Non-Confidential
Final Report

Canned Peaches
from
South Africa

Dumping and Countervailing Duties Act 1988

2007 Sunset Review

Ministry of Economic Development
November 2007

HTML: 978-0-478-31613-1
PDF: 978-0-478-31614-8

Trade Rules and Remedies Group
Ministry of Economic Development

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Abbreviations

The following abbreviations are used in this Report:

Act (the)	Dumping and Countervailing Duties Act 1988
Anti-Dumping Agreement	WTO Agreement on Implementation of Article VI of GATT 1994
Brooke Holdings	Brooke Holdings Limited
Chief Executive	Chief Executive of the Ministry of Economic Development
CIF	Cost, Insurance and Freight
CPI	Consumer Price Index
Del Monte	Del Monte South Africa (Pty) Limited
Del Monte Fresh Produce	Del Monte Fresh Produce (NZ) Ltd
EBIT	Earnings Before Interest and Tax
FIS	Free into Store
FOB	Free on Board
Foodtown	Foodtown Supermarkets Ltd
Fresh Partners	Fresh Partners (Pacific) Limited
GUR	Good Under Review
HW	Heinz Wattie's Limited
Langeberg & Ashton	Langeberg and Ashton Foods Limited
LDC	Less Developed Countries
LLDC	Least Developed Countries
LSV	List Sales Value
Ministry (the)	Ministry of Economic Development
NIFOB	Non-Injurious Free on Board
NV (VFDE)	Normal Value (Value for Duty Equivalent)
NSV	Net Sales Value
NZCS	New Zealand Customs Service
Pac	Forum Island Members of the South Pacific Regional Trade and Economic Co-operation Agreement
POR(D)	Period of Review (Dumping)
POR(I)	Period of Review (Injury)
Progressive	Progressive Enterprises Limited
Supermarket Sales	Supermarket Sales NZ Limited
TPA	Trans-Pacific Strategic Economic Partnership Agreement
VAT	Value Added Tax
VFD	Value for Duty
WTO	World Trade Organisation

1. Executive Summary

Introduction

1. A review of the anti-dumping duties that currently apply against imports of canned peaches from South Africa was initiated by the Ministry of Economic Development (the Ministry) on 31 May 2007. The review was initiated upon the receipt of an application from Heinz Watties Limited (HW), the sole New Zealand producer of canned peaches, for a review of the present anti-dumping duties. The duties under review have been in place since 1996 and would have expired in June 2007. HW claimed that the expiry of the duties would lead to a continuation or recurrence of dumping and material injury to the industry.

Goods Subject to the Investigation

2. The goods under review (GUR) from South Africa are described as follows:

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

3. The Ministry was satisfied that the application from HW contained positive evidence substantiating the need for a review. This report considers the likelihood of a continuation or recurrence of dumping causing material injury, should the anti-dumping duties be removed.

Dumping

4. Based on the information gathered during the review, the Ministry has concluded that 3kg (A10) [redacted] grade canned peaches exported from South Africa were not dumped but that 825gm (A2.5) choice grade canned peaches were dumped with an average dumping margin of [redacted] percent of the value of the export price. The volume of dumped goods represented [redacted] percent of the total volume of GUR imported from South Africa over the review period.

5. Further information gathered during the investigation has enabled the Ministry to conclude that should the duties be removed from the GUR, there is likely to be a continuation or recurrence of dumping.

Material Injury

6. The domestic industry, HW, does not claim that it is currently suffering material injury due to imports of canned peaches from South Africa as it believes that the current duties have been effective in preventing material injury. No evidence of material injury due to the dumping of the GUR from South Africa was found.

7. This review has concentrated on the likelihood of a recurrence of material injury to the domestic industry, should the present anti-dumping duties be removed. In this respect the Ministry has examined information gathered during the course of the review on the previous and current pricing behaviour of the market participants both

in New Zealand and in South Africa, statements made during the review by these participants and the level of capacity of the South African canned peach industry to supply New Zealand importers with significant volumes of canned peaches. On the basis of the totality of the information gathered during the review, the Ministry has concluded that should the duties be removed from imports of canned peaches from South Africa there is likely to be a recurrence of the material injury suffered by the New Zealand industry.

Conclusions

8. This report concludes that if the current anti-dumping duties are removed there is a likelihood of a continuation or recurrence of dumping and that this would likely cause material injury to the New Zealand industry.

2. Proceedings

2.1 Proceedings

9. On 1 August 1996, the Minister of Commerce imposed anti-dumping duties on canned peaches from South Africa imported into New Zealand, because an investigation had established that the goods were being dumped and by reason thereof causing material injury to the New Zealand industry.

10. On 19 December 1996 and 9 March 1998 reassessments of the rates of anti-dumping duties applicable to South African canned peaches were carried out.

11. In January 2002 a sunset review was completed. It was found that anti-dumping duties were still necessary to prevent a recurrence of injurious dumping from South Africa. The duties were reassessed in June 2002.

12. On 31 May 2007, the Chief Executive initiated a review of the continued need for the imposition of the anti-dumping duties, pursuant to s.14(8) of the Dumping and Countervailing Duties Act 1988 and its subsequent amendments (the Act), on the basis of positive evidence submitted by Heinz Watties Limited (HW) justifying the need for the review.

13. In accordance with Article 11 of the World Trade Organisation (WTO) Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Anti-Dumping Agreement), the purpose of the Ministry's review is to examine whether the current imposition of the duty is necessary to offset dumping, whether the injury would be likely to continue or recur if the duty was removed or varied, or both.

14. On 26 October 2007 an Interim Report for this review was provided to all interested parties being written advice of the essential facts and conclusions that will likely form the basis for any final determination to be made. All interested parties were given until 9 November 2007 to make submissions based on the content of the Interim Report.

15. This Final Report includes the conclusions reached by the Ministry. However, it should be noted that the report provides a summary only of the information, analysis and conclusions relevant to this investigation, and should not be accorded any status beyond that.

2.2 Reviews

16. In terms of section 14(9)(b) of the Act, anti-dumping duties relating to the subject goods would, in the absence of a review, have ceased to apply as from 11 June 2007.

17. On 31 May 2007, being satisfied that positive evidence justifying the need for a review had been provided, the Chief Executive initiated a review. A notice to this effect was published in the *New Zealand Gazette* of 7 June 2007. The existing anti-

dumping duties will continue to apply pending the outcome of this review and any reassessment that may follow it.

18. The period of review for dumping, POR(D), is from 1 May 2006 to 30 April 2007, while the review into injury, POR(I), involves an evaluation of the data submitted by the New Zealand industry for the period 1 May 2005 to 30 April 2007 (HW's financial years 2004/5, 2005/6 and 2006/7). The Ministry has also evaluated forecast information provided by the New Zealand industry concerning the impact on its domestic operation of the removal of the duty.

19. Interested parties to the 2002 sunset review were advised of the initiation of this review in writing and provided with the opportunity to make written submissions to the Ministry.

2.3 Dumping and Injury for the Purposes of a Review

Ministry's Approach to Sunset Reviews

20. The Ministry carries out sunset reviews on the basis of section 14 of the Act and article 11 of the Anti-dumping Agreement. In interpreting Article 11 of the Anti-dumping Agreement, the Ministry takes guidance from New Zealand legal reports, WTO Panel reports and approaches taken by other WTO member countries.

21. Article 11.3 infers a necessity to clearly demonstrate that, "…the expiry of the duty <u>would be likely</u> to lead to continuation or recurrence of dumping and injury" *[emphasis added]*. 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" *(Commissioner of Police Vs Ombudsman [1988] 1 NZLR 385*).

22. For further guidance on the level of evidence that is required to meet the "would be likely" criteria of Article 11.3, the Ministry also referred to the findings of the WTO panel report, *United States Anti-Dumping Duty on Dynamic Random Access Memory Semi Conductors (DRAMS) from Korea*, and to the approaches taken by the EU, US, Canada and Australia to sunset reviews.

23. The Ministry 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 expiry of duty would be likely to lead to a continuation or recurrence of dumping and injury. In determining "likelihood", it is considered that regard should be had to the timeframe within which an event may occur. Article 11.3 of the Agreement makes no express reference to the length of time within which a continuation or recurrence of injury has to take place.

24. Mindful of the different factors involved in each case, and taking guidance from the sources referred to above, the Ministry approaches all investigations and reviews on a case-by-case basis. Based on its interpretation of the Agreement and the Act, the Ministry adopts the following general principles in considering injury in sunset reviews:

- The Ministry is required to establish whether the expiry of the anti-dumping duty would be likely to lead to a continuation or recurrence of dumping and injury.

- The test to be applied in respect of the likelihood of a continuation or recurrence of dumping and material injury is a positive one, i.e., the Ministry needs to be satisfied, based on positive evidence, that certain events are likely to occur, and that those events will cause dumping and material injury to the industry to continue or recur in the absence of anti-dumping duties.

- Interpretation of the phrase "would be likely" is guided by a court judgement referring to "a real and substantial risk…, a risk that might well eventuate".

- In considering the likelihood of injury, the Ministry may refer for guidance to provisions in the Agreement that may be helpful in assessing that likelihood and those provisions may include, if appropriate, the factors used in Article 3.7 in assessing a threat of injury. The test to be applied, however, is not that for establishing whether there is a threat of injury.

25. In considering whether removal of the duty would be likely to lead to a recurrence of dumping and injury, the Ministry considers what is likely to happen in the foreseeable future. The extent to which the Ministry is able to make judgements 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 timeframes longer than imminent.

2.4 Grounds for the Review

26. The New Zealand industry provided evidence that material injury will recur should the subject goods be imported into New Zealand without adequate anti-dumping duties. The industry claimed that imports of the subject goods will be dumped with the removal of anti-dumping duties and that material injury to the industry will recur through:

- significant increase in import volumes, price undercutting, price suppression and depression

resulting in:

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

Reassessment of Anti-Dumping Duties

27. If the outcome of this review indicates that anti-dumping duties should continue to be applied, then the rate or amount of duty can be reassessed in accordance with section 14(6) of the Act.

2.5 Interested Parties

New Zealand Industry

28. Heinz Wattie's Limited (HW) submitted the application for a review. HW is the sole New Zealand producer of canned peaches, and therefore constitutes the New Zealand industry.

Exporters and Importers

Exporters

29. In its application for a review, HW identified two specific exporters of canned peaches from South Africa. They were Langeberg Foods Limited and Del Monte Foods International Limited. They were the exporters identified in the 2002 sunset review. Import information provided by the New Zealand Customs Service (NZCS) for the period 1 May 2006 to 30 April 2007 (POR(D)) showed that there were no exporters other than the two identified in the application.

Langeberg and Ashton Foods Limited (Langeberg and Ashton)

30. Langeberg Foods Limited was identified as an exporter in both the original investigation and the 2002 sunset review. In 2005 Langeberg Foods Limited merged with another South African producer, Ashton Canning (Pty) Ltd. The company now takes the name Langeberg and Ashton Foods Limited.

Del Monte South Africa (Pty) Limited (Del Monte)

31. Del Monte South Africa (Pty) Limited is operated under the management of Del Monte Foods International Limited, Monaco. Del Monte Foods International Limited, was identified as an exporter in both the original investigation and the 2002 sunset review.

32. Both South African producers were sent manufacturers questionnaires. Neither of the companies provided the Ministry with a response to the questionnaire.

Importers

33. NZCS data identified two importers of canned peaches from South Africa during the POR(D).

Brooke Holdings Limited (Brooke Holdings)

34. Brooke Holdings is a small company primarily involved in the importation and distribution of bulk food ingredients to manufacturers. Brook Holdings Limited acts both as an agent and customer of Langeberg & Ashton. As an agent Brook Holdings negotiates sales on behalf of Langeberg & Ashton working on an agent's commission. As a customer Brook Holdings purchases product and sells into the market working on a margin.

Fresh Partners (Pacific) Limited (Fresh Partners)

35. For the one shipment from Del Monte over the POR(D), Del Monte Fresh Produce (NZ) Ltd (Del Monte Fresh Produce) acted for Del Monte. At this time, all export sales to New Zealand made by Del Monte were made through Del Monte Fresh Produce which was operating in New Zealand as Del Monte's agent. Del Monte Fresh Produce ceased operations in New Zealand in October 2006 and Fresh Partners became Del Monte's agent in New Zealand.

36. Fresh Partners is a limited liability company. The company has a formal marketing agreement with Del Monte handling export and imported products within the territory of Australia and New Zealand. The company was able to provide the Ministry with information on Del Monte's one shipment to New Zealand which was sold to Supermarket Sales NZ Ltd (Supermarket Sales).

37. Supermarket Sales is a sales and marketing company which works with overseas and New Zealand companies to provide support for their products in New Zealand. Supermarket Sales on-sold the canned peaches in this shipment to privately-owned and operated supermarkets in New Zealand.

38. Fresh Partners responded to the Ministry's importers' questionnaire. Supermarket Sales also provided a response to the questionnaire.

2.6 Imported Goods

39. The goods which are the subject of the anti-dumping duty, hereinafter referred to as "goods under review", GUR or "subject goods", are:

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

40. The New Zealand Customs Department has stated that the subject goods enter under the following tariff classifications:

20.08	Fruits, 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:

	[- Nuts, groundnuts and other seeds, whether or not mixed together]
	[- Pineapples]
	[- Pears]
	[- Apricots]
	[- Cherries]
2008.70	-Peaches: *[--Cooked and preserved by freezing, not containing added sugar]*
2008.70.09 00L	--Other
	[-Strawberries]
	[- Other, Including mixtures other than those of subheading No 2008.19]

41. Applicable duty rates are:

Normal	7%
Australia	Free
Canada	Free
LDC	5.5%
LLDC	Free
Pac	Free
Singapore	Free
Thailand	Free
TPA	Free

2.7 Exchange rates

42. Article 2.4.1 of the Anti-Dumping Agreement provides as follows:

When the comparison under paragraph 4 *[of Article 2]* requires a conversion of currencies, such conversion should be made using the rate of exchange on the date of sale[8], provided that when a sale of foreign currency on forward markets is directly linked to the export sale involved, the rate of exchange in the forward sale shall be used. Fluctuations in exchange rates shall be ignored and in an investigation the authorities shall allow exporters at least 60 days to have adjusted their export prices to reflect sustained movements in exchange rates during the period of investigation.

[8] Normally, the date of sale would be the date of contract, purchase order, order confirmation, or invoice, whichever establishes the material terms of sale.

43. In this report normal values are expressed in South African rand, export transactions take place in US dollars, and any injurious effect is reflected in NZ dollars. The Ministry has used the invoice date to establish the date of sale for the export sales, which have been converted into rand at the date of sale. The exchange rates used are the interbank rates recorded on the OANDA currency conversion site on the internet (www.oanda.com/converter/classic).

2.8 Disclosure of Information

44. The Ministry makes available all non-confidential information to any interested party through its public file system.

45. Article 6.8 of the Anti-dumping Agreement provides as follows:

In cases in which any 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.

46. Section 6 of the Act states that:

(1) Where the [Chief Executive] is satisfied that sufficient information has not been furnished or is not available to enable the export price of goods to be ascertained under section 4 of this Act, or the normal value of goods to be ascertained under section 5 of this Act, 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.

47. As noted above, information concerning exports of the subject goods over the POD(R) was requested but not received from Langeberg & Ashton and Del Monte. In view of the failure to provide information, decisions regarding these two exporters have been made having regard to all available information, in accordance with section 6 of the Act and article 6.8 of the Anti-dumping Agreement. Details of the information used and the conclusions drawn are shown in sections 4 and 5 of this report.

3. New Zealand Industry

48. Section 3A of the Act provides the definition of “industry”:

> **3A. Meaning of “industry”—**For the purposes of this Act, the term "industry", in relation to any goods, means—
>
> (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.

3.1 Like Goods

49. In order 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, and if not, whether there are New Zealand producers of other goods which have characteristics closely resembling the subject goods. The subject goods are described in section 2.6.

50. HW produces, *inter alia*, a range of styles of canned peaches (halves, slices, diced), packed in various concentrations of sugar syrup, “lite” media (artificial sweetener in water) and fruit juice, and in various can sizes. In addition to its branded lines of “Wattie’s”, “Oak”, and “Weight Watchers”, HW also produces the house brand Pam’s for the Foodstuffs NZ Limited supermarket chain.

51. In the original investigation, the Ministry reached the conclusion that the canned peaches produced by HW in syrup and juice, while not alike in all respects because of differences in can sizes, varieties of peaches used, the use of juice and variations in concentrations of sugar syrup, had characteristics closely resembling the imported canned peaches and were therefore like goods to the subject goods.

52. The Weight Watchers brand and “Wattie’s” canned peaches in “lite” media were not produced by HW at the time of the original investigation but were produced by HW at the time of the 2002 sunset review. The 2002 sunset review found that the “Wattie’s” canned peaches in “lite” media were like goods, but that the “Weight Watchers” canned peaches were not like goods to the subject goods.

53. The Ministry has reviewed whether there has been a change since the original investigation and the 2002 sunset review, which would lead to a change in the conclusions reached in those investigations, regarding its like goods analysis. The Ministry has been provided with no information which would have it conclude that its like goods analysis should be changed. On this basis the Ministry concludes that HW is still producing like goods to the subject goods imported from South Africa. However, based on the Ministry’s conclusions in relation to like goods, the Ministry has extracted all sales of the Weight Watchers product from the injury analysis.

3.2 Imports of Canned Peaches

54. The subject goods are not separately identified in the Tariff of New Zealand but the NZCS data does provide a description of the goods. Using this description and the information supplied by Brooke Holdings and Fresh Produce on the size and type of canned peaches these companies imported over the POR(D), the volume of subject goods from South Africa was calculated for the 2004/5 to 2006/7 April years.

55. Import volumes of goods falling within the description of the goods subject to duty from countries other than South Africa were also estimated by referring to the goods description contained in the NZCS data. This approach was used as the existence of the anti-dumping duty is likely to have reduced the proportion of the subject goods from South Africa, but not from other markets. The Ministry examined each import entry in the NZCS data from May 2006 to April 2007 and totalled the quantity of each entry falling within the description of the subject goods. This analysis showed that imports falling within the description of the subject goods represented [redacted] percent of all imports. Import volumes from countries other than South Africa (and China, Greece, Spain and the EU as discussed below) from 2004/5 to 2006/7 were therefore estimated at [redacted] percent of imports under the tariff item covering the subject goods as shown in the INFOS data.

56. HW imports both subject goods and other goods within the tariff classification (e.g. small plastic pottles) from a number of countries. HW advised that it imports to supplement its domestic production to meet the demand [redacted] it supplies to the supermarket chains. The Ministry has excluded imports by HW from the volumes of the subject goods imported from all countries for the purposes of determining import volumes and also in its determination of whether dumped imports have caused material injury to HW. For the purpose of considering import volumes and market share, HW's total imports have been added to domestic production to represent NZ industry sales.

57. For Chinese imports, the Ministry notes that a dumping investigation was completed into Chinese imports of preserved peaches imported under this tariff item in August 2006. Since July 2006 anti-dumping duties have been imposed on imports of these goods from China. While the goods specification for the Chinese investigation was broader than the goods subject to the present review, the Ministry considers that the imposition of anti-dumping duties on Chinese imports under this tariff item is likely to have affected the volume of canned peaches being imported from China. Therefore, in calculating the volume of imports of canned peaches of the type subject to this review (as opposed to imports of other goods) under this tariff item), from China, the Ministry referred to the description of the goods contained in the NZCS data for each shipment made since the 2004/5 year and estimated import volumes for the 2004/5, 2005/6 and 2006/7 years using this description.

58. The Ministry also notes that a review of the anti-dumping duty on canned peaches from Greece and a review of the countervailing duty on canned peaches from the EU was completed in July 2003. During that review, it was determined for the purpose of establishing import volumes from these countries, that [redacted] percent of total imports from Greece were subject goods and [redacted] percent of total imports from

Spain were subject goods. These proportions were combined and a figure of [redacted] percent was applied to total imports of canned peaches of the type subject to review from EU countries other than Greece and Spain, to estimate the volume of imports entering New Zealand from these other EU countries. These same proportions were applied to imports from Greece, Spain and other EU countries in the present review.

59. The estimated import volume figures are as follows:

Table 3:1: Import Volumes of Subject Goods (kgs)
(Years ended April)

	2004/5	2005/6	2006/7
Imports from South Africa	[redacted]	[redacted]	[redacted]
Imports from Australia	3,292,754	2,996,911	2,561,545
Other Imports	1,294,896	993,125	1,222,946
Total Imports	[redacted]	[redacted]	[redacted]

60. The figures in the above table show that imports of the subject goods from South Africa remain at low levels. This is not surprising in view of the fact that there are currently anti-dumping duties imposed on these imports.

3.3 New Zealand Market

61. The following table shows the New Zealand market for canned peaches in kilograms. Import figures used in this table are as per table 3.1 above and those relating to domestic sales are as provided by HW.

Table 3:2: New Zealand Market for Canned Peaches (kgs)
(Years ended April)

	2004/5	2005/6	2006/7
Subject Goods	[redacted]	[redacted]	[redacted]
Other Imports*	4,587,650	3,990,036	3,784,491
Domestic Sales**	[redacted]	[redacted]	[redacted]
Total NZ Market	[redacted]	[redacted]	[redacted]

* Excludes HW's imports.
** Includes HW's imports

62. The above table shows that the New Zealand market for canned peaches decreased in size by approximately 6 percent from 2005 to 2007.

4. Dumping

63. Dumping occurs when an exporter sells goods to New Zealand at a price lower than they would sell the same goods in their country, as defined in Section 3(1) of the Act. In essence dumping is price discrimination between an export and domestic market.

4.1 Introduction

64. This section of the report explains how the Ministry established whether canned peaches were being dumped, and the extent of any dumping, during the POR(D) (1 May 2006 – 30 April 2007). It also explains how the Ministry established whether there was a likelihood of a continuation or recurrence of dumping, if the duties were removed.

65. The Ministry compares export prices and normal values on a transaction-to-transaction basis. This basis of comparison involves selecting an appropriate domestic transaction value (or when no suitable domestic transactions exist, constructing a domestic transaction value) for comparison with each export transaction value, seeking to find sales of the same type and size of good as that exported and as near as possible to the same point in time and making any adjustments for differences that affect price comparability. The Ministry is then able to compare the two values to establish whether or not each transaction was dumped and the extent of any dumping.

66. The Ministry uses a transaction-to-transaction basis for comparing export prices and normal values, rather than a weighted average-to-weighted average method, because this method identifies the individual transactions that are dumped. The Ministry considers this provides a more accurate representation of the extent of any dumping and is particularly suited to a small economy such as New Zealand where the number of transactions is relatively small.

67. In the present review, HW submitted that the normal value for sub-standard grade canned peaches should be constructed around the standard grade because in the eyes of the consumer, the two types of products are the same. However, when a determination of dumping is made under the provisions of the Act and the Anti-dumping Agreement, the export price of a particular good must be compared with the "like product" in the domestic market of the country of origin. Only when there are no suitable sales of "like products" in that domestic market is the Ministry able to use other means to determine the normal value. In the present case, the Ministry is satisfied that if a sub-standard grade product has been exported to New Zealand this export price should be compared with the sub-standard grade normal value for the purposes of determining if that product has been dumped, because these goods are considered "like products".

68. In the present review, because there was no cooperation from the two South African exporters identified as exporting the GUR to New Zealand during the POR(D), the Ministry was unable to select an appropriate South African domestic sale made by each of these exporters with which it could compare with their export

transactions. Therefore, the Ministry chose an individual domestic sale for each exporter from a selection of domestic sales of canned peaches in South Africa, supplied by HW in its application for a review. The Ministry considered this was the best information to fill in this information gap and did so under the provisions of section 6 of the Act and article 6.8 of the Anti-dumping Agreement which allows for a decision to be made having regard to all available information. Only the volume of those transactions found to be dumped with a dumping margin greater than zero are included in the volume of dumped imports used in the analysis of injury.

69. In order to conduct the above exercise, and to determine ex-factory export prices and normal values, the Ministry relied on information sourced from the original investigation and the 2002 review because of the lack of cooperation from the South African exporters. In its submission on the Interim Report, Brooke Holdings stated that by using export price and normal value information sourced from the original review, the Ministry has not established export prices and normal values but simply estimated these amounts. Brooke Holdings stated that this particular information is out-of-date and cannot be considered relevant.

70. In its submission on the Interim Report, Brooke Holdings also indicated its concerns about the Ministry's use of export pricing information from South Africa at the 6-digit level to estimate likely export prices of canned peaches, in the absence of anti-dumping duties. HW made a similar comment in its submission on the Interim Report. Both parties suggested that pricing information at a 6-digit level can lead to inaccuracies because it contains non-specific information. Brooke Holdings, in particular, stated that it is impossible to separate GUR from the other products, therefore use of these particular statistics is not reasonable to base estimated export prices of the GUR to New Zealand.

