpretation of HWL’s EBIT performance is flawed. As indicated by Figure 5.10, it is not correct that HWL’s EBIT increased between 2014 and 2018. EBIT decreased from 2014 to 2015, recovered between 2015 and 2017 to reach the level of 2014, but then strongly decreased from 2018 to 2019. BHL also claimed that HWL’s argument that the removal of anti-dumping duties will cause a significant reduction in EBIT has not happened. MBIE notes that the projection relates to a scenario where anti-dumping duties are not imposed. As duties have continued to be imposed in every sunset review of canned peaches from South Africa since 1996, this outcome has not eventuated.</p>
<p>BHL noted that HWL’s production, return on investment, and production capacity have not been negatively impacted by the continuing importation</p>	<p>MBIE notes that BHL’s point relates to the same matter as mentioned above. As duties have not ceased, these effects have not eventuated.</p>

of canned peaches from South Africa.	
A5 Form of Anti-dumping Duty	
<p>BHL believes that the fairest form of anti-dumping duties, and most likely to encourage exporters to increase prices, is reference pricing. BHL also noted that, as MBIE recognizes, ad valorem duty rates can be manipulated, and they discourage exporters from raising prices. In this regard, BHL considers ad valorem duties are counterproductive.</p>	<p>As mentioned above, imports of canned peaches from South Africa have been, in the past, subject to reference price anti-dumping duties. As indicated in Figure 4.3 of the Interim Report, these duties became outdated and were only providing a lower limit on prices and duties were not widely collected. This does not mean that imports are not dumped or that dumped prices not injurious. For these reasons, MBIE considers that ad valorem duty rates are most likely to address the injury to the domestic industry caused by price undercutting. MBIE also notes that although ad valorem duty rates can be manipulated and may discourage exporters from raising prices, the likelihood of invoice manipulation is low for the subject goods, as mentioned in the Interim Report.</p>

B. HWL Submission	MBIE Comments
B1 Profit used in constructed normal values	
<p>HWL considered that the profit used in the construction of normal values for L&AF and RFG was understated, and the profit used should be the profit across the domestic market of all producers.</p> <p>In particular, HWL noted that the L&AF canned peach business was at a loss so using general sales of canned fruit would include those losses and the profit figure would be affected. HWL notes that the Act provides [at section 5(2)(d)(B)] that profit should be</p> <p><i>An amount calculated in accordance with such rate as the chief executive determines would be the rate of profit on that sale having regard to the rate of profit normally realised on sales of goods (where such sales exist) of the same general category in the domestic market of the country of export of the goods;</i></p>	<p>The profit used by MBIE in the construction of normal values is based on the best information available to MBIE, and meets the requirements of section 5(2)(d)(ii)(B) of the Act.</p> <p>Using L&AF’s profit for goods in the same general category is more reflective of the normally realised rate of profit for L&AF, as sales of other products in the same general category are more profitable than sales of canned peaches, the latter being at a loss.</p> <p>It is also relevant that “all producers” in this case effectively means L&AF and RFG, both of which were operating at a loss for domestic sales of canned peaches.</p>
<p>HWL noted that L&AF sells to Tiger Brands and this relationship has affected the selling price and profit, so L&AF’s normal value should have been calculated by the Tiger Brands selling price to a non-related customer. HWL cites the WTO dispute US – Hot Rolled Steel in which the Appellate Body found that downstream transactions could be used to calculate normal value.</p>	<p>MBIE has used the profit achieved by Tiger Brands in the canned fruit category on its sales to unrelated customers, rather than sales from L&AF’s to Tiger Brands which are not in the ordinary course of trade. MBIE is therefore satisfied that the profit it has used in the construction of normal values for L&AF is not affected by the relationship between L&AF and Tiger Brands. MBIE is also satisfied that the profit used is the amount available to MBIE which is the least affected by sales at a loss.</p>
<p>HWL noted that similar comments applied to RFG.</p>	<p>As explained above for L&AF, using RFG’s profit made in the same general category is more reflective of the normal rate of profit achieved by RFG, as sales of other products in the same general category are more profitable than sales of canned peaches, the latter being at a loss.</p>

