MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

LABOUR, SCIENCE AND ENTERPRISE
Trade and International

Canned Peaches from South Africa

2019 Full Review

Final Report

Trade (Anti-dumping and Countervailing Duties) Act 1988

Non-Confidential

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New Zealand Government

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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 (the)	WTO Agreement on Implementation of Article VI of GATT 1994
BHL	Brooke Holdings Ltd
chief executive (the)	Chief Executive of Ministry of Business, Innovation and Employment
CIF	Cost, Insurance and Freight
Customs	New Zealand Customs Service
EBIT	Earnings Before Interest and Tax
EMA	Employers and Manufacturers Association
FOB	Free on Board
Foodstuffs	Foodstuffs North Island Ltd and Foodstuffs South Island Ltd
HWL	Heinz Wattie's Ltd, the domestic industry
L&AF	Langeberg & Ashton, a Division of Tiger Foods Ltd
MBIE	Ministry of Business, Innovation and Employment
Minister, the	The Minister of Commerce and Consumer Affairs
NIFOB	Non-Injurious Free on Board
NV(VFDE)	Normal Value (Value for Duty Equivalent)
NZFGC	New Zealand Food & Grocery Council
NZMEA	The Manufacturers' Network
PF	Preliminary Findings
RFG	Rhodes Food Group Pty Ltd
USD	United States Dollar
VFD	Value for duty
Woolworths	Woolworths New Zealand Ltd
ZAR	South African Rand

EXECUTIVE SUMMARY

MBIE has carried out a full review of canned peaches from South Africa.

The Ministry of Business, *Innovation* and Employment (MBIE) has carried out a full review of anti-dumping duties on canned peaches from South Africa under the Trade (Anti-dumping and Countervailing Duties) Act 1988 (the Act).

Stage 1 of the full review concluded that the continued imposition of anti-dumping duties is necessary to offset dumping and material injury to the domestic industry.

Stage 1 of the full review was completed and a determination was made by the Minister of Commerce and Consumer Affairs (the Minister) on 18 November 2019. That determination was that the continued imposition of anti-dumping duties is necessary to offset dumping and material injury to the domestic industry, Heinz Wattie's Ltd (HWL). The Minister also determined the rate of anti-dumping duty that formed the basis of stage 2 of the investigation and directed MBIE to start stage 2.

Stage 2 of the full review concluded that the continued imposition of anti-dumping duties is in the public interest, as outlined in this Final Report.

MBIE started stage 2 on 22 November 2019. Stage 2 of a full review under the Act requires MBIE to investigate whether the continued imposition of the duties is in the public interest. In line with the process set out in the Act, on 28 January 2020 MBIE released a Public Interest Preliminary Findings Report outlining the preliminary findings of stage 2. Brooke Holdings Ltd (BHL) was the only party to provide comments on the Public Interest Preliminary Findings Report. Its comments were taken into account in the preparation of this Final Report and a detailed response is contained in Annex 1 of this Final Report.

Continuing to impose the duty is in the public interest unless the cost to downstream industries and consumers of imposing the duty is likely to materially outweigh the benefit to the domestic industry of imposing the duty. The Act sets out the matters which MBIE must consider.

Continuing to impose the duty is in the public interest unless the cost to downstream industries and consumers of imposing the duty is likely to materially outweigh the benefit to the domestic industry of imposing the duty. The Act sets out matters which MBIE must consider when investigating whether a duty is in the public interest. These are:

- the effect of the duty on prices of the dumped or subsidised goods
- the effect of the duty on the prices of like goods produced in New Zealand
- the effect of the duty on the choice or availability of like goods
- the effect of the duty on product and service quality
- the effect of the duty on the financial performance of the domestic industry
- the effect of the duty on employment levels
- whether there is an alternative supply (domestically or internationally) of the like goods available
- any other factor that the chief executive considers essential to ensure the existence of competition in the market.

MBIE used information from HWL, South African exporters, New Zealand importers and Customs, as well as its own research. MBIE is satisfied that there were no relevant downstream industries.

In assessing these factors, MBIE had regard to information received from HWL, New Zealand importers, South African exporters and the New Zealand Customs Service (Customs), as well as information from MBIE's own independent research. MBIE is satisfied that there were no relevant downstream industries for the goods on which anti-dumping duty is proposed.

MBIE has found that the continued imposition of anti-dumping duties is in the public interest.

MBIE has reached the finding that continuing to impose the duties at the reassessed rate is in the public interest. MBIE has found that the cost of the duties to downstream industries and consumers is not likely to materially outweigh the benefit of the duties to the domestic industry.

MBIE considers that the cost of anti-dumping duties to consumers is likely to be very small.

MBIE considers that since duties have been reassessed to apply to particular can sizes from only one significant South African exporter, some canned peaches from South Africa will still be exported in other can sizes and by the other significant exporter without being subject to anti-dumping duties. MBIE has concluded that the cost for consumers is likely to be very small, as a wide range of canned peaches will still be available in New Zealand at prices that are not likely to change significantly.

MBIE considers that the domestic industry is likely to benefit significantly from the anti-dumping duties.

MBIE has found that the benefit of the reassessed rates of duty is likely to be significant for the domestic industry. The anti-dumping duties are likely to remove the significant injurious effects of dumped goods as established in stage 1 of this review, and will enable it to maintain the production of canned peaches.

The Minister will make a determination based on this Final Report.

On the basis of the Final Report, the Minister will determine whether continuing to impose the duty is in the public interest.

1. Introduction

1. MBIE has conducted a full review of anti-dumping duties on canned peaches from South Africa under the Act.
2. Stage 1 of the review resulted in the Minister determining that the continued imposition of the anti-dumping duties was necessary to offset dumping and material injury to the domestic industry, HWL. Consequently, the Minister determined the rate of the anti-dumping duty in accordance with the Act and directed MBIE to start a full review stage 2 beginning on 22 November 2019.
3. Stage 2 under the Act requires MBIE to investigate whether the continued imposition of the duties at the rates determined by the Minister is in the public interest. The imposition of duties is in the public interest unless the cost to downstream industries and consumers of imposing the duty is likely to materially outweigh the benefit to the domestic industry of imposing the duty. A Public Interest Preliminary Findings Report was released to interested parties on 28 January 2020.
4. This Public Interest Final Report sets out the findings that are likely to form the basis for a determination to be made by the Minister on whether continuing to impose the duties is in the public interest.

2. Legal Requirements

2.1 Full review stage 2

5. The requirements for reviews under the Act are set out in Part 6. The requirements for stage 2 of a review are provided in section 17H of the Act:

(1) If the Minister directs the chief executive to start full review stage 2, the chief executive must investigate whether continuing to impose an anti-dumping or a countervailing duty at the rate determined under section 17G(2)(a) is in the public interest.
(2) Continuing to impose the duty is in the public interest unless the cost to downstream industries and consumers of imposing the duty is likely to materially outweigh the benefit to the domestic industry of imposing the duty.
(3) In investigating whether continuing to impose the duty is in the public interest, the matters the chief executive must investigate include those referred to in section 10F(3).

2.2 Public interest investigation

2.2.1 Definitions

Public Interest

6. According to section 17H(2) of the Act, continuing to impose the duty is in the public interest unless the cost to downstream industries and consumers of imposing the duty is likely to materially outweigh the benefit to the domestic industry of imposing the duty.

Consumers

7. Section 17H(4) defines consumers for the purposes of section 17H as:

(a) New Zealand consumers of –

(i) the dumped or subsidised goods; or

(ii) like goods; or

(iii) the other goods referred to in paragraph (a) of the definition of downstream industries; and

(b) if the Minister considers it appropriate for the purposes of this section, any other relevant New Zealand consumers.

Downstream industries

8. Section 17H(4) defines downstream industries for the purposes of section 17H as:

(a) each immediate downstream New Zealand industry that uses the dumped or subsidised goods, or like goods, as an input in the production of other goods; and

(b) if the Minister considers it appropriate for the purposes of this section, any other relevant downstream New Zealand industry.