71. The Ministry has noted Brooke Holdings' concern over the use of information sourced from the original investigation in order to assist it in establishing export prices and normal values at the ex-factory level. However, the information sourced from the original investigation has only been used to substitute actual export-related costs between ex-factory and FOB and domestic sales-related costs incurred in South Africa rather than to substitute the actual export prices and normal values themselves. The base export prices and normal values themselves, were established from information relating to the current POR(D). Furthermore, in the absence of actual information supplied by the South African exporters themselves, the Ministry considers the substituted information was the best information available in terms of Section 6 of the Act and Article 6.8 of the Anti-dumping Agreement.

72. The Ministry has also noted both Brooke Holdings' and HWs' concerns over the use of South African trade statistics at the 6-digit level and has addressed this concern at paragraph 149 below. The Ministry has also noted in paragraph 148 that it requested from the South African exporters information on their export prices to markets other than New Zealand because such information provides a useful basis for estimating likely prices to New Zealand should duties be removed. However, because this information was not provided by these exporters, the Ministry resorted to the use of other information at its disposal in estimating likely export prices to New Zealand in the absence of anti-dumping duties. The Ministry considered that South

African export pricing information obtained at the 6-digit level from the Trade Map database was the best information available in terms of Section 6 of the Act and Article 6.8 of the Anti-dumping Agreement.

73. On the basis of a comparison of export prices and normal values, the Ministry concludes that dumping exists in relation to the 825gm choice grade canned peaches exported to New Zealand but that no dumping exists in relation to the 3kg (A10) [redacted] canned peaches exported to New Zealand. Sections 4.6 to 4.8 below describe how the Ministry's came to this conclusion. Section 4.9 describes the methodology the Ministry used to establish likely export prices and normal values in the absence of anti-dumping duties and the conclusions it reached as a result of its analysis.

4.2 Findings of the Original Investigation

74. The original investigation established dumping margins between 10 and 34 percent for the different product styles and can sizes.

4.3 Findings of previous reassessments

75. A reassessment completed in December 1996 showed that the weighted average dumping margin was 12 percent, down from the 20 percent found in the original investigation, due to increased export prices.

76. A second reassessment was completed in March 1998 to take account of the removal of an export subsidy, a change in the treatment of a commission and movements in the exchange rate. As a result, the NV(VFDE) amounts applicable to canned peaches exported by Langeberg were reassessed and the percentage anti-dumping duty rate applicable to other suppliers was reassessed to a rate of 3 percent.

4.4 Findings of the 2002 Review

77. The 2002 sunset review concluded that the 3kg (A10) [redacted] grade canned peaches imported over the POR(D) were dumped but that the 3kg (A10) [redacted] grade canned peaches were not.

78. The 2002 review team concluded that the 3kg (A10) [redacted] grade peaches would continue to be dumped should duties be removed. On the basis of the export prices derived from Langeberg's list prices and from the export prices derived from average South African export prices to other countries, the 2002 review team concluded there was sufficient positive evidence to conclude that there was likely to be a recurrence of dumping of other sizes and types of canned peaches, if the duties were removed.

4.5 Purpose of Review of Dumping

79. The Ministry's sunset reviews are intended to determine whether the expiry of the existing anti-dumping duties after five years would be likely to 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. Questions to be asked in relation to dumping are:

- Whether the goods under review continue to be dumped and, if so, the extent of that dumping.
- The likelihood of a continuation of any such dumping should anti-dumping duties be removed.
- Where imports of the goods subject to anti-dumping duty have ceased or are no longer dumped, the likelihood of a recurrence of dumping should anti-dumping duties be removed.

4.6 Export Prices

80. Export prices are the prices at which the goods are exported from South Africa to New Zealand, adjusted to allow a fair comparison with the prices of goods sold in the country of manufacture, as required by section 4 of the Act.

81. Export prices have been established by deducting the charges incurred by each exporter in preparing the shipment to New Zealand and by making any other relevant adjustments required in order to ensure a fair comparison with normal values. An explanation of the base prices and adjustments for each exporter is described below.

Langeberg & Ashton Foods (Pty) Ltd

Export Sales Distribution

82. During the POR(D) all export sales of the subject goods by Langeberg & Ashton were made to Brooke Holdings. Brooke Holdings imports on behalf of other New Zealand wholesalers (acting as an agent for Langeberg & Ashton) or on its own account in which case it then on-sells to other wholesalers in the Food Service sector. Brooke Holdings receives an agent's commission of [redacted] percent of the sales amount under both of these arrangements.

83. There was one shipment of the subject goods over the POR(D), consisting of 3kg (A10) [redacted]" grade canned peaches.

Base Price

84. The actual transaction value for this shipment of the subject goods by Langeberg & Ashton over the POR(D) was used to establish a base export price. Brooke Holdings provided copies of the commercial invoice for this shipment. All information on the base price for this shipment has been established on a per kilogram basis. The sale was invoiced in US dollars on a [redacted] basis. The base price for this shipment is USD [redacted] per kilogram.

85. The invoice amount was converted into rand at the interbank rate at the date of the invoice. The interbank rate was obtained from the Oanda currency conversion site on the Internet (http://www.oanda.com). The exchange rate used for the currency conversion is 7.34 rand to the US dollar.

Adjustments

Overseas Freight

86. The base export price per kilogram was adjusted for overseas freight by the actual amounts recorded in the NZCS data. An adjustment of NZD[redacted] ([redacted] rand) per kilogram was made.

Insurance

87. The base export price per kilogram was adjusted for insurance by the actual amounts recorded in the NZCS data. An adjustment of NZD[redacted] ([redacted] rand) per kilogram was made.

Agent's Commission

88. A commission of [redacted] percent of the invoice price is paid to Brooke Holdings. Brooke Holdings pays the invoice amount less the commission. The base price has been adjusted for the amount of the commission.

Further Adjustments for Costs Incurred in South Africa

89. The Ministry received no information from Langeberg & Ashton on adjustments to the export price incurred in South Africa as it chose not to participate in the review. The Ministry has therefore used information from the original investigation, the 2002 review and from Brooke Holdings to calculate the adjustments required.

90. The amounts of the adjustments established in the original investigation and then updated for the 2002 review for shipping, packing, handling and inland freight were updated again to reflect price movements over the period since the 2002 review. The Consumer Price Index (CPI) for South Africa was used for this purpose.

91. The Ministry considers the CPI to be the most relevant adjustment mechanism to reflect price movements since the 2002 review for the purpose of updating the cost of adjustments for the present review. The CPI measures price increases of goods and services for daily ordinary consumption. The Ministry considers that the services referred to above, for which an adjustment is required, are consumed by South African exporters of the same level at which the CPI is measured. The most recent information available on the CPI in South Africa was to January 2007.

92. The table below shows the movement in the CPI for South Africa for the period from the calendar year 2000 to January 2007. The figures have been obtained from the *International Monetary Fund's International Financial Statistics*, April 2007 edition.

Movement In Prices: South Africa
(base year = 2000 calendar year)

2000	Jan 2007	change as % of 2000
100	138.2	38.2%

93. The information above shows that the CPI has increased by 38.2 percent since 2000 (the period examined in the 2002 review) to January 2007.

Packaging, Handling and Documentation

94. In the 2002 review an adjustment for packing was made together with a range of handling and documentation charges covering wharfage, export and shipping documentation, and terminal handling charges. The total amount of the adjustment for these costs in the 2002 review was [redacted] rand per kilogram. Updating this amount by the movement in the CPI gives an adjustment of [redacted] rand per kilogram. It was considered reasonable to assume that these costs are still relevant for the present review and an adjustment of [redacted] rand per kilogram was made.

Inland Freight

95. An adjustment of [redacted] rand per kilogram was made in the 2002 review for the cost of inland freight from factory to port. For the current review this amount was adjusted by the movement in the CPI to give a cost of [redacted] rand per kilogram. It was considered reasonable to assume that this cost is still relevant for the present review and an adjustment of [redacted] rand per kilogram was made.

Shipping

96. An adjustment for shipping charges of [redacted] rand per kilogram was made in the 2002 review. For the present review this amount was adjusted for the movement in the CPI to give an adjustment of [redacted] rand per kilogram. It was considered reasonable to assume that this cost is still relevant for the present review and an adjustment of [redacted] rand per kilogram was made.

Cost of Credit

97. An adjustment for cost of credit was made on the same basis as an adjustment was made in the 2002 review. An adjustment for differences in the cost of credit for this review was based on the current 91-day treasury bill rate offered by the South African Reserve Bank of 9.07% plus a [redacted] percent premium and based on the difference between an average of [redacted] days credit to domestic customers and the credit terms given to the New Zealand customers. In the present review Brooke Holdings advised that its credit terms are [redacted] days from the date of the bill of lading. An adjustment was made to the export price of [redacted] percent ([redacted]days-[redacted]days/365 x [redacted]%).

Export Price Calculation

98. An export price for the one shipment of 3kg (A10) [redacted]” grade cans was calculated by deducting from the base price, amounts for the adjustments referred to above. The ex-factory export price is [redacted] rand per kilogram.

Del Monte SA (Pty) Limited

Export Sales Distribution

99. Del Monte exported one shipment of the GUR to New Zealand during the POR(D) consisting of 825gm canned peaches in syrup. For this particular shipment, Del Monte Fresh Produce acted as an agent for Supermarket Sales in its purchase from Del Monte. Supermarket Sales on-sold the canned peaches from this shipment to privately-owned and operated supermarkets in the upper North Island.

Base Price

100. The actual transaction value for this shipment of the subject goods was used to establish a base export price. Fresh Partners provided copies of the commercial invoice for this shipment. All information on the base price for this shipment has been established on a per kilogram basis. The sale was invoiced in US dollars on a C&F basis. The base price for this shipment is USD[redacted] per kilogram.

101. The invoice amount was converted into rand at the interbank rate at the date of the invoice using the interbank rate obtained from the Oanda currency conversion Internet site. The exchange rate used for the currency conversion is 7.28 rand to the US dollar.

Adjustments

Overseas Freight

102. The base export price per kilogram was adjusted for overseas freight by the actual amounts recorded in the NZCS data for overseas freight. An adjustment of NZD[redacted] ([redacted] rand) per kilogram was made.

Further Adjustments for Costs Incurred in South Africa

103. The Ministry received no information from Del Monte SA (Pty) Ltd on adjustments to the export price incurred in South Africa as it chose not to participate in the review. The company was not an interested party in the original investigation or in the 2002 review, therefore the Ministry was unable to use previous information supplied by the company in the same manner as for Langeberg and Ashton. The Ministry therefore based the adjustments to Del Monte’s export price on the information it had used to calculate the adjustments required for Langeberg & Ashton. This information was a combination of information sourced from the original investigation and the 2002 review. Where possible, it also used information supplied by Fresh Partners and Supermarket Sales.

104. The amounts of the adjustments established in the original investigation and then updated for the 2002 review for shipping, packing, handling and inland freight were updated again to reflect price movements over the period since the 2002 review. The Consumer Price Index (CPI) for South Africa was used for this purpose.

Packaging, Handling and Documentation

105. It was considered reasonable to assume that these costs are still relevant for the POR(D) and an adjustment for packing was included together with a range of handling and documentation charges covering wharfage, export and shipping documentation, and terminal handling charges. The total amount of the adjustment for these costs was [redacted] rand per kilogram.

Inland Freight

106. It was considered reasonable to assume that this cost is still relevant for the present review and an adjustment of [redacted] rand per kilogram for the cost of inland freight from factory to port was made.

Shipping

107. It was considered reasonable to assume that this cost is still relevant for the present review and an adjustment of [redacted] rand per kilogram for shipping charges was made.

Regional Office Margin

108. Fresh Partners stated that it is likely that Del Monte's invoice price includes a [redacted] percent regional office margin (covering the Hong Kong and New Zealand offices of Del Monte). The base price has been adjusted for the amount of this margin.

Cost of Credit

109. An adjustment for differences in the cost of credit was based on the current 91-day treasury bill rate offered by the South African Reserve Bank of 9.07% plus a [redacted] percent premium and based on an average of [redacted] days credit to domestic customers. In the present review Fresh Partners advised that the credit terms for this particular shipment were [redacted] days after delivery which meant payment was made [redacted] days after the date of sale. An adjustment was made to the export price of [redacted] percent ([redacted]days-[redacted]days/365 x [redacted]%).

Export Price Calculations

110. An export price for the one shipment of 825gm (A2.5) choice grade cans of peach slices in syrup was calculated by deducting from the base price, amounts for the adjustments referred to above. The ex-factory export price is [redacted]rand per kilogram.

4.7 Normal Values

111. The normal value is the price the foreign manufacturers or exporters sell like goods in their own country. The types of sales that can be used to determine normal values are set out in section 5 of the Act. Normal values have been established by adjusting the base prices for any differences which affect price comparability, between the canned peaches each exporter sells on the South African domestic market and that which it exports to New Zealand.

112. Where sufficient information has not been provided or is not available, normal values can be established under section 6 of the Act. The provisions of section 6 allow the Ministry to ascertain normal values having regard to all available information. As a result of having no information supplied by the two South African exporters identified as having exported the GUR to New Zealand during the POR(D), the Ministry has had to derive normal values on the basis of the best information available. Details of the information used is set out below for each exporter.

Langeberg & Ashton Foods (Pty) Ltd

113. In the absence of co-operation from Langeberg & Ashton, normal values have been established in accordance with section 6 of the Act having regard to all available information.

114. The information available on normal values is that provided by HW in its application for the present review and information sourced from the original investigation and the 2002 review. Normal values were established in the original investigation on the basis of sales by Langeberg on the South African domestic market, in accordance with section 5(1) of the Act.

115. The Ministry considers it likely that the information provided by HW in the present review will more accurately reflect actual normal values because it is far more recent than that from the original investigation. However, as a check on the reasonableness of the HW data, the Ministry made a comparison of the normal values provided by HW with the normal values for identical goods sold in South African supermarkets, supplied by Langeberg & Ashton to Brooke Holdings in a fax dated 14 June 2007. These normal values were found to be similar to those provided by HW, therefore, normal values were established on the basis of the information provided by HW (see below).

Base Prices

116. In its application for a review, HW provided normal values based on data sourced from a report issued by Datamonitor on the market for canned fruit in South Africa. Datamonitor is described on its web site as “the world’s leading provider of online data, analytic and forecasting platforms for key vertical sectors”. The report contains a summary of the market by value and volume for 2000 to 2005 and forecast market size for 2006 to 2010 and shows a steady increase in the actual and forecast size of the market for canned peaches.

117. HW also provided receipts for five different brands of 410g and 420g canned peaches purchased from two supermarket chains in South Africa and from these prices calculated an average price per kilogram. None of the brands was identical to that exported by Langeberg & Ashton to New Zealand during the POR(D), however, two brands were [redacted] product.

118. The Ministry compared the average retail price calculated as per the paragraph above with an average price per kilogram taken from the Datamonitor report. The Datamonitor price is significantly higher than the average retail price calculated from the supermarket purchases. In its application for a review, HW noted that the Datamonitor price covers all can sizes and commented that the market for the 410g can size could be more competitive than other sizes in South Africa as it is in New Zealand.

119. The Ministry considers the normal values provided by HW that are most comparable to the export sales to New Zealand are domestic prices for sales by general supermarket chains because of the relatively small volumes exported to New Zealand. This would be in contrast with sales to bulk buy retailers for example, which would likely consist of a greater volume of sales. The Ministry notes that such sales were also used in the 2002 review to establish a normal value for Langeberg. In calculating the normal value, the Ministry used the selling price for the [redacted] brands "[redacted]" and "[redacted]" canned peaches. It considered these brands were the most similar to the [redacted] brand exported to New Zealand by Langeberg and Ashton. The retail price of both these two brands is 4.99 rand for a 410gm can.

120. The Ministry compared the South African selling prices supplied by HW with prices for two [redacted] brands which had been supplied by Brooke Holdings in its response to the Ministry's importers questionnaire. Brooke Holdings had been supplied with these prices in a fax sent by Langeberg & Ashton dated 14 June 2007. While these prices are unsubstantiated by receipts or other evidence, they enabled the Ministry to check that the prices supplied by HW had not been arbitrarily chosen to reflect higher than average supermarket selling prices. The Ministry found that the price of the two [redacted] brands it chose for calculating a normal value for Langeberg & Ashton were similar to the pricing information supplied by Brooke Holdings.

Adjustments

Retail Margin

121. In order to ensure that these normal value sales are compared with the export sales at a comparable level of trade, an adjustment was made to these supermarket prices to bring them back to an estimated ex-factory price. An adjustment for a supermarket retail margin of 15 percent was made to the supermarket selling prices to derive estimated ex-factory FIS wholesale selling prices to the supermarket chains. This percentage amount was provided by HW in its application for a review. HW stated that the 15 percent retail margin is based on its "knowledge of the distribution of preserved peaches". It is reasonable to assume that HW would have knowledge of retail margins that would allow it make an estimate of a retail margin.

The Ministry also notes that Brooke Holdings provided an [redacted] percentage retail mark up figure in its response to the Ministry's Importers Questionnaire taken from data provided by Langeberg & Ashton in a fax dated 14 June 2007.

Physical Differences

122. The per kilogram price of canned peaches varies with the size of the can, the per kilogram price decreasing as the can size increases. The subject goods exported by Langeberg & Ashton during the POR(D) were 3kg cans. HW provided normal values for a 410gm can. An adjustment was therefore derived by applying the per kilogram price ratio between 410gm and a 3kg can from the original investigation of [redacted] (a [redacted] percent difference in price). This ratio was applied to the per kilogram normal value provided by HW for the 410gm can to derive a per kilogram normal value for a 3kg can for this review. The same methodology was used in the 2002 review to derive per kilogram normal values for 3kg cans for Langeberg.

Value Added Tax (VAT)

123. The base prices used to establish export price are exclusive of the 14 percent VAT as this is only applicable to goods sold within South Africa. Base prices are inclusive of VAT. An adjustment has therefore been made for VAT.

Discounts

124. In the 2002 review a [redacted] percent adjustment was made for discounts. This percentage was estimated by HW, based on its knowledge and experience of the canned peaches industry in South Africa. Given that a number of adjustments were made in the original investigation for various discounts and rebates (being in total greater than that estimated by HW), the 2002 review team considered it likely that some discounts were still provided. In the absence of information from Langeberg & Ashton on its current discounts, an adjustment of [redacted] percent has been made in the present review.

Swell Allowance

125. In the 2002 review an adjustment was made for a swell allowance. This was based on the fact that in the original investigation, Langeberg gave a swell allowance to all domestic customers in lieu of a specific warranty provision for damaged cans. Similar warranty coverage is not specifically provided for in export contracts to New Zealand. Instead Brooke Holdings makes a claim on Langeberg & Ashton for specific damage that may occur. The Ministry considers it likely that Langeberg & Ashton still provides a swell allowance on its domestic sales as this is a common industry practice. An adjustment of [redacted] percent has been made based on the adjustment made in the 2002 review.

Inland Freight, Insurance, Storage and Handling

126. A combined adjustment of [redacted] percent was made for the above items in the 2002 review based on information sourced from Langeberg in the original investigation. In the absence of information supplied by Langeberg & Ashton in the

current review, the Ministry considers that these costs are likely to still be incurred. An adjustment has therefore been made for these costs at [redacted] percent of net sales value.

Normal Value Calculations

127. A normal value was calculated by deducting from the base prices, amounts for the adjustments referred to above. The normal value calculated was [redacted] rand/kg for a 3kg (A10) can of [redacted] peach slices in syrup.

Del Monte SA (Pty) Limited

128. In the absence of co-operation from Del Monte, normal values have been established in accordance with section 6 of the Act having regard to all available information.

129. The information available on normal values is that from the original investigation, the 2002 review and that provided by HW in its application for the present review. However, Del Monte was not an interested party in the original investigation or in the 2002 review, therefore the Ministry was unable to use previous information supplied by the company to establish normal values, in the same manner as it had done for Langeberg and Ashton.

Base Prices

130. The Ministry therefore based normal values for Del Monte on the information it had used to calculate a normal value for Langeberg & Ashton in the present review. This information was a combination of information provided by Langeberg in the original investigation, information used in the 2002 review and information provided by HW in its application for the present review.

131. The Ministry considers the normal values provided by HW that are most comparable to the export sales to New Zealand are those relating to sales by general supermarket chains because of the relatively small volumes exported to New Zealand. The Ministry notes that such sales were also used in the 2002 review. In calculating the normal value, the Ministry used the selling price provided by HW for the Del Monte brand (peach halves). It considered this brand and type of canned peaches was the most similar to type exported to New Zealand by Del Monte. The retail price was 6.99 rand for a 410gm can.

132. The Ministry compared the South African selling price for this particular brand, supplied by HW, with the price for the same brand and type of product which had been supplied by Brooke Holdings in its response to the Ministry's importers questionnaire. Brooke Holdings had been supplied this price in a fax sent by Langeberg & Ashton dated 14 June 2007. The two prices were identical.

Adjustments

Retail Margin

133. In order to ensure that this normal value sale is compared with the export sales at a comparable level of trade, an adjustment was made to the supermarket price to bring it back to an ex-factory price to general supermarket chains. The Ministry made an adjustment for a supermarket retail margin of 15 percent to the supermarket selling price to derive an estimated ex-factory FIS wholesale selling price to the supermarket chains. This percentage amount was provided by HW in its application for a review and was also used for the purpose of deriving an export price for Langeberg & Ashton. Brooke Holdings had provided an [redacted] percentage retail mark up figure in its response to the Ministry's Importers Questionnaire.

Physical Differences

134. The per kilogram price of canned peaches varies with the size of the can, the per kilogram price decreasing as the can size increases. The subject goods imported during the POR(D) were 825gm cans. HW provided normal values for 410gm cans only. An adjustment was therefore derived by applying the per kilogram price ratio between a 410gm can and an 825gm can from the original investigation of [redacted] (an [redacted] percent difference in price). This ratio was applied to the per kilogram normal value provided by HW for the 410gm can to derive a per kilogram normal value for the 825gm can for the present review.

135. In the absence of information provided by Del Monte, the following further adjustments were made to the base price based on the same adjustments that were made for Langeberg & Ashton.

Value Added Tax (VAT)

136. An adjustment to the base price of 14 percent was made for VAT.

Discounts

137. An adjustment of [redacted] percent was made for discounts offered to domestic customers in South Africa.

Swell Allowance

138. An adjustment of [redacted] percent for a swell allowance was made.

Inland Freight, Insurance, Storage and Handling

139. A combined adjustment of [redacted] percent was made for the above items.

Normal Value Calculations

140. A normal value for Del Monte was calculated by deducting from the base price, an amount for the adjustments referred to above. The normal value calculated was [redacted] rand/kg for an 825gm (A2.5) can of choice peach slices in syrup.

4.8 Comparison of Export Price and Normal Value

141. In order to establish whether imports over the POD(R) were dumped, a comparison of the export prices as established in section 4.6 of this report and the normal values established in section 4.7 has been made. The result of this comparison for the two shipments by the two exporters over the POR(D) is shown in the table below.

Table 4.1: Dumping Margins

Exporter	Dumping Margin (% of Export Price)
Langeberg & Ashton Foods (Pty) Ltd (Peach Slices, Syrup, 3kg (A10), Sub Std Grade)	Not Dumped
Del Monte SA (Pty) Limited (Peach Slices, Syrup, 825gm (A2.5), Choice grade)	[redacted]%

142. Based on the export price and normal value information sourced during this review, [redacted] percent (by volume) of the subject goods imported into New Zealand from South Africa during the POR(D) are being dumped.

4.9 Likelihood of Continuation or Recurrence of Dumping

Introduction

143. The Ministry's approach to sunset reviews is recorded in section 2.3. In considering the likelihood of a continuation or recurrence of dumping, the Ministry has applied the general principles set out in that section of the report.

144. Of the two shipments of the subject goods over the POR(D) the 825gm choice grade canned peaches exported by Del Monte were dumped by a margin of [redacted] percent of the export price, while the 3kg (A10) [redacted] grade peaches exported by Langeberg & Ashton were not dumped. According to Article 11.3 of the Anti-Dumping Agreement, the review must also focus on the likelihood of a continuation or recurrence of dumping should the anti-dumping duties be allowed to expire.

Likelihood of Continuation of Dumping

145. Based on current prices and available evidence, the Ministry considers it likely that the 825gm (A2.5) cans of choice grade canned peaches will continue to be dumped should the duties be removed. This is because any movement in export prices resulting from the removal of duties is likely to be a downward one.

