DUMPING AND COUNTERVAILING DUTIES ACT 1988

REVIEW INVESTIGATION

NON-CONFIDENTIAL
FINAL REPORT

CANNED PEACHES FROM SOUTH AFRICA

Trade Remedies Group
Ministry of Economic Development
January 2002
ISBN 0-478-24281-6

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 the 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 Foods International Ltd
EBIT	Earnings Before Interest and Tax
FIS	Free into Store
FOB	Free on Board
Foodtown	Foodtown Supermarkets Ltd
HW	Heinz Wattie's Limited
Langeberg	Langeberg 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)
NZCS	New Zealand Customs Service
Pac	Forum Island Members of the South Pacific Regional Trade and Economic Co-operation Agreement
POD(R)	Period of Dumping (Review)
Progressive	Progressive Enterprises Limited
VAT	Value Added Tax
VFD	Value for Duty
WTO	World Trade Organisation
	Confidential Information

1. PROCEEDINGS

1.1 PROCEEDINGS

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

1.1.2 On 19 December 1996, the Minister of Commerce reassessed the amounts and rates of anti-dumping duties applicable to South African canned peaches, which ____________________ (value for duty equivalent) (NV (VFDE)) amounts applicable to 410g and 825g choice grade slices and halves, 3kg substandard and choice grade canned peach slices and 3kg choice grade peach halves. The *ad valorem* rates for other can sizes and product styles were reduced from 20 percent to 12 percent.

1.1.3 On 9 March 1998, the Minister of Commerce carried out a second reassessment of the amounts and rates of anti-dumping duties applicable to South African canned peaches. This resulted in ________________ NV (VFDE) amounts for Langeberg Foods Limited (Langeberg) for 825g and 3kg choice grade canned peaches of all types, 3kg substandard canned peaches of all types, ___________ 410g choice grade canned peaches of all types and the introduction of a NV (VFDE) for 225g canned peaches. The *ad valorem* rate for other suppliers of all can sizes and product styles was reduced from 12 percent to 3 percent.

1.1.4 On 30 July 2001, the Chief Executive of the Ministry of Economic Development (the Chief Executive) initiated a review of the continued need for the imposition of the anti-dumping duties, pursuant to section 14(8) of the Dumping and Countervailing Duties Act 1988 ("the Act"), on the basis of positive evidence submitted by Heinz Wattie's Australasia justifying the need for the review.

1.1.5 In accordance with Article 11 of the WTO Anti-Dumping Agreement ("the Agreement"), the purpose of the Ministry's review was to examine whether the continued imposition of the duty is necessary to offset dumping, whether the injury would be likely to continue or recur if the duty were removed or varied, or both.

Anti-Dumping Duty Collected

1.1.6 The New Zealand Customs Service (NZCS) has been able to provide information covering the period 1 August 1996 to 30 June 2001 showing that over that period a total amount of $_____ in anti-dumping duty has been collected on ___ import entry lines relating to the subject goods.

1.1.7 The anti-dumping duty applied to _____ kilograms of canned peaches with a value of $______, being ___ percent of total imports by volume from South Africa over the period and ___ percent of imports by value. The anti-dumping duties collected represent ____ percent of the total value of imports from South Africa over the period.

1.1.8 During the period investigated for dumping, 1 July 2000 to 30 June 2001, hereinafter referred to as the period of dumping review (POD(R)), ____ ___________ was collected. The review team further analysed the anti-dumping duty figures for the period 1 August 1996 to 30 June 2001, and found that ___ percent of the total anti-dumping duties paid during this period had been paid on canned peaches supplied __________________________ _____________ of the subject goods identified in the original investigation.

1.2 REVIEW

1.2.1 Section 14(8) of the Act states:

> The [Chief Executive] may, on his or her own initiative, and shall, where requested to do so by an interested party that submits positive evidence justifying the need for a review, initiate a review of the imposition of anti-dumping duty or countervailing duty in relation to goods and shall complete that review within 180 days of its initiation.

1.2.2 Section 14(9) of the Act states:

> Anti-dumping duty or countervailing duty applying to any goods shall cease to be payable on those goods from the date that is five years after —
>
> (a) The date of the final determination made under section 13 of this Act in relation to those goods; or
>
> (b) The date of notice of any reassessment of duty given under subsection (6) of this section, following a review carried out under subsection (8) of this section —
>
> whichever is the later, unless, at that date, the goods are subject to review under subsection (8) of this section.

1.2.3 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 2 August 2001.

1.2.4 The provision of sections 14(8) and 14(9) of the Act give specific effect to Article 11 of the Anti-Dumping Agreement which provides additional guidance as follows:

> 11.1 An anti-dumping duty shall remain in force only as long as and to the extent necessary to counteract dumping which is causing injury.
>
> 11.2 The authorities shall review the need for the continued imposition of the duty, where warranted, on their own initiative or, provided that a reasonable period of time has elapsed since the imposition of the definitive anti-dumping duty, upon request by any interested party which submits positive information substantiating the need for a review. Interested parties shall have the right to request the authorities to examine whether the continued imposition of the duty is necessary to offset dumping, whether the injury would be likely to continue or recur if the duty were removed or varied or both. If, as a result of the review under this paragraph, the authorities determine that