2.2.2 Matters investigated

9. Section 10F(3) of the Act provides that in investigating whether imposing the duty is in the public intrest, the matters the chief executive must investigate include the following:

   (a) the effect of the duty on the prices of the dumped or subsidised goods;

   (b) the effect of the duty on the prices of like goods produced in New Zealand;

   (c) the effect of the duty on the choice or availability of like goods;

   (d) the effect of the duty on product and service quality;

   (e) the effect of the duty on the financial performance of the domestic industry;

   (f) the effect of the duty on employment levels;

   (g) whether there is an alternative supply (domestically or internationally) of the like goods available;

   (h) any other factor that the chief executive considers essential to ensure the existence of competition in the market.

3. Investigation procedures

3.1 Interested parties

3.1.1 New Zealand Industry

10. "Industry" is defined in section 3A of the Act as:

    a. The New Zealand producers of like goods; or

    b. Such New Zealand producers of like goods whose collective output constitutes **a major proportion** of the New Zealand production of like goods (emphasis added).

11. HWL remains the sole manufacturer of canned peaches in New Zealand. MBIE is consequently satisfied in terms of section 3A of the Act that HWL's output constitutes a major proportion of the New Zealand production of like goods and, therefore, that HWL can constitute the New Zealand industry for the purpose of this investigation.

12. 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.

3.1.2 Exporters

13. There were two South African exporters over the period of review for dumping (POR(D)):

    - Langeberg & Ashton, a Division of Tiger Foods Ltd (L&AF), and
    - Rhodes Food Group Pty Ltd (RFG).

14. MBIE also calculated a residual rate of duty in the event that any other South African exporters begin exporting canned peaches to New Zealand.

15. MBIE obtained relevant information from the South African exporters from questionnaire responses for stage 1 of the investigation and MBIE's verification visit to the exporters' premises in South Africa.

3.1.3 Importers

16. The New Zealand importers over the POR(D) were:

    - BHL,
    - Foodstuffs North Island Ltd and Foodstuffs South Island Ltd (Foodstuffs),
    - Woolworths New Zealand Ltd (Woolworths), and
    - HWL.

17. MBIE received relevant information from questionnaire responses for stage 1 of the investigation from BHL, Foodstuffs and HWL.

18. MBIE also received information from questionnaire responses for stage 2 from BHL and HWL, and a submission on the Public Interest Preliminary Findings Report was received from BHL. These comments have been addressed where relevant.

3.1.4 Downstream Industries

19. MBIE sought comments from a number of groups and companies in order to identify potential downstream industries. Those approached were the New Zealand Food & Grocery Council (NZFGC), Retail NZ, The Manufacturers' Network (formerly New Zealand Manufacturers and Exporters Association) (NZMEA), Business New Zealand, Employers and Manufacturers Association (EMA), the Importers Institute, New Zealand Council of Trade Unions, Barker Fruit Processors Limited, and Rangiora Bakery. No responses were received from any of these parties.

20. MBIE notes that the Act defines downstream industries as those that use the dumped goods, or like goods, as an input in production of other goods. Downstream industries of preserved peaches tend to purchase the goods in A10 cans, for which duties are not proposed, or large drums, which are not subject to this review. As duties are only proposed for 410g/415g/420g/820g/ 825g cans, MBIE is satisfied that there are no downstream industries for the goods on which duties are applied.

3.1.5 Consumers

21. MBIE sought comments from Consumer NZ, but did not receive a response from that body. No comments were received from consumers or any other bodies in response to the *Gazette* notice.

3.2 Subject goods

22. The goods which are the subject of the full review, hereinafter referred to as canned peaches, or "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).*

23. Canned peaches enter under the following tariff classification in the New Zealand Customs Tariff:

Figure 3.1: Tariff Heading

<table>
<tr><th colspan="6">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:</th></tr>
<tr><td>Number</td><td colspan="2">Statistical key</td><td>Goods</td><td colspan="2">Rate of Duty</td></tr>
<tr><td></td><td>Code</td><td>Unit</td><td></td><td>Normal</td><td>Pref.</td></tr>
<tr><td>2008.70</td><td></td><td></td><td>– Peaches, including nectarines:</td><td></td><td></td></tr>
<tr><td>2008.70.09</td><td>00L</td><td>Kg</td><td>– – Other [than cooked and preserved by freezing, not containing added sugar]</td><td>5</td><td>Free
*See Below
CA Free</td></tr>
<tr><td colspan="6">*Unless otherwise indicated, AAN, AU, CN, CPT, HK, KR, LLDC, MY, Pac, SG, TH, TPA and TW rates in the Preferential Tariff are Free.</td></tr>
</table>

3.3 Like goods

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

    a. 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.

25. A detailed outline of MBIE's consideration of like goods for the purpose of this review has been set out in section 2 of the 17F Report for stage 1 of the full review.

3.4 Imports of canned peaches

26. Table 3.2 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 presented below include HWL's imports.

Figure 3.2: 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

27. Imports from South Africa made up 76 per cent of total imports of the subject goods in the POR(D).

28. During the POR(D), imports of the subject goods from South Africa included peaches in 410g/415g (N1M) cans, 820g/825g (A2.5) cans, and 2.95kg/3kg (A10) cans, and including halves, slices and diced peaches in syrup and in juice.

3.5 Reassessed duties

29. The Minister determined the following rates of duty in accordance with section 17G(2) of the Act:

Figure 3.3: Rates of duty

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%

30. Imports of goods which would be covered by the anti-dumping duties determined by the Minister in the stage 1 investigation made up about half of the total 2018 imports from South Africa shown in Table 3.2.

31. In determining the rates of duty, the Minister had regard to the desirability of ensuring that the rate of duty is not greater than is necessary to prevent material injury or a recurrence of material injury, and is less than the margin of dumping. These rates of duty formed the basis of MBIE's public interest analysis.

4. Public interest investigation

32. As set out in section 10F(3) of the Act, MBIE assesses each factor below.

4.1 Effect of the duty on the prices of the dumped goods

33. MBIE is required to consider the effect of the duty on the prices of the dumped goods. In assessing this, MBIE has had regard to the impact that previous duties have had on prices of the imported goods; the extent to which importers and downstream industries are likely to pass on the duty through an increase in prices; and whether prices are responding to market factors.

4.1.1 Previous duties

South Africa

34. Anti-dumping duties have been imposed on canned peaches from South Africa since 1996. In assessing the effect of the proposed duty on the export prices of the dumped goods, MBIE undertook an analysis of the past impact duties have had on the export prices of the dumped goods from South Africa. This provides an indicator of the likely effect of the continued imposition of a newly reassessed duty going forward.

35. Based on Customs data, MBIE has assessed the evolution of export prices following the outcome of more recent reviews and reassessments of canned peaches from South Africa. In particular, prices were compared for periods before and after changes in the levels of anti-dumping duty. For the two main exporters of canned peaches from South Africa these anti-dumping duties were generally expressed as reference prices. Frequently, reference prices were established on the basis of can sizes and grades, but this information is not always available from Customs data. The outcome of the analysis is therefore indicative rather than definitive.

2007 Sunset Review and Reassessments

36. Following the 2007 sunset review and subsequent reassessment, anti-dumping duties were continued through reference prices[1] applicable from 12 February 2008. A reassessment of Choice grade canned peaches was undertaken in 2008-09, with reassessed NV(VFDE) reference prices applied to each can size from 10 February 2009. The reassessed level for one can size was lower than the previous NIFOB/NV(VFDE) alternatives. The NIFOB was expressed in NZD/kg terms so for the purposes of the analysis a conversion to ZAR/kg was made to ensure comparability with the NV(VFDE) levels expressed in ZAR/kg.

37. Because of the range of reference prices involved, and the reduction in the reference price for one line, it is difficult to draw any firm conclusions from the price movements before and after the Choice grade reassessment. Average prices across all sales indicate virtually

[1] NIFOB (Non-Injurious Free on Board) amounts which set a reference price at a price level that removes the injurious effect of dumped goods; and NV(VFDE) (Normal Value (Value for Duty Equivalent) amounts, which set a price level equivalent to the normal value in order to remove the effect of dumping.

no change when the periods are compared which suggests that the revised reference prices did not contribute to increased export prices.

2013 Sunset Review and Reassessments

38. A further sunset review in 2013 was followed by a reassessment which put in place reference price duties and a residual rate of 11 per cent to be applied from 29 May 2014. The reassessed duties were NV(VFDE) amounts for each grade, but with no differentiation between can size. The reference price levels were significantly higher than those previously applying. Before the implementation of the reassessed duties, a new shipper reassessment was initiated, and reference prices for the new shipper were established with effect from 19 December 2014. Reference prices were established for each grade but with no differentiation for can size.