Likelihood of Recurrence of Dumping

146. In assessing the likelihood of a recurrence of dumping of the [redacted] grade 3kg (A10) cans and of other types and sizes of canned peaches other than 825gm choice grade, the Ministry needs to consider the effect of the current duties on export pricing i.e. whether the exporter has increased prices up to the NV (VFDE) amounts. The Ministry also needs to consider whether the exporters are likely to reduce their export prices, as a direct result of the removal of the duties to a level that would once again result in the goods being dumped. With the current anti-dumping duties being in place there is an incentive for South African exporters to sell their goods at non-dumped prices because the payment of an anti-dumping duty is legitimately avoided. If the anti-dumping duties were then removed, the exporter could simply readjust its export prices downwards to the level they were prior to the imposition of the duties resulting in a recurrence in dumping.

147. Langeberg & Ashton exported to New Zealand during the POR(D) at values [redacted]. However, in order for the Ministry to conclude that this exporter would recommence dumping into New Zealand if the anti-dumping duties were to expire, the Ministry would need positive evidence that exporters would likely reduce their export prices in the absence of anti-dumping duties to levels that would constitute dumping.

148. Information to this effect was sought from Langeberg & Ashton, however, the company chose not to participate in the review and therefore no information is available on its likely prices to New Zealand, should duties be removed. Such information would normally include the exporter’s export prices to markets other than New Zealand. The Ministry considers that the South African export prices to markets that do not have anti-dumping duties in place provides a useful basis for estimating likely prices to New Zealand should duties be removed.

149. In its application for a review HW provided 2005 South African export statistics, at a six digit level, showing the export quantity and value (at the FOB level) of canned peaches to all countries. From that information HW calculated an average FOB price per kilogram. HW stated that this FOB price is a good starting price from which export-related costs can be deducted in order to calculate a likely ex-factory export price to New Zealand, should the duties expire. The Ministry has a number of reservations about using the statistics provided by HW. The statistical information includes a wide range of products that are not GUR including a variety of pack sizes and peach pulp. Larger sized products and peach pulp are likely to be at a lower value per kilogram than the GUR although based on information sourced during the review, this is not always the case. For example, the Ministry observed that imports of peach pulp (including nectarine) in air-tight containers into Canada were of a higher per kilogram value per unit than peaches (including nectarines) in air-tight containers, excluding peach pulp. Furthermore, the statistics provided by HW relate to 2005 information and more recent information would provide a better indication of likely export prices. Also, the format in which the information had been presented made it impossible for the Ministry to make any detailed analysis on prices, products

or market trends. Therefore, the Ministry sourced additional information on South African exports of canned peaches from another trade database, Trade Map[1] The Trade Map database is operated by the International Trade Centre. Values are recorded in US dollars and quantity units are measured in metric tonnes. Trade Map covers trade flows for 224 countries for the last 5 years, including 2006. In relation to canned peaches, the database provided South African export information at the six digit level of the international harmonized system, recorded at the FOB level. Import information was available in further detail, to eight digit domestic nomenclature, recorded at the CIF level however the usefulness of the import information was dependent on the classification of the goods at the tariff line level of the particular importing country. The Ministry notes that importing countries differentiated their classification at the tariff line on a number of aspects. Some aspects observed included the weight of the product, whether it is pulp or non-pulp, whether it contains added spirit, whether it is in an air-tight or non-airtight container, whether it contains added sugar and if so the amount of added sugar contained in the product.

150. However, the detailed 8-digit information at the CIF level was not able to be used for the calculation of likely export prices from South Africa to New Zealand at the 8-digit level. The importing countries statistics did not disclose the actual freight and insurance costs associated with the imported goods. It was not possible for the Ministry to estimate these costs from the database because the goods recorded in the South African 2006 export statistics were not necessarily the same goods recorded in the importing country's 2006 statistics. This is most likely due to transit time for goods from South Africa to their destination. For example, goods leaving South Africa in November/December 2005 will be reported in 2005 South African export statistics but these particular goods may not arrive to their destination until 2006 and will be recorded in the importing country's 2006 importing statistics. In addition, there is the possibility of differences in the recorded value of goods which may be due to exchange rate fluctuations between the date of export and the date of import. Without accurate information the Ministry was prevented from taking the detailed CIF import figures and working the figures back to the FOB level in South Africa.

151. In view of the fact that the 2006 Trade Map statistics were more recent than the 2005 statistics provided by HW, the Ministry used the Trade Map 2006 FOB prices from South Africa in calculating likely export prices from South Africa to New Zealand, should the duties be removed. The 2002 review team analysed South African FOB prices to the top five importing countries plus Australia. Three additional countries have been included in the present review because their markets have increased in size to an equivalent or higher level in relation to the countries used in the 2002 review. The nine largest importing countries in 2006 were Japan, Hong Kong, United Kingdom, Australia, Canada, Switzerland, Belgium, Germany and the Netherlands. The table below shows the export value, quantity and unit

[1] www.trademap.org

price information for each country when sourcing canned peaches from South Africa under this six digit tariff item.

Table 4.2: South African Exports 2006

Import Market	*Value US$ (000)*	*Unit Quantity (MT)*	*Unit Price (FOB) per kg*
Japan	9,645	12,198	0.79
HK	7,312	7,438	0.98
UK	4,636	4,298	1.08
Australia	4,069	4,274	0.95
Canada	2,945	3,570	0.82
Switzerland	2,812	2,664	1.06
Belgium	2,364	2,015	1.17
Germany	2,357	2,487	0.95
Netherlands	2,119	2,644	0.80

152. From this information the Ministry calculated an ex-factory export price for each of the export destinations listed in the table above, by deducting estimated costs and charges between ex-factory and FOB using the adjustments before FOB, outlined in section 4.6 above.

153. Using the normal values calculated in section 4.7 above for Langeberg & Ashton's [redacted] canned peaches (because exports to New Zealand of this type of canned peach are currently not being dumped with duties in place), the Ministry calculated estimated dumping margins for South African export sales to each of the export destinations. The US dollar FOB prices have been converted to rand using the average US dollar to rand exchange rate for 2006 sourced from the Oanda currency conversion Internet site. The results are shown in the table below.

Table 4.3 South African Export Prices 2006

Import Market	*FOB (US$)*	*Ex-factory Export Price (Rands/kg)*	*Normal Value (Rands/kg)*	*Dumping Margin*	*Dumping Margin (as % of EP)*
Japan	0.79	[redacted]	[redacted]	[redacted]	25.2%
HK	0.98	[redacted]	[redacted]	[redacted]	0.3%
UK	1.08	[redacted]	[redacted]	[redacted]	-8.8%

Australia	0.95	[redacted]	[redacted]	[redacted]	3.6%
Canada	0.82	[redacted]	[redacted]	[redacted]	19.9%
Switzerland	1.06	[redacted]	[redacted]	[redacted]	-6.7%
Belgium	1.17	[redacted]	[redacted]	[redacted]	-16.2%
Germany	0.95	[redacted]	[redacted]	[redacted]	4.1%
Netherlands	0.80	[redacted]	[redacted]	[redacted]	23.5%
Average	0.96	[redacted]	[redacted]	[redacted]	3.1%
World	0.93	[redacted]	[redacted]	[redacted]	6.5%

154. The information shows that the goods are being dumped on the basis of export prices to five of the nine countries (excluding Hong Kong, where the margin is *de minimis*) with dumping margins for these five countries ranging from 3.6 to 25.2 percent. The highest dumping margin is that based on export prices to Japan. The dumping margin when based on the average export price to all nine destinations, is 3.1 percent and if based on the export prices to all countries, the dumping margin is 6.5 percent. In considering these figures due regard must be given to the normal value with which the estimated export prices have been compared which is a [redacted] grade product that is likely to be considerably [redacted] than a normal value for an equivalent sized [redacted] grade product.

155. In its submission on the Interim Report, Brooke Holdings stated that is very strange that there should be such a variation in the estimated dumping margins (and in values) when some of these markets are significant in volume (e.g. Japan, Germany, Australia) and one would expect that the prices would have been closely negotiated. Brooke Holdings stated that the pricing information provided by Trade Map must demonstrate the difference between the value of the packs rather than the pricing expectations and demands of the various markets. Brooke Holdings warned against using a homologous number because such information contains numerous variances and can be misleading. The Ministry has addressed this concern at section 4.1 of this report.

156. In its importers questionnaire response, Brooke Holdings also stated that its supplier, Langeberg & Ashton had made no specific determination with regards to its intentions towards the New Zealand market other than to state that there is a requirement from its parent company to achieve higher returns on investment which will manifest itself in higher prices. Brooke Holdings also stated that Langeberg & Ashton is able to secure higher pricing in its other markets for canned peaches than it can in the New Zealand market, therefore the company has no interest in aggressively pricing its product for sale in New Zealand.

157. In a fax to Brooke Holdings, dated 14 June 2007, Langeberg & Ashton stated that its 2007 selling prices into Japan are US$[redacted] - [redacted] for its No1m (24 cans of choice grade 410gm canned peaches) but that "[b]ased on the latest strategic plan

meetings etc, I can assure you that our price for 24/No1m slices of halves choice grade will be a lot higher and we will be needing to sell at US$[redacted] - [redacted] in Japan to get the margins we want." Langeberg & Ashton stated in a later fax to Brooke Holdings, dated 29 August 2007, that it is not making its margins in Japan as it is competing against products from China and Greece and will need to get US$[redacted] - [redacted]. The company stated in the same fax that it has informed its Japanese clients that it will not be supplying them unless they achieve this price otherwise the company will concentrate on markets like the United Kingdom where returns are better. The Ministry notes that on the basis of its terms of trade to New Zealand, the prices quoted by Langeberg & Ashton are likely to be CIF selling prices equating to approximately US$[redacted] - [redacted]/kg.

158. Using information at the 6-digit level on 2006 exports from South Africa sourced from the Trade Map data base, the Ministry calculated that a US$[redacted] - [redacted]/kg CIF price would equate to an approximate FOB value per kilogram of between US$[redacted] - [redacted]. If this is the lowest price that Langeberg & Ashton considers it can export to other destinations at in order to achieve the margins it wants, applying the estimated costs and charges between ex-factory and FOB using the adjustments outlined in section 4.6 above, would result in an estimated ex-factory export price of between [redacted] - [redacted] rand/kg. This would result in no dumping. Using the average 2006 FOB South African price to Japan of US$0.79/kg, the dumping margin is 25.2 percent.

159. The Ministry notes, however, that no evidence was provided by Langeberg & Ashton of its changed pricing structure to Japan to back up the claims in its fax of 29 August 2007. In its response to the Ministry's Importers Questionnaire, Brooke Holdings provided the Ministry with a 2007 price list for New Zealand which showed that 24/No1m slices of halves, choice grade canned peaches from Langeberg & Ashton are listed at US$[redacted] per carton equating to a CIF value of $US[redacted]/kg. The Ministry notes that this is the current CIF value at which Langeberg & Ashton are exporting the same type and size of canned peaches to [redacted]. At this price the information suggests that when adjustments are made to bring the price back to an ex-factory export price, and then compared with the normal value established for Langeberg & Ashton, the canned peaches are being dumped by a margin of [redacted] percent.

160. After the release of the Interim Report, Brooke Holdings provided the Ministry with a 2008 price list for New Zealand which showed that 24/No1m slices of halves, choice grade canned peaches from Langeberg & Ashton are listed at US$[redacted] per carton. This represents a US$[redacted] per carton increase in the prices listed on the 2007 price list from the same exporter. The 2008 price equates to a CIF value of US$[redacted] per kilogram. It was at this price that the Ministry determined in paragraph 158 above would result in no dumping when adjusted back to the ex-factory level and then compared with the normal value information contained in table 4.3 above. However, the Ministry has reservations about the validity of the prices listed on Langeberg & Ashton's 2008 price list. The price list itself is unverified and the extent to which list prices might resemble actual export prices will depend on the amount of any discount the importer is able to negotiate with its supplier. This, in itself, will often depend on a number of factors including the relationship between the

supplier and its customer and the volume of the order. The Ministry also notes that the prices on the 2008 price list may have been influenced by the initiation of the current review.

161. During the course of the review the Ministry was made aware of a Home Brand brand 825gm can of sliced peaches in syrup being sold in a Foodtown Supermarket in Auckland for $1.42. This particular can was manufactured in South Africa and packed for Woolworths in Australia, but had found its way into New Zealand. The Ministry considers it very likely that this can forms part of a consignment that was shipped from South Africa to Australia as part of a 2006 contract for the South African producers to supply Coles and Woolworths in Australia with Home Brand lines of canned fruit. These supermarkets had previously sourced from SPC-Ardmona cannery in Victoria. Further details of this contract are provided in section 5.4 of this report. The Ministry considers that the price at which this 825gm can of sliced peaches is being sold in New Zealand is further evidence of the likelihood that should the current anti-dumping duties be removed, the GUR will be imported into New Zealand at dumped prices.

162. The Ministry also notes that the drop in import volumes of the subject goods to negligible levels also indicates that they are unable to compete in the New Zealand market at non-dumped prices. This, in itself, suggests that a fall in prices to dumped levels would be required if the subject goods were to re-enter the New Zealand market.

163. The Ministry has had no information that indicates that there are any factors that are likely to significantly change the current normal values established in the review, should the duties be removed.

4.10 Conclusions Relating to Dumping

164. The Ministry concludes that the 825gm (A2.5) choice grade canned peaches that were imported over the POR(D) were dumped based on the current dumping calculation for Del Monte. The Ministry concludes that these 825gm choice grade peaches will continue to be dumped should duties be removed.

165. The Ministry concludes that the 3kg (A10) [redacted] grade canned peaches imported over the POR(D) were not dumped. On the basis of the CIF export prices derived from Langeberg & Ashton's 2007 price list, that company's current 2007 export prices to Japan and the 2006 export prices derived from the Trade Map database showing South African export prices to a number of different markets that do not have anti-dumping duties in place, the Ministry considers there is sufficient positive evidence to conclude that there is likely to be a recurrence of dumping of sizes and types of canned peaches, other than the 825gm (A2.5) choice grade peaches.

166. The Ministry is of the view that in reaching its conclusions, it has had regard to all available information in accordance with section 6 of the Act and article 6.8 of the Anti-dumping Agreement and has come to the conclusions on the basis of its analysis of that information as set out above.

5. Material Injury

5.1 Findings of the Original Investigation

167. The original investigation into dumping of canned peaches from South Africa, finalised in August 1996, found that:

- The import volume of the subject goods had increased significantly in both absolute terms and in relation to production and consumption in New Zealand.
- The dumped goods had undercut prices of the domestic producer and had caused price depression and price suppression.
- There was evidence of an economic impact shown as a decline in profits.
- There was no evidence of other adverse economic impacts.
- There were factors other than the dumping that contributed to the injury.

168. The investigation team in 1996 consequently found that dumping had caused material injury to the domestic industry.

5.2 Findings of the 2002 Review

169. The 2002 sunset review finalised in January 2002 found that in relation to the likelihood of a recurrence of material injury should anti-dumping duties be removed:

- It was likely there would be a significant increase in import volumes.
- It was likely that there would be price undercutting, price depression and suppression due to dumped imports from South Africa.
- Consequent upon the likely volume and price effects, it is likely there would be an adverse effect on sales volume and revenue, a reduction in output, and a negative impact on the domestic industry's market share, profits, productivity, utilisation of production capacity, cash flow, inventories, employment, wages and growth.

170. On the basis of these findings, the 2002 review team concluded that anti-dumping duties continued to be necessary to prevent a recurrence of injurious dumping.

5.3 Injury in a Review

171. The basis for considering material injury is set out in section 8(1) of the Act. The Ministry interprets section 8 to mean that injury is to be considered in the context of the impact on the industry arising from the volume of the dumped goods and their effect on prices.

172. Section 8 also 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 the Chief Executive may consider. These factors and indices are considered under the relevant headings below.

173. The demonstration of a causal relationship between the dumped imports and the injury, or threat thereof, must be based on an examination of all relevant evidence and any known factors other than the dumped imports, which are injuring, or threatening to injure, the domestic industry. Any injury caused or threatened by factors other than dumping must not be attributed to the dumped imports.

174. In the present review the Ministry has evaluated the data submitted by the New Zealand industry for the period 1 May 2005 to 30 April 2007 (HW's financial years 2004/5, 2005/6 and 2006/7). However, HW is not claiming that it is being injured by dumped goods entering the country from South Africa at present. The present review is based on the likelihood of material injury recurring should the anti-dumping duties be removed. Therefore, the Ministry has also evaluated forecast information provided by the New Zealand industry concerning the impact on its domestic operation of the removal of the duty.

Likelihood of Continuation of Recurrence of Injury

175. The Ministry's approach to sunset reviews is recorded in section 2.3 of this report. In considering the likelihood of a continuation or recurrence of injury, the Ministry has applied the general principles set out in that section of the report.

176. The Ministry carries out reviews on the provisions of section 14 of the Act and article 11 of the Anti-dumping Agreement. The Ministry interprets these provisions to mean that the likely continuation or recurrence of injury is to be considered in the context of the likely impact on the industry, arising from the likely volume of the dumped goods and their likely effect on prices.

177. In considering injury in a review, the Ministry examines whether the removal of the duty would be likely to lead to the continuation or recurrence of injury. If it is concluded that dumping and injury would likely continue or recur, the Ministry will undertake a reassessment of the rate or amount of duty under s.14(6) of the Act in order to establish whether the existing duty remains sufficient to remove or prevent injury, or whether a different rate of duty is necessary.

The Injury Information Submitted by HW

178. HW provided the Ministry with financial information for the purpose of the injury analysis. HW provided details of its financial performance for its sales of canned

peaches on the New Zealand market from 2004/5 to 2006/7 in order that the Ministry could assess how the company has performed over this period. The company also provided projections of its likely financial performance if the duties were removed from South African imports.

179. The Ministry is required to consider the injurious effects on the New Zealand industry producing like goods to the imported subject goods. To this effect, information relating to HW's total canned peach operation (domestic production plus imported sales) has been included in this report and analysed in the injury assessment. Consideration of HW's financial performance relating to its total sales of canned peaches allows the Ministry to consider the injurious effects of the dumped goods because:

- the volume of domestic production depends on the size of the peach crop from HW's contracted growers and the size of the crop has fluctuated significantly in the past due to disease and weather events; and

- HW sources canned peaches from abroad to supplement its domestic production with imports which are priced the same and incur many of the same general, administration, marketing and selling costs as domestic production.

180. Furthermore, in a review situation, because there are currently anti-dumping duties in place, it would not be expected that the industry is suffering injury due to the dumped goods. The focus of the injury analysis is therefore, on the likelihood on injury recurring should the duties be removed.

General Submissions by Brooke Holdings on the Injury Scenarios and Information provided by HW

181. Brooke Holdings stated in its submission on the Interim Report that HW has provided forecast injury information without any knowledge of South African pricing or marketing strategies and without this information the forecasts made by HW are conjecture and can not be considered positive evidence of a recurrence of injury. Brooke Holdings stated that all conclusions drawn by the Ministry are founded on the acceptance of the injury scenario presented by HW. Brooke Holdings said the Ministry has no basis on which to draw conclusions of "likelihood" of injury based on conjecture. Brooke Holdings also stated that without the knowledge of South African pricing and marketing strategies all conclusions drawn in order to quantify the volume of imports to New Zealand of canned peaches are assumptive and not based on any positive evidence.

182. As stated in paragraph 175 above, section 2.3 of this report outlines the Ministry's Approach to Sunset Reviews, including the factors the Ministry takes into account in interpreting Article 11.3 of the Anti-dumping Agreement and the need to clearly demonstrate that , "… the expiry of the duty would likely lead to continuation or recurrence of dumping and injury".

183. As determined in section 2.3 above, guidance on the level of evidence that is required to meet the "would be likely" criteria of Article 11.3, is provided in the findings of the WTO panel report, *United States Anti-Dumping Duty on Dynamic Random Access Memory Semi Conductors (DRAMS) from Korea*. It was determined in that case that the test to be applied is a positive one, based on positive evidence that certain events are likely to occur, which will cause a continuation or recurrence of dumping and material injury to the industry, in the absence of anti-dumping duties. The Ministry also noted in section 2.3 that regard should be had to the timeframe within which an event may occur, and that in determining "likelihood", the Ministry considers what is likely to happen in the foreseeable future which in itself will depend on the circumstances of each case.

184. The Ministry considers that the nature of making a determination as to the likelihood of an event occurring in the foreseeable future, makes it an inherently uncertain exercise and the Panel in the above case noted that the necessity requirement involved in the analysis " … is not to be construed in some absolute and abstract sense, but as that appropriate to circumstances of practical reasoning intrinsic to a review process". The Panel also noted that "Mathematical certainty is not required, but the conclusions should be demonstrable on the basis of the evidence adduced. This is as much applicable to a case relating to the prospect of recurrence of dumping as to one of present dumping."

185. A further relevant factor in any determination the Ministry makes in regard to the likelihood of an event occurring in the foreseeable future is that it may need to make this determination without being supplied pertinent information by parties who are in the best position to supply the Ministry with it. Brooke Holdings made specific mention of the fact that the Ministry made its injury determination on the basis of having no knowledge of South African pricing or marketing strategies. In this respect there is a balancing act of having to determine the likelihood of an event occurring with the need to use the facts available provisions of the Act and the Anti-dumping Agreement to make this determination.

186. After the initiation of the review, the Ministry requested information from the South African exporters regarding their anticipated pricing behaviour on both the South African and export markets in order that it could make an informed decision on their likely behaviour in the foreseeable future, if the duties were removed, using actual information. Both South African exporters chose not to cooperate directly with the Ministry in providing this information.

187. When an interested party in a dumping investigation does not provide necessary information to the authorities, both the Act and the WTO Anti-dumping Agreement make provisions for such an eventuality. Section 6 of the Act allows the Ministry to ascertain normal values and export prices 'having regard to all available information' while Article 6.8 and Annex II (the 'facts available' provisions) of the Anti-dumping Agreement allow the authorities to make preliminary and final determinations 'on the basis of facts available' in cases in which any interested party 'refuses access to, or otherwise does not provide necessary information within a reasonable period, or significantly impedes the investigation'.

188. The ‘facts available’ provisions of the Act and the Anti-dumping Agreement exist because the authorities need certain information from exporting firms, however, authorities generally have no subpoena power to demand that these firms supply the information. The authorities must usually rely on the voluntary cooperation of the investigated firms in providing the information but if these firms fail to do so, the authorities cannot simply give up, otherwise the investigated firms will never provide the information if they consider that it may disadvantage their position. The Anti-Dumping Agreement therefore allows the Ministry to use the facts available, when exporters do not provide necessary information, when calculating individual dumping margins and making an injury determination based on the extent of these margins.

189. The Ministry outlined in detail in the Interim Report what information it has used in the absence of information sought from but not provided by the South African exporters of canned peaches. This includes information on their anticipated pricing behaviour both in South Africa and to New Zealand and their capacity to provide the New Zealand market with substantially increased importations of the GUR, if the duties were removed. In the absence of information provided by these exporters, the Ministry considers the information it has used is the best information available in terms of both section 6 of the Act and article 6.8 of the Anti-dumping Agreement.

190. Brooke Holdings also stated that the detail of the forecast injury for HW’s injury scenarios was withheld on the basis of confidentiality. For this reason it and any other interested parties are unable to scrutinize HW’s figures and forecasts. Brooke Holdings assumes that HW worst case scenario foresees the peach canning industry collapsing if dumping duties were removed. Brooke Holdings believes that this prediction is unsubstantiated and biased. Brooke Holdings said that making an analogy to a comparable market is conjecture and this has no relevance.

191. The Ministry is under an obligation under section 10(7) of the Act and article 6.5 of the Anti-dumping Agreement to treat as confidential all information which a party has shown good cause for it to be treated as confidential. In the present review, HW provided financial information relating to its current production and sales of canned peaches as well as its projected production and sales performance, on the basis that this information was by its very nature confidential and if disclosed would be of significant competitive advantage to its competitors. The Ministry has analysed the information supplied by HW including that contained in its injury projections, if the duties were removed, and is satisfied that the request by HW to have the information treated as confidential has met the confidentiality requirements of both section 10(7) of the Act and article 6.5 of the Anti-dumping Agreement.

192. Brooke Holdings also stated in its submission on the Interim Report that the function of the Ministry is not to protect HW’s imports and thus to enable it to increase its market share at the expense of other imported product. While HW imports canned peaches to supplement any shortfall in domestic production, the Ministry notes that its imports are sourced from countries which currently have anti-dumping or countervailing duties in place. These countries include China, Greece and Spain. HW, like any other importer of the GUR from these countries, must pay the applicable anti-dumping duties, therefore in respect of its imports, the company is competing on the same terms and prices as other importers of the GUR.

193. In its injury determination, the Ministry has analysed all the information supplied by HW including its projections regarding its likely financial performance should the duties be removed. The Ministry is satisfied that the projections themselves and the basis on which the projections have been made (including the projected loss of market share based on the current market share held by the same brands in a comparable market) meet all the requirements laid down in both the Act and the Anti-dumping Agreement and also the tests laid down in the relevant WTO case law on the matter.