> the anti-dumping duty is no longer warranted, it shall be terminated immediately.
>
> 11.3 Notwithstanding the provisions of paragraphs 1 and 2, any definitive anti-dumping duty shall be terminated on a date no later than five years from its imposition (or from the date of the most recent review under paragraph 2 if that review has covered both dumping and injury, or under this paragraph), unless the authorities determine, in a review initiated before that date on their own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time prior to that date, that the expiry of the duty would be likely to lead to a continuation or recurrence of dumping and injury. The duty may remain in force pending the outcome of such a review.
>
> 11.4 The provisions of article 6 regarding evidence and procedure shall apply to any review carried out under this Article. Any such review shall be carried out expeditiously and shall normally be concluded within 12 months of the date of initiation of the review.
>
> Note: Footnotes excluded from the above Articles of the Agreement

1.2.5 On 30 July 2001, 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 2 August 2001. The existing anti-dumping duties will continue to apply pending the outcome of this review and any reassessment that may follow it.

1.2.6 Interested parties to the original investigation were advised of the initiation of this review in writing and provided with the opportunity to make written submissions to the review team.

1.2.7 It should be noted that this report provides a summary only of the information, analysis and conclusions relevant to this review, and should not be accorded any status beyond that.

1.3 DUMPING AND INJURY FOR THE PURPOSES OF A REVIEW

Approaches to Sunset Reviews

1.3.1 The Ministry carries out sunset reviews on the basis of the above provisions in the Act and the Agreement. In interpreting Article 11 of the Agreement, the Ministry takes guidance from New Zealand legal reports, WTO Panel reports and approaches taken by other WTO member countries, which are discussed below.

Meaning of "Would be Likely"

1.3.2 Article 11.3 infers a necessity to clearly demonstrate that, "…the expiry of the duty would be likely 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*).

WTO Panel Report

1.3.3 For further guidance on the level of evidence that is required to meet the "would be likely" criteria of Article 11.3, the review team has referred to the findings of the WTO panel report, *United States Anti-Dumping Duty on Dynamic Random Access Memory Semi Conductors (DRAMS) from Korea*, as set out below.

1.3.4 The Panel noted that, "… with regard to dumping, the "sunset provision" in Article 11.3 of the AD Agreement envisages *inter alia* an examination of whether the expiry of an anti-dumping duty would be likely to lead to "continuation or recurrence of dumping"". The Panel went on to note that "… the reference to "expiry" in Article 11.3 assumes that duty is still in force and the reference to "recurrence" of dumping assumes that dumping has ceased, but may "recur" as a result of revocation."

1.3.5 The Panel decided that the Anti-Dumping Agreement does not require automatic revocation of anti-dumping duties as soon as dumping ceases after the date of the imposition of duties.

1.3.6 The Panel was of the view that "…the references in Article 11.2 to "the need for the continued imposition of the duty" and "whether the continued imposition of the duty is necessary to offset dumping" can only be understood in a meaningful manner when read in conjunction with the obligation in Article 11.1, whereby:

> "An anti-dumping duty shall remain in force only as long as and to the extent necessary to counteract dumping which is causing injury"

1.3.7 The Panel noted that Article 11.2 of the AD Agreement implements Article 11.1, which "…contains a general necessity requirement, whereby anti-dumping duties "shall remain in force only as long as and to the extent necessary" to counteract injurious dumping" and "…is therefore an unambiguous requirement of Article 11.1."

1.3.8 The Panel went on to note that "… the necessity of the measure is a function of certain objective conditions being in place, i.e., whether circumstances require continued imposition of the anti-dumping duty." The Panel further stated that "… such continued imposition must, in our view, be essentially dependent on, and therefore assignable to, a foundation of positive evidence that circumstances demand it. In other words, the need for the continued imposition of the duty must be demonstrable on the basis of the evidence adduced."

1.3.9 The Panel said that the plain meaning of Article 11.2 means "… the continued imposition must still satisfy the "necessity" standard, even where the need for the continued imposition of an anti-dumping duty is tied to the "recurrence" of dumping." In the Panel's view "… this reflects the fact that the necessity involved in Article 11.2 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. 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."

1.3.10 The Panel discusses in depth the meaning of the words “likely” and “not likely” in relation to events occurring that would cause material injury to the industry to continue or recur, if the duties were removed.

1.3.11 The Panel stated that “… a failure to find that an event is “not likely” is not equivalent to a finding that the event is “likely””. The Panel also stated that there is “… a clear conceptual difference between establishing something as a positive finding, and failing to establish something as a negative finding.” The Panel cites the following as an example, “… a statement that a horse is “likely” to win a race implies a greater likelihood of victory than a statement that the same horse is not unlikely to win, or not “not likely” to win.”

1.3.12 The Panel further clarifies the concept of “likely” and “not likely” by interpreting the word “likely” in accordance with its normal meaning of “probable”. The Panel said “The question then becomes whether not “not probable” is equivalent to “probable”. In our view the fact that an event is not “not probable” does not by itself render that event “probable.”” The Panel concluded by saying that the “… “not likely” standard is not in fact equivalent to, and falls decisively short of, establishing that dumping is “likely to recur if the [anti-dumping duty] order is revoked.””