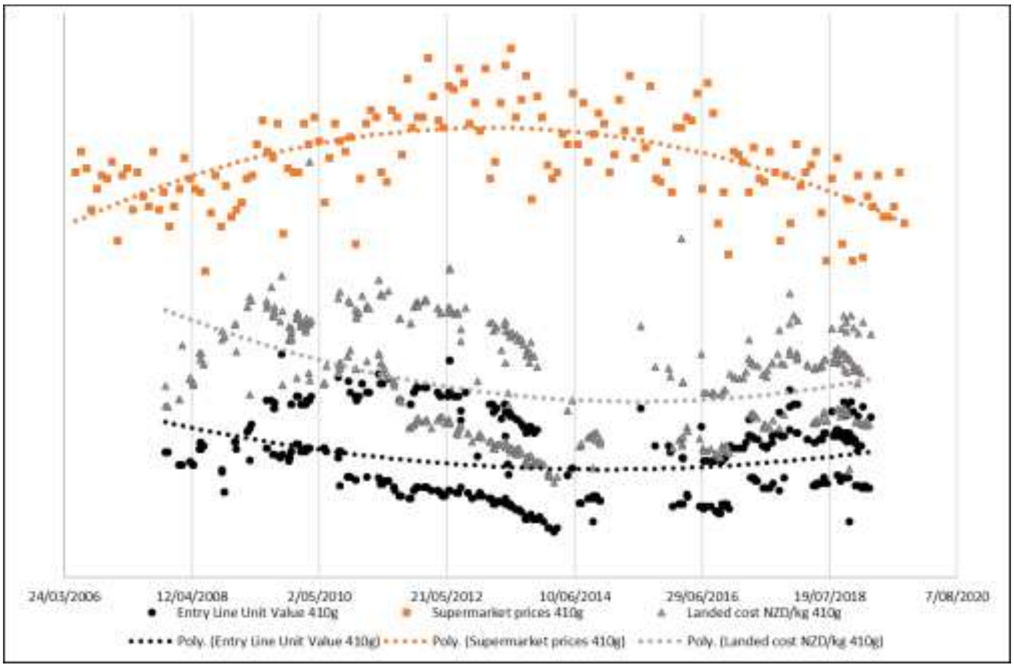
39. MBIE has analysed the effect on export prices of the reassessment following the 2013 Review and of the new shipper reassessment. The analysis indicates that following the implementation of higher reference prices following the 2013 review and reassessment, export prices increased significantly to levels above the reference price and, in ZAR/kg terms, continued to increase over the period concerned. MBIE notes that movements in the ZAR-USD exchange rate may have contributed to this increase.

40. MBIE has also analysed the effects on export prices of the new shipper reassessment. The analysis indicates that prices increased significantly to move above the reference price. Exchange rate movements have not been a significant contributor to this price trend, suggesting a clearer link between the imposition of duties and price movements.

Impact on New Zealand prices

41. MBIE has analysed the VFD and landed price (including ocean freight, insurance, Customs duty, anti-dumping duty, GST) movements for imports that can be specifically identified as 410g/415g/420g/N1M cans, against Consumer Price Index information for supermarket prices for 410g cans. The outcome shown in Figure 4.1 suggests that the price trends have been opposite, i.e. supermarket prices rose from 2006 to 2013, and have been declining since then. On the other hand, VFD and landed prices of South African canned peaches declined between 2007 and 2013 and have been increasing since then. This suggests that retail prices have not necessarily been affected by changes in import prices.

Figure 4.1: Price Trends – Retail Prices and Export Prices
NZD/kg
Y-axis values withheld



Other sources

42. Anti-dumping duties have been in place on imports of preserved peaches from China, Greece and Spain, as well as from South Africa. There are variations in the subject goods descriptions applying to these sources.

43. There have been virtually no imports from Greece since 2006, while imports from Spain have also been at very low levels since 2008. For these sources the amount of data available is not sufficient to allow any broad conclusions to be reached regarding any more recent impact on prices of the anti-dumping duties in force against these countries.

44. In the recent reconsideration of the sunset review of preserved peaches from China, MBIE analysed the pricing of imports of the subject goods (which cover a broader range of goods than the South African review), and noted that on average, there did not appear to be a strong increase in export prices after the imposition of duties in 2006, although prices have been steadily increasing since then, likely due to inflation.

Conclusion on previous duties

45. Evidence of past behaviour, and particularly since the 2013 Review, shows that movements in export prices of canned peaches from South Africa have tended to follow changes in the level of anti-dumping duties. This has reflected the fact that anti-dumping duties have generally been expressed as reference prices based on the margin of dumping, which means that increases in export prices have increased returns to exporters, rather than requiring the payment of duties by importers, although the net effect on prices into the New Zealand market is similar. The conclusion is that the imposition of anti-dumping duties has affected the export price of the subject goods.

46. However, the export price movements are not reflected in New Zealand retail price trends, suggesting that while the imposition of anti-dumping duties may have led to prices of imports that are higher than would otherwise apply, this has not been translated through to higher retail prices in New Zealand. This suggests that the higher prices of imports are likely to be felt by importers, but possibly not by retail customers.

4.1.2 Pass-on rate

47. In the questionnaire for the full review stage 1 investigation, importers of the subject goods from South Africa were asked to comment on the extent to which their prices would be likely to change if duties were to be imposed.

48. BHL and Foodstuffs commented on the matter. BHL, which imports A10 cans for sale to food producers, noted that, as its imports are not currently dumped; pricing has not been influenced by the anti-dumping controls. On the other hand, Foodstuffs indicated that the imposition of any duties would be passed straight on to the end customer in retail prices, in turn having a detrimental effect on their ability to compete in the category, and effectively reducing competition.

49. MBIE has not assessed the extent to which downstream industries may pass-on price increases to their consumers should anti-dumping duties be imposed, as MBIE is satisfied that there are no downstream industries affected by the public interest investigation.

4.1.3 Price Factors

50. In assessing the effect of the duty on the prices of the dumped goods, MBIE has had regard to the relevant price factors in the market for the dumped goods. In doing so, MBIE has assessed how responsive the prices of the dumped goods are to fluctuations in exchange rates, surges in inflation, and the presence of competition in the South African export market for canned peaches. MBIE has carried out this analysis to determine whether the price effects it has identified are attributable to the continued imposition of anti-dumping duties rather than other causes.

51. MBIE assessed the movement of the NZD against the United States Dollar (USD) and Australian Dollar (AUD) in Section 5.2.1.5 of the 17F Report, as imports from South Africa are invoiced in these currencies. The information indicated that NZD costs for AUD shipments fluctuated during the period, and for much of the period from 2015 to 2018, exchange movements did not favour importers. Should prices be adjusting appropriately to market factors, adjustments would be expected in response to fluctuations in exchange rates. However, RFG and L&AF have fixed contract prices, with sales concluded for a 12-month period prior to the start of the canning season. This means that contract prices during the contract period do not respond to movements in exchange rates (although the payments when expressed in NZD or ZAR will be affected by exchange rate movements). Nevertheless, when the 12-month period concludes, contracts are re-negotiated, and may address exchange rate fluctuations.

52. The South African producers operate in a high inflationary environment. In the full review stage 1 L&AF indicated that it would appreciate any increase it could obtain in prices to offset its year on year inflationary cost pushes. Should prices be adjusting appropriately to market factors, South African producers may expect to pass on the manufacturing inflation

costs. However, as New Zealand maintains low rates of inflation, this presents a challenge to the South African producers. Regardless, when current contracts expire, terms will be re-negotiated, and this factor may be addressed.

53. MBIE also notes that there are two producers of canned peaches from South Africa. This competition moderates prices. The New Zealand market is not being supplied by a foreign monopolist, and prices therefore are not set at an artificially high level.

54. MBIE concludes that in the short-term (assumed to be the immediate future), prices are fixed. Prices cannot adjust accordingly to exchange rate fluctuations and to the high inflationary environment while subject to a current contract. In the medium to long-term, rounds of negotiation will be undertaken to re-establish prices, and MBIE expects these factors will be taken into account in the negotiation. MBIE concludes that in the medium to long term, prices are adjusting to these market factors.