B2 Injury based on Oak undercutting	
<p>HWL considers that injury has not been addressed by basing the remedy solely on the undercutting of the Oak brand.</p> <p>HWL believes that the correct comparison for price undercutting should use the average revenue per kg obtained from the industry manufacturing preserved peaches of all types and sizes. HWL suggests since MBIE used of weighted averages for exporters and single dumping margins it would seem only appropriate to treat the local industry in the same way and not unfairly impair HWL in its analysis.</p> <p>HWL points out that injury is to the business manufacturing like goods, and other key elements are not analysed by the Oak brand alone, although separate examinations can be used.</p> <p>HWL notes that the total business is considered in the EBIT analysis, and an objective examination would not confuse a marketing strategy with the establishment of a remedy that seeks the removal of injury caused by dumping to the extent of the Oak brand alone.</p> <p>HWL points that the calculation of dumping is focused on the product, preserved peaches, whether or not the peaches are a premium brand or a fighting brand. HWL notes that MBIE has acknowledged that the Oak brand may, and often is an imported product.</p>	<p>Section 8(2)(b) of the Act provides that MBIE shall have regard to “the extent to which the prices of the dumped or subsidised goods represent significant price undercutting in relation to prices in New Zealand (<u>at the relevant level of trade</u>) for like goods of New Zealand producers.” <i>[emphasis added]</i>.</p> <p>MBIE’s approach to price undercutting in this review was set out in section 5.3.1 of the Interim Report. MBIE has used the undercutting level against Oak brand goods because, on the basis of information provided by HWL, the Wattie’s brand goods operate at a premium over Oak brand goods. Comparing the Oak brand product with the imported product ensures a comparison at the relevant level of trade, and ensures a fair price undercutting analysis which considers the relevant level of trade in accordance with section 8 of the Act.</p> <p>MBIE is satisfied that the analysis of the effects of undercutting at the Oak level carries through to the Wattie’s brand level and consequently properly reflects the injury caused to HWL’s total business.</p> <p>Where MBIE has analysed HWL’s business as a whole and not on separate Oak and Wattie’s levels, a key factor has been HWL’s inability to provide injury information at this level, and so MBIE has had to use the best information available, for example in regards to EBIT.</p>
<p>HWL goes on to cite the Australian Federal Court <i>Panasia</i>¹² case, which, in the context of zeroing, agreed with the Appellate Body in <i>US – Zeroing (Japan)</i>¹³ that the AD Agreement requires the calculation of a single</p>	<p>MBIE does not agree with HWL’s interpretation of the <i>Panasia</i> case in relation to injury. <i>Panasia</i> and <i>US – Zeroing (Japan)</i> discuss the calculation of a single dumping margin for exporters, but this discussion does not</p>

¹² *Panasia Aluminium (China) Limited v Attorney-General of the Commonwealth* [2013] FCA 870.

¹³ WTO document WT/DS322/AB/R.

<p>dumping margin for a particular exporter in respect of the goods under investigation.</p> <p>HWL then appears to attribute to the Appellate Body in this case the view that to properly apply the single dumping margin in order to calculate a remedy requires an objective examination of the material injury to HWL’s preserved peach business and not one part of the business in various presentations.</p> <p>HWL states that assuming that the injury is addressed by the undercutting of the Oak brand does not fully address the requirements of section 8 of the Act <i>[relating to material injury]</i>.</p>	<p>extend to the assessment of injury. Further, MBIE notes that the relevant parts of the <i>Panasia</i> case focus on the interpretation of Australian trade remedies legislation, which is not authoritative for the present case.</p> <p>In light of MBIE’s comments above, MBIE is satisfied that the requirements of section 8 of the Act are in fact addressed in its analysis of the undercutting of the Oak brand and its flow on effects on the Wattie’s brand.</p>
<p>C. RFG Submission</p>	<p>MBIE Comments</p>
<p>C1 Imports by Heinz Wattie’s Ltd</p>	
<p>RFG notes that HWL is a significant importer of the subject goods from South Africa and HWL has claimed that these imports are not injurious.</p> <p>RFG also notes that the prices negotiated by HWL are the lowest of all imported products from South Africa, resulting in a higher dumping margin for each of RFG and L&AF compared with the weighted average dumping margin.</p> <p>RFG submits that since imports by HWL cannot cause injury, they should be excluded from the likelihood determination of injury continuing or recurring in the future. RFG claims that exports destined for customers other than HWL are not dumped and this is relevant to MBIE’s consideration of the likelihood of a recurrence of injury. RFG submits that there is no evidence to suggest a likelihood that injury may continue or recur.</p>	<p>As stated in both the Interim Report and this 17F Report, MBIE has carefully reviewed the implications of HWL’s imports for the examination of the likelihood of a continuation or recurrence of dumping and injury, and does not consider that the fact of the imports provides a basis for changing its conclusions on these matters.</p> <p>MBIE referred to HWL’s imports at various points in the Interim Report, for example in section 2.4.2 relating to the identification of the New Zealand industry; section 4.4 relating to the findings on current dumping; section 5.1.3 relating to injury information provided by HWL; section 5.3.1 (paragraph 221) relating to price undercutting; and in section 5.6 which addressed the requirement in section 8(2)(f) of the Act to have regard to the nature and extent of importations of dumped goods by New Zealand producers of like goods, including the value, quantity, frequency and purpose of any such importations.</p>