Other Jurisdictions

1.3.13 The Review team has considered the approaches taken by the EU, US, Canada and Australia on sunset reviews.

1.3.14 The position taken by EU is that “In the absence of current injury, the Commission’s pre-Uruguay Round analysis would consider whether a “recurrence of injury to the Community industry caused by dumping would be foreseeable and imminent in the absence of measures.” Under the post-Uruguay analysis, the Commission considers whether expiry would be likely to lead to a continuation or recurrence of dumping [or subsidisation] and injury”. [1]

1.3.15 The U.S. has taken the approach that “… in a sunset review whether revocation of an order or termination of a suspended investigation would be likely to lead to a continuation or recurrence of injury within a reasonably foreseeable time.” [2] “According to the legislative history, a “reasonably foreseeable time” will vary from case to case but will normally exceed the ‘imminent” timeframe under the threat standard in original investigations”.[3]

1.3.16 The Canadian International Trade Tribunal (CITT) considers “… whether the past, recent and current behaviour of exporters and market conditions in the countries of origin, Canada and elsewhere made it likely that dumping would resume in the foreseeable future (within the next year or two).”[4]

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[1] Terence P Stewart and Amy S Dwyer, *WTO Antidumping and Subsidy Agreements: A Practitioners Guide to “Sunset” Reviews in Australia, Canada, the EU and the US, Kluwer Law International, 1998, p 80.*

[2] *Ibid, p 174.*

[3] *Ibid*, *p 177.*

[4] *Ibid*, *p 98*

1.3.17 The Australian Anti-Dumping Administration (ADA) is of the view that "The ADA must not recommend continuation of a measure "unless it is satisfied that the expiration of the notice would lead, or would be likely to lead, to a continuation of, or recurrence of material injury that the anti-dumping measure is intended to prevent."[5]

1.3.18 The review team referred to the 1999 Australian Customs Service (ACS) *Continuation Inquiry: A4 Copy Paper from Brazil, Germany and South Africa.* In that case, a Brazilian exporter had not exported to Australia for three years. The ACS considered that "while it is always possible for an exporter to sell at dumped prices at <u>some time in the future</u>, the issue to be addressed by Customs is whether that dumping circumstance would probably arise in <u>the imminent and foreseeable future</u>." *[Emphasis added].* The ACS was not satisfied that removal of the duties would lead to a recurrence of dumped exports.

1.3.19 The review team has examined other Australian continuation inquiry reports and has not found any other reference to the term "imminent" in relation to the likelihood of recurrence of injury.

<u>Submission by HW</u>

1.3.20 HW made a submission on the interpretation of Article 11.3 of the Anti-dumping Agreement. The submission by HW has been made in the context of the approach taken by the Ministry on the likelihood of a continuation or recurrence of injury in reviews carried out since the implementation in New Zealand law on 1 January 1995 of the Anti-dumping Agreement.

1.3.21 In those previous reviews the Ministry has noted that in carrying out a review which considers the likelihood of a recurrence of injury should duties be removed, the situation is similar to that found in an investigation where there is no actual injury and a threat of injury is therefore being considered. In those previous reviews the Ministry has consequently referred, where appropriate, to the factors set out in Article 3.7 of the Anti-dumping Agreement relating to threat of injury, for guidance in assessing the likelihood of a recurrence of injury.

1.3.22 HW's submission focuses on the application of the threat of injury provisions of Article 3.7 to a sunset review. Article 3.7 of the Agreement provides as follows:

> 3.7 A determination of a threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the dumping would cause injury must be clearly foreseen and imminent.[10] In making a determination regarding the existence of a threat of material injury, the authorities should consider, *inter alia*, such factors as:
>
> (i) a significant rate of increase of dumped imports into the domestic market indicating the likelihood of substantially increased importation;
>
> (ii) sufficient freely disposable, or an imminent, substantial increase in, capacity of the exporter indicating the likelihood of substantially increased

[5] *Ibid*, *p 117.*

dumped exports to the importing Member's market, taking into account the availability of other export markets to absorb any additional exports;

(iii) whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports; and

(iv) inventories of the product being investigated.

No one of these factors by itself can necessarily give decisive guidance but the totality of the factors considered must lead to the conclusion that further dumped exports are imminent and that, unless protective action is taken, material injury would occur.

[10] One example, though not an exclusive one, is that there is convincing reason to believe that there will be, in the near future, substantially increased importation of the product at dumped prices.

1.3.23 HW submitted that the correct test the Ministry must adopt in the context of a sunset review is to consider whether the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury. HW said that the provisions of Article 3.7 do not apply in a review because it is <u>not</u> necessary that a change in circumstances which would create a situation in which the dumping would cause injury must be clearly foreseen or imminent.

1.3.24 HW stated that, for sunset reviews, there is no express reference in section 14(8) of the Act to a particular standard that needs to be established for injury or even dumping. HW said, however, it is clear from the purpose of the Act that duties may be imposed in the event of dumping that causes or threatens material injury.

1.3.25 HW also stated that "… Article 11.3 requires authorities to terminate definitive anti-dumping duties five years after imposition, unless "…the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury"". HW said that section 269ZHF of the Australian Customs Act 1901 and Title 19 of the United States Code have the same requirement in relation to a five-year review of a countervailing or anti-dumping duty order.