4.1.4 Conclusion

55. With regard to the effect of the duty on the prices of dumped goods, MBIE concludes that the continued imposition of anti-dumping duties is likely to increase the cost of imported goods, but it cannot be concluded that these increased prices will necessarily be reflected in increased prices to retail consumers.

4.2 Effect of the duty on the prices of like goods produced in New Zealand

56. MBIE is required to consider the effect of the duty on the prices of like goods produced in New Zealand. In assessing this, MBIE has had regard to the impact that previous duties have had on prices of the like goods; the degree of substitutability between the imported and domestically produced goods; the extent to which the domestic industry is likely to change the price of the like goods in response to a change in the price of imported goods; and whether domestic prices are responding to market factors.

4.2.1 Past behaviour

57. In assessing this factor, MBIE refers to its analysis carried out in section 4.1.1, where the evolution of prices following the outcome of reviews and reassessments of canned peaches from South Africa was analysed.

58. MBIE notes that although export prices of goods from South Africa have fluctuated in response to the imposition of anti-dumping duties, this has not been translated through to higher retail prices in New Zealand. As indicated by Figure 4.1, Supermarket prices for 410g cans do not appear to have reflected the imposition of anti-dumping duties.

4.2.2 Substitutability

59. MBIE finds that there is a high degree of substitutability between imports and domestically produced canned peaches.

60. In their responses to the full review stage 1 questionnaire, importers of the subject goods indicated that there are limited physical differences in canned peaches whether they are sourced locally or internationally, as the method of manufacture is similar, as is the

function and end use for the product. Importers have indicated that from a consumer perspective, the variation between end products is not significant.

61. This evidence is further supported by MBIE's analysis of price behaviour in the market. As demand is sensitive to a change in the price of the goods, the goods are purchased based on the lowest prices available in the market, not based on non-price factors such as quality or consumer perception. This indicates that the goods are highly substitutable for each other, and importers' purchasing behaviour is likely guided by the lowest prices in the market.

4.2.3 Economic Assessment

62. MBIE has used the public interest partial economic simulation (PIPES) framework to assess the effect of the continued imposition of anti-dumping duties at the rates set out above on prices and volumes of imports of canned peaches from South Africa, and to assess the extent to which the domestic industry is likely to change the price of like goods in response to a change in the price of the imported goods.

63. Several simplifying assumptions are made to allow for the exercise. Consumers are assumed to view the imported goods and the domestically produced goods as substitutable; the supply curve for both the import and domestic market is assumed to be upward-sloping (as supported by evidence in questionnaire responses); prices are assumed to adjust to the imposition of duties to ensure the markets clear at an equilibrium price and quantity; and importers are assumed to pass-on the entire duty to consumers (indicated in submissions by interested parties). Simplifying assumptions of this nature are standard across partial equilibrium modelling, but as they must be made, the simulation is only *indicative* of the market outcome.

64. MBIE relied on data provided by interested parties through questionnaire responses, as well as confidential Customs data, to carry out its economic simulation. The effects of the duty were calculated as the differences between the simulation's estimated outcome in relation to equilibrium prices and quantities in both the import and domestic market after the imposition of duty, and the baseline values obtained when the markets are in equilibrium prior to the imposition of duties.

65. As importers are assumed to pass on the entire rate of duty to their consumers, an increase in the price of the imported good equivalent to the rate of duty proposed is likely, that is, the ad-valorem rates of 16.4% for 410g/415g/420g/820g/825g cans from L&AF, and 16% for all can sizes from any producers other than L&AF and RFG. It is also assumed that HWL will adjust the price of the domestically produced good, as prices will no longer be depressed by injurious dumping.

66. The increase in prices will negatively impact consumers who purchase the South African produced good, as they will face a higher price for goods previously purchased more cheaply. However, as consumers view the imported and domestically produced goods as substitutable, losses faced in the import market due to the increase in prices are largely compensated for by consumers' willingness to purchase the like goods from the domestic market. A loss is likely to be faced by consumers, but as the increase in the price of the domestically produced goods is only a portion of the ad valorem rate of duty imposed on

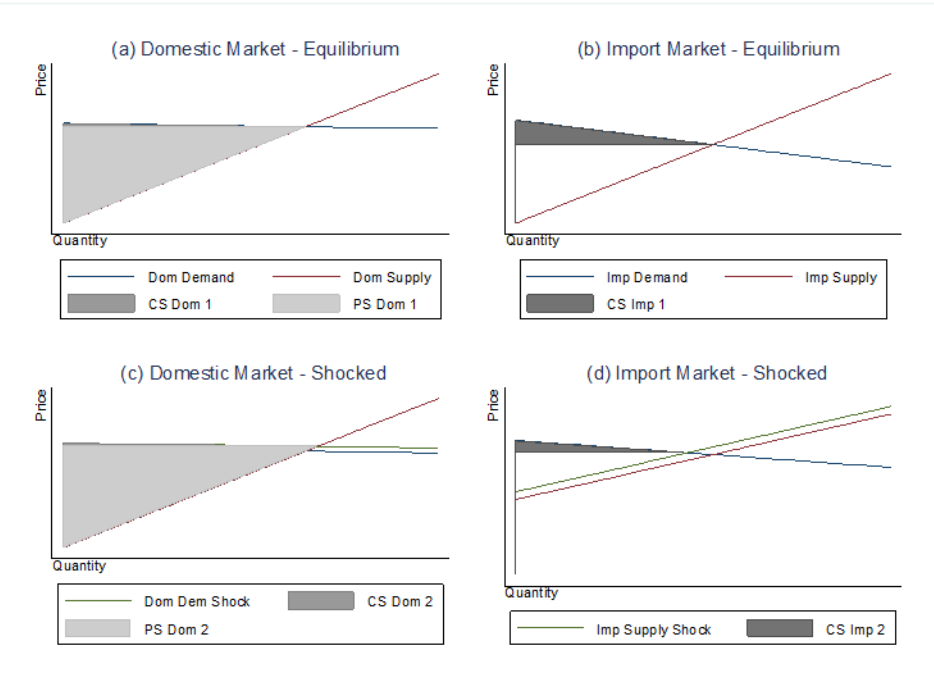
the dumped goods, and as long as the consumers consider the goods to be fairly substitutable, the loss faced by consumer is not significant.

67. On the other hand, MBIE finds that the domestic industry is likely to be significantly affected by the continued imposition of anti-dumping duties. If it adjusts prices, it would not have to continue selling at depressed prices due to injurious dumping, and may face an increase in demand for its goods due to consumer substituting the internationally produced good for the domestically produced good. This is likely to result in a significant gain to the domestic industry.

68. This simulation is reflected in Figure 4.2, where graphs (a) and (b) model the equilibrium state prior to the imposition of anti-dumping duties, and graphs (c) and (d) model the shocked state[2], where duties have been imposed. CS represents consumer surplus, PS represents producer surplus, Dom represents the domestic market, and Imp represents the import market. The decrease in consumer wellbeing in the import market can be noted as the change in the shaded area from CS Imp 1 to CS Imp 2, and in the domestic market it is presented by the change from CS Dom 1 to CS Dom 2. MBIE notes that this change is minimal. The gain to the domestic industry can be noted as the increase in the shaded area from PS Dom 1 to PS Dom 2, which is significantly larger than the loss previously mentioned.

Figure 4.2: Economic Simulation

All axes values withheld



69. These findings are in line with the assessment of the other factors under this consideration.

[2] The shocked state of the model is the state reached once the duties have been passed on through the markets.

4.2.4 Price Factors

70. In assessing the effect of the duty on the prices of like goods produced in New Zealand, MBIE has had regard to the current market situation, in particular assessing the relevant price factors in the domestic market that arise from competition.

71. HWL is the sole manufacturer of canned peaches in New Zealand. If New Zealand was not open to trade, HWL would be a pure monopoly for the subject good, giving it market power to raise prices above costs with no risk of losing its profits to a new market participant. This kind of monopolistic behaviour would drive prices up with no incentive to lower them, which would be favourable to the monopolist but potentially very harmful to consumers and downstream industries.

72. Although HWL is the sole domestic producer, New Zealand is a small open economy, and competition is introduced to the market through international trade. HWL does not set monopolistic prices, as importers compete by sourcing the subject goods internationally.