194. In conclusion the Ministry is satisfied that on the totality of the information gathered during the review, the expiry of the present anti-dumping duties <u>would likely lead to</u> continuation or recurrence of dumping and injury to the domestic industry. This section of the report outlines the basis on which this conclusion has been reached including the extent to which the removal of the anti-dumping duties is likely to impact of the domestic industry.

General Scenario Submitted by HW

195. After the initiation of the review HW submitted a scenario of what it considers will likely occur should the current anti-dumping duties be removed. The company considers that there will be a significant increase in dumped imports from South Africa if the current duties are removed which will directly impact on its financial performance for canned peaches. HW provided forecasts of its projected financial performance for the 2008/9 and 2009/10 financial years, if the duties were to remain and if they were to expire (in November 2007). HW expects its total sales volume for these two financial years will decrease significantly if the duties were removed. For 2008/9, HW has projected that its sales volume will decline to [redacted] tonnes (a decrease from [redacted] tonnes for the 2006/7 financial year) which will [redacted]. HW considers that even if the duties expire in November 2007, [redacted] due to a loss in market share.

196. For the 2009/10 financial year HW has projected that it would satisfy its total domestic sales requirements using [redacted].

197. HW has based its projected 2008/09 and 2009/10 sales volume decreases on the following synopsis:

- it considers that the removal of the duties on South African goods will result in a drop in sales volume of [redacted] percent for its [redacted] brand. This represents a drop in sales volume from [redacted] tonnes (actual 2006/7 figure) to [redacted] tonnes.

- it considers that the removal of the duties on South African goods will result in a drop in sales volume of [redacted] percent for its [redacted] brand. This represents a drop in sales volume from [redacted] tonnes (actual 2006/7 figure) to [redacted] tonnes.

198. HW has based its projected [redacted] percent decrease in sales volume for its [redacted] brand and its projected [redacted] percent decrease in sales volume for [redacted] on the current market share [redacted] and [redacted] have of the entire New Zealand canned peach market as well as the current market share these same brands have of a comparable market in New Zealand (the [redacted] market).

199. HW considers that this comparable market is a good analogy to the canned peach market. The brands that compete and the market conditions occurring in this market are similar to the canned peach market. Wattie's and Oak are [redacted] and they compete with the same products and under the same market conditions in the comparable market as they do in the canned peach market. For instance the [redacted]. The Wattie's brand of [redacted]. [redacted]. In summary, HW considers that the market shares of the different products in this market provide a good indication of what will happen to the market shares in the canned peach market (including its own brands), if the duties were removed.

200. HW supported this scenario in the form of a table showing projected sales volume, value, cost and profit figures for its 2008/9 and 2009/10 financial years, if the duties are removed. Where appropriate, HW's projections are considered in detail in the injury section of this report under each of the injury indicators.

Injury - Worst Case Scenario

201. HW also made the following further comments regarding what it considers would be the worst case scenario, if the duties were to expire on imports of South African canned peaches.

i. With anti-dumping duties in place for peaches from South Africa, the company will be able to [redacted].

ii. In the event of dumped product returning to the market HW brands share of market will deteriorate due to the loss of its [redacted]. This will be due to the [redacted]. This will affect both the Wattie's and Oak brands including Oak Peaches, Oak Fruit Salad and Pears. [redacted]

[redacted]. [redacted].

iii. In the event [redacted]. This [redacted] for the Wattie's brand at large.

iv. The "Watties" brand is HW's [redacted]. Consumers will be [redacted]. Without this, consumers could potentially [redacted]. Moreover, [redacted]. The [redacted] repercussions to sales revenue and profit will [redacted].

v. Of significance, HW's parent company will [redacted] historically HJ Heinz has invested heavily in New Zealand infrastructure given their confidence in the strength of the Wattie's brand.

vi. Since the imposition of anti-dumping duties on peaches from China, HW has seen [redacted]. This [redacted] has been possible due to HW branded peaches not having to compete with the prices and margins of dumped product from China. In fact, HW brands have become increasingly attractive [redacted] value per kilogram.

vii. This has had the effect that HW brands [redacted] in our last fiscal year which proves that the remedies have been effective in creating a level competitive playing field.

202. While the Ministry notes the above comments made by HW on the potential impact of the removal of the duties [redacted], the Ministry can [redacted] evaluate the likely impact on the industry's domestic production and sale of like goods. The issue of what the Ministry considers

are like goods to canned peaches imported from South Africa is dealt with in section 3.1 of this report.

203. In response to the Ministry's Interim Report, Brooke Holdings stated that imports have consistently over the years made up a significant portion of HW's total sales. While the Ministry has analysed forecast injury to the domestic industry based on the impact on HW's total sales, Brooke Holdings stated that the Ministry's focus should be the injury impact on the domestic production, and it should not concern itself with any impact on HW importing side of the business. Brooke Holdings stated that HW's market share is increasing and this additional demand is being met by HW's imports. Brooke Holdings considers that the Ministry's injury analysis approach is protecting HW's increasing market share based on a "perfect season" scenario. This scenario envisions a situation where domestic production will be sufficient to meet the market demand. This is an unacceptable approach as this scenario is unreasonable when consideration is given to HW's unsuccessful domestic peach procurement since the original investigation.

204. In its injury projections in this section of the report, HW has provided projections of what it considers will be the affect of the expiry of the anti-dumping duties on both its Wattie's and Oak brands (see "General Scenario" above). Because HW currently attempts to produce its total requirements [redacted] with peaches sourced from the domestic peach crop while fulfilling [redacted] with imported peaches [redacted], this has provided the Ministry with a good indication of how the company is likely to perform in respect of its total sales of canned peaches as well as its sales of canned peaches manufactured from domestically-sourced raw peaches.

205. The company stated that for the 2008/9 financial year it will attempt to meet its projected lower sales volume with [redacted]. In analysing the projections provided by HW, the Ministry has attempted for each of the injury indicators below to isolate and analyse the extent of the expiry of the duties on HW's domestic production as well as its total sales of canned peaches.

5.4 Import Volumes

206. Section 8(2)(a) of the Act provides that the Ministry 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 goods either in absolute terms or in relation to production or consumption in New Zealand.

207. As noted in section 3.2 above, the tariff item covering the subject goods also includes peach products falling outside of the definition of the subject goods. The volume of imports of the subject goods from South Africa and other countries has been calculated on the basis set out in section 3.2. The figures for the volume of dumped goods considered in this section of the report are based on the proportion of subject goods identified as dumped in section 4.8. In that section of the report it was

determined that [redacted] percent of the subject goods imported over the POR(D) were dumped.

208. The following table sets out the volume of imports of dumped subject goods over the review period together with New Zealand production and consumption volumes. The import figures and the figures for HW's sales are both in April years, as this is HW's financial year. HW's sales figures include sales of imported canned peaches, therefore these imports have been excluded from the import data to avoid double counting.

Table 5.1: Import Volumes (kg)

	2004/5	2005/6	2006/7
Dumped Imports from South Africa	[redacted]	[redacted]	[redacted]
Other Imports**	4,599,315	3,995,072	3,791,433
Total HW Sales*	[redacted]	[redacted]	[redacted]
NZ Market	[redacted]	[redacted]	[redacted]
<u>Change on previous year:</u>			
Dumped Imports from South Africa		[redacted]	[redacted]
Other Imports**		-604,243	-203,639
Total HW Sales*		[redacted]	[redacted]
NZ Market		[redacted]	[redacted]
<u>Percentage Change:</u>			
Dumped Imports from South Africa		[redacted]	[redacted]
Other Imports**		-13%	-5%
Total HW Sales*		[redacted]	[redacted]
NZ Market		[redacted]	[redacted]
<u>Dumped Imports from South Africa as a % of:</u>			
Total HW Sales*	[redacted]	[redacted]	[redacted]
NZ Market	[redacted]	[redacted]	[redacted]

*Includes HW's imports
**Excludes HW's imports

209. The table shows that dumped imports from South Africa have entered New Zealand in negligible quantities, and with the duties in place this would be expected.

210. The volume of dumped imports is currently minimal in relation to both New Zealand production and consumption. For the period ending April 2007 dumped imports represented less than [redacted] percent of the New Zealand market for canned peaches.

Likely Import Volumes Should Duties be Removed

211. The likelihood of a recurrence of significant volumes of dumped imports sufficient to cause material injury is related to factors such as:

- the volume of imports before and after the imposition of anti-dumping duties;
- the price advantage (in the absence of duties) which such imports may hold;
- the capacity 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 of importers to handle a significant increase in imports;
- the ease of distribution of the goods in New Zealand; and
- exchange rates.

Import Volumes before and after Imposition of Duties

212. The Ministry analysed NZCS data used in the 2002 review into canned peaches from South Africa, to see whether the imposition of the original anti-dumping duty in 1996 caused a decline in imports of canned peaches from South Africa. This information revealed that prior to the imposition of the duty, the import volumes from South Africa had been increasing significantly. In 1997, the year immediately after the imposition of the original anti-dumping duty, imports from South Africa peaked, however, since that time import volumes have fallen substantially and presently are negligible. This indicates that the anti-dumping duty did have an effect at the time of its original imposition in 1996, suggesting (given the factors outlined in the remainder of this section) that the removal of duty would likely lead to an increase in imports.

Price Advantage held by the Imported Products

213. In its response to the Ministry's Importers Questionnaire, Brooke Holdings stated that the removal of the anti-dumping measures on imports of South African canned peaches would have no effect on prices in the New Zealand market. The company stated that this is because the prices of canned peaches being imported from other countries (namely Greece and China) are considerably lower than canned peaches from its supplier, Langeberg & Ashton. Therefore, according to Brooke Holdings, there would be no downwards pricing pressure at the retail level. Brooke Holdings also supplied a facsimile from Langeberg & Ashton, dated 27 June 2007, which stated that there is a requirement from its parent company to achieve a higher return on investment and that this will manifest itself in higher prices. Langeberg & Ashton claimed in its fax that based on the prices it would need to obtain on its sales to New Zealand, it would not be competitive with HW, Australian or Chinese imports. Brooke Holdings also stated that Langeberg & Ashton is able to secure higher prices for canned peaches in markets other than New Zealand, therefore, it has no interest in pricing aggressively in New Zealand.

214. The Ministry examined the current import value of canned peaches from Greece and since the imposition of anti-dumping duties, in most cases the FOB value of

these imports was not lower than the current FOB value of the imports from South Africa. In any event, it is difficult to gauge the extent to which this pricing information is useful for this exercise. Many of the imports (from China, Greece and South Africa) are likely to be entering the New Zealand market at a deliberately inflated prices in order to legitimately avoid the payment of anti-dumping duties, which in most cases have been based on normal value (value for duty) equivalents or benchmark prices.

215. In its response to the Interim Report, Brooke Holdings submitted that it was hard to imagine South African canned peaches entering New Zealand at prices lower than the Chinese product if the duties were removed. Brooke Holdings argued that the South African product would not cause injury to HW as the Chinese product would be causing the injury.

216. The Ministry analysed the import value of canned peaches from China over the POR(D) inclusive of any dumping duty paid. Products falling outside the GUR description were excluded from the analysis. The average NZD FOB value for canned peaches exported from China was converted to US dollars at the current exchange rate obtained from Oanda and compared to the projected South African FOB export prices calculated in Table 4.2. The comparison showed that the average USD FOB value of Chinese canned peaches exported to New Zealand was higher than the projected South African export prices to six of the nine countries listed in Table 4.2 and was higher than the average US FOB value of these eight countries combined as well as the average US FOB value for all export destinations. The results of these comparisons suggest that exports from South Africa to New Zealand would likely have a lower FOB value than the goods currently imported from China, if the duties on South African canned peaches were lifted.

217. Langeberg & Ashton also claimed in another fax to Brooke Holdings (dated 14 June 2007) that it is monitored by the South African Competition Board and as a result of the 2005 merger between Ashton Canning Company and Tiger Food Brands (which owns Langeberg) a condition of the merger is that it must sell to Tiger Brands in the South African market at the same prices as it does on the international market. Brooke Holdings considers this requirement as evidence that its supplier, Langeberg & Ashton, would not reduce prices in order to secure a percentage of the canned peach market in New Zealand, if the anti-dumping duties are removed.

218. The Ministry obtained information regarding the conditions of the merger between Ashton Canning Company and Langeberg (Tiger Food Brands). In particular, it sourced a “Reasons and Order” Report prepared by the South African Competition Tribunal outlining the reasons for its decision to grant approval for the merger between the two producers. However, upon examination of this document, the Ministry could find no information regarding the condition of the merger that Langeberg & Ashton must sell to Tiger Brands at the same price as it does on the international market.

219. In a later fax to Brooke Holdings, dated 29 August 2007, Langeberg & Ashton stated that a condition of the merger was that it had to sell to Tiger Brands in the South African market and achieve a reasonable profit margin and that international prices were only the company’s guidelines.

Conclusion

220. The price undercutting analysis in section 5.5 below shows that, based on the information gathered during the review, certain types and sizes of canned peaches from South Africa are currently undercutting the prices of HW's canned peaches. The analysis concludes that if the duty was removed, there is likely to be a continuation or recurrence of significant price undercutting. It is also concluded in section 5.5 that there is likely to be a recurrence of significant price depression and suppression, should the duty be removed.

221. In its submission on the Interim Report, Brooke Holdings stated that the Ministry's undercutting projections are based on non-specific information, and consequently the Ministry is reaching a conclusion based not on facts but hypotheses.

222. The Ministry requested from the South African exporters, information on their pricing behaviour to their export markets, in order that it could made an informed decision on their likely prices to New Zealand if the duties were allowed to expire. This information was not provided by the exporters and the Ministry resorted to the 'facts available' provisions of the Act and the Anti-dumping Agreement in making its analysis. The Ministry considers that the extent of the current and projected price undercutting provides a clear incentive to import the subject goods should the duty be removed.

Capacity of the South African Industry

223. In its application for a review HW stated that South Africa's peach industry has a capacity of around 100,000 tonnes and in 2006 had opening stocks of nearly 20,000 tonnes. HW stated that this is more than double the normal carryover of the South African industry and is over double the size of the New Zealand market. It considered that this surplus stock would make it extremely easy for traders to source peaches at dumped prices. HW considered this information as evidence that due to the huge surplus capacity of the South African canned peach producers, material injury to HW from imports of dumped South African peaches will recur should the anti-dumping duties cease to apply. HW stated that this information was sourced from a 2006 Global Agriculture Information Network (GAIN) Report, dated 16 October 2006. The information was compiled by the United States Department of Agriculture's (U.S.D.A.) Foreign Agricultural Service and includes production and export quantities of South African canned deciduous fruit (including peaches) for the last three calendar years.

224. The Ministry analysed the information contained in the 2006 GAIN report. The report noted that the South African deciduous canned fruit industry produced 56,560 tonnes of canned peaches (excluding peach pulp) in 2006 and that there was an additional volume of carry-over stock from the previous year of 19,532 tonnes. The report stated the industry exports 80 percent of its products annually, mainly to the Far East, Europe and America. The Report listed 2006 exports of total canned peach products (including peach pulp) as 73,000 tonnes. The report provided a table which split these export sales into a number of different destinations. Australia was listed as one of South Africa's largest export destinations for canned peaches.

225. The GAIN report also provided forecast production and export figures for canned peaches, for 2007. The report forecast total production of 90,000 tonnes and export sales of 70,000 tonnes, although the export figure contained pulp exports which were not separated from the total canned fruit export figure. The projected export figure was 3,000 tonnes (or 4 percent) down on the export figure for 2006. Carry-over inventory of peaches from 2006 was listed as 5,674 tonnes while domestic consumption was forecast to be 15,000 tonnes. The Ministry notes that in 2005, 3,321 tonnes of canned peaches were exported to Australia, which represented an increase of 17 percent from 2004.

226. In its response to the Ministry's Importers Questionnaire, Brooke Holdings stated that its South African supplier, Langeberg & Ashton, is critically short of peaches, has insufficient product to cover local demand and is unable to supply any volume to the New Zealand market. Brooke Holdings provided a facsimile from Langeberg & Ashton, dated 14 June 2007, which stated that "[u]ntil 2005, 100,000 tonnes was the ball park figure for peach production in South Africa but with the demise of Del Monte and the crop situation, the total intake has dropped and for 2007 it was [redacted] tonnes". In a later fax to Brooke Holdings, dated 29 August 2007, Langeberg & Ashton clarified what it meant by "[t]he demise of Del Monte and the crop situation". In this fax the company stated that Del Monte has cut back production during the 2007 season and only took in approximately [redacted] tons of peaches compared with its usual [redacted] tons. Langeberg & Ashton stated that Del Monte "[h]ave appointed a new Managing Director this year [in 2007] and he has confirmed that they would be restricting their fruit intake to more or the same as the last season" and that "Del Monte's aim is to only supply their own brand for the European market". Langeberg & Ashton further stated that it also is considering reducing the intake of fruit for the new season and that its target is to only sell into profitable markets. Langeberg & Ashton stated that it is taking in a large tonnage and then having to can fruit just for the sake of it and then sell at a loss. Langeberg & Ashton stated that it is currently in negotiations with the peach farmers on cutting back its intake.

227. In respect of inventory levels, Langeberg & Ashton stated in its fax to Brooke Holdings of 14 June 2007 that a carry-over of 20,000 tonnes is a bit high as this equates to approximately 930,000 basic cartons of peaches. The company stated that its own carry-over for peaches at the end of December 2005 must have been approximately [redacted] basic cartons ([redacted] tonnes). Langeberg & Ashton stated that it could not see Rhodes Food Group or Del Monte (the other two South African domestic producers) carrying over such large quantities of peaches.

228. The Ministry also sourced a later GAIN Report, dated 18 May 2007, which provided information on South African production of fresh deciduous fruit. The Report did not contain the same detailed information on South Africa's production and export volumes of canned deciduous fruit, as was provided in the October 2006 GAIN report. However, the report did note that South Africa's 2007 updated deciduous fruit production figures are expected to reach 1.35 million metric tonnes, which is a 5 percent increase on the actual 2006 level because of the climatic conditions and the natural lifecycle of the trees. The report noted in particular that the 2006/7 deciduous fruit season started well with a more favourable exchange rate

and that the relatively good climatic conditions of last year are expected to carry-over to this year. The report stated that total annual production is 150,000 tonnes. The report also noted that total exports of deciduous fruit for 2006/7 are expected to increase by about 5 percent because of increased production for export. The report did not provide a figure relating specifically to canned peach exports.

229. In its submission on the Interim Report, Brooke Holdings referred to the fact that the Ministry had made comments on the capacity of the South Africa canned peach industry based on a 2007 GAIN report which provided information relating to the fresh deciduous fruit industry in South Africa rather than canned peaches in particular. Brooke Holdings stated that deciduous fresh fruit is such a broad category that it bears little relevance to canned peaches.

230. The Ministry has used the 2007 GAIN report on South African production of fresh deciduous fruit to provide an overall assessment of the current state of the South African fresh deciduous fruit industry. The Ministry considers that the information contained in the 2007 Report, provides an indication of the extent to which there are currently favourable conditions in South Africa for the production and export of deciduous fruit products, which will include canned peaches.

231. HW also stated that it is aware of a South African supplier being awarded a particular Australian private label contract (Coles) in the last three years. HW stated that it was aware that the volume of this business equated to [redacted] containers consisting of approximately [redacted] tonnes assuming 18 tonnes per container and that the contract would most likely be for the supply of peaches, pears, apricots and fruit salad.

232. The Ministry sourced information on this contract, online.[2] News sources show that the SPC-Ardmona cannery in Victoria's Goulburn Valley previously supplied Coles and Woolworths with fruit for its Home Brand lines but that in 2006 these supermarket chains sourced their fruit from China and South Africa. The Ministry was unable to establish the total volume sourced from South Africa, the percentage relating to peaches as opposed to pears, apricots and fruit salad and whether the contract was for 2006 only or extends to future years. The Ministry notes from other information sourced online, that the Goulburn Valley industry normally supplies about 50,000 tonnes of peaches to SPC-Ardmona for processing during a season.[3]

233. The Ministry was unable to obtain further information to substantiate the nature of this particular contract including the volume of exports involved. However, the Ministry did examine the export volume from South Africa to Australia for canned peaches, canned pears, canned apricots and canned mixtures which was contained in the 2006 GAIN Report. The total export volume of these products combined to Australia in 2005 was 7,059 tonnes which increased to 8,432 tonnes in 2006, representing a 19 percent increase from the previous year.

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[2] "Supermarkets ditch local canned fruit" (25 January 2006) *ABC Premium News*, Australia.

[3] "Peachy Outlook" (25 January 2006) *The Country News*, Australia.

234. In its submission on the Interim Report, Brooke Holdings stated that the Australian import statistics should show a decline in the imports of South African canned peaches into Australia because [redacted] has switched the majority of its requirements to another source and [redacted] shipments of canned fruits from South Africa have slowed. However, Brooke Holdings provided no information to substantiate this claim and in any event the Ministry considers that this particular Australian private label contract illustrates the extent to which the South African exporters have the ability to significantly increase their supply of canned peaches to New Zealand, in the absence of the present anti-dumping duties.

235. The Ministry also notes that, because Langeberg & Ashton has not co-operated with the review, the information supplied by the company in faxes to Brooke Holdings is unverified. Furthermore, Langeberg & Ashton is only part of the South African industry and its situation may not be representative of the whole industry.

236. The Ministry also looked at other ongoing investigations and trade actions in other jurisdictions concerning the subject goods to assist it in its analysis of the likelihood of there being substantially increased importations of canned peaches to New Zealand in the absence of anti-dumping duties. In its submission on the Interim Report, Brooke Holdings stated that it is irrelevant that no other countries have imposed measures on South African canned peaches because this is simply a demonstration of free trade working. The Ministry, however, considers that if countries other than New Zealand have also imposed trade remedies on canned peaches from South Africa this would mean that there would be fewer export markets available for South African peaches and increased competition in other existing markets due to exports being diverted from these other countries. The Ministry found no evidence that countries other than New Zealand had imposed anti-dumping, countervailing or safeguard measures on imports of canned peaches from South Africa.

237. The Ministry also noted the information contained in the “Reasons and Order” Report (see paragraph 218 above) prepared by the South African Competition Tribunal regarding the conditions of the merger between Langeberg & Ashton Canning Company. In that report, it was noted by the South African Competition Tribunal that “… the [South African Competition] Commission considers the existence of surplus capacity at the plants of the other non-merging canning firms as a factor that will allow them to discipline any attempt at market power by the merged entity.” The other two plants the Tribunal is referring to are Del Monte and RFF Foods (Rhodes). The Tribunal also noted at page 9 of its report that in 2004, Del Monte and RFF Foods together accounted for 32 percent of the South African canned deciduous fruit market.

Conclusion

238. Currently, the New Zealand industry’s domestic production volume of canned peaches is approximately [redacted] tonnes. Assuming that South Africa’s annual export volume of canned peaches ranges between 70,000 – 80,000 tonnes, this means that [redacted] percent of the South African export volume would be enough to capture the New Zealand industry’s entire domestic production volume of canned peaches. The Ministry also notes that the South African industry’s carry-over

inventory level from 2006 was listed as 5,674 tonnes which represents almost [redacted] the amount of the New Zealand industry's domestic production volume. In 1995, South African imports of canned peaches into New Zealand reached 421 metric tonnes at which level the Ministry concluded they were causing enough injury to the domestic industry to warrant the imposition of duties in 1996.

239. The Ministry has also noted the comments by Langeberg & Ashton in its fax to Brooke Holdings, dated 29 August 2007, to the effect that both it and Del Monte are currently negotiating with the South African peach farmers to cut back the intake of peach crop. However, the Ministry also notes that Langeberg & Ashton stated in the same fax that this is not an easy objective and the farmers are going to have the government and unions involved because it is bound to create job losses down the line. The company also stated in the same fax that it has been taking in a large tonnage of fruit and is then having to can the fruit just for the sake of it and then sell it at a loss. The Ministry concludes from this statement that the company has in the past had the ability to export canned peaches to foreign markets in large volumes and at a loss and is likely to look to the New Zealand market to do the same, if the removal of the duties made it possible to do so.

240. The Ministry has also noted a further development since the release of the Interim Report. HW is currently negotiating with Brooke Holdings to purchase a substantial volume of canned peaches from its South African supplier due to an expected shortfall in the domestic peach crop in 2008 caused by recent frosts in the Hawkes Bay area. The information sourced by the Ministry shows that HW is currently in negotiations with Brooke Holdings for the supply of [redacted] containers. Assuming 18 tonnes per container this represents approximately [redacted] tonnes of canned peaches. This represents a significant volume of canned peaches and Langeberg & Ashton has indicated that it is in a position to fulfil this one-off order.

241. On the basis of the totality of the information gathered during the investigation, the Ministry concludes that South African producers have sufficient freely disposable capacity to substantially increase exports of canned peaches to New Zealand.