1.3.26 HW was of the opinion that "… the Ministry should not automatically equate "recurrence" of dumping and/or injury under Article 11.3 of the Agreement with "threat" of injury in terms of Article 3.7." HW went on to say that "…Article 3 deals with the determination of injury, and Article 3.7, concerning threat of material injury, sets an evidential requirement. The reference to "foreseen and imminent" in Article 3.7 relates to a "change in circumstances which would create a situation in which the dumping would cause injury". If recurrence in a sunset review were erroneously equated with threat, the change in circumstances would simply be removal of duty."

1.3.27 HW submitted that "likely" means "… above mere possibility but not so high as more likely than not and is best expressed as a real and substantial risk that the stated consequence will happen." In support of its interpretation of the word "likely", HW cited the Court of Appeal decision in *Port Nelson Ltd v Commerce Commission [1996] 3 NZLR 554* and *Commissioner of Police v Ombudsman [1988] 1 NZLR 385*, where the meaning of the word "likely' is discussed. HW also cited the WTO Panel Report on DRAMS (discussed above) stating that "… the report makes it clear that likely means something less than "more likely than not"".

1.3.28 HW, then went on to differentiate the "would be likely" test between an investigation and a sunset review, and states that in a new investigation "Section 13(1) requires the Minister to decide whether or not material injury has been or is being caused or is threatened in relation to injury to an existing industry. This requires the Minister to be satisfied on the balance of probabilities (i.e. more likely than not). This, however, is not the test applicable in a sunset review".

1.3.29 HW concludes its submission by stating that "The test the Ministry must apply in the review context is whether there is a "real and substantial risk" that dumping will continue or recur and that injury will recur."

Ministry's Consideration and Approach

1.3.30 The review team 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.

1.3.31 The US refers to "a reasonably foreseeable time", Canada refers to the foreseeable future and Australia refers to "some time in the future" and in one case (ACS), the "imminent and foreseeable future". The Australian reference in the case cited above could mean either that the foreseeable future is only that which is imminent or that a likelihood can arise imminently or sometime further out in the foreseeable future.

1.3.32 The words "clearly foreseen" and "imminent" in Article 3.7 imply a shorter time period than "would be likely" in Article 11. The review team referred to the Concise Oxford dictionary (7th edition, 1984, reprint) for the definition of the words "foreseen", "imminent" and "likely". "Foreseen" is defined as "see or be aware of beforehand", "imminent" is defined as "impending, soon to happen" and "likely" is variously defined as (1) "such as might well happen, or prove to be true, or turn out to be the thing specified, probable"; (2) "to be reasonably expected"; (3) "probably"; and (4) "with equal chances of happening etc. or not".

1.3.33 The definition of the words, "foreseen" and "imminent" therefore imply a greater degree of probability than an event that is just "likely". This suggests that there is a higher standard for threat of injury under Article 3.7 to be satisfied in an investigation before anti-dumping duties are imposed. The review team considers that the near certainty that injury will occur required by Article 3.7 is a higher threshold than the "would be likely" test of Article 11.3.

1.3.34 The review team notes that the Anti-Dumping Agreement deals with reviews under Article 11 of the Agreement, without any express or implied reference to Article 3, indicating that the drafters intended to keep the two separate. While the Agreement appears to make a distinction between threat of injury and recurrence of injury, the review team notes that there are some similarities between the two to the extent that predictions need to be made relating to the likelihood of whether material injury will occur in the case of threat of injury or will continue or recur in the case of a sunset review.

The Ministry's Approach to Sunset Reviews

1.3.35 Mindful of the different factors involved in each case, 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 injury.
- The test to be applied in respect of the likelihood of a continuation or recurrence of material injury is a positive one, i.e., the review team needs to be satisfied, based on positive evidence, that certain events are likely to occur, and that those events will cause 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 to provisions in the Agreement that are helpful in assessing that likelihood and those provisions may include, where appropriate, the factors used in Article 3.7 in assessing a threat of injury.

1.3.36 In considering whether removal of the duty would be likely to lead to a recurrence of 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.

Grounds for Review

1.3.37 The review is to establish whether the continued imposition of the duty is necessary to offset dumping and whether the injury would be likely to continue or recur if the duty were removed or varied or both.

1.3.38 HW in its submissions claims that material injury will recur should the subject goods be imported into New Zealand without adequate anti-dumping duties. The industry claims that the imports of the subject goods will be dumped and will significantly increase in volume with the removal of anti-dumping duties and that material injury to the industry will recur through:

- price undercutting, price suppression and depression

resulting in:

- a decline in outputs 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.

1.4 INTERESTED PARTIES

New Zealand Industry

1.4.1 Heinz Wattie's Australasia submitted the application for a review.

Heinz Wattie's Australasia

1.4.2 Heinz Wattie's Australasia consists of H J Heinz Company Australia Limited and Heinz Wattie's Ltd (HW). HW is 100 percent owned by H J Heinz Company (New Zealand) Limited which is owned by New Zealand Investment Corporation, which has 20 ordinary shares and H J Heinz Credit Company, a United States company with 80 ordinary shares and 100,000 redeemable preference shares. HW is the sole New Zealand producer of canned peaches. HW produces canned peaches under the brand names Wattie's, Oak and Weight Watchers, and also produces various supermarket housebrands.