73. If anti-dumping duties were to discourage importation of canned peaches, there could be a risk of monopolisation of the New Zealand canned peach market. However, anti-dumping duties are set at the rate necessary to address the material injury caused by dumping, and are not intended to discourage importation of goods at non-injurious prices. MBIE notes that duties are currently imposed on Spain and Greece for this purpose, and canned peach imports from most of the rest of the world enter free of duty. The continued imposition of anti-dumping duties on canned peaches from South Africa at the rate determined by the Minister is not intended to divert trade away from this source, but to address the material injury caused by dumping.

74. MBIE is satisfied that the pricing of canned peaches in New Zealand is adjusting to market factors.

4.2.5 Conclusion

75. MBIE concludes, in relation to this point, that if anti-dumping duties are imposed, an economic incentive to increase prices of like goods may exist, as prices will no longer be depressed. However, past behaviour indicates that retail prices have remained unaffected. Nonetheless, MBIE has noted that even if a price increase of the domestically produced good was to occur, the loss faced by consumer is not significant.

4.3 Effect of the duty on the choice or availability of like goods

76. MBIE is required to consider the effect of the duty on the choice or availability of like goods. In assessing this, MBIE has had regard to the potential impact that continued imposition of anti-dumping duties may have on the choice or availability of like goods in the New Zealand market; domestic production; and market shares of imported and domestically produced goods.

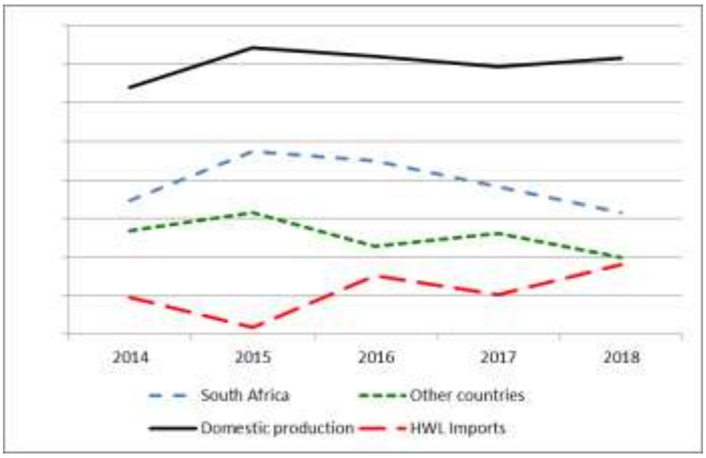
4.3.1 New Zealand market

77. The market for preserved peaches in New Zealand is made up of domestically-produced and imported goods. Figure 4.3 indicates that domestic production covers a larger share of

the market than South African imports. These goods are sourced globally as there is not sufficient local supply to satisfy consumer demand.

Figure 4.3: Market Share 2014-2018, %

Y-axis values withheld



78. In theory, two extremes relate to the effect of duties on the choice or availability of goods.

- If duties are imposed, and the import market is highly price sensitive, the extreme effect of an increase in the price of the imported goods may be that importers stop purchasing from the source. This could result in a decrease of supply of the internationally produced good, and restrict the range of goods available in the domestic market.
- If duties are not imposed, and the domestic industry continues to be materially injured by the dumped goods, the extreme effect may be to exit the market and stop producing the domestic good.

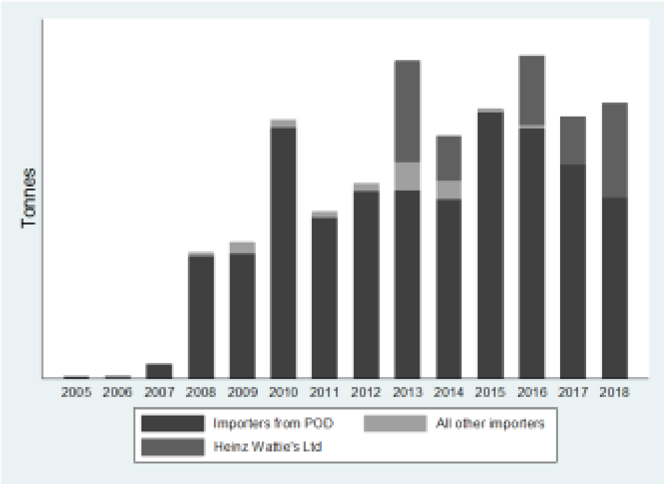
79. As mentioned in the 17F Report, MBIE has determined that imports from South Africa are highly price elastic. Demand is sensitive to a change in the price of imports, and importers may seek a lower priced alternative should duties be imposed on South Africa. However, as the domestic industry is unable to meet market demand, the importers are incentivised to remain in the market to supply the excess demand by sourcing goods globally. Although importers may be motivated to find a lower priced alternative, they are unlikely to stop supplying the market as there is a market opportunity to continue supplying. Although prices in the market may be affected, MBIE considers it unlikely that there will be a significant effect on the choice and availability in the New Zealand market.

80. On the other hand, the counterfactual situation may be harmful. MBIE has already determined that there is material injury to the domestic industry caused by the dumped goods, with HWL facing negative economic impacts in terms of prices, sales revenue and earnings before interest and taxation (EBIT). If duties are not imposed, the domestic industry may be materially injured by the dumped goods, and the theoretical extreme is that it may be forced to exit the market. If a situation like this was to unfold, choice of canned peaches would be restricted by the loss of the domestic brands from the market, and only internationally produced goods would be available to consumers.

81. As mentioned in section 4.1, in the past, when duties have been imposed on imports from South Africa, the impact has been an increase in export price of the subject goods to

accommodate the duty, although the export price movements have not been reflected in New Zealand retail prices. However, as indicated in Figure 4.4, although export prices were affected, the volume imported has not.

Figure 4.4: Import volumes of canned peaches from South Africa, 2005-2019
Y-axis values withheld



82. MBIE considers that although prices of some of the imported goods will be affected by the continued imposition of anti-dumping duties, it is unlikely that there will be a significant effect on the choice and availability of these goods in the domestic market, and therefore on the market shares.

83. On the other hand, MBIE considers that there could be a harmful effect on the choice or availability of domestically produced goods, should duties not be imposed. The non-imposition of duties may result in pricing becoming uncompetitive, resulting in HWL being forced to discontinue producing canned peaches.

4.3.2 Conclusion

84. MBIE concludes, in relation to this point, that the choice and availability of like goods is likely to remain unchanged after the continued imposition of anti-dumping duties.

4.4 Effect of the duty on product and service quality

85. MBIE is required to consider the effect of the duty on product and service quality. In assessing this, MBIE has had regard to any industry or international standards in place; the quality produced by market participants; the extent to which the quality of goods or services in the market could be lowered upon the continued imposition of anti-dumping duties, or without duties in place; and consumer preferences in relation to quality.

4.4.1 Grading and quality

86. Canned peaches imported from South Africa range in grade, from "choice" canned peaches being the highest grade, and "sub-standard" being the lowest. Although grades are regulated in South Africa, the New Zealand market does not distinguish between grades and they therefore do not appear to affect perception as to quality.

87. In its importer questionnaire response, HWL stated that there are no discernible quality differences for consumers between the peaches imported from South Africa and those produced by the NZ industry. HWL reiterated this point in its submission on the Public Interest Investigation Memorandum.

88. BHL stated, in its submission, that L&AF supplies a superior peach to what is produced domestically, and has argued that the restriction of South African canned peach imports could lower the quality of goods being sold on the New Zealand market.

89. Importers have indicated that consumers view the internationally sourced and domestically produced goods as substitutable, indicating that there are no consumer preferences in relation to quality between canned peaches from South Africa and New Zealand.

90. MBIE notes that, although L&AF may export a superior grade to the New Zealand market, it is not the dominant portion of its exports to the New Zealand market. MBIE is satisfied that the imports of canned peaches from L&AF are not increasing the overall quality in the market, and the continued imposition of anti-dumping duties therefore does not have the potential to lower it.

91. MBIE is not aware of any effects the duty may have on service quality.

4.4.2 Conclusion

92. MBIE concludes, in relation to this point, that product and service quality is likely to remain unchanged after the continued imposition of anti-dumping duties.

4.5 Effect of the duty on the financial performance of the domestic industry

93. MBIE is required to consider the effect of the duty on the financial performance of the domestic industry. In assessing this, MBIE has had regard to the current state of the domestic industry; the extent to which the non-imposition of duties could result in the exit from the market of the domestic industry; and whether any other market effects could arise from the imposition of duties other than those intended by the imposition of duties.