The ease of entry into the New Zealand market

242. HW stated that the New Zealand wholesale market for the supply of canned peaches to distributors and retailers is highly competitive. The company claimed that there are no [redacted] and house brand supply contracts are up for constant tender. [redacted] and the market is always open to new sources of supply. HW also stated that many of the importers and exporters previously involved in exporting dumped peaches from South Africa to New Zealand remain active and if the present anti-dumping duties were removed, these parties would without question use their unfair advantage to resume substantial imports of canned peaches into New Zealand.

243. The Ministry examined past review reports concerning dumped imports of canned peaches from various sources in relation to the ease of entry into the New Zealand market.

244. In the 2002 review, the Ministry concluded that barriers to entry to the New Zealand market are extremely low due mainly to the ability of house brand customers to terminate present contracts at short notice, [redacted], the ability of house brand customers to switch suppliers with ease and the ability of brokers to source the subject goods from anywhere in the world, including South Africa, to take advantage of market opportunities. In respect of the 2003 review of the anti-dumping duty on canned peaches from Greece, the Ministry concluded that there are very few barriers to entry in the New Zealand market.

Conclusion

245. The Ministry considers that there have been few changes in the New Zealand market since the 2002 and 2003 reviews were completed, regarding barriers to entry for an importer and concludes that there continue to be few barriers to entry for an importer in the New Zealand market.

The Ability of Importers to Handle a Significant Increase in Imports

246. HW claimed that at dumped injurious prices it would be extremely attractive to all private label brands to source their product from South Africa, either through importers or by sourcing direct from the exporters themselves. HW stated that the relationship between trading houses and retailers already exists with traders acting as the broker on some products already sold in supermarkets. HW stated that retailers are increasingly sourcing direct from suppliers. They have their own warehousing and distribution networks to be able to manage the integration of their peach volumes from South Africa and in fact some importers already source their private label products from offshore. HW is of the view that all importers who were involved in the original investigation have procedures and practices in place to handle any increased volume of exports from South Africa.

247. All importers importing during the POR(D) were asked in the importers questionnaire about their ability to handle increased exports of canned peaches from South Africa. Brooke Holdings responded by saying that it is a well-resourced company and capable of coping with any increase in the volume of imported canned peaches. The Ministry did not receive a response from any other importer on this particular issue.

248. The Ministry examined past review reports concerning dumped imports of canned peaches from various sources in order to note the comments and conclusions made regarding the ability of importers to handle significant increases in imports of canned peaches from abroad.

249. In the 2002 review, the Ministry concluded that the existing distribution systems and import brokers would be able to cater for any increased imports of canned peaches from South Africa entering the market, should anti-dumping duties be removed. In the 2003 review of the anti-dumping duty on canned peaches from Greece, the Ministry concluded that importers and retailers have the ability to import and distribute a significant increase in volume of canned peaches from Greece.

Conclusion

250. The Ministry considers that there have been few changes in the New Zealand market since the 2002 and 2003 reviews were completed, regarding the ability of importers to handle a significant increase in imports. For the present review, the Ministry concludes that, on the totality of the information gathered, the existing distribution systems and importers would be able to cater for any increased imports of canned peaches from South Africa entering the market, should anti-dumping duties be removed.

The Ease of Distribution of the Goods in New Zealand

251. In the 2002 review, the Ministry concluded that the existing import and distribution systems could cope with a significant increase in import volumes. In the 2003 review of the anti-dumping duty on canned peaches from Greece, the Ministry concluded that importers and retailers have the ability to import and distribute a significant increase in the volume of canned peaches from Greece.

Conclusion

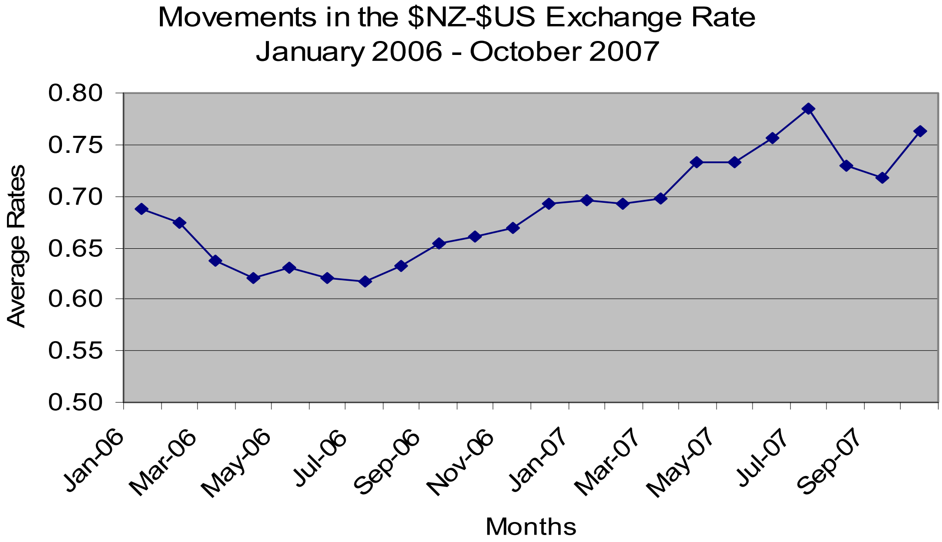
252. The Ministry considers that there have been few changes in the New Zealand market since the 2002 and 2002 reviews were completed, regarding the ease of distribution of the goods in New Zealand. For the present review, the Ministry concludes that the existing import and distribution systems in place could cope with a significant increase in import volumes of South African canned peaches.

Exchange Rates

253. A further consideration in respect of the assessment of the likelihood of an increase in import volumes of the dumped subject goods from South Africa in the absence of the current anti-dumping duties is the level of the US-New Zealand exchange rate.

254. In the 2002 review the change in the US-New Zealand exchange rate from July 2000 to September 2001 was analysed. This analysis showed that there had been a decline in the average monthly interbank exchange rate of nine percent over this period. The 2002 review team concluded that it was unlikely that the relatively small depreciation of the NZ dollar against the US dollar would be a significant disincentive to import from South Africa.

255. In the present review, the Ministry has again analysed the change in the US-New Zealand exchange rate from January 2006 to the middle of October 2007. The graph below shows the change in the average monthly interbank exchange rate over this period.



256. The information shows that there has been an 11 percent appreciation in the US-NZ exchange rate since January 2006. While the Ministry acknowledges that it is impossible to predict future exchange rate trends with 100 percent certainly, it does consider that the extent to which the appreciation of the NZ dollar against the US dollar would provide New Zealand importers with an incentive to source from South Africa would depend on whether the South African exporters have increased their US dollar prices.

257. In its submission on the Interim Report, Brooke Holdings stated that during this period of time Langeberg & Ashton increased its prices by [redacted]% - [redacted]% and this went some way to negating any advantage gained through the favourable exchange movement. The Ministry sourced import pricing information from both importers that imported canned peaches from South African over the review period. The information obtained from Brooke Holdings showed, however, that the company [redacted] since 2005. The other importer, Supermarket Sales, had made only one importation from Del Monte.

Conclusion

258. There has been a significant appreciation of the US-NZ exchange rate since the beginning of 2006. Such an exchange rate appreciation suggests improving conditions for New Zealand importers when sourcing goods from abroad when they are paying for the goods in US dollars.

259. The Ministry concludes that the significant appreciation of the US-NZ exchange rate since the beginning of 2006 and the current level of the NZ dollar compared with the US dollar offer very favourable conditions for New Zealand importers to source canned peaches from South Africa. This offers a significant incentive for New Zealand importers to source from South Africa if the current anti-dumping duties were removed.

Conclusion on Import Volumes

260. The Ministry concludes that since the 2002 review, imports of canned peaches from South Africa have continued to have a negligible presence in the New Zealand market, both in absolute terms, and relative to production and consumption in New Zealand. This indicates that the anti-dumping duties have significantly reduced the volume of imports.

261. In respect of the likely import volumes should duties be removed from imports of canned peaches from South Africa, the Ministry concludes that:

- there are no significant barriers to entry into the New Zealand canned peaches market.
- Existing import and distribution systems could cope with a significant increase in import volumes.
- South African producers continue to have the capacity to significantly increase exports of canned peaches to New Zealand.
- Current exchange rates provide an incentive to import from South Africa.

262. It has also been concluded that there is likely to be significant price undercutting should duties be removed (see section 5.5 below). The Ministry concludes that on the totality of the information sourced during the review, it is likely that there would be a significant increase in import volumes should duties be removed.

5.5 Price Effects

Price Undercutting

263. 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.

264. In considering price undercutting, the Ministry will normally seek to compare prices at the point of first competition in New Zealand. This will normally be the ex-factory price for goods produced in New Zealand and the importer's ex-store price for imports. This approach ensures that differences in distribution costs and margins do not confuse the impact of dumping. This approach therefore compares importers' prices, including relevant selling and administration costs, which involve similar cost elements to those in the New Zealand manufacturer's selling price, but not including cost elements relating to the distribution of goods.

265. The purpose of the price undercutting comparison is to establish whether or not there is price undercutting attributable to dumping. It should be noted that the determination that price undercutting exists is not by itself a determination of the extent of injury, i.e., the margin of price undercutting is not a measure of the extent of

economic impact on the industry. This impact is to be measured in terms of the factors and indices set out in s.8(2)(d) of the Act.

266. The original investigation found evidence of price undercutting which was attributable to dumping. In the 2002 review, no evidence of price undercutting was found, however, only one particular can size (A10-3kg) was compared and the Ministry concluded that the existence of the anti-dumping duty had likely affected the price of the South African imports. The 2002 review team also examined the likely price undercutting should the duties be removed. The 2002 review team concluded that should the duties be removed, it was likely that prices of canned peaches from South Africa would undercut the prices of the New Zealand industry.

Level of Trade

267. HW essentially sells preserved peaches to two large customers, Progressive Enterprises and Foodstuffs NZ Ltd, (the supermarket chains), although Foodstuffs NZ Ltd (Foodstuffs) is split into three regional co-operative companies. The supermarket chains sell goods at the retail level, through affiliated supermarkets. Between them the supermarket chains control almost the entire grocery retail market in New Zealand, and are also major players in the food service sector of the grocery market.

268. HW competes with overseas suppliers directly and with New Zealand importers (who may be supermarket chains or independent importers), to supply canned peaches in the New Zealand market destined for either the retail sector or the food service sector. The Ministry considers that the level at which HW's ex-factory prices are compared with its competitors' prices in the New Zealand market will depend on the type of purchasing and selling arrangement its competitors have and to what sector the imported goods are being sold into.

269. The Ministry notes that Brooke Holdings (one of two importers of canned peaches from South Africa over the POR(D)) sells its imports of canned peaches to the New Zealand food service sector. The company stated in its importers questionnaire response that it considers its competition as SPC, HW and other importers chasing private label business.

270. The Ministry considers that the appropriate level of trade and prices to be used for price undercutting purposes for the one shipment of canned peaches imported by Brooke Holdings is a comparison of HW's ex-factory price (net of trade spend), with Brooke Holdings' ex-store prices to the food service sector. It is at this level that the buyers in the food service sector make their purchasing decision. This is the same level of trade where the price comparison was made in the 2002 review.

271. One other importation of canned peaches was sourced from South Africa during the POR(D) At that time, Del Monte Fresh Produce was operating in New Zealand. For this particular shipment, Del Monte Fresh Produce acted as an agent for Supermarket Sales in its purchase from Del Monte. Del Monte Fresh Produce ceased operations in New Zealand in October 2006 and Fresh Partners now represents Del Monte's interests in New Zealand.

272. Supermarket Sales is a sales and marketing company which works with local and overseas companies to provide support for their products in the New Zealand marketplace. In cases where a client has imported a product into New Zealand on consignment, Supermarket Sales will warehouse, invoice and distribute its client's product to the supermarkets throughout New Zealand. In other cases it buys the product itself and then warehouses, invoices and distributes the product to the supermarkets.

273. For the one shipment of canned peaches exported from Del Monte during the POR(D), Supermarket Sales was listed as the [redacted] on the import documentation and incurred the clearance, handling, warehousing, distribution and delivery costs on this shipment. It sourced the shipment of 825gm choice grade canned peaches from Del Monte and on-sold the canned peaches from this shipment to privately-owned and operated supermarkets in the upper North Island. The company stated that the canned fruit market is very competitive with the established players utilising cost deals and promotional funds to sell their products.

274. The Ministry considers that the appropriate level of trade and prices to be used for price undercutting purposes for this particular shipment of canned peaches is to compare HW's ex-factory price (net of trade spend), with the importer's (Supermarket Sales) ex-wharf import price. It is at this level that Supermarket Sales will make its purchasing decision because the choice it faces is whether to purchase from HW or to import from abroad.

Relevant Prices

275. Import prices per kilogram at each of the two importers' appropriate level of trade for the price undercutting comparison and for each can size and type have been compared with the New Zealand industry's 2006/7 average Net Sales Value (NSV) for each can size and type comparable with the imported can size and type. The NSVs represent HW's list selling prices net of all trade spend. Trade spend represents the various forms of promotional expenditure undertaken by HW as part of selling its products [redacted]. The Ministry considers that the relevant HW price for the price undercutting comparison is that net of trade spend.

276. Because HW [redacted] basis the NSVs have also been adjusted to remove [redacted]. The Ministry has established average ex-factory NSVs for the types and sizes of the canned peaches HW produces which are directly comparable with the types and sizes sourced by the two importers and has compared these with the prices of the imported peaches.

Physical Characteristics

277. Brooke Holdings' imports of canned peaches during the POR(D) were of [redacted]" grade. In its Importers Questionnaire response, Brooke Holdings said that the [redacted]" slices are often a by-product (from normal slice production) and that the slices are often [redacted] or [redacted] than [redacted] or [redacted] grade slices. Brooke Holdings sells its [redacted]" grade peaches to the food sector service where the product is

used as an ingredient for other processed foods. The food service market is more price-driven and issues of brand are less important than sales to the retail market. The company stated that in the food service market local and imported product usually competes directly. The purchase decision is usually based on price, security and reliability of supply.

278. HW does not produce a product equivalent to the [redacted]" grade produced by Langeberg & Ashton and imported by Brooke Holdings with which the Ministry could make a comparison of prices for the price undercutting exercise. The Ministry notes that in the 2002 review Brooke Holdings was also importing [redacted]" grade peaches. In that review, the Ministry made an adjustment to the ex-factory price of HW's Wattie's and Oak brands of canned peaches to allow a fair comparison with the ex-importers store price of the [redacted]" canned peaches imported by Brooke Holdings.

279. In the previous review the [redacted] invoiced price of the imported [redacted] grade was [redacted] percent [redacted] than that of the [redacted] grade. Therefore, for price undercutting purposes, the 2002 review team [redacted] HW's ex-factory price for its Wattie's and Oak 3kg (A10) canned peaches by [redacted] percent to allow a fair comparison with the [redacted] grade imported peaches.

280. Brooke Holdings did not import [redacted] grade peaches from South Africa during the current POR(D). Therefore, the Ministry could not undertake the same exercise in comparing the company's [redacted] invoice price for its [redacted]" product with the [redacted] price for its [redacted]" product. In order to make an adjustment in the current review, the Ministry therefore again used [redacted] percent. It considers this amount to be a reasonable amount for the purpose of making an adjustment to the ex-factory price of HW's Wattie's and Oak 3kg (A10) canned peaches to allow a fair comparison with the [redacted]" grade imported peaches.

Price Undercutting Comparison

281. Brooke Holdings provided the Ministry with its cost build-up to selling price information for its single importation of 3kg (A10) canned peaches over the POR(D). The shipment was [redacted] where the goods were transported from the wharf to its store. Brooke Holdings' ex-store price for this shipment was used by the Ministry for the price comparison exercise with HW's canned peaches.

282. Fresh Produce provided the Ministry with a cost build-up to ex-wharf for the single importation of 825gm "choice" grade canned peaches sourced from Del Monte during the POR(D). The ex-wharf import price for this shipment was used by the Ministry for the price comparison exercise with HW's peaches.

283. The Ministry compared both Brooke Holdings' and Fresh Produce's import prices with HW's prices for the same types and sizes of canned peaches as those imported. HW provided its average ex-factory per kilogram prices, net of trade spend, for the year ended 30 April 2007. Where HW did not produce an identical

type and size to that imported, the comparison was made with the nearest type and size the company did produce. An adjustment was made for physical differences, as outlined above.

Table 5.2: Price Undercutting

HW Ex-factory vs Brooke Holdings Ex-store Price

	Ex-store price ($/ctn)	Ex-store price ($/kg)		
Imported 3kg A10	[redacted]	[redacted]		
	Ex-factory price ($/kg)	**Adjusted ex-factory Price**	**Under-cutting ($/kg)**	**As %HW Price**
Wattie's A10	[redacted]	[redacted]	nil	-
Oak A10	[redacted]	[redacted]	nil	-

HW Ex-factory vs Fresh Produce (Pacific) Ex-wharf Price

	Ex-wharf price ($/ctn)	Ex-wharf price ($/kg)		
Imported 825gm	[redacted]	[redacted]		
		Ex-factory Price ($/kg)	**Under-cutting ($/kg)**	**As %HW Price**
Wattie's 820gm		[redacted]	[redacted]	[redacted]%
Oak 820gm		[redacted]	[redacted]	[redacted]%

284. The above table shows that there is no price undercutting by the [redacted]" 3kg (A10) canned peaches imported by Brooke Holdings when compared with the prices of HW's equivalent Oak and Wattie's brand peaches. The imported 825gm product imported by Supermarket Sales is undercutting HW's equivalent Oak and Wattie's brand peaches by [redacted] and [redacted] percent, respectively.

285. The Ministry considers that caution is required in drawing conclusions from this price comparison exercise. Only two particular can types and sizes have been compared, these being the only types and sizes imported over the POR(D). Due regard should also be given to the fact that Wattie's is [redacted]. It has been shown [redacted]. It is also likely that the existence of the anti-dumping duty has affected the price of the South African imports.

Conclusion

286. From the comparison above, the Ministry concludes that prices of domestically produced 825gm canned peaches are currently being undercut by the equivalent South African canned peaches but that there is no undercutting in respect of the 3kg (A10) [redacted] canned peaches imported by Brooke Holdings.

Price Undercutting Should Duties be Removed

287. In its application for a review, HW provided estimates of the likely export prices to New Zealand in the absence of anti-dumping duties. These estimates were based on the per kilogram average FOB prices for 2006, of canned peaches exports from South Africa to all countries taken from the latest 2006 GAIN Report on South Africa's Canned Deciduous Fruit.

288. For price undercutting purposes, HW estimated an ex-importer's store price per kilogram in New Zealand by adding to the average FOB prices referred to above, various costs after FOB and an importer's margin. This information was based on HW's knowledge of sourcing and importing the product. HW calculated an ex-importers store price for a 410gm can from the average per kilogram price.

289. The importer's price was built up by HW to an estimated supermarket price by adding a margin for supermarkets and GST. On this basis, HW estimated a retail selling price of $0.75 for a 410gm can, which it compared to its current retail price for the Wattie's, Oak and Pams brands, to estimate margins of price undercutting of [redacted], [redacted] and [redacted] percent respectively.

290. In its Importers Questionnaire response, Brooke Holdings questioned the retail selling price derived by HW. The company stated that if it was to sell a container load of 410gm canned peaches imported from South Africa to a major retailer, those peaches would not be sold at the retail level for less than $[redacted].

Ministry's Approach to Price Undercutting Calculations

291. The Ministry considers that HW's use of export prices to other countries, with no anti-dumping duties in place, is a reasonable basis to estimate likely prices in New Zealand in the absence of anti-dumping duties. The Ministry considers, however, that information relating to the current importers' profit margins and costs after FOB should be used to calculate estimated importers' ex-store prices for price undercutting purposes, as this information represents the most accurate and current information the Ministry has for into-store costs. The Ministry has sourced this information from Brooke Holdings' Importers Questionnaire response and from NZCS data. This was the same approach taken in the 2002 review to determine likely importers' ex-store prices in the absence of duties.

292. For the purpose of this exercise the Ministry used average 2006 per kilogram FOB export prices from South Africa to Germany, Great Britain, Hong Kong, Japan, the Netherlands, Canada, Switzerland, Belgium and Australia sourced from the Trade Map database. These countries consistently import the majority of South Africa's exports of canned peaches and were the same countries used to calculate estimated export prices to New Zealand, in the absence of anti-dumping duties, in section 4.9 above. The peach product covered by the tariff item from which the average prices were calculated is the same as that covered by tariff item 2008.70.09.00L shown in section 2 of this report. It therefore covers a wider range of peach products than the subject goods. The average FOB prices were converted into New Zealand dollars using the average exchange rate for September 2007 and the first half of October 2007 which was sourced from the Oanda website. It was US$1= NZ$0.73.

293. The Ministry made adjustments to the average per kilogram FOB prices to calculate ex-importers' store prices, based on information provided by Brooke Holdings and sourced from NZCS. The adjustments included overseas insurance and freight, wharfage/handling fees, transport/devanning, storage and administration, customs duty and an importer's margin.

294. In its Importers Questionnaire response and also in its submission on the Interim Report, Brooke Holdings stated that the USFDA GAIN Report from which HW's calculated per kilogram average FOB prices for 2006, is flawed because it is non-specific to the types and sizes of canned peaches exported to New Zealand. The company stated that it did not import any 410gm canned peaches during the review period in question nor was it aware of any 410gm cans being included in the import statistics.

295. The Ministry considers that the information contained in the Trade Map database concerning average per kilogram FOB export prices from South Africa to all export destinations is a reasonable starting point in the calculation of likely ex-importers' store prices in New Zealand, in the absence of anti-dumping duties. While the pricing information is not specific to the types and sizes of canned peaches that were exported to New Zealand, it does include information relating to all types and sizes of preserved peaches (including canned peaches), therefore, the Ministry considers it indicative of the likely export price to New Zealand, in the absence of duties.

296. Ex-importers' store prices calculated as above from the average export FOB prices were compared to HW's net sales revenue (NSV) per kilogram, for the financial year 2006/07. Details are shown in the table below:

Table 5.3: Price Undercutting Should Duties be Removed

(per kg)

	Germany	Great Britain	Hong Kong	Japan	Netherlands	Australia	Canada	Switzerland	Belgium
Estimated Importer's Ex-Store Price	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
HW Price (NSV)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Price Undercutting	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
% Price Undercutting	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

297. The information in the above table indicates that there would be price undercutting at the ex-importers' store level, ranging from 9 to 28 percent should the duties be removed, if exports to New Zealand were made at prices similar to those of other export markets.

Conclusion on Price Undercutting

298. The Ministry concludes that on the basis of prices to other export markets, should the duties be removed, it is likely that prices of canned peaches from South Africa would undercut the prices of the New Zealand industry.

Price Depression

299. 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 goods is or is likely significantly to depress prices for like goods of New Zealand producers.

300. 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 that have been made by domestic producers in order to deal with competition from prices of dumped goods.

301. In case of a review, there is an assumption that the existence of a remedy has had the effect of removing injury due to dumping. On this basis, a period covered by anti-dumping duties meets the general requirement of being a market unaffected by dumping.

302. In the original investigation, it was found that the average prices of HW products showed an overall decline for the period 1993-95. The investigating team found that the average price of the Wattie's brand had remained at the same level, with some decline in the house brands, and a greater level of decline in the Oak brand. In the 2002 review, it was found that there had been a small decline in overall net selling prices but this was unlikely to be attributable to dumped imports.

303. In the present review, HW has provided average selling prices for its financial years 2004/5 to 2006/7 for Wattie's, Oak and house brands (like goods) on a per kilogram basis, as well as an overall average selling price for canned peaches on a per kilogram basis for the same years (after the deduction of trade spend). The following table shows the average selling price for canned peaches on a per kilogram basis for the last three financial years.

Table 5.4: Average Selling Price

(YE April)

	2005	2006	2007
Ave. price (NSV) per kg	[redacted]	[redacted]	[redacted]
As a % of 2005		[redacted]%	[redacted]%

304. The figures in the above table show a small decline in the overall net price per kilogram over the POR(I). Given the existence of anti-dumping duties, price depression attributable to dumped imports from South Africa would not be expected, unless conditions had changed such as to make the remedy no longer fully effective.

However, the volume of imports from South Africa during the POR(I) has been minimal and is unlikely to have contributed to the small price depression experienced by HW, especially from 2005 to 2006. This is more likely to have resulted from the company experiencing competition from imports of dumped peaches arriving into the country from China. An investigation was completed regarding Chinese imports of preserved peaches in August 2006, with the imposition of final anti-dumping duties being imposed that same month.

Conclusion

305. There was a small decline in HW's overall net selling price from 2005 to 2007. However, because anti-dumping duties are currently in place in respect of imports from South Africa, and import volumes have been minimal since the duties were first imposed, this is unlikely to be attributable to dumped imports from South Africa.