1.4.3 HW produces processed and canned fruit, including peaches, apples, pears, apricots, and nectarines as well as vegetables under its fruit and vegetables division. HW also has a recipe division which produces canned meals, soups, tomato paste, tomato puree, pasta sauce, simmer sauces, canned desserts, canned casseroles and tomato sauces in plastic bottles. HW's canning plant is based in Hastings.

1.4.4 HW imports various products, including some peach products from overseas e.g. [redacted] and, when there is a shortfall in domestic raw peach production, canned peaches from [redacted].

1.4.5 HW exports [redacted] quantities of canned peaches and other canned products to [redacted] though it is predominantly a locally based operation for peaches.

Exporters and Importers

Exporters

1.4.6 In its application for a review, HW identified two specific exporters of canned peaches from South Africa.

1.4.7 Import information provided by the New Zealand Customs Service (NZCS) for the period 1 August 1996 to 30 June 2001 does not show that there were any suppliers other than the two identified in the application.

1.4.8 The suppliers specifically considered in this review were:

Langeberg Foods Limited

Del Monte Foods International Limited

Langeberg Foods Limited

1.4.9 Langeberg Foods Limited is now part of the Tiger Brands Group. Langeberg has exported canned peaches to New Zealand during the POD(R).

Del Monte Foods International Limited (Del Monte)

1.4.10 Del Monte has also exported canned peaches to New Zealand since 1 August 1996, .

1.4.11 Langeberg and Del Monte were part of the original investigation in 1996. The two companies were sent manufacturers' questionnaires on 30 July 2001 via fax and courier.

1.4.12 None of the exporters identified above has provided the review team with a response to the manufacturers' questionnaire.

Importers

1.4.13 The application from HW identified several importers of the subject goods.

1.4.14 NZCS data also identified several importers of canned peaches from South Africa, additional to those that were specifically investigated in the original investigation.

1.4.15 The following is a complete list of importers who were sent importers' questionnaires:

Brooke Holdings Limited

Progressive Enterprises Limited

Davis Trading Company Limited

Newmans International Limited

Directus International Limited

Europacific Foods Limited

Foodtown Supermarkets Ltd

Wholesale Distributors Ltd

1.4.16 Even though Brooke Holdings Limited (Brooke Holdings) was the only importer of canned peaches during the POD(R), all other importers were provided with an opportunity to make submissions. Brooke Holdings was the only importer that responded to the importers' questionnaire.

Brooke Holdings Limited

1.4.17 Brooke Holdings is a small company primarily involved in the importation and distribution of bulk food ingredients to manufacturers. Brooke Holdings is located in Auckland and has a 50 percent share in Brooke Holdings South Island Ltd. There is a high level of co-operation and shared philosophies between the two companies. The two companies have been represented in this review by Brooke Holdings. Brooke Holdings has contracts with warehouses in Auckland, Wellington and Christchurch for storage and distribution of its products.

1.4.18 Brooke Holdings was the only company identified from the NZCS data as an importer of canned peaches from South Africa during the POD(R). Brooke Holdings' submissions are discussed under the appropriate headings in this report.

1.5 IMPORTED GOODS

1.5.1 The goods which are the subject of the anti-dumping duty, hereinafter referred to as "canned peaches", 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)*

1.5.2 NZCS has advised 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]

1.5.3 Applicable duty rates are:

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

1.5.4 In this report, unless otherwise stated, years are June years and dollar values are NZ$. In tables, column totals may differ from individual figures because of rounding.

1.5.5 The period of investigation for establishing if the subject goods have been dumped is 1 July 2000 to 30 June 2001. The investigation of injury involves evaluation of data for the period 1 May 1998 to 30 June 2001. This review also examines whether the expiry of the duty would be likely to lead to a continuation or recurrence of dumping and injury.

1.6 EXCHANGE RATES

1.6.1 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.

1.6.2 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 review team has used the invoice date to establish the date of 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).

1.7 DISCLOSURE OF INFORMATION

1.7.1 The Ministry of Economic Development makes available all non-confidential information to any interested party through its public file system.

1.7.2 Article 6.8 of the 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.

1.7.3 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.

1.7.4 As noted above, information concerning exports of the subject goods over the POD(R) was requested but not received from Langeberg. In view of the failure to provide information, decisions regarding Langeberg have been made having regard to all available information, in accordance with section 6 of the Act. Details of the information used and the conclusions drawn are shown in sections 3 and 4 of this report.

1.7.5 Section 10(1) of the Act provides as follows:

> Subject to subsection (2) of this section, within 150 days after the initiation of an investigation under section 10 of this Act, the [Chief Executive] shall give to the parties to the investigation referred to in section 9(b) of this Act written advice of the essential facts and conclusions that will likely form the basis for any final determination to be made under section 13 of this Act.

1.7.6 Written advice of the essential facts and conclusions in the form of an Interim Report was released to all known interested parties on 5 December 2001, being the 128th day after the initiation of the review.

1.7.7 The only comments on the Interim Report were received from HW and Brooke Holdings. These comments have, as appropriate, been incorporated in this report.

2. NEW ZEALAND INDUSTRY

Section 3A 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.

"Like goods" is defined in section 3 of the Act:

'Like goods', in relation to any goods, means—

(a) Other goods that are like those goods in all respects; or

(c) In the absence of goods referred to in paragraph (a) of this definition, goods which have characteristics closely resembling those goods:

2.1 LIKE GOODS

2.1.1 In order to establish that a New Zealand industry still exists, and the 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.