4.5.1 Injury to the domestic industry

94. In stage 1 of the investigation, MBIE assessed the likely financial impact on HWL if duties are not continued, and found that it would likely suffer material injury. MBIE has taken this injury analysis as the basis for assessing the effect of the duty on financial performance of the domestic industry for stage 2 of the investigation. The relevant financial effects considered by MBIE are summarised below.

Price effects

95. MBIE's overall conclusion in the 17F Report regarding price effects is that the continued dumping of the subject goods from South Africa would be likely to result in continued price undercutting, with consequent price depression and price suppression.

96. The rates of duty determined by the Minister were based on the price undercutting of the Oak brand, which competes at the same level of trade as canned peaches from South

Africa and has a flow on effect to the price of Wattie's brand peaches. Therefore, the examination of the effect of the duty on HWL's financial performance was based on the assumption that if anti-dumping duties are imposed, there would be no price undercutting of the Oak brand.

Sales revenue

97. In the injury analysis in stage 1 of the investigation, MBIE determined that if anti-dumping duties are not continued there is likely to be a reduction in sales revenue. The imposition of the duty would prevent the degree of price undercutting leading to this reduction.

Market share

98. In the injury analysis in stage 1 of the investigation, MBIE determined that if anti-dumping duties are not continued it is not likely that there will be any significant effect on HWL's market share. The imposition of the duty is unlikely to have any effect on market share of the domestic industry.

Profits

99. In the injury analysis in stage 1 of the investigation, MBIE also assessed the impact on profits. Forecasts were provided and assessed by MBIE, which indicated that in the absence of anti-dumping duties there would be significant reductions in EBIT. The continued imposition of anti-dumping duties would prevent the degree of price undercutting leading to this reduction.

Other indicators

100. In its 17F Report, MBIE also concluded that there could be potential negative effects on cash flow, which would arise from the impact on sales revenue and profits. MBIE did not consider that the amount of inventories on hand, employment or wage levels, were useful indicators of injury in this case. MBIE noted that any detrimental effects on growth would reflect other injury indicators such as sales, profits and return on investments.

4.5.2 Viability of the domestic industry

101. A possible effect of duties not being imposed could be significantly reduced production, or even the exit from the market by the domestic industry.

102. As mentioned in Section 4.3, the non-imposition of duties would likely result in pricing becoming uncompetitive for the domestic industry, resulting in HWL being forced to discontinue producing canned peaches.

103. MBIE notes that if duties are not imposed, it is open to HWL to close its peach processing and import all of its canned peaches, thereby closing the domestic industry for canned peaches. If this were to happen, MBIE considers it is likely that HWL would process its contracted raw peaches and then resume importing. MBIE notes that if this were to happen, HWL would lose some of its capital from investments in its own peach crops. However MBIE notes that the main financial impact will be on the upstream industry, namely the peach growers, which are out of scope for this investigation. MBIE also notes that the window for peach processing is short, and it is likely that HWL would replace peach production during this period with the production of another good.

4.5.3 Other possible market effects

104. MBIE has assessed whether any other market effects could arise from the continued imposition of anti-dumping duties other than those intended by the imposition of duties.

105. HWL has stated that if pricing becomes uncompetitive and it is forced to cease processing peaches, this would likely result in HWL also ceasing to produce other canned fruit products, such as fruit salad, of which a significant proportion is peaches, which would then result in HWL also ceasing to process pears.

106. The continued imposition of anti-dumping duties on canned peaches from South Africa has the potential to protect the domestic industry from this scenario.

4.5.4 Conclusion

107. MBIE concludes, in relation to this point, that a significant effect of the duty on the financial performance of the domestic industry would be the avoidance of the injurious effects that would otherwise hinder the financial performance of the domestic industry.

4.6 Effect of the duty on employment levels

108. MBIE is required to consider the effect of the duty on employment levels. In assessing this, MBIE has had regard to the extent to which the imposition or non-imposition of duties would like affect levels of employment in the domestic industry and in downstream industries; and the extent to which labour could be reallocated should there be any loss of employment.

4.6.1 Injury to the domestic industry

109. In stage 1 of the investigation, MBIE assessed the effects of price undercutting on employment and wages to the domestic industry.

110. It was noted that HWL employs seasonal staff on an “as required” basis, and that year-on-year the number required depends 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.

111. MBIE concluded in the 17F Report 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.

112. However, MBIE notes that if HWL was forced to discontinue production of canned peaches, there would likely be a loss of employment. MBIE further notes that if the effect carried through to production of fruit salad or processing of pears, a further loss of employment may result from the loss of those operations.

113. As mentioned in Chapter 3, MBIE is satisfied that there are no downstream industries for the goods on which duties are proposed, so there are no potential effects on downstream industries.

4.6.2 Conclusion

114. MBIE concludes that if anti-dumping duties are not imposed, a significant loss of employment could arise from the loss of the canning operations at HWL. As no downstream industries have been identified, there are no other employment effects to assess. The imposition of anti-dumping duties is likely to protect against any adverse impacts on employment.

4.7 Alternative supply (domestically or internationally) of like goods available

115. MBIE is required to consider the effect of the duty on alternative supply (domestically or internationally) of like goods available. In assessing this, MBIE has had regard to whether the domestic industry is able to meet domestic demand; whether the imported good is covering any excess demand that the domestic industry is unable to supply; whether there are any alternative sources of supply, competitive in price and quality, capable of accommodating additional demand; whether there are any technical specifications demanded by the domestic market that may restrict import possibility; the extent to which there is a risk of monopolisation of the supply of goods to New Zealand; and whether there are any non-price, non-supply factors to consider, such as contract terms, speed of delivery, etc.

4.7.1 Domestic demand

116. As discussed in relation to the effect of the duty on the prices of like goods produced in New Zealand at 4.3, the domestic industry is unable to meet total domestic demand. This means that importers are motivated to meet demand by sourcing goods globally.

4.7.2 Alternative supply

117. The global market for canned peaches provides an alternative supply of like goods for New Zealand importers. These sources are competitive in price and quality, and are capable of accommodating additional demand. 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.

118. Whilst anti-dumping duties are currently in place on preserved peaches from Spain and Greece, these sources still provide an alternative supply for the New Zealand market. Anti-dumping duties do not apply to preserved peaches from China, which is a significant global supplier of canned peaches. Anti-dumping duties also do not apply to Australian imported goods, which provides a duty free supply. Suppliers such as Chile also provide alternative sources of supply which have not yet been tapped into by New Zealand importers. These markets all provide an alternative supply of canned peaches to South Africa.

119. The continued imposition of anti-dumping duties does not mean that importing from South Africa will be untenable. Anti-dumping duties have been in place on South African canned peaches since 1996, yet South Africa has remained one of the largest sources of supply of canned peaches for New Zealand importers. Whilst MBIE notes that one potential cause of South Africa being one of the cheapest sources of canned peaches even with anti-dumping duties is the possibility of outdated reference prices, this still shows that the continued

imposition of anti-dumping duties is not likely to eliminate South Africa as a viable supplier of canned peaches to New Zealand. As the proposed duties do not apply to one significant South African exporter, this also provides an alternative supply of South African peaches free from anti-dumping duties.

4.7.3 Technical specifications

120. MBIE notes that there are no technical specifications demanded by the domestic market that might restrict import possibilities from international sources of supply.

4.7.4 Risk of monopolisation

121. MBIE addressed this matter in section 4.2. MBIE also notes that the risk of monopolisation by the domestic industry is not high, based on the lesser duty rule set out in section 10E(2) of the Act being applied to the proposed duties. The purpose of a lesser duty is to apply the lowest possible duty to remedy the injury to the domestic industry caused by dumping. The application of this rule is not intended to eliminate importation, and mitigates the risk of monopolisation of the supply of goods by the domestic industry. As the proposed duties do not apply to one of the two significant South African exporters, this risk is also mitigated by keeping this channel for South African canned peaches open.

4.7.5 Non-price, non-supply factors

122. MBIE notes that there are some relevant non-price and non-supply factors. Canned peaches are typically contracted for on an annual basis based on the exporting supplying country's season, and therefore a lag in contract timing may contribute to a short term delay in shifting to alternative markets for supply.