Price Depression should Duties be Removed

306. HW contends that the New Zealand wholesale market for the supply of canned peaches to distributors and retailers is highly competitive. All supermarkets stock brands of canned peaches other than those supplied by HW, there are [redacted] and house brand supply contracts are up for constant tender. [redacted]. HW maintains [redacted], however, HW stated that [redacted].

307. The company stated that unsustainable price differences have previously occurred in the past when dumped or subsidised imports have entered the New Zealand market. This has resulted in a loss in volume and market share for the Wattie's product, to such an extent that prices [redacted] were forced downwards. HW considers that a similar effect would likely occur should dumped imports from South Africa be permitted to return to the market. According to HW, the [redacted].

308. HW has made a forecast for the 2008/9 financial year, of what would happen to its average net selling price, if the current anti-dumping duties were removed from imports of canned peaches from South Africa (see "General Scenario" in section 5.3 above). HW has forecast (for 2008/9) that if the current anti-dumping duties were to expire in November 2007 dumped goods from South Africa would return to the New Zealand market forcing the company to [redacted] in order to compete with the cheaper imports.

309. The following table shows HW's forecast (for 2008/9) of its average net selling price (NSV) for its overall sales of like goods to the canned peaches imported from South Africa on the assumption that the anti-dumping duties remain in place and on the assumption that they are removed.

Table 5.5: Forecast Average Selling Price

	2008/09	
	If Duties Remain	If Duties Expire
Selling price (NSV) per kg	[redacted]	[redacted]
- % change		[redacted]%

310. The above table shows that HW has projected that its average price of canned peaches in the 2008/9 financial year will be depressed by [redacted] percent if anti-dumping duties are removed. The company considers that this course of action would lead to severe injury [redacted].

Conclusion on Price Depression

311. The Ministry considers that on the basis of the information gathered in the review, HW's selling prices are likely to be depressed should the anti-dumping duties be removed.

Price Suppression

312. 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 goods is or is likely significantly to prevent price increases for those goods that otherwise would have been likely to have occurred.

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

314. The Ministry 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 by 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. While the inability to recover cost increases in prices is the main indicator of price suppression, the Ministry will consider any other factors raised as positive evidence of price suppression.

315. The original investigation found that total costs as a percentage of revenue had increased, indicating price suppression. The 2002 review concluded that even if prices had been suppressed, this was unlikely to be attributable to dumped imports from South Africa.

316. The following table shows HW's total costs (cost of goods sold plus selling, general and administration expenses) relative to sales revenue.

Table 5.6: Price Suppression

(per kg)

	2005	2006	2007
Net Sales Revenue	[redacted]	[redacted]	[redacted]
Total Costs	[redacted]	[redacted]	[redacted]
As % of Sales Revenue:			
- Total Costs	[redacted]%	[redacted]%	[redacted]%

317. The table shows that HW incurred a [redacted] percent increase in total cost per kilogram relative to sales revenue per kilogram from 2005 to 2007 indicating that prices have been suppressed. However, it was noted in the Ministry's 2006 Final Report into dumped imports from China that HW experienced fluctuations in its cost of goods sold from 2003 to 2006 primarily due to the allocation of factory overheads to fluctuating volumes of domestic production and the [redacted]. The Final Report of the 2006 Chinese investigation did note, however, that because domestic production in 2005 and 2006 was similar, the increase in the cost of goods sold in 2006 was likely due, at least partially, to increases in the cost of production, although [redacted].

318. The 2006 Final Report noted that the changes in production volumes were due to crop availability which impacts on cost of production and which may have contributed to the price suppression experienced by the company. The Ministry considers that this fact, combined with the decreased NSV per kilogram in 2006 and to a lesser extent in 2007, indicates that HW has experienced some price suppression from 2005-2007 in respect of its total sales of canned peaches.

Conclusion

319. There has been a decline in HW's overall net selling price from 2005 to 2007. HW experienced fluctuations in its cost of goods sold from 2003 to 2006 primarily due to the allocation of factory overheads to fluctuating volumes of domestic production and [redacted]. This has resulted in some price suppression over the POR(I) However, because anti-dumping duties are currently in place in respect of imports from South Africa, and import volumes have been minimal

since the duties were first imposed, the Ministry considers it unlikely that any price suppression being experienced by HW could be attributable to dumped imports from South Africa.

Price Suppression should Duties be Removed

320. HW contends that the price undercutting and price depression effects from dumped South African peaches returning to the New Zealand market would result in price suppression with HW being unable to offset the significant price undercutting by means of cost savings elsewhere. In fact, the company considers that the opposite effect would occur with its cost base increasing due to market share being taken by dumped South African imports causing processing costs per tonne to increase. In addition, HW stated that it undertakes significant consumer and trade marketing activities [redacted]. HW considers that should dumped peaches from South Africa reappear on the New Zealand market, it would either need to [redacted]. Either way, injury will have occurred.

321. The following table shows HW's forecasts for the 2008/09 financial year if anti-dumping duties are removed and if they stay in place. The forecast has been prepared on the basis noted above under price depression.

Table 5.7: Price Suppression

2008/09

	If Duties Remain	If Duties Removed
Selling Price (NSV) per kg	[redacted]	[redacted]
Total Costs per kg	[redacted]	[redacted]
Total Costs as % of NSV	[redacted]%	[redacted]%

322. The table shows that HW has projected a large increase (from [redacted] to [redacted] percent) in the percentage of total cost per kilogram relative to net revenue per kilogram should duties be removed. This is due to the large decrease in the projected average selling price per kilogram and substantial increases in the per kilogram costs of production and selling, general and administrative expenses. The cost per unit of domestic production is dependent to a significant degree on the total volume produced. HW has projected that it will continue to incur high fixed factory overheads which will be spread over a much lower production volume. HW considers that this course of action would lead to severe injury [redacted].

Conclusion on Price Suppression

323. The Ministry considers that on the basis of the information gathered in the review, HW's prices are likely to be suppressed as a result of the dumped goods should the duties be removed.

Conclusion on Price Effects

324. The Ministry concludes there is evidence of current price undercutting. The Ministry also concludes that because import volumes have been minimal since anti-dumping duties were first imposed on South African canned peaches, any price depression and suppression is unlikely to be attributable to dumped imports from South Africa.

325. The Ministry considers that removal of the anti-dumping measures from South African canned peaches would lead to a decrease in the cost to import, which would exert downward pressure on domestic prices in the New Zealand market. In its submission on the Interim Report, Brooke Holdings stated that while the cost to import may be lower in the absence of anti-dumping duties, the cost of supporting the product (marketing, merchandising, promotion, advertising and distribution) would result in a higher retail price. Brooke Holdings did not provide specific details of why, in the absence of anti-dumping duties on canned peaches from South Africa, there would be increased marketing, merchandising, promotion, advertising and distribution costs for the importer to incur.

326. The Ministry concludes that the decrease in the cost to import canned peaches from South Africa in the absence of anti-dumping duties would likely lead to a reduction in prices of South African product in the market. This in turn would likely lead to further price undercutting, price depression and price suppression being suffered by the New Zealand industry, should the duties be removed.

5.6 Economic Impact

327. 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—

(i) Actual and potential decline in output, sales, market share, profits, productivity, return on investments, and utilisation of production capacity; and

(ii) Factors affecting domestic prices; and

(iii) The magnitude of the margin of dumping; and

(iv) Actual and potential effects on cash flow, inventories, employment.

Output

328. Dumped imports can affect a domestic industry's production volume through increased supply of goods to the market and through price competition.

329. In the original investigation, it was found that domestic output fluctuated with the availability of the raw peaches each season, and HW sometimes imported canned peaches to make up for poor harvests to maintain its presence in the market. In the 2002 review this situation had not changed and the Ministry concluded that fluctuations in output cannot be attributable to dumped imports.

330. In the present review HW stated that there is both grower capacity in New Zealand for the production of peaches for processing and spare production capacity for the processing of those peaches. HW stated that it [redacted] based upon expected demand at the start of each season. HW said, however, this is not always sufficient to guard against fluctuations in the crop if there has been a bad growing season due to weather or disease. HW said in such cases, it imports canned peaches to maintain continuity of supply to its markets and protect its brand when New Zealand production is unavailable.

Conclusion

331. HW processes the entire raw peach crop available each year from its contract growers, consequently, its output is unlikely to be affected by the presence of the subject goods in the market. The Ministry considers that output is not a useful indicator of injury caused by the dumped goods.

Output Should Duties Be Removed

332. HW stated that following the imposition of final duties on canned peaches from China in August 2006, [redacted]. According to HW, [redacted]. The company intends to [redacted].

333. Currently HW fulfils its requirements for [redacted]. If the current anti-dumping duties remain in place, the company expects to [redacted]. HW stated that [redacted]. The Ministry notes that this forecast figure is [redacted] as its current domestic production amount and [redacted] than its current domestic sales volume (which includes imports sourced from abroad to make up the shortfall in domestic production).

334. HW stated, however, that if the duties are allowed to expire this would lead to the reappearance of dumped imports from South Africa causing an immediate and significant slowdown in domestic production and sales for HW.

335. HW has projected that for the 2008/9 financial year its sales volume will decline to approximately [redacted] tonnes according to the market share loss it has projected for its Watties and Oak brands (see "General Scenario" under section 5.3 above). Although the company has projected that for the 2008/9 financial year it will [redacted], the production volume will be considerably lower than what the company has historically budgeted for (a peach crop intake of between [redacted] – [redacted] tonnes). However, HW's policy has been to [redacted] based upon expected demand at the start of each season and recently reassessed its budgeted peach crop intake specifically for the production of canned peaches [redacted]

336. While the company's revised budgeted intake of raw peaches is between [redacted] – [redacted] tonnes per year, its production volume over the last four years has averaged [redacted] tonnes per year. The company's projected decline in production volume for the 2008/9 financial to [redacted] tonnes represents an [redacted] percent decrease when compared with its average production volume per year over the last four years. This indicates to the Ministry that even if the company [redacted], it is still likely to suffer a decrease in production volume compared to the upper-end of its current budgeted peach in-take amount and its average production volume (which is based on the intake of raw peaches) over the last four years.

337. HW stated that due to the intense competition from the lower-priced dumped South African canned peaches, it would [redacted]. This in turn would lead to accepting less peach crop volume from the supporting horticultural industry which the company also uses to produce fruit salad. Given that HW is their only customer the company stated [redacted].

338. In its submission on the Interim Report, Brooke Holdings stated that despite HW claiming that there is grower capacity and spare production capacity HW is continually increasing its import volume which may be due to peach growers electing not to contract to HW and the domestic peach crop being unreliable. Brooke Holdings also stated that HW is able to manipulate its peach intake by reducing the tonnage to be contracted.

339. Brooke Holdings provided no information to substantiate these claims. In any event, the Ministry notes the company's [redacted]

[redacted]. The Ministry notes that HW made this [redacted] following the imposition of anti-dumping duties on preserved peaches imported from China, in 2006. As a result of not having to compete with dumped imports from this source as well as a number of other sources that are currently subject to anti-dumping duties, HW considers that the market conditions are now favourable [redacted].

Conclusion

340. The Ministry notes that if the anti-dumping duties are allowed to expire, HW has forecast a significant reduction in production volume [redacted].

341. HW has made [redacted]. As it is the aim of anti-dumping duties to protect domestic industries against injurious dumping and to remedy injury caused by dumping then it follows that the duties are having their intended effect. The duties are setting the conditions for fair trading in the New Zealand market, thereby allowing domestic production of canned peaches to take place in fair trading conditions.

342. The Ministry considers that should the duties be removed, there is likely to be a significant increase in import volumes, price undercutting and price depression and suppression. The Ministry concludes that as a result of these volume and price effects, there would likely be a consequential impact on domestic production volume [redacted].

Sales Volume and Value

343. Movements in sales revenue reflect changes in volume 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.

344. The original investigation found there was no decline in HW's sales volume or revenue. The 2002 review found that there had not been a significant decline in sales volume or revenue over the review period.

345. The following table shows HW's sales volume and revenue for the financial years 2005 to 2007. The figures in the table include HW's sales of imported canned peaches.

Table 5.8: Total Sales of Canned Peaches

(YE April)	2005	2006	2007
Sales (000 kg)	[redacted]	[redacted]	[redacted]
- Change on previous year		[redacted]	[redacted]
- as % of 2005	100%	[redacted]%	[redacted]%
Net Revenue	[redacted]	[redacted]	[redacted]
- Change on previous year		[redacted]	[redacted]
- as % of 2005	100%	[redacted]%	[redacted]%

346. The figures show that sale volume increased by [redacted] percent from 2005 to 2006 and [redacted] percent the following year. Sales revenue decreased by [redacted] percent from 2005 to 2006 [redacted] percent the following year.

Conclusion

347. In relation to HW's total sales of canned peaches, there is no evidence that it has suffered a loss of sales volume and revenue over the POR(I). Because anti-dumping duties are currently in place in respect of imports from South Africa, and import volumes have been minimal since the duties were first imposed, should there have been a decrease in sales volume and revenue it is unlikely to be attributable to dumped imports from South Africa. HW has not claimed that its sales volume and revenue have been affected by dumping. The present review is based on the likelihood of material injury recurring should the anti-dumping duties be removed.

Sales Volume and Revenue should Duties be Removed

348. HW has made forecasts of what it expects would be the effect on its sales volume and revenue if the duties were removed. HW's forecasts are based on its estimated loss of market share and the price effects under its "General Scenario", referred to in section 5.3 above. HW considers that as a result of the removal of the duties, it would [redacted].

349. The following table shows HW's forecast sales volume and revenue for 2008/09 assuming duties stay in place and assuming duties are removed. That part of the table assuming the duties are removed is based on the price depression/discounting needed in order to compete with the renewed competition from the cheaper priced imports from South Africa, as referred to previously in this report.

Table 5.9: Canned Peaches Sales

(Forecast 2008/9)

	If Duties Remain	If Duties Removed
Sales (000 kg)	[redacted]	[redacted]
- Change (000 kg)		[redacted]
- Change (%)		[redacted]%
Net Revenue	[redacted]	[redacted]
- Change ($)		[redacted]
- Change (%)		[redacted]%

350. The figures in the table show that HW considers there will be a material impact on sales volume and revenue should the duties be removed. This will take the form of a [redacted] percent decline in sales volume and a [redacted] percent decline in sales revenue.

351. The extent to which this decrease in total sales volume is likely to affect the company's domestically-produced volume of canned peaches rather than its import operation will depend on a number of factors including the extent to which the company's projected market share decrease for both its Wattie's and Oak brand eventuates, to what extent it is contractually obliged or it decides to fulfil its projected decreased domestic sales orders with domestically-produced peaches as opposed to imported peaches and most importantly the size of the peach crop for that year.

352. Under the 'output' section above the company has projected that for the 2008/9 financial year it will attempt to [redacted]. It was also determined under the 'output' section above that HW's projected decreased production volume will be considerably lower than what the company has historically budgeted for (between [redacted] – [redacted] tonnes), as well as representing an [redacted] percent decrease when compared with its average production volume per year over the last four years.

353. In its response to the Interim Report, Brooke Holdings stated that marketing history shows that when activity in a market increases, the demand increases and the market size will expand accordingly. The company stated that this fact suggests that HW will not suffer a loss in sales volume because the presence of South African canned peaches in the New Zealand market will expand the New Zealand market. The Ministry notes this argument but also notes that Brooke Holdings provided no research or other evidence to substantiate its claim.

Conclusion

354. The Ministry concluded in sections 5.4 and 5.5 above that, should the current duties be removed, there is likely to be a significant increase in import volumes and significant price effects. The Ministry concludes that as a result of these volume and

price effects, it is likely that there would be a significant consequential impact on domestic sales volume and revenue, not only affecting the company's domestic production of canned peaches but also its total sales of this product.

Market Share

355. The analysis of the 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 or is threatened to the domestic industry, particularly if the domestic industry's sales are also growing.

356. The original investigation found that the total New Zealand market and HW's share of the market had increased in 1994 and 1995. At the same time dumped imports had also increased their market share but at the expense of imports from other countries. The 2002 review found that over the review period, the market share held by the New Zealand industry had declined as a result of an increase in non-dumped imports, largely from Australia.

357. The following table shows market share and changes in market share from 2005 to 2007.

Table 5.10: Market for Canned Peaches

	(KGs) 2005	2006	2007
Dumped Imports	[redacted]	[redacted]	[redacted]
Other Imports	4,599,315	3,995,072	3,791,433
HW Sales	[redacted]	[redacted]	[redacted]
Total NZ Market	[redacted]	[redacted]	[redacted]
Change in Volume:			
- Dumped Imports		[redacted]	[redacted]
- Other Imports		-604,243	-203,639
- HW Sales		[redacted]	[redacted]
- Total NZ Market		[redacted]	[redacted]
Percentage Share Held By:			
- Dumped Imports	[redacted]%	[redacted]%	[redacted]%
- Other Imports	[redacted]%	[redacted]%	[redacted]%
- HW Sales	[redacted]%	[redacted]%	[redacted]%

358. The figures show that HW's market share has increased from [redacted] percent to [redacted] percent over the POR(I). The figures also show that the market share held by dumped imports has remained negligible over the same period. The market share held by HW has increased at the expense of imports from other sources.

Likely Impact of Removal of Duties on Market Share

359. HW consider that if dumped South African canned peaches returned to the New Zealand market, they would enter at prices which would undercut HW's Wattie's and Oak brands to the extent that the company's market share for these brands would decrease to the level that these same brands currently hold of a comparable New Zealand market (the [redacted] market). HW considers that this comparable market is a good analogy to the canned peach market because the brands that compete and the market conditions occurring in this market are similar to the canned peach market. This scenario is explained in more detail in section 5.3 above. HW stated that it would continue to produce its domestic requirements for the 2008/9 financial year, however, as a result of competition from the dumped imports, [redacted].

Conclusion

360. The Ministry is of the opinion that the impact of the dumped goods on market share will depend on how HW responds to the South African imports, e.g. the more HW discounts its prices, the less will be the impact on market share, with the main impact being on HW's revenue and profits.

361. The Ministry has already concluded, should duties be removed, that there is likely to be significant volume and price effects and a significant consequent impact on HW's sales volume and revenue. It is concluded therefore that there is likely to be at least some impact on HW's market share attributable to dumped imports from South Africa. The significance of the likely impact will depend on factors such as HW's strategy, the impact of dumped imports on imports from other countries and growth in the total market.

Profits

362. Changes in profit reflect changes in prices, sales volumes or costs. Dumped imports can impact on any or all of these. The original investigation in 1996 found that HW's profit had declined since 1993 and that in absence of price suppression, its profits would have been higher. The 2002 review found that the combination of the negligible import volumes since the anti-dumping duties were imposed in 1996 and the lack of price undercutting made it unlikely that any decline in profits could be attributable to dumped imports from South Africa.

363. The following table shows details of HW's earnings before interest and tax (EBIT) from 2005 to 2007.

Table 5.11: Earnings Before Interest and Tax

	2005	2006	2007
EBIT ($'000)	[redacted]	[redacted]	[redacted]
Change on Previous Year	-	[redacted]	[redacted]
EBIT as a % of Net Revenue	[redacted]%	[redacted]%	[redacted]%
EBIT as a % of 2005	-	[redacted]%	[redacted]%
EBIT per kg	[redacted]	[redacted]	[redacted]
Change on Previous Year	-	[redacted]	[redacted]
EBIT per kg as % of 2005	-	[redacted]%	[redacted]%

364. The above figures show that EBIT in total, per kilogram and relative to net revenue decreased from 2005 to 2007.

Conclusion

365. Given the minimal import volumes of dumped goods from South Africa it is unlikely that any decline in profits could be attributed to dumped imports from South Africa. HW has not claimed any adverse effects on its profitability from dumped imports from South Africa.

Movement in Profits Should Duties be Removed

366. HW stated that the loss of sales revenue it has forecast should the current duties be removed, will impact directly on its profit.

367. HW stated that it is difficult to determine what expectations would be placed on the company to protect its position in the market. The company stated that retailers often use HW products [redacted] and if South African imports could be sourced at such low injurious prices, it could be foreseen that retailers would source their own private label brands from South Africa [redacted]. HW considers that with [redacted], retailers could, if using dumped South African peaches, retail peaches for as low as $0.75c for a 410gm can.

368. The following table shows HW's forecast EBIT for 2008/09 on the assumption that the duties stay in place and on the assumption that duties are removed. The forecast, based on the assumption the duties are removed, has been prepared on the same basis as that referred to previously in this report.

Table 5.12: Forecast EBIT

(2008/9)	If Duties Remain	If Duties Removed
EBIT	[redacted]	[redacted]
Change		[redacted]
% of Net Revenue	[redacted]%	[redacted]%
EBIT per kg	[redacted]	[redacted]
Change		[redacted]
% of Net Revenue per kg	[redacted]%	[redacted]%

369. The figures in the table above quantify the assumptions referred to above and shows a material impact in the form of a [redacted] in 2008/9, if the duties were to be removed. The extent to which this loss in profits is likely to affect the company's domestic production of canned peaches as opposed to its import operation is difficult to calculate but will depend on a number of factors including the extent to which company's projected market share decrease for both its Wattie's and Oak brand eventuates, to what extent it is contractually obliged or it decides to fulfil its remaining domestic sales orders with domestically-produced peaches as opposed to imported peaches and most importantly the size of the peach crop for that year.

370. Under the 'output' section above the company has projected that for the 2008/9 financial year it will attempt to [redacted]. It was concluded in that section that even if the company fulfils its projected decreased sales requirements [redacted], it is still likely to suffer a decrease in production volume compared to previous years. In addition, the likely price depression and suppression should duties be removed will impact equally on both the domestically produced and imported product. HW is forecasting [redacted] if the duties are removed and as domestic production makes up the majority of its sales it is expected that the majority of that [redacted] will relate to its domestically-produced product.

371. HW considers that such a loss in profits on its total sales of canned peaches [redacted].

372. The Ministry notes that on the assumption that duties stay in place, HW is forecasting [redacted] in EBIT compared to its 2006/7

financial year. This is mainly due to [redacted] selling price per kilogram for the 2008/9 financial year. HW does [redacted] and its [redacted] in selling price per kilogram for [redacted] with the result being [redacted] in its total EBIT forecast for 2008/9, if the duties remain.

Conclusion

373. The Ministry concludes, based on its findings of the likely volume and price effects and the consequent impact on sales volume and revenue, that it is likely HW will suffer a material loss of profit should duties be removed not only affecting the company's domestic production operation but also its total canned peach sales operation.

Utilisation of Production Capacity

374. 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 production capacity will lead to an increase in the unit cost of production, and a consequent loss of profit.

375. HW stated that its potential production capacity for peaches is restricted by crop availability. Currently HW receives and processes every peach its contracted growers wish to supply. According to the company, theoretically, with the varieties of peaches available the peach season could run from the beginning of February to the end of March (a total of 59 days). At [redacted] metric tonnes per day processing capacity, this gives a theoretical production capacity of [redacted] metric tonnes, but this includes crop tonnes for both peaches and peaches that are processed into fruit salad. HW normally budgets for a total peach crop of between [redacted] tonnes each year, [redacted]. This leaves approximately [redacted] tonnes available for [redacted]. However, HW stated that an [redacted] and therefore it has begun to budget for between [redacted] tonnes each year. This equates to approximately [redacted] tonnes available for canned peach production.

376. In summary, the total production capacity of canned peaches is limited by the quantity of raw peaches available for like goods production each year, competition for the parts of the canning line which are common to other seasonal fruit and vegetables and also by the storage life of the raw fruit. In effect, HW's production capacity utilisation rate is not a good indication of injury.

Likely impact of the Removal of Duties

377. HW has not specifically quantified any impact on its utilisation of production capacity although it did state that capacity would reduce [redacted].

Conclusion

378. Due to the multitude of canned products manufactured by HW and the limitations mentioned above regarding the availability of the raw peaches and the storage life of the raw fruit, the Ministry considers that it is difficult to predict the impact on the utilisation of production capacity for canned peaches if the anti-dumping duties were removed. However, as it has already been concluded that there would likely be a significant impact on domestic production and sales volume should duties be removed, it is likely the result would also be a decrease in HW's capacity utilisation rate.

Productivity

379. 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.

380. Table 4.13 below shows the annual production volume of canned peaches per employee engaged in production and total hours engaged in production.

Table 4.13: Productivity Per Employee and Labour hours

	2005	2006	2007
Domestic Production (000 kg)	[redacted]	[redacted]	[redacted]
Seasonal Staff	[redacted]	[redacted]	[redacted]
Permanent Staff	[redacted]	[redacted]	[redacted]
Total Staff	[redacted]	[redacted]	[redacted]
Total Hours	[redacted]	[redacted]	[redacted]
Production volume per employee	[redacted]	[redacted]	[redacted]
Production volume per hours worked	[redacted]	[redacted]	[redacted]

381. In relation to production volume per employee, there has been an improvement in productivity since 2005. HW advised this is likely to be a reflection of recent efficiencies introduced in the seasonal manufacturing area. HW stated that the volume of raw peaches also has a major effect on establishing the hours and staff numbers allocated to peaches for any given year. The information also shows that production per hours worked decreased over the period.