C2 Price comparison	
<p>RFG notes that in conducting price comparisons between normal value and export price then differences in terms and conditions of sale, such as freight costs, payment terms and discounts are required under Article 2.4 of the AD Agreement.</p> <p>The export prices have been adjusted by deducting overseas freight, inland freight, packaging costs and handling and credit costs arising from exportation to establish the export price on an ex-factory basis.</p> <p>RFG points out that MBIE made normal value adjustment only in respect to physical differences arising from differences in the cost of the canning medium. RFG claims that the normal value is not at the ex-factory level, resulting in an unfair comparison.</p> <p>RFG claims that the normal value was constructed utilising verified selling and distribution costs provided by RFG, but these costs include damages, discounts and distribution costs for which no adjustment was made. The result is an inflated dumping margin.</p>	<p>MBIE has noted the points made by RFG relating to adjustments to ensure a fair comparison. This matter has been addressed in the context of MBIE’s response to RFG’s submission on constructed normal values (see below).</p> <p>In accordance with section 5(4) of the Act, where the normal value is ascertained under section 5(2), as in this case, the chief executive is required to make such adjustments as are necessary to ensure that the normal value so ascertained is properly comparable with the export price of the goods.</p> <p>The adjustments made by MBIE reflected its understanding of the elements making up the constructed value, but as outlined below MBIE has accepted that there was a degree of duplication in the provision for administration expenses and for selling and distribution expenses. This has been resolved by excluding from the constructed value any selling and distribution expenses that are not properly within the ex-factory price equivalent. MBIE is satisfied that the information provided by RFG confirms that the selling and distribution costs relating to the subject goods are all transaction-related and would be subject to adjustment if normal values had been established on the basis of selling prices rather than a constructed value.</p>
C3 Constructed normal value	
<p>RFG notes that the constructed normal value resulted in a weighted average dumping margin whereas RFG’s calculations indicated no dumping margin. RFG considers that this has arising from the addition of fixed plant overheads twice, through the inclusion of “Admin costs” from Appendix 6a to RFG’s questionnaire response, and the amount for “fixed plant overheads” discussed during the verification visit. The removal of the double counting results in a reduction of the weighted average dumping</p>	<p>MBIE has reviewed the information used in its constructed value for RFG and agrees that there is an element of duplication between “Admin costs” and “fixed plant overhead”.</p> <p>MBIE has also reviewed the costs covered by “selling and distribution expenses” to ensure that the constructed value properly reflects an ex-factory price. The amounts provided for “selling and distribution” is calculated on the basis of the overall selling and administration costs for all</p>