4.7.6 Conclusion

123. MBIE concludes that the proposed duties are not likely to have a significant effect on alternative sources of supply of like goods. Whilst the domestic industry is not able to supply the entire New Zealand market, there is a range of international sources of supply which are viable for New Zealand importers to look to. Despite the proposed duties, South Africa even remains a viable source of supply of the like goods, since one significant exporter is not subject to duties.

4.8 Other factors essential to ensure the existence of competition in the market

124. MBIE is required to consider the effect of the duty on any factors the chief executive considers essential to ensure the existence of competition in the market. In assessing this, MBIE has had regard to the current situation in the market, whether the market may be influenced by consumers purchasing substitute goods; the extent to which there are any complementary goods that may be affected; the extent to which there is risk of monopolisation of supply in the market; the extent to which it is in the interest of competition to maintain domestic production of this good; how accessible the market is to new entrants; and any existing protection of the domestic industry.

4.8.1 Current market situation

125. New Zealand's current market situation for canned peaches has been analysed in previous sections.

126. MBIE reiterates that the New Zealand market for canned peaches is sensitive to variations in price, and the domestically produced and internationally sourced goods are substitutable. Although there is only one domestic producer, New Zealand is a small economy open to trade and there do not appear to be any significant barriers to entry, resulting in a high degree of price competition which is driving prices down. The market appears to be responding to normal market factors, and although demand exceeds domestic supply, it is being met by importers sourcing goods internationally. MBIE is satisfied that, in terms of the current market situation, there is a satisfactory level of competition.

4.8.2 Substitutability and complementarity of goods

127. MBIE has identified a high degree of substitutability between the domestically produced and internationally sourced goods, and has previously concluded that the continued imposition of anti-dumping duties is not likely to affect the choice or availability of goods in the market.

128. BHL stated in its submission to the public interest investigation memorandum that substituting South African canned peaches with domestically produced goods is not feasible, as the New Zealand industry no longer supplies the private label market, and has insufficient capacity to do so. MBIE notes that this does not affect the substitutability of goods in the market, whether provided by the domestic industry or by imports from other sources.

129. The continued imposition of anti-dumping duties may also protect the domestic industry against the potential loss of production of fruit salad and pears due to dumped pricing of canned peaches.

130. MBIE notes that the continued imposition of anti-dumping duties will allow the domestic industry to continue domestic production and is not likely to result in any decrease of supply of the internationally sourced goods, and is likely to maintain competition at current levels.

4.8.3 Risk of monopolisation

131. MBIE has addressed this matter in detail in Section 4.2.4, and has concluded that the risk of monopolisation of the New Zealand market for canned peaches is very low.

4.8.4 Market accessibility

132. MBIE concluded in the 17F Report that there is easy entrance to the New Zealand market.

133. BHL, in its submission to the public interest investigation memorandum, expressed its view that it is not easy to substitute South African canned peaches in the New Zealand market, because of the main possible sources, Australia had effectively withdrawn from the New Zealand market, supplies from Spain and Greece were curtailed by the imposition of anti-

dumping duties, and imports from China did not meet New Zealand consumers preference for a higher quality product.

134. However, MBIE is satisfied that these factors are not significant in limiting market accessibility. The New Zealand canned peach market 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.

4.8.5 Existing protection of domestic industry

135. Anti-dumping duties are currently imposed on imports of preserved peaches from Greece and Spain. MBIE consequently considers that imports from these sources enter New Zealand at the equivalent of non-injurious prices.

4.8.6 Conclusions

136. MBIE concludes that the continued imposition of anti-dumping duties is unlikely to reduce competition in the New Zealand market for canned peaches. The continued imposition of anti-dumping duties will allow the domestic industry to continue domestic production, and it is not likely to result in a decrease of South African sourced goods. The presence of importers in the market introduces a healthy level of competition, the market is accessible to new entrants, and although there is existing protection of the domestic industry in terms of anti-dumping duties on preserved peaches from Greece and Spain, they are pitched so imports are entering at the equivalent of non-dumped or non-injurious prices as is proposed for South African exporters.

5. Public interest outcome

137. As set out in the Act, imposing the duty is in the public interest unless the cost to downstream industries and consumers of imposing the duty is likely to materially outweigh the benefit to the domestic industry of imposing the duty.

Cost to downstream industries and consumers

138. For the purpose of this public interest investigation, MBIE is satisfied that there are no downstream industries for the goods on which duties are proposed.

139. MBIE notes that since duties have been reassessed to apply to particular can sizes from only one significant South African exporter, other canned peaches from South Africa will still be exported in other can sizes and by the other significant exporter without being subject to anti-dumping duties.

140. There is a possibility that consumers may be negatively affected by facing higher prices for canned peaches sourced from L&AF. However, MBIE has noted that past behaviour in the market indicates that the imposition of anti-dumping duties has affected export prices thereby negatively impacting importers, but has not affected New Zealand retail prices. This suggests that on average, consumers have not had to pay any more for the subject goods at retail level after the imposition of duties. Nonetheless, even if the goods sourced from L&AF were to increase in price, interested parties have indicated that consumers view these goods and the domestically-produced goods as highly substitutable. This would suggest that any losses that consumers may face from having to pay a higher price for L&AF's goods may be partially compensated by purchasing the domestically produced good.

141. MBIE considers it unlikely that importers will stop supplying the market causing any significant effect on the choice or availability in the New Zealand market. Imports from South Africa are highly price elastic, suggesting that demand is sensitive to a change in export price, and importers may seek lower priced alternatives should prices increase. However, the domestic industry is unable to meet market demand in its entirety, providing importers with an incentive to remain in the market to supply the excess demand by sourcing goods globally.

142. MBIE considers that product quality is likely to remain unchanged in the New Zealand market after the continued imposition of anti-dumping duties. Canned peaches imported from South Africa range in grade, from "choice" canned peaches being the highest grade, and "sub-standard" being the lowest. However, although grades are regulated in South Africa, the New Zealand market does not distinguish between grades.

143. MBIE further notes that there is a range of international sources of supply available. Whilst anti-dumping duties are currently in place on preserved peaches from Spain and Greece, these sources still provide alternative sources of supply which have not yet been tapped into by New Zealand importers. These markets all provide an alternative supply of canned peaches to South Africa.

144. Lastly, MBIE notes that the continued imposition of anti-dumping duties is unlikely to reduce competition in the New Zealand market for canned peaches. The continued imposition of anti-dumping duties is not likely to result in a decrease of South African sourced goods, and the continued presence of importers in the market introduces a healthy level of competition, and the market is accessible to new entrants.

145. By considering all factors set out in the Act, MBIE has concluded that the cost to downstream industries and consumers of the reassessed rates of duty is likely to be small.

Benefit to the domestic industry

146. As assessed in stage 1 of the full review, the anti-dumping duties are intended to remove the significant injurious effects of the dumped goods that would otherwise hinder HWL's financial performance. The rates of duty determined were based on the price undercutting of the Oak brand, which competes at the same level of trade as canned peaches from South Africa. The continued imposition of anti-dumping duties would prevent the degree of price undercutting that was determined likely to reduce HWL's sales revenue, market share and profits.

147. MBIE further considers that the continued imposition of anti-dumping duties avoids pricing becoming uncompetitive and causing HWL to reduce production, or in an extreme scenario, exit the market. Should this eventuate, the choice and availability of like goods in the New Zealand market would be reduced by the loss of the sole domestic supplier of like goods, restricting the range of goods available to consumers. A further impact from the domestic industry exiting the market would be a loss of employment from the closure of HWL's canning operations, as well as a reduction of competition in the market from the loss of the domestic producer. The presence of the domestic industry and importers in the New Zealand market introduces a healthy level of competition.

148. Through the continued imposition of anti-dumping duties, the domestic industry may face increase in demand of its goods as goods from L&AF will become more expensive at the export level, and should prices increase at retail, consumers may substitute for HWL's goods due to consumer perceptions of substitutability of the subject goods.

149. MBIE has found that the benefit to the domestic industry of the reassessed rates of duty is likely to be significant.

6. Conclusions

150. MBIE has found that continuing to impose the duties at the reassessed rate is in the public interest. MBIE has found that the cost of the duties to downstream industries and consumers **is not likely** to materially outweigh the benefit of the duties to the domestic industry.

151. On the basis of the information available, it is concluded that:

   a. imposing the duty is in the public interest, and

   b. duties should continue to be imposed at the reassessed rate.