2.1.2 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 house brands for supermarket chains. The Weight Watchers brand and "Wattie's" canned peaches in "lite" media were not produced by HW at the time of the original investigation.

2.1.3 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. HW stated in its application that there has been no material change to the like goods produced by it in New Zealand or to the subject goods produced in South Africa since the original investigation.

2.1.4 The review team had further discussions with HW on like goods during the verification visit, in particular whether HW's two fruit (pears and peaches), fruit salad and Weight Watchers products were like goods to the subject goods, and should therefore be covered in this review. The results of those discussions and further HW submissions on like goods are addressed below.

HW submitted that its Weight Watchers brand is not a like good, while all of its other canned peach products in syrup, juice and lite media are like goods to the subject goods.

2.1.5 HW also submitted that plastic pottled peaches are not like goods to the subject goods. The review team notes that since HW does not manufacture plastic pottled peaches in New Zealand, there are no like goods issues to consider for plastic pottled peaches. HW's submissions on plastic pottled peaches have therefore been excluded from the like goods discussion below. HW also confirmed that there was no other New Zealand manufacturer of plastic pottled peaches.

2.1.6 The review team concludes that HW's peaches in syrup are like goods to the subject goods as there are only minor differences in sugar concentrations and types of peaches. The review team also notes that due to lack of co-operation from Langeberg, and because there were only 2 shipments over the POD(R), which were for the __________, there is limited information available. Therefore, in considering whether canned peaches in lite media, juice, and the Weight Watchers brand are like goods to the subject goods, guidance has been sought by comparing these HW products to the HW syrup product (having already concluded that HW syrup based products are like goods to the subject goods).

2.1.7 In deciding the remaining like goods issues, the review team has taken into account the following considerations:

a. Physical characteristics, which covers appearance, size and dimensions, components, production methods and technology.

b. Function/usage. This covers consumer perceptions /expectations, end uses, and will lead to any conclusions on the issues of substitutability where relevant.

c. Pricing Structures

d. Marketing issues such as distribution channels and customer advertising.

e. Other. This can include tariff classification if applicable, and any other matters which could be applicable in the circumstances.

2.1.8 This framework is used to consider whether goods produced in New Zealand are like goods to the subject goods.

Physical Characteristics

2.1.9 HW stated in its submission that its canned peaches packed in light syrup, juice or "lite" media are all produced on the same production line, with the standard retail sizes sharing the same fruit quantity, container can size, product cut and the same type of label. HW further stated that each product style has the same basic appearance and taste, the only difference being that each is packed in different mediums.

2.1.10 HW submitted that the cost of production of each style of product is _____, ____.

According to HW, this is not the case with its fruit salad, as the average production time for fruit salad is about [redacted] than that for canned peaches. HW said the two fruit (peaches and pears) takes essentially the same time to be produced as the plain peaches.

2.1.11 HW advised that only [redacted] percent of the total fruit volume of [redacted]. The two fruit products have a fruit volume of approximately [redacted] percent peach and [redacted] percent pear and are produced in 120g cans only. HW also manufactures diced peaches in juice in 120g cans. During the verification visit, HW showed samples of the 120g cans of fruit salad, two fruits and peaches to the review team. As far as the external physical appearance of these products are concerned, the review team is of the view that they are similar in appearance with small differences in labelling, although the contents obviously differ from that of the peaches only products.

2.1.12 As for the physical characteristics, HW views the fruit salad and two fruits as having considerable differences in appearance, taste, flavour and production methods and therefore, does not consider them as sharing the same physical characteristics as plain canned peaches. [redacted].

Functions/Usage

2.1.13 The information made available to the review team by HW indicates that the imported canned peaches and the canned peaches produced by HW in sugar syrup, juice and "lite" media have the same function and usage, i.e., they are generally used as a topping in breakfasts or desserts prepared at home. According to HW, the fruit salad and the two fruit products have the same usage, although the two fruit is generally used as a snack item because of its 120g size.

2.1.14 HW said New Zealand customers have a preference for the syrup based product as they have grown up with this product, which accounts for about [redacted] percent of total canned peaches sales. HW noted, however, that canned peaches are a mature product and consumers are price sensitive and will switch product styles if a particular style is on special.

Pricing

2.1.15 HW stated that its retail size canned peaches in light syrup, juice or "lite" packing media are listed at [redacted]. HW, during the verification visit, also stated that fruit salad retails at the same price and occupies exactly the same shelf location as similar size canned peaches, [redacted]. HW also said that the two fruit product is sold at the same price, and alongside the same size peach snack product.

2.1.16 According to HW, the price [redacted] amongst product styles is almost always reflected in the retail shelf price to end-user.

2.1.17 HW advised that the Weight Watchers' product is sold [redacted] and occupies the same shelf space as Wattie's "lite", juice and light syrup products. HW provided retail sales data showing that the Weight Watchers product is sold at a [redacted] the [redacted].

Marketing

2.1.18 HW stated that its promotional activity does not differentiate between syrup and juice, and is targeted at canned peaches regardless of the medium they are in. HW also stated that consumers perceive the juice based canned peaches to be healthier than syrup based product.