Likely Impact of Removal of Duties on Productivity

382. In respect of the likely impact on HW's productivity should the anti-dumping duties be removed, the company stated that [redacted].

Conclusion

383. In relation to production volume per employee, there is no evidence that productivity has been adversely affected by the dumped imports. The Ministry concludes that if HW reduces its volume of canned peach production due to

competition from increased import volumes from South Africa, it is likely that it will suffer a decline in productivity because of reduction in throughput and output per employee.

Return on Investments

384. A decline in return on investments (ROI) 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 investment.

385. [redacted] HW's seasonal production plant is not specific to canned peaches. [redacted]. This fact made it difficult for the company to provide information on returns on investment specific to its canned peach operation. In any event, because duties are already in place and there have been minimal volumes of imports from South Africa, it is unlikely the company has suffered a decrease in its return of investment for canned peach production due to imports from South Africa.

Likely Impact of Removal of Duties on Return on Investment

386. In respect of the likely impact on HW's return on investment should the anti-dumping duties be removed, the company considers that returns would diminish [redacted]. HW said this would lead to reduced margins [redacted].

Conclusion

387. The Ministry has no information on which to base a conclusion relating to return on investments specific to canned peach production, either in terms of the performance of the New Zealand industry over the review period or in terms of the likely effect of the removal of existing anti-dumping duties. However, on the basis that HW has projected a loss of profits should the duties be removed, it is likely the result will also be a decrease in its return on investment.

388. In its submission on the Interim Report, Brooke Holdings stated that because there is competition for production capacity from other products HW produces, a decrease in peach production would not necessarily mean a decline in return on investment. Brooke Holdings also stated that the Ministry has no information with which to base a conclusion relating to return on investment specific to canned peaches yet it still concluded that HW's return on investment will decrease if the duties were to expire. This suggests to Brooke Holdings that the Ministry has an unwarranted bias towards the domestic industry.

389. The Ministry considers that in any injury determination it must consider to what extent the imports have affected the domestic industry's production of like goods. In the present case, the like goods are canned peaches, therefore, the Ministry must

consider the likely effect of the expiry of the duties on the domestic industry's return on investment relating to its production and sales of canned peaches. On this basis the Ministry considers that on the likelihood that HW suffers a loss of profits on its production and sales of canned peaches it follows that it will suffer a consequential decrease in its return on investment.

Magnitude of the Margin of Dumping

390. 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.

391. In the present review, for the [redacted] 3kg (A10) canned peaches, the Ministry found that there was no dumping and no price undercutting but that the margin of dumping for 825gm choice grade peaches was [redacted] percent and the price undercutting ranged from [redacted] to [redacted] percent. In an investigation situation, it is expected that the dumping margins would contribute to price undercutting. It is difficult to reach the same conclusion in a review situation, where, rather than the importer paying the anti-dumping duty, one would expect the exporter to benefit by pricing up to the reference price.

Conclusion

392. While the Ministry has concluded that dumping is likely to continue or recur, given the uncertainties involved in quantifying the extent of the likely dumping margins should duties be removed, the Ministry considers that it is unable to draw any useful conclusions related to the likely magnitude of the margin of dumping should duties be removed.

Factors Affecting Domestic Prices

393. The Ministry is not aware of an adverse economic impact by the GUR on factors affecting domestic prices, or of any likely impact, should the duties expire.

Other Adverse Effects

Cash Flow

394. HW stated that cashflow is managed at a corporate level in HW and at H. J. Heinz. Given the nature of the peach business being seasonal with an uneven distribution of expenditure and revenue relating to the production and sale of peaches, the company considers that it would not add value to the Ministry's analysis of injury for HW to provide a cash flow analysis relating to peaches. The Ministry agrees with this.

Inventories

395. Production over a relatively short period, once a year, means that inventory is at its peak soon after production. In the 2006 investigation into dumped imports from China HW stated that it manages its inventory system and the company considers

that the presence of the dumped goods was unlikely to have had an effect on its inventory levels. In the 2006 investigation inventory data supplied by HW showed that inventory levels [redacted]. The information also showed that the domestic crop made up the substantial part of the inventory except in 2003 when frost seriously affected the domestically produced volume.

396. In previous investigations and reviews into canned peaches the Ministry has considered that there has been no adverse effect on HW's inventory levels. Furthermore, in a review because anti-dumping duties are already in place on imports of canned peaches from South Africa, it is unlikely that the industry will be experiencing any injury due to imports from this source.

397. In respect of the likely impact on HW's inventory should the anti-dumping duties be removed, HW considers that the reappearance of dumped product in the market would cause an immediate and significant slow down in sales for HW leading to [redacted].

Conclusion

398. On the basis of its analysis of the likely impact on the above injury indicators if the duties were removed, the Ministry has concluded that most of these indicators would be adversely affected. The Ministry consequently concludes that there would likely be a subsequent adverse impact on inventories.

Employment and Wages

Employment

399. The table below shows the number of full-time seasonal and permanent employees that are engaged in the domestic production of canned peaches during the production season.

Table 5.14: Total Employee Numbers

	2005	2006	2007
Seasonal Staff	[redacted]	[redacted]	[redacted]
Permanent Staff	[redacted]	[redacted]	[redacted]
Total Staff	[redacted]	[redacted]	[redacted]
Change from previous year	-	[redacted]	[redacted]
% of 2005	-	[redacted]%	[redacted]%

400. The number of employees engaged in the production of like goods has declined from [redacted] full time equivalents in 2005 to [redacted] in 2007. HW considers the decline in employees engaged in production of like goods during the peach season is due to recent efficiencies introduced in the seasonal manufacturing area rather than due to any effect of dumped goods.

Wages

401. The following table shows average hourly wage rates for staff engaged directly in the production of canned peaches.

Table 5.15: Average Wage Rates

	2005	2006	2007
Seasonal Labour Rates	[redacted]	[redacted]	[redacted]
Change from previous year	-	[redacted]	[redacted]
% of 2005	-	[redacted]%	[redacted]%

402. The average production wage rate relating to canned peaches increased from 2005 to 2007. There is no evidence that dumped imports have had an adverse effect on wage rates.

403. In respect of the likely impact on HW's employment and wage levels should the anti-dumping duties be removed, HW considers that the reappearance of dumped product in the market would cause an immediate and significant slow down in production and sales volume for HW leading to a corresponding decrease in employment levels and wage rates for factory salaried and wage staff. However, the company considers that [redacted].

Conclusion on Employment and Wages

404. Given that HW has always processed the entire peach crop available from its contracted growers each year, the Ministry considers it unlikely that any adverse effects on employment and wages directly relating to the production of canned peaches could be due to dumped imports from South Africa.

405. Regarding the situation that would likely exist if the duties were removed, it was concluded above that there would likely be a significant impact on domestic production and sales volume. The Ministry therefore concludes that the loss in output volumes as a result of the South African imports, would have an adverse effect on seasonal employment. This would be reflected in a reduced number of hours worked and a reduction in the total wage bill, as HW will reduce staff hours rather than the wage rates.

Growth

406. HW's sales volumes have increased from 2005 to 2007 although its profits have decreased due to price depression and suppression, suggesting that the company has been limited in its ability to grow its canned peach business.

407. In its submission on the Interim Report, Brooke Holdings stated that the on-going trade-off between volume and profit will make the importing of canned peaches more attractive to HW because of the less onerous investment regime

associated with importing. The company suggested that HW's inability to grow its canned peach business is not a reason to inhibit the importation of South African canned peaches. The Ministry notes that any decrease in growth in its canned peach business suffered by HW over the last few years is unlikely do have been a result of competition from South African imports, in view of the small volume of imports from this source over this period. The analysis should rather focus on the company's likely growth in its operations should the duties expire.

408. HW stated that in the event of the current anti-dumping duties expiring and the dumped product returning to the New Zealand market, the company's peach sales would go into a severe negative growth both in value and volume as a result of market share losses and a loss of profit premiums on its brands. The company stated that this would [redacted]. After this point, HW stated that [redacted].

Conclusion

409. The Ministry considers any detrimental effects on growth will be reflected in other injury indicators such as sales, profit and return on investment. While there is no evidence of an adverse impact on growth due to dumped imports from South Africa, the Ministry concluded above that should the present duties be removed, HW's sales, profit and return on investment would likely be adversely affected. The Ministry consequently concludes that there would likely be a subsequent adverse impact on the company's growth.

Ability to Raise Capital and Investments

410. HW advised that since the 2002 review it had pursued opportunities for capital expenditure that were likely to create further production efficiencies. HW stated that it has invested [redacted] in capital on the seasonal business, the majority of which is directly attributable to peaches with [redacted] being spent in its 2004 fiscal year on the [redacted]. Further improvements were made [redacted] in its fiscal year 2006 with [redacted] being invested.

411. Regarding the likely impact on HW's ability to raise capital and investment should the anti-dumping duties be removed, the company stated that [redacted] which has to compete with dumped products.

412. HW provided specific evidence of its capital expenditure over the last 2-3 years relating to its peach canning operation and in particular since its 2006 financial year. Anti-dumping measures were imposed on Chinese preserved peaches in July 2006.

413. Capital appropriation requests in the 2006 financial year included a [redacted] ($[redacted]), [redacted] ($[redacted]), [redacted] ($[redacted]), [redacted] ($[redacted]), [redacted] ($[redacted]), [redacted] ($[redacted]) and the [redacted]r ($[redacted]). The total amount of peach related capital expenditure for 2006 was $[redacted].

414. HW provided 2007 capital appropriation requests detailing the company's proposed future capital expenditure. Proposed projects include a [redacted] ($[redacted]) and the [redacted] ($[redacted]). HW is also proposing to [redacted] and [redacted].

415. In its submission on the Interim Report, Brooke Holdings stated that it can not understand why any enterprise would invest in increased production facilities when there is a drift away from its grower base and the climatic conditions regularly cause substantial crop shortfalls. The company submitted that both of these factors would contribute to redundant production capacity.

416. The Ministry notes that nevertheless HW has made considerable investment over the last 2-3 years on its peach canning operation and that it has also moved to facilitate [redacted] in the future (see section 5.7 below).

Conclusion

417. The Ministry notes that not all the capital expenditure made by HW since the 2002 review is directly attributable to peaches and of the amount that is attributable to its peach processing facility, not all the peaches that are processed through this facility are destined to be processed into canned peaches. Peaches that are processed by HW are also processed into fruit salad.

418. In any event, the Ministry notes the extent of HW's recent capital expenditure on its peach processing facilities and that as result of not having to compete with dumped imports from a number of foreign sources, the domestic market conditions are now more favourable for HW investing in new processing facilities in order enable it to more effectively meet its domestic customer requirements with domestic output rather than having to source imports from abroad. In conclusion, the information provided by HW on the extent of any adverse impact on its canned peaches operation resulting from the removal of duties is inconclusive in respect of the extent to which this will adversely impact on its ability to raise investments in respect of its total operation. However, the Ministry considers it unlikely that [redacted]

[redacted] if it has to compete with injurious dumped products from abroad, including South Africa.

5.7 Other Causes of Injury

419. Sections 8(2)(e) and (f) of the Act provide that the Secretary shall have regard to factors other than the dumped goods which have injured, or are injuring, the industry, including -

i. The volume and prices of goods that are not sold at dumped prices; and

ii. Contraction in demand or changes in the patterns of consumption; and

iii. Restrictive trade practices of, and competition between, overseas and New Zealand producers; and

iv. Developments in technology; and

v. Export performance and productivity of the New Zealand producers; and

vi. the nature and extent of importations of dumped or subsidised goods by New Zealand producers of like goods, including the value, quantity, frequency and purpose of any such importations.

Non Dumped Imports

420. In the 2002 review HW stated that it competes with non dumped SPC imports from Australia and with products from Italy (Contel) which HW cited as an example of what could happen to the price of Wattie's and Oak branded canned peaches should duties be removed. HW provided AC Neilsen data showing the price of Contel dropping and the price of Oak following the price down soon after. The 2002 review team concluded that HW had lost market share to non-dumped imports since duties were first imposed in 1996, however, the loss in market share related to the international competitiveness of the New Zealand industry and not to any cause that could be remedied through the imposition or retention of anti-dumping duties.

421. In its submission on the Interim Report, Brooke Holdings stated that the conclusion by the Ministry in the 2002 review that HW's loss in market share related to the international competitiveness of the New Zealand industry rather than through any cause that could be remedied through anti-dumping duties, confirmed what it asserted at that time about HW losing business to non-dumped imports. Brooke Holdings stated that this is inevitable as the peach industry declines in New Zealand. The company also noted that Australia and China are the largest exporters of canned peaches to New Zealand and that these countries will continue to have the biggest effect on HW's market.

422. The Ministry notes that at the time of the 2002 review, there were no imports coming from any Asian countries, including China. Since that time, imports of canned peaches from China have been entering New Zealand at dumped prices resulting in

the imposition of final anti-dumping duties on imports of preserved peaches from China in August 2006.

Conclusion

423. As a result of the imposition of anti-dumping duties on Chinese imports of preserved peaches, it is unlikely that any injury suffered by HW since the imposition of these duties could be attributed to imports of canned peaches from this source. An examination of the import statistics shows that the vast majority of imports are still entering New Zealand from Australia. In the 2002 review it was determined that Australian imports were unlikely to have any greater impact on HW than they had in the past, should the duties be removed. In the present review the Ministry notes that the market share of imports from Australia has decreased since the 2002 review. This indicates to the Ministry that imports of non-dumped goods from Australia are unlikely have been a source of any injury suffered by the industry since 2002 any more than they were prior to the 2002 review. The Ministry concludes that this is unlikely to change should the present duties on imports from South Africa be removed.

Supermarket Purchasing Power

424. In the original investigation, the Ministry noted the increasing ability of supermarkets in New Zealand to directly influence not only pricing levels but also levels of supplier-funded promotion and support within purchase contracts. The Ministry also noted that the direct effects of such activity on suppliers' returns could not be attributed to dumping.

425. In the 2002 review, HW made a number of comments to the effect that supermarkets in New Zealand have the ability to directly influence prices and the levels of supplier promotion and support. HW said that the market is competitive and price is always an issue for suppliers to supermarkets. HW said that given fair choice, supermarkets prefer to buy locally made products. HW stated that a local supplier reduces the requirement to hold large inventory levels and allows the quick replenishment of stock levels if demand is greater than expected.

426. The 2002 review and the 2006 investigation into imports from China concluded that supermarkets in New Zealand had the ability to influence prices and the level of supplier promotion. The 2002 review team also concluded that the ability of supermarkets to influence prices in a competitive market was likely to continue should the duties be removed and that any adverse impact from that influence could not be attributed to dumping.

Conclusion

427. In the present review, the Ministry considers that the market conditions have not changed to any significant extent and that supermarkets in New Zealand still have the ability to influence prices and the level of supplier promotion. The Ministry considers that this is likely to continue should the duties be removed and that any adverse impact from that influence could not be attributed to dumping.

House Brands

428. In the original investigation it was reported that there had been a growth in house brands in directly competing with branded lines, which was placing additional pressure on the more traditional branded lines.

429. In the 2002 review, HW said that the growth of supermarket house brands and the [redacted] to supply these products have increased price competition in New Zealand. HW also stated that house brands are positioned [redacted] but that some house brands were being marketed at the premium end of the market and had begun competing with HW branded products making it highly price competitive.

430. The 2002 review team concluded that house brands are a growing market in New Zealand and have put pressure on HW's brands during the review period. The 2002 review team concluded that this situation was likely to continue regardless of whether or not duties were removed.

Conclusion

431. In the present review, the Ministry considers that the market conditions have not changed to any significant extent and that HW's brands are still under pressure from house brands. The Ministry considers that this is likely to continue regardless of whether or not the current duties on South African canned peaches are removed.

Imports by the Industry

432. HW stated in the original investigation that it imports peaches from Spain and Greece in order to maintain its market presence when domestic production of peach is insufficient to meet demand. The company stated that from the 1996 season onwards it did not expect to have to import any finished product as local supplies of raw material will be sufficient to meet all domestic requirements. HW stated that it was expensive to import canned fruit and in most cases was [redacted] but was considered vital in order to retain market share.

433. The 2002 review concluded that HW imports when there is a shortfall in the New Zealand harvest and that this is a valid commercial strategy to protect its market share and presence in the market. HW imported canned peaches in 1999 and 2001. The imports represented [redacted] percent and [redacted] percent of sales respectively. The Ministry concluded that HW's imports were not a cause of sustained injury to itself.

434. HW has imported increased quantities of peaches from a variety of sources over a number of years. In the 2006 investigation into dumped imports from China, it was concluded that while HW's import volumes are significant, they do not appear to be displacing domestic production because HW appears to process the entire available domestic peach crop each year. Because it was determined that the volume of domestic production depended upon the size of the peach crop which had fluctuated in the past, the injury analysis for HW was conducted on the company's total sales of preserved peaches (domestic production plus imports). In that

investigation, the Ministry did not consider that the increased material injury was caused by HW's importing activity.

Conclusion

435. In the present review, the Ministry considers that the conditions in the market which cause HW to import canned peaches from abroad, have not changed to any significant extent since the 2006 investigation into dumped imports from China. The injury analysis for HW has again been conducted on the company's total sales of canned peaches. As HW continues to need to fulfil its domestic sales requirements by sourcing imports from abroad, the Ministry concludes that any injury suffered by HW is unlikely to be a result of its importing activity.

The Availability of Raw Peaches for Like Goods Production

436. The cost per unit of domestic production is dependent to a significant degree on the total volume produced. This is due to the allocation of factory overheads to domestic production. The total volume of domestic production is dependent on the availability of raw peaches for like goods production, which is further limited by the allocation of raw peaches to fruit salad products.

437. For the above reasons, it is likely that the limited availability of raw peaches for like goods production and the consequent low domestic production volumes may mean that sales of like goods are less profitable than they would be if production volumes were greater.

438. HW stated that following the imposition of anti-dumping duties on preserved peaches from China in August 2006, [redacted].

439. HW stated that it intends to [redacted]. As evidence of this, the Ministry was provided with copies of a number of contracts entered into [redacted]. HW stated that it has [redacted].

Conclusion

440. The statistics and contracts provided by HW show that the company has been active in ensuring [redacted] However, the information

does not confirm conclusively that HW will be [redacted].

Duty Concessions

441. In the 2002 review Brooke Holdings expressed concerns about HW being an active importer of canned peaches whilst using the Ministry to “thwart competition from other importers”. In particular Brooke Holdings was concerned about HW securing concessions for it imports from Greece in the previous year. Brooke Holdings was of the opinion that the tariff concessions would impact adversely on HW as it will enable HW competitors to land canned peaches at a lower price and thus contribute to HW’s injury.

442. The 2002 review team was of the view that the concession granted was a temporary shortfall concession, which can be differentiated from the situation that is likely to arise should anti-dumping duties be removed. The 2002 review team was satisfied that the concession granted was “a one-off” action to protect HW’s market share and supplier commitments as a result of unforseen shortfalls in the New Zealand harvest. At the time of the 2002 review HW advised the Ministry that it had applied for further concessions for its imports to maintain market share until the February/March 2002 production period due to poor supply from the last harvest.

443. Since the 2002 there have been 10 duty concessions approved that apply to the GUR. Of those 10 concessions, five were approved for 2006 and 2007. Duty concessions have been approved for 21 months of this two-year period.

Conclusion on Other Causes of Injury

444. The Ministry concludes that there continue to be a number of factors, such as the purchasing power of supermarkets and the growth in supermarket house brands, which are likely to have been a cause of injury to HW over the POR(I). The Ministry also concludes that these factors will continue to affect HW in the same way regardless of whether or not duties are removed and can therefore be clearly distinguished from the injurious effects likely to arise from dumped imports, should duties be removed.

5.8 Conclusions Relating to Injury

445. From information made available during the review, the Ministry has reached the following conclusions in relation to material injury suffered by the New Zealand industry since the completion of the 2002 sunset review:

Volume and Price Effects

- In absolute terms, the volumes of dumped imports have remained negligible in relation to both New Zealand production and consumption.

- The prices of the domestically produced canned peaches are being undercut by imports of 825gm choice grade South African canned peaches but not by 3kg (A10) [redacted] grade South African peaches.

- There is evidence of price suppression and price depression but this is unlikely to be attributable to dumped imports from South Africa.

Economic Impact

- Any change in the industry's output is related to fluctuations in the peach harvest and cannot be attributed to dumped imports from South Africa.

- The industry's sales volumes and revenue have shown small increases over the POR(I).

- The market share held by the domestic industry has increased over the POR(I) at the expense of a decrease in the market share held by imports from sources other than South Africa.

- Industry profit levels have decreased, but this is unlikely to be attributable to dumped imports due to the minimal import volumes from South Africa.

- No positive evidence has been provided that shows any injurious effects due to dumping of the GUR from South Africa on productivity, return on investments, utilisation of production capacity, factors affecting domestic prices, cashflow, inventories, employment, wages, growth and ability to raise capital and investments.

- The extent to which the magnitude of the margin of dumping is likely to have caused any price undercutting is inconclusive.

- Factors other than dumped goods are likely to have been a cause of injury to the industry, however, these factors will continue to affect HW in the same way regardless of whether or not anti-dumping duties have been imposed.

446. The Ministry concludes that there is no current material injury that is attributable to dumped imports from South Africa.

Likelihood of Injury if Anti-Dumping Duties Cease or are Terminated

447. In relation to the likelihood of a recurrence of material injury should anti-dumping duties be removed, the Ministry concludes that:

- It is likely that there would be a significant increase in import volumes.

- It is likely that there would be price undercutting, price depression and suppression due to dumped imports from South Africa.

- Consequent upon the likely volume and price effects, it is likely there would be an adverse effect on domestic production and sales volume and revenue.

- As a result of volume and price effects, there is likely to be a negative impact on the industry's market share if anti-dumping duties are removed.

- Based on the findings of the likely volume and price effects and consequent impact on sales volume and revenue, it is likely that the industry will suffer a loss in profits.

- There is likely to be an adverse effect on the industry's productivity, utilisation of production capacity, inventories, employment and wages, return on investments, growth and its ability to raise capital and investments.

- There is insufficient evidence available to come to a conclusion on the likely impact on the industry's cashflow and the extent to which the magnitude of the margin of dumping is likely to contribute to injury and on any factors affecting domestic prices.

- Factors other than dumped imports are likely to continue in the same way to be a cause of injury to the industry and can therefore be clearly distinguished from the injurious effects likely to result from dumped imports from South Africa.

448. On the basis of these considerations, the Ministry concludes that if anti-dumping duties were to be removed, material injury to the New Zealand industry due to dumped imports of South African canned peaches is likely to recur.

6. Conclusions

449. On the basis of the information available, it is concluded that the continued imposition of anti-dumping duties is necessary to prevent the recurrence of dumping and material injury to the New Zealand industry producing like goods.

7. Recommendations

450. It is recommended on the basis of the information obtained during the course of the review that:

1. The Chief Executive of the Ministry determine pursuant to section 14(8) of the Act that in relation to the importation or intended importation of canned peaches of the type under review from South Africa into New Zealand that if anti-dumping duties were to be removed:

   (a) there is a likelihood of dumping continuing and recurring; and

   (b) by reason thereof material injury to an industry is also likely to recur.

2. The Chief Executive of the Ministry initiate a reassessment of the anti-dumping duty rates pursuant to section 14(6)(c) of the Act.

3. The Chief Executive of the Ministry sign the attached *Gazette* notice publicly notifying the completion of this review and initiation of a reassessment of the anti-dumping duty rates that currently apply to imports of canned peaches from South Africa.

……………………………………..

……………………………………..

Review Team
Trade Rules and Remedies Group
Ministry of Economic Development

Recommendation Accepted/ Not Accepted

………………………………………………….

Anne Corrigan
Manager, Trade Rules and Remedies Group (*Acting under delegated authority from the Chief Executive of the Ministry of Economic Development)*
Ministry of Economic Development.

8. Reassessment of Anti-Dumping Duties

8.1 Introduction

451. Section 14 of the Act sets out the requirements in regards to the imposition of AD duties. If a "sunset" review concludes that there is the need for a continuation of the anti-dumping duties, the Chief Executive may initiate a reassessment of the anti-dumping duty. The reassessment of anti-dumping duty following the completion of a review is provided for by section 14(6) of the Act. Under the provisions of section 14(6) of the Act, the rate or amount of AD duty may be reassessed following the completion of a review.

452. This section of the report provides the basis for a recommendation to the Chief Executive to initiate a reassessment of the current anti-dumping duties immediately following the completion of this review. This section of the report also forms an Interim Report for that reassessment and provides interested parties with the opportunity to comment on the proposed duties. Interested parties have until 12 December 2007 to make submissions.