<p>margin from 19% to 7%.</p> <p>RFG notes that should MBIE correct this error as well as allowing for a fair comparison then RFG would have a negative dumping margin.</p>	<p>RFA sales as a percentage of the cost of sales, and applied to the cost to make for the product lines exported to New Zealand. The provision for profit is similarly based on the application of the RFA profit to the cost to make MBIE has clarified that its calculations of the amounts for administrative and selling costs and profits are correctly linked to their base factor of cost of sales/cost to make.</p> <p>The outcome of the review is that there is no dumping for goods in juice, and a dumping margin for 410g cans with peaches in syrup. The weighted average margin of dumping for RFG exports during the POR(D) is less than zero, so there is no overall dumping.</p>
<p>C4 Current dumping/Price behaviour</p>	
<p>RFG notes MBIE’s conclusion that as a result of current dumping there is a clear indication that dumping will continue if the duties are removed. RFG notes that if its findings relating to dumping are confirmed then this finding needs to be reassessed and reversed, since there is currently no dumping.</p> <p>RFG also emphasises that it was unaware of any reference pricing when setting pricing to its New Zealand customers, which is a further indication that dumping should not recur if the duties are removed. RFG suggests that it also indicates that, contrary to MBIE’s conclusion, the reference price had no effect on RFG’s pricing behaviour and its absence could not alone lead to a conclusion that RFG will dump in the future if duties are removed, and in any event it is not dumping.</p>	<p>The revised dumping margins applicable to RFG lead to a conclusion that there is no dumping by RFG, but there continues to be dumping by L&AF.</p> <p>In addition, the assessment of the likelihood of a continuation or recurrence of dumping, as set out in section 4.5 of the Interim Report covered a range of factors, and the conclusion set out in paragraphs 166 and 167 of that Report that dumping is likely to continue arose from the commercial arrangements for pricing of imports and conditions in the South African market, as well as the existence of current dumping.</p> <p>MBIE has noted RFG’s statement that it was not aware of the anti-dumping duty reference price levels put in place in December 2014 (following a new shipper reassessment carried out at the request of RFG). The reference prices are referred to in paragraphs 151-154 of the Interim Report, while the pros and cons of using reference prices as the basis for ant-dumping duties are discussed in section 6.3.3.</p> <p>It is also relevant that in a dumping investigation intent is irrelevant, in that goods are dumped if the export price determined in accordance with section 4 of the Act is less than the normal value determined in accordance with section 5 of the Act.</p>

C5 Exchange rate	
<p>RFG points out that its prices are fixed when sales are concluded for a 12-month period prior to the start of the canning season. Given this, it is not possible for RFG to increase its exports to New Zealand to take advantage of any exchange rate upside. The exchange rate risk is taken by RFG.</p> <p>RFG also points out that since prices are fixed over a 12-month period the price responsiveness analysis needs to take this into account in order to avoid drawing erroneous conclusions.</p>	<p>MBIE notes that movements in exchange rates can affect whether or not individual shipments are dumped, and the level of dumping, irrespective of when the price was negotiated.</p> <p>With regard to the impact of exchange rates on the level of imports, MBIE notes that in paragraph 207 of the Interim Report it noted that it was not possible to conclude that exchange rate movements involving the NZD will encourage an increase in imports. MBIE sees no reason to change this conclusion, but will add a reference to the matters raised by RFG, which further support this conclusion.</p> <p>The analysis of price responsiveness referred to in paragraph 194 of the Interim Report was a simple indicative exercise based on information relating to all suppliers from South Africa. Data used covered the period from 2005-2018, and aggregated all suppliers from South Africa. The analysis simply identified that demand is sensitive to a change in price.</p> <p>Had the exercise been carried out for one calendar year only and if prices were fixed for a 12-month period, no such responsiveness would have been identified. However, since the period examined extended over 13 years the analysis yielded a statistically significant responsiveness of demand to price changes.</p>

CONFIDENTIAL ATTACHMENT 1: DUMPING ANALYSIS: L&AF

NOTE: This Attachment is Confidential in its entirety because making the information available would give a significant competitive advantage to a competitor of the submitter of the information. Section 4 of this 17F Report provides a summary of this confidential information to the extent that information is capable of summary.

CONFIDENTIAL ATTACHMENT 2: DUMPING ANALYSIS: RFG

NOTE: This Attachment is Confidential in its entirety because making the information available would give a significant competitive advantage to a competitor of the submitter of the information. Section 4 of this 17F Report provides a summary of this confidential information to the extent that information is capable of summary.