2.1.19 HW stated that its retail size canned peaches in light syrup, juice and “lite” packing media are presented with the same basic green Wattie’s label. HW also stated that its marketing promotions usually relate to all three product styles and not just one particular product style. HW said that its juice and “lite” canned peaches are both labelled with Heart Foundation ticks and most consumers treat the two products interchangeably. HW was also of the view that while the “lite” product is marketed towards the health conscious spectrum of the market, there is considerable substitution when other product styles are discounted.

2.1.20 According to HW, the Weight Watchers canned peaches [redacted] and targeted towards customers who are associated with Weight Watchers “weight loss” programmes or other diet plans. Marketing of Weight Watchers product is done through the Weight Watchers franchise through their membership to serve as an alternative to a regular product. [redacted]. HW said this is not the case with the Wattie’s brand “lite” product, which the consumers [redacted] as a regular product, much like the juice product.

2.1.21 HW stated that the two fruit product is marketed as a snack item only, in the same way as HW peach products in the 120g snack pack.

Other

Tariff Classification

2.1.22 HW submitted that canned peaches are classified under Tariff Item and Statistical keys 2008.70.09.00L, which relates to all pure peach products, whereas the fruit salad and two fruit products are classified under Tariff Item and Statistical keys 2008.92.01.00F, which relates to mixtures of fruits. The fruit salad and two fruit products can therefore be distinguished from canned peaches on this basis.

Legal Requirements

2.1.23 HW referred to the baked beans and spaghetti subsidy investigations, where “lite” baked beans and spaghetti were found not to be like goods to “regular” imported baked beans and spaghetti products, largely on the basis that a product labelled “lite” had to meet specific criteria set out in Regulation 15 of the Food Regulations 1984.

2.1.24 HW stated that the regulatory framework associated with the Food Act 1981, in place at the time of the baked beans and spaghetti investigations, is at present undergoing considerable change. HW said Australia and New Zealand have jointly created the Australia and New Zealand Food Authority (ANZFA) to deal with society's changed expectations of food and the information required about food.

2.1.25 HW said at present food manufacturers in New Zealand, producing for the New Zealand market have the choice of following either (but not a combination) of:

(i) the New Zealand Food Regulations 1984;

(ii) the Australian Food Standards Code (also known as Volume One); or

(iii) the new joint Australia New Zealand Food Standards Code (also known as Volume Two)

2.1.26 HW has adopted the new joint Australia New Zealand standards code and has therefore based its submissions on this code. HW stated that reliance could not be placed on the requirements of New Zealand Food Regulations as the regulatory framework associated with the Food Act 1981 is currently being reviewed and the results of the review will not be made available until December 2002. According to HW, the new joint Australia New Zealand Food Standards Code deals with comparatively recent food issues, such as genetic modification, without specific reference to "lite" or "reduced salt" on product labels. HW said this reflects the society's changed expectations of food and the information required about food. HW stated that the fact that a product is labelled "lite" is not a distinguishing characteristic as it perhaps may have been in the past.

2.1.27 HW said labelling requirements are moving beyond the narrow scope originally prescribed in the New Zealand Food Regulations to bring in a wider range of information requirements for consumers about their food. ANZFA has laid down new standards (standard 1.2.8) for the nutrition information requirements on labels. Where nutritional claims are made in relation to food, standard 1.2.8 sets out the nutritional information that must be included on the labels. The words "lite" or "light" are not referred to under these requirements. HW stated that the omission of these words from the new standard reflects the fact that the customers are not differentiating between the "lite" products and other products to the same extent as before, therefore, making its "lite" product a substitutable good to juice packed canned peaches.

Conclusion

2.1.28 The review team concludes that the Wattie's fruit salad and two fruits are not like goods to the subject goods given the differences in:

- Appearance, taste, flavour and production methods of the two fruit (peaches and pears) and fruit salad.
- The can sizes (the two fruits are only produced in 120g cans).

- The function and usage of the two fruit products i.e., as a snack item rather than a topping for desserts and breakfasts.

- Physical characteristics, the fruit salad and two fruits containing other types of fruit and containing no more than [redacted] percent of peaches.

- Tariff classification for fruit salad and two fruits.

2.1.29 The review team concludes the Weight Watchers product is not a like good to the subject goods for the following reasons:

- It is sold at a [redacted] the [redacted] and is not affected by market price changes in the same way as other HW products.

- It is labelled differently to other HW products.

- It is specifically targeted towards consumers who are on the Weight Watchers' "weight loss" programme and marketed through the Weight Watchers franchise.

2.1.30 The review team concludes the Wattie's brand "lite" product is a like good to the subject goods because:

- It is produced and packaged in the same way as other Wattie's canned peaches.

- It has the same appearance, taste and use as other canned peaches.

- It is a regular product that is labelled, priced and marketed the same way as other canned peaches.

2.1.31 The review team concludes that HW's canned peaches packed in juice is a like good to the subject goods because:

- It is produced, packed, labelled, priced and marketed the same way as other Wattie's canned peaches in syrup.

- It has the same basic appearance and taste as other Wattie's canned peaches in light syrup and "lite" medium.

2.2 NEW ZEALAND INDUSTRY

2.2.1 HW is the sole New Zealand producer of canned peaches, and therefore constitutes the New Zealand industry. The application for the original investigation was made by J Wattie Foods Ltd, which has since become part of the Heinz group.