8.2 Proposal to Suspend the Anti-Dumping Duties

453. After the release of the Interim Report Brooke Holdings raised the prospect of a "suspension" of the anti dumping duties. The company stated that by suspending the anti dumping duties (rather than removing or continuing to impose them) the Ministry could determine what the consequence of unrestricted access by South African canned peach into the New Zealand market would be. If the New Zealand market appeared to be in danger of becoming awash with cheap, dumped, injurious canned peaches from South Africa, then the anti dumping measures could be reactivated immediately.

454. The Ministry has concluded in this report that injury to HW is likely to recur if the anti-dumping duties on South African canned peaches are lifted. Having made this conclusion there is no reasonable basis to entertain the idea of suspending the anti-dumping duties. Article 15 of the Anti-dumping Agreement provides that "Possibilities of constructive remedies provided for by this Agreement shall be explored before applying anti-dumping duties where they would affect the essential interest of developing country Member". The Ministry considers that the "constructive remedies" referred to in Article 15 of the Anti-dumping Agreement are price undertakings and a lesser duty, which are both referred to in the Act and the Anti-dumping Agreement. This was reinforced by the Panel in the WTO dispute settlement case *Cotton-Type Bed Linen from India* (see section 8.5 below).

8.3 Method of Imposing Duties

455. The objective of the anti-dumping duty is to remove injury attributable to dumping, and is not to punish the exporter or to provide protection to an industry beyond the impact of the dumping. Section 14(4) of the Act prevents the Minister from imposing a duty that exceeds the margin of dumping. When deciding on the

form of the anti-dumping duty there are numerous relevant considerations that are taken into account. Factors such as the ease of administration, the ability to ensure the dumping margin is not exceeded, the ability to maintain fairness between parties, and the predictability of the duty payable are all important aspects of an anti-dumping duty.

456. Anti-dumping duties can be applied in a number of different ways. The three basic approaches are:

- a specific duty approach;
- an *ad valorem* rate approach; and
- a reference price approach.

A Specific Duty Approach

457. A specific duty is a set amount of duty payable per unit of product imported. This specific amount of duty is based on the monetary value of a margin of dumping. The approach is convenient to apply, impossible to evade by incorrectly stating the value for duty and it clearly indicates to the importer the amount of duty payable on the product.

458. Some problems with a specific duty approach may occur if there are a wide range of goods involved, exchange rates may fluctuate to the extent that the margin of dumping will be exceeded, without constant reassessments of the specific amount, or where an exporter manipulates prices so that the duty is either greater than the margin of dumping or less than the margin of dumping previously established.

459. A specific duty, expressed as a monetary amount, can only operate effectively when two conditions are present. The first is that prices and exchange rates are consistent and stable. The second is that the transaction-to-transaction comparison does not result in a range of different dumping margins.

460. A specific duty approach can be used as a formula, being the difference between equivalent prices to the normal value and the export price of a particular shipment, with the values for the normal value and export price being fixed. When those elements of the formula are expressed in terms of the currency of each transaction, the problem of exchange rate movements can be dealt with. However, a formula approach does not deal with the problem of changes in export prices for reasons other than exchange rate movements or movements in normal values such as a price change.

Ad Valorem Rate Duty

461. An *ad valorem* duty is a duty based on the margin of dumping and is expressed as a percentage of the dutiable value. An *ad valorem* duty is convenient to apply and is not substantially affected by exchange rate movements. *Ad valorem* rates are often appropriate where there are a large range of goods or where new models

appear, provided that the transaction-to-transaction comparison does not result in a range of different dumping margins.

462. As with the other approaches, there is the possibility of collusion between an exporter and importer concerning the manipulation of the invoice value of the goods.

463. Under this approach, a particularly low export price (and therefore a potentially more injurious export price) would result in a lower amount of duty, which may not be sufficient to remove injurious dumping. Conversely, a particularly high export price (and therefore likely to be less injurious), would attract a higher amount of duty, which may be higher than is necessary to remove injurious dumping.

464. An *ad valorem* rate gives an indication of the impact of the duty, but is not as clear an indication as the other forms of duty.

Reference Price Duty

465. Under the reference price approach, the duty payable is the difference between the transaction price and a reference price.

466. A reference price can be based on either a normal value or a non-injurious price. A Normal Value (Value for Duty Equivalent) amount represents the un-dumped value of the goods at the FOB level. A non-injurious price (a price at which imports would not cause injury to the New Zealand industry), is normally calculated at the Free on Board (FOB) level. A full discussion of the methodology is set out in the following section.

467. A reference price duty has advantages in that it is best able to deal with movements in the export price and exchange rates (if expressed in the currency of the normal value), and is particularly appropriate for dealing with situations where a lesser duty is applicable. However, it has been argued that it is more easily evaded than the other forms of duty, by overstating the VFD of the goods. Nevertheless, a reference price does have the advantage of clearly signalling to exporters and importers what price is un-dumped or non-injurious and the problem of evasion can be dealt with. In addition, a reference price duty only collects duty when the goods are priced below the non-injurious or un-dumped reference price. It therefore collects duty only to the extent necessary to remove injurious dumping and avoids over-collecting duty.

468. A reference price method is therefore considered the best method of assessing and collecting anti-dumping duties in the circumstances presented in this case.

8.4 Background to this Review

469. On 1 August 1996, the Minister of Commerce first imposed anti-dumping duties on canned peaches from South Africa. On 19 December 1996 the anti-dumping duties were reassessed lowering the NV(VFDE) amounts applicable to 410gm and 825gm choice grade slices and halves, 3kg substandard and choice grade canned peach slices and 3kg choice grade peach halves. The ad valorem rate for other can sizes and product styles was reduced from 20 percent to 12 percent.

470. In 1998 a second reassessment of anti-dumping duties resulted in an increase in the NV(VFDE) amounts for Langeberg Foods Limited (Langeberg) for 825gm and 3kg choice grade canned peaches of all types, 3kg substandard canned peaches of all types, a reduction for 410gm choice grade canned peaches of all types and the introduction of a NV(VFDE) for 225gm canned peaches. The ad valorem rate for other suppliers of all can sizes and product styles was reduced from 12 percent to 3 percent.

471. In 2002, a sunset review was completed and determined that the continued imposition of anti-dumping duties was necessary to prevent a likely recurrence of material injury to the New Zealand industry. The reassessment that followed calculated NIFOB amounts for 410gm, 825gm and 3kg cans. No distinction was made between choice grade and sub-standard grade cans for the NIFOB calculations. The reason for this is because in the New Zealand market there is no difference between substandard and choice grade products. Both grades of product compete in the same market.

472. For both choice grade and sub-standard grade cans, a NV(VFDE) amount was calculated for 410gm, 825gm, and 3kg cans. The reason for this is that the South African market makes a distinction between the choice grade and sub-standard grade and therefore separate NV(VFDE) amounts were calculated.

473. The NIFOB amounts were compared to NV(VFDE) amounts to identify whether a "lesser duty" should apply. The NIFOB amount was the lesser duty for the choice grade 410gm, 820gm and 3kg cans, and the 410gm sub-standard grade can. The NIFOB duty rates were only applicable to Brooke holdings as the information used for the NIFOB calculations were specific to Brooke Holdings.

474. The ad valorem rate used in previous reassessments was removed. A residual rate in the form of a NV(VFDE) amount (in South African Rand) was calculated at the full margin of dumping for all other suppliers of canned peaches out of South Africa and for importers from Langeberg other than Brooke Holdings.

475. An alternative duty was set for Brooke Holdings at the NV(VFDE) amount which would be applied instead of the NIFOB. This duty would apply where the NIFOB duty amount exceeded the NV(VFDE) amount due to exchange rate fluctuations.

476. A reference price for the 225gm can was not calculated because there was evidence that the product was no longer sold in the NZ market. According to the NZCS data these cans were not imported and were no longer manufactured by HW.

477. The current rates of anti-dumping duty are shown in the table below.

Table 7.1: Current Anti-dumping Duty Rates

Brooke Holdings Limited from Langeberg		
Can Size	Choice	Sub-standard
410gm	*	*
825gm	*	5.55**
3KG	*	5.52**
Alternative Duty+		
410gm	8.63**	6.75**
825gm	7.09**	5.55**
3 KG	7.01**	5.52**
Importers other than Brooke Holdings Ltd		
from Langeberg		
410gm	8.63**	6.75**
825gm	7.09**	5.55**
3 KG	7.01**	5.52**
All Importers including Brooke Holdings		
from Other Suppliers		
410gm	8.63**	6.75**
825gm	7.09**	5.55**
3 KG	7.01**	5.52**

* NIFOB amount in NZ dollars.

** NV(VFDE) amount in South African Rand (ZAR)"

+ Alternative Duty applies where the calculated NIFOB amount exceeds this NV(VFDE) amount due to the exchange rate conversion and only applies to Brooke Holdings imports from Langeberg.

8.5 Developing Country Considerations

478. For the purposes of dumping investigations and reviews and the imposition of anti-dumping duties, South Africa is considered to be a developing country and therefore Article 15 of the Anti-dumping Agreement applies. Article 15 requires that special regard must be given by developed country members to the special situation of developing country members when considering the application of anti-dumping measures. The possibility of constructive remedies is to be explored before applying anti-dumping duties where they would affect the essential interests of a developing country member.

479. The WTO Dispute Settlement Panel in *Cotton-Type Bed Linen from India* was of the view that "the imposition of a "lesser duty" or a price undertaking would constitute "constructive remedies" within the meaning of the Article 15…"[4] Price undertakings offered in relation to an initial investigation are covered in section 15 of

[4] Appellate Body Report, at para 6.229.

the Act but do not explicitly extend to reassessments of current anti-dumping duties in place. In addition, no offers of price undertakings were received from either of the South African exporters.

480. The Ministry considers that, given the above, its consideration of a lesser duty (as discussed below) fulfils its obligation under Article 15 of the Agreement to give special regard to constructive remedies.

8.6 Amount of Anti-dumping Duty

Consideration of Lesser Duty

481. Section 14(5) of the Act requires that the Minister have regard to the desirability of ensuring the amount of duty is not greater than is necessary to prevent material injury to the New Zealand industry. To establish whether a lesser duty should apply to canned peaches from South Africa, the Ministry has firstly calculated a NIFOB amount based on HW's NIP and secondly calculated a NV(VFDE) to check whether the NIFOB exceeds the margin of dumping. The calculation of HW's NIP is discussed below. If the NIFOB is less than the NV(VFDE), then the NIFOB amount, which is a form of lesser duty, will apply. If the NIFOB is greater than the NV(VFDE) then the NV(VFDE) will apply, i.e., duty will be imposed at the full margin of dumping.

Calculation of NIFOBs

482. The New Zealand industry's NIPs are the basis on which a NIFOB amount is calculated. NIFOBs are calculated by deducting from the industry's NIP, those costs that arise after FOB up to the level of trade at which the imported product first competes with the New Zealand industry's product. The level of trade at which the goods first compete on the New Zealand market was determined to be ex-factory for HW and ex-importers store for Brooke Holdings and ex-wharf for Fresh Partners/Supermarket Sales.

483. The purpose of a NIFOB value is to ensure that the price of imported product, when considered at the FOB level, is such that when it is sold at the relevant level of trade, the sale price equates to the NIP. In calculating the NIFOB amounts at the ex-store level of trade for Brooke Holdings and Fresh Partners/Supermarket Sales, the Ministry has established the costs after FOB from NZCS data (overseas insurance and freight costs) and from the importers themselves.

Calculation of NIP

484. The review has found no evidence of injury to HW attributable to South African imports subject to anti-dumping duty. As a result of an investigation into dumped imports of preserved peaches from China in 2006, provisional measures were applied to such imports (including canned peaches) in July 2006 and final anti-dumping duties imposed in August 2006. The review team considers that HW's net selling prices achieved over the first six months of the company's 2006/7 financial year are likely to have been affected by dumped imports from China and that the last six months of this financial year is likely to provide a better indication of a non-

suppressed or non-injurious price. Therefore, the Ministry has used HW's NSVs for the last six months of its 2006/7 financial year to calculate NIPs for the three sizes of canned peaches produced by the company.

485. The following table shows HW's weighted average NIP per kilogram for each can size calculated on the basis set out above.

Table 7.2: HW's NIPs

Can Size	Weighted Avg. NIP/kg
410gm	[redacted]
820gm	[redacted]
3Kg	[redacted]

NIFOB Amounts

486. If a NIFOB was to be established in South African rand, the level of the NIFOB when converted to NZ dollars would vary every time there was a movement in the New Zealand dollar to South African rand exchange rate. The effect of a variable NIFOB, when converted into NZ dollars, would be to change the consequent ex-store price (assuming the same profit margin is taken). For example, if the NZ dollar depreciated against the South African rand, then the NIFOB in NZ dollars would increase and result in an ex-store price higher than the NIP, and the dumping margin could also be exceeded. The reverse would result if the NZ dollar appreciated against the South African rand.

487. If a NIFOB is set in NZ dollars and the transaction price is below the NIFOB amount, then the anti-dumping duty collected will be such that the ex-store price (assuming the allowable profit margin is taken) or the ex-wharf price will always equate to the NIP, provided there are no significant changes in the costs between FOB and ex-store from those used to establish the NIFOB amount. With the exception of sea freight, all significant costs between FOB and ex-store are incurred in NZ dollars and are not directly affected by exchange rate movements. However, if these costs do change significantly, this can be addressed by way of reassessment. A NIFOB fixed in NZ dollars will ensure that the duty collected does not exceed the margin of dumping and is administratively simple to operate.

Langeberg & Ashton

488. A specific NIFOB was calculated at the ex-importers store level which takes into account import costs incurred by Brooke Holdings when sourcing from Langeberg & Ashton. The costs between FOB and ex-store were taken from information sourced from NZCS (freight and insurance) and that provided by Brooke Holdings, relating to its imports of the subject goods over the POR(D). A reasonable profit margin was calculated also using Brooke Holdings' cost build up information.

489. These adjustments have been made to the NIP to derive the NIFOB and are shown in the table below.

Table 7.3: NIFOB (NZD/Kg)

NIFOB - Langeberg & Ashton

	410gm	825gm	3KG
HW NIP/Kg			
<u>Less:</u> costs and margins after FOB to Ex-store			
Freight (NZD/Kg)			
Insurance (NZD/Kg)			
BAF (bunker surcharge)			
wharfage/port			
clearance/handling			
transport/devanning			
Bank charges			
Customs Duty (7%)			
Customs/MAF			
Storage & admin. costs			
Reasonable profit margin			
Total adjustments			
NIFOB (NZD/kg)			

Del Monte SA (Pty) Ltd

490. A specific NIFOB was calculated at the ex-wharf level which takes into account import costs incurred by importers when sourcing from Del Monte. Costs between FOB and ex-wharf were taken from information sourced from NZCS (freight and insurance) and from Brooke Holdings (wharfage, port clearance and handling) and related to importations of the subject goods over the POR(D)

491. These adjustments have been made to the NIP to derive the NIFOB and are shown in the table below.

Table 7.4: NIFOB (NZD/Kg)

NIFOB - Del Monte SA (Pty) Ltd

	410gm	825gm	3KG
HW NIP/Kg			
<u>Less:</u> costs and margins after FOB to Ex-wharf			
Freight (NZD/Kg)			
Insurance (NZD/Kg)			
wharfage/port			

clearance/handling Customs Duty (7%)	[redacted]	[redacted]	[redacted]
Total adjustments	[redacted]	[redacted]	[redacted]
NIFOB (NZD/kg)	[redacted]	[redacted]	[redacted]

Calculation of NV(VFDE)s

492. NV(VFDE) amounts are calculated by adjusting the normal value to the FOB level, i.e. adding to normal values the costs incurred by exporters between the level at which a fair comparison is made (normally ex-factory) and FOB. In this case, the costs incurred between the level at which normal values were established and FOB were inland freight, shipping, handling and packaging, agent's commission and cost of credit. Section 4 of this report outlines the ex-factory normal values and the costs incurred by each of the two exporters between this level and the FOB level. The NV(VFDE) therefore represents an un-dumped price at the FOB level. The NV(VFDE) per kilogram amounts in NZ dollars have been calculated by converting the NV(VFDE) in rand per kilogram using the average rand/NZD exchange rate for the last six months of the domestic industry's 2006/7 financial year (1 Nov 06 - 30 April 07), which according to the www.oanda.com website was 1 rand = 0.2004.

Langeberg & Ashton

493. The following table shows the NV(VFDE) amounts for Langeberg & Ashton, calculated for each can size and type under review.

Table 7.5: Normal Value (Value for Duty Equivalent)

NV(VFDE) - Langeberg & Ashton Rand/Kg	410g		825g		3Kg	
	Choice	Sub-standard	Choice	Sub-standard	Choice	Sub-standard
Normal Values (Rand/Kg)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Plus costs from ex-factory to FOB level						
Inland Freight	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Shipping Charges	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Handling/ Packing	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Commission ([redacted]%)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Cost of Credit ([redacted]%)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Total costs (Rand/Kg)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
NV(VFDE)(Rand/Kg)	12.07	8.65	9.91	7.11	9.78	7.01
NV(VFDE)(NZD/Kg)	2.42	1.73	1.99	1.42	1.96	1.41

Del Monte SA (Pty) Ltd

494. The following table shows the NV(VFDE) amounts for Del Monte, calculated for each can size and type under review.

Table 7.6: Normal Value (Value for Duty Equivalent)

NV(VFDE) - Del Monte SA (Pty) Ltd
Rand/Kg

	410g		825g		3Kg	
	Choice	Sub-standard	Choice	Sub-standard	Choice	Sub-standard
Normal Values (Rand/KG)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Plus costs from ex-factory to FOB level						
Inland Freight	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Shipping Charges	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Handling/ Packing	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Commission ([redacted]%)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Cost of Credit ([redacted]%)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Total costs Rand/Kg)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
NV(VFDE)(Rand/Kg)	12.21	8.75	10.02	7.19	9.89	7.09
NV(VFDE)(NZD/Kg)	2.45	1.75	2.01	1.44	1.98	1.42

Comparison of NIFOB and NV(VFDE) Amounts

495. The review team compared the NIFOB amounts calculated for the 410g, 825g and 3Kg canned peaches to the NV(VFDE) amounts calculated for the choice and sub-standard grade canned peaches of the same size.

Langeberg & Ashton Sales to Brooke Holdings

496. The following table shows the proposed levels of duty for exports from Langeberg & Ashton to Brooke Holdings, calculated on the basis set out above.

Table 7.7: Proposed Reference Prices (Level of Duty)

Comparison - Langeberg & Ashton to Brooke Holdings
NZD/Kg

	NIFOB	NV(VFDE)	NIFOB or NV(VFDE)
410gm Choice	[redacted]	2.42	NIFOB
410gm Sub-standard		1.73	NV(VFDE)
825gm Choice		1.99	NV(VFDE)
825gm Sub-standard		1.42	NV(VFDE)
3kg Choice		1.96	NIFOB
3kg Sub-standard		1.41	NV(VFDE)

Del Monte SA (Pty) Ltd

497. The following table shows the proposed levels of duty for exports from Del Monte to all importers, calculated on the basis set out above.

Table 7.8: Proposed Reference Prices (Level of Duty)

Comparison - Del Monte SA (Pty) Ltd
NZD/Kg

	NIFOB	NV(VFDE)	NIFOB or NV(VFDE)
410gm Choice		2.45	NIFOB
410gm Sub-standard		1.75	NV(VFDE)
825gm Choice		2.01	NV(VFDE)
825gm Sub-standard		1.44	NV(VFDE)
3kg Choice		1.98	NV(VFDE)
3kg Sub-standard		1.42	NV(VFDE)

Effect of Exchange Rates on Anti-Dumping Duties

498. The Ministry considers that where anti-dumping duty is imposed at a full margin of dumping, and is therefore based on the normal value (i.e. a NV(VFDE)), it is appropriate that the duty should be established in South African Rand as that is the currency in which the normal value is set.

499. As in the 2002 review, the Ministry also recognises the problem of exchange rate movements concerning the lesser duty rule. In some instances exchange rate movements can result in NIFOB amounts that were identified as being the lesser duty, later become higher than the corresponding NV(VFDE) amount, which would be contrary to the requirement of the New Zealand Act and the WTO Anti-dumping Agreement, that anti-dumping duties do not exceed the margin of dumping.

500. Therefore, the review team proposes that an *alternative duty* rate be set at the NV(VFDE) rate due to exchange rate fluctuations. In other words, the NIFOB amounts (in NZD) identified as the lesser duty should be applied except where the NV(VFDE) amount in NZ dollars (calculated at the exchange rate at the date of importation) is lower than the NIFOB. In this situation the NV(VFDE) rate should be applied instead of the NIFOB rate.

Residual Rate of Duty

501. In the 2002 review, the review team did not have any cost information from any of the importers apart from Brooke Holdings on which to calculate separate NIFOB amounts for importers other than Brooke Holdings with which it could base a residual rate on the lesser duty rule. It was considered unlikely that other importers have the same cost and margin structure as Brooke Holdings, therefore a residual rate in the form of a NV(VFDE) amount (in South African Rand) was calculated at the full margin of dumping for all other suppliers of canned peaches from South Africa other than Langeberg) and for importers from Langeberg other than Brooke Holdings.

This was to take into account fluctuations in the importer's costs and margin, where a NIFOB amount might exceed a NV(VFDE) amount and was also to prevent any occurrence of injury to HW as well.

502. In the present review, NIFOB amounts (for the three can sizes) were calculated at the ex-store level for Langeberg and Ashton on the basis of Brooke Holdings cost and margin structure. There was another exporter other than Langeberg and Ashton in this review that exported to another importer other than Brooke Holdings. Separate NIFOB amounts were calculated for this exporter (Del Monte) (for each type and size of can) at the ex-wharf level.

503. The Ministry has therefore calculated a residual rate for 'other suppliers' based on the highest of the rates calculated for the two exporters from South Africa. The rates for 'other suppliers' are listed in Table 7.8 below.

8.7 Proposed Levels of Anti-dumping Duty

504. The following table shows the proposed levels of anti-dumping duties for exports from South Africa, calculated on the basis set out above.

Table 7.9: Proposed Reference Price Levels

(Rand/kg, unless otherwise stated)

Product type and size	Langeberg & Ashton through Brooke Holdings		Langeberg & Ashton through other importers		Del Monte		Other Suppliers	
	Choice	Sub-std	Choice	Sub-std	Choice	Sub-std	Choice	Sub-std
410gm	NZ$[redacted]	8.65	12.07	8.65	NZ$[redacted]	8.75	12.21	8.75
825gm	9.91	7.11	9.91	7.11	10.02	7.19	10.02	7.19
3kg	NZ$[redacted]	7.01	9.78	7.01	9.89	7.09	9.89	7.09
Alternative Duty*:								
410gm	12.07	-	-	-	12.21	-	-	-
825gm	-	-	-	-	-	-	-	-
3kg	9.78	-	-	-	-	-	-	-

* Note: An alternative duty rate has been set at the NV(VFDE) rate. The NV(VFDE) rate should be applied instead of the NIFOB rate where the NIFOB duty amount calculated exceeds the NV(VFDE) amount due to exchange rate fluctuations.

505. A comparison of the NIFOB amounts listed in the table above with those established in the 2002 review shows that the 410gm, 825gm and 3kg choice grade NIFOB amounts established for shipments from Langeberg & Ashton through Brooke Holdings are higher than those established in the 2002 review. All the NV(VFDE) amounts established in the present review are also higher than the equivalent NV(VFDE) amounts established in the 2002 review.

Other Can Sizes

506. The Ministry is of the view that if canned peaches falling within the description of the goods subject to anti-dumping duty are imported in can sizes other than those for which a separate rate has been established, duty should be based on a reference price proportionate to the rates established as above. The proportionate reference price would be calculated relative to the nearest can size for which a separate rate has been established.

8.8 Opportunity for Comment

507. Interested parties have until 12 December 2007 to make submissions upon this interim reassessment report. All submissions must be accompanied by a non-confidential version.

508. A final reassessment report will be completed as soon as practicable after receiving submissions on the interim reassessment report. However, depending on the nature of the submissions received and the content thereof it may be necessary to lengthen the reassessment process in order to include new information in the Ministry's analysis. If submissions result in significant changes to the proposals contained in this interim reassessment report, the Ministry will consider issuing another interim report to allow parties to defend their interests before final recommendations are made to the Minister of Commerce.

Appendix One

509. A full copy of the WTO Agreement on Implementation of Article VI of the GATT 1994 can be found at:

http://www.wto.org/english/docs_e/legal_e/19-adp.pdf

510. A full copy of the Dumping and Countervailing Duties Act 1988 can be found at:

http://www.legislation.govt.nz/browse_vw.asp?content-set=pal_statutes