7. Recommendations

152. MBIE recommends that the Minister:

- Note that MBIE has completed its full review stage 2 of anti-dumping duties on canned peaches from South Africa under section 17H of the Act, and has reported its findings to you.
- Note that, as set out in detail in this Final Report, MBIE has concluded that the continued imposition of anti-dumping duties on canned peaches from South Africa is in the public interest.
- Agree to determine under section 17J(1) of the Act that continued imposition of anti-dumping duties on canned peaches from South Africa is in the public interest.
- Agree that the duty should continue to be imposed at the rate previously determined under section 17G(2)(a).
- Sign a Gazette notice giving notice of the determination, in accordance with section 17J(2) of the Act.

Annex 1: Comments received on the Public Interest Preliminary Findings Report

BHL Submission

BHL Submission	MBIE Comment
Injury is not occurring	
BHL noted that HWL imports canned peaches in times of short supply in order to protect its market share, shelf space and consumer goodwill for New Zealand preserved peaches in a time of shortage, and this does not cause injury to HWL. BHL noted that this is a definitive statement which clearly states that no injury has occurred in the sales of L&AF's peaches to HWL, and HWL is not suffering injury.	MBIE notes that stage 1 of the full review concluded with a determination by the Minister 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 (Chapter 7 of 17F Report). The stage 2 assessment does not reopen the finding of material injury reached in stage 1.
BHL noted that there would undoubtedly be a negative impact on the consumer because HWL imports sliced peaches from L&AF, and the duty would negate any financial advantage of the domestic industry and to the consumer.	MBIE notes that the effect of the duty on the financial performance of the domestic industry was assessed in section 4.5 of the report. MBIE found that the significant effect of the duty on the financial performance of the domestic industry would be the avoidance of the injurious effects that would otherwise hinder it. BHL has stated that the duty would negate any financial advantage of the domestic industry, resulting in an undoubtedly negative impact on the consumer, but no evidence has been provided to support this claim.
BHL has also noted that MBIE hypothesized that by imposing a duty on L&AF, the domestic industry would benefit through increased domestic demand, but the domestic industry is already unable to meet its current market demand. BHL indicated that any increase in demand would need to be met by additional imports of canned peaches from L&AF on which duty would be levied.	In relation to this point, MBIE refers BHL to section 4.3 of the Preliminary Findings Report. It is noted in paragraph 79 that the domestic industry is unable to meet market demand, thereby incentivising importers to remain in the market to supply the excess demand by sourcing goods globally. BHL has stated that any increase in demand would need to be met by additional imports of canned peaches from L&AF, but MBIE notes that there are several international sources other than South Africa available, which would also be able to supply the New Zealand market, as discussed

	in section 4.7.2.
The imposition of duty is unlikely to cause an increase in retail pricing	
BHL has noted that competition at retail level has ensured that price increases in the export pricing over the years have been contained and thus the consumer hasn't been disadvantaged. However, BHL noted that if an ad valorem duty of 16.4% is applied to imports of L&AF's canned peaches by HWL and other importers, this would be passed on to a large extent and the consumer would suffer because of this.	As noted by BHL, past evidence of retail pricing in the New Zealand market for canned peaches has indicated that consumers have not faced higher prices after the imposition of anti-dumping duties. BHL has stated that the imposition of an ad valorem duty of 16.4% would be passed on to a large extent, but has not provided evidence as to why this outcome would differ from past behaviour. As this claim is not substantiated, MBIE's conclusion that retail prices are unlikely to be affected by the imposition of the duty remains unchanged.
BHL noted, in response to MBIE's claim that it is open to HWL to close its peach processing thereby closing the domestic industry for canned peaches, that it has no foundation and is very unlikely to happen. BHL offered as a counter argument that throughout the review both MBIE and HWL have referred to reference pricing as ineffective. Consequently, as the reference pricing duty mechanism has been ineffective and HWL hasn't found it necessary to close its plant during that period, BHL challenge the suggestion that HWL may close its plant if anti-dumping duties are not continued.	MBIE notes BHL's comments in respect to HWL's claims. MBIE considers that although the reference prices may not have kept pace with inflation and other factors, they have provided a price floor for imports. This is not equivalent to not having duties in place and does not therefore support the argument raised by BHL.
In response to HWL's statement that if pricing becomes uncompetitive and it is forced to cease processing peaches, this would likely result in HWL also ceasing to produce other canned fruit products, BHL stated that the review is of canned peaches from South Africa, and does not directly involve other canned fruits.	MBIE agrees that other canned fruits are not subject to this full review, and has disregarded HWL's claim that if pricing becomes uncompetitive and it is forced to cease processing peaches, it would likely result in it also ceasing to produce other canned fruit products.
The domestic industry will not increase its prices if anti-dumping measures are continued	
BHL has noted that in paragraph 148 of the Preliminary Findings Report (which assesses the public interest outcome) it is mentioned that the	MBIE begins by noting that the sentence referred to by BHL was misquoted by MBIE. In its importer questionnaire, HWL indicated that when duties are

domestic industry may face an increase in demand, and it has stated it will not change the price of the domestically produced good in response to the continued imposition of anti-dumping duties on canned peaches from L&AF. BHL notes that this argument confirms that if a duty is imposed on L&AF canned peaches, this will be passed on to the consumer and that HWL will benefit from increased demand, although it will be unable to meet the excess demand.	in place its retail price does not change. MBIE stated in the Public Interest Preliminary Findings Report the following: "Any losses that consumers face from having to pay a higher price for some of the South African-sourced goods may be partially compensated by purchasing the domestically produced good, *which the domestic industry has stated will not change in price in response to the continued imposition of anti-dumping duties on canned peaches from L&AF* (emphasis added)". Therefore, MBIE considers it was a misquote by MBIE to indicate in its Public Interest Preliminary Findings Report that HWL stated that it **will not** change its price in response to the continued imposition of anti-dumping duties, as HWL stated that its retail price **does not** change in response to duties. This speaks to current behaviour, not future intention. In light of the above, MBIE notified interested parties of this correction in an email dated 5 March 2020 and invited interested parties to comment on the following paragraph which corrected the misquote: 148. There is a possibility that consumers may be negatively affected by facing higher prices for canned peaches sourced from L&AF. However, it has been noted that consumers are likely to view these goods and the domestically-produced goods as highly substitutable. Any losses that consumers face from having to pay a higher price for some of the South African-sourced goods may be partially compensated by purchasing the domestically produced good. MBIE has concluded that consumers are likely to face the same choice and availability of goods in the market, and that product and service quality is likely to remain unchanged in the New Zealand market after the continued imposition of anti-dumping duties. MBIE has also noted that there are several alternative sources of like goods available which will remain after the continued imposition of anti-dumping duties." A submission was only received from BHL where it indicated that, given

	that anti-dumping duties have been in place continuously for twenty years and that HWL is confirming that it doesn't change its retail pricing of canned peaches in response to anti-dumping duties, MBIE's first interpretation was reasonable. BHL considers that if the presence of anti-dumping duties has not been a factor in HWL's retail pricing strategy for the past 23 years, there is no rationale to conclude that this "speaks to current behaviour, not future intentions". MBIE considers that BHL's argument is reasonable. The analysis carried out in Chapter 4 assesses the worst case scenario where the price of HWL's good increases, which will negatively impact consumers. If the domestic industry was not to increase its prices after the imposition of duties, then consumers would not face any loss from substituting for HWL's goods after the imposition of duties on some of the imported goods as the price would remain the same, thereby being equally as well off after the imposition of duties. The cost to consumers would be lower if HWL did not increase its prices. In relation to BHL's comments in relation to the domestic industry being unable to meet domestic demand, MBIE notes that this matter was addressed in section 4.3 of the Preliminary Findings Report.
BHL further noted that MBIE's idea that the New Zealand market does not distinguish between grades, and they therefore do not appear to affect perception as to quality, is patently incorrect. BHL has stated that there is a noticeable difference between grades – choice grade sliced peach is uniform in shape, texture and appearance, whereas the substandard (irregular) grade, because it is comprised of the offcuts, is of variable sizing, shape and is visibly less appealing.	MBIE notes that several parties have indicated that they are not aware of quality differences in the market, including importers and one of the exporters. MBIE remains satisfied that consumers are not motivated by quality in the market, rather by prices.