2.2.2 During the August 1996 to June 2001 period, HW has imported canned peaches from [redacted]. HW has also imported [redacted] from [redacted] in the same period. None of these countries of origin are included in the existing determination.

2.2.3 Brooke Holdings stated it had been approached by a broker to import canned fruit for HW from South Africa. Brooke Holdings submitted a list of all canned fruit that HW was seeking to import. This list includes canned peaches. HW advised that it has not and does not intend to import canned peaches from South Africa. HW said all of its import arrangements were finalised by early October, so none of its imports over the remainder of the year will be of South African origin. The NZCS data from the period 1 August 1996 to 30 September 2001 does not show South Africa as the country of origin for any of HW's imports.

2.3 IMPORTS OF CANNED PEACHES

2.3.1 The subject goods are not separately identified in the Tariff of New Zealand. To estimate the volume of imports of the subject goods, the proportion of subject goods from South Africa to non-subject goods was calculated for the year ended 30 June 2001, using information provided by Brooke Holdings on the size and type of canned peaches imported over this period. Brooke Holdings was the only importer from South Africa over this period. The calculation showed that _____ percent of the imports were canned peaches of the type under review. This percentage has been applied to INFOS data to calculate the volume of imports of the subject goods from South Africa for each period from 1996.

2.3.2 Import volumes of goods falling within the description of the goods subject to duty from countries other than South Africa were 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 review team examined each import entry in the NZCS data from January 1996 to June 2001 and totalled the quantity of each entry not falling within the description of the subject goods. This analysis showed that imports falling within the description of the subject goods represented 99 percent of all imports. Import volumes from countries other than South Africa were therefore estimated at 99 percent of imports under the tariff item covering the subject goods as shown in the INFOS data.

2.3.3 The estimated import figures are as follows:

Table 2.1: Import Volumes (Kgs) of Subject Goods
(Calendar Years)

	1996	1997	1998	1999	2000
Australia	1,527,381	1,392,255	1,959,761	2,604,514	2,680,837
South Africa	<15,000	<20,000	<10,000	<5,000	<5,000
Other	486,120	413,373	21,399	878,486	541,561
Total Imports	_____	_____	_____	_____	_____

2.3.4 The table shows that imports of the subject goods from South Africa, since the original investigation, peaked in 1997 and have, overall, fallen since that time to very small quantities. The table also shows a significant growth in imports of canned peaches from other sources, including Australia, since the original investigation.

2.3.5 Brooke Holdings submitted that the import statistics for the year ending 31 March 2001 confirm that South African canned peaches account for only ___ percent of the imports. Brooke Holdings also stated that of the [redacted] percent, a majority of the products were [redacted]. Brooke Holdings further submitted that with imports of subject goods from South Africa accounting for less than an estimated [redacted] percent of the total canned peach imports, section 11(2)(c) of the Act should make the imports from South Africa negligible, thereby, providing grounds for termination of the review.

2.3.6 Section 11(2) of the Act refers to insufficiency of evidence of dumping where *inter alia* the volume of imports of dumped goods is negligible as a percentage of the total imports. However, the termination provision under section 11 of the Act applies to an investigation before a final determination under section 13 of the Act is made. A final determination under section 13 of the Act only applies to investigations that have been initiated pursuant to section 10 of the Act, where sufficient evidence has been provided.

2.3.7 A review investigation, however, including this review, is initiated under section 14(8) of the Act, either on the initiative of the Chief Executive or on the request of an interested party that submits positive evidence justifying the need for a review. Section 11(2) of the Act, therefore, is not applicable to review investigations.

2.4 NEW ZEALAND MARKET

2.4.1 The following table shows the New Zealand market for canned peaches in kilograms. Import figures used in this table are drawn from INFOS and those relating to domestic production are as provided by HW.

Table 2.2: New Zealand Market for Canned Peaches
(Calendar Years)

	1996	1997	1998	1999	2000
Subject Goods	<15,000	<20,000	<10,000	<5,000	<5,000
Australia	1,527,381	1,392,255	1,959,761	2,604,514	2,680,837
Other Imports	486,120	413,373	21,399	878,486	541,561
Domestic Production	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Total NZ Market	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

2.4.2 The above table shows that the total New Zealand market for canned peaches has increased by about 23 percent since the imposition of anti-dumping duties in 1996.

3. REVIEW OF DUMPING

Section 3(1) of the Act states:

> "Dumping", in relation to goods, means the situation where the export price of goods imported into New Zealand or intended to be imported into New Zealand is less than the normal value of the goods as determined in accordance with the provisions of this Act, and 'dumped' has a corresponding meaning:

3.1 FINDINGS OF THE ORIGINAL INVESTIGATION

3.1.1 The original investigation established dumping margins between 10 and 34 percent for the different product styles and can sizes. The range of dumping margins established for each product was as follows:

Product Style and Can Size	Dumping Margin (% of Export Price)
Slices, in syrup: N1M Choice	18-26%
Slices, in light syrup: N1M Choice	17-21%
Slices, in light syrup: A10 Choice	14%
Slices, in syrup: A10 Choice	12%
Slices, in light syrup: A10 S/Std	18%
Halves, in syrup: A2.5 Choice	28%
Halves, in light syrup: A10 S/Std	10%
Slivers, in light syrup: A10 S/Std	34%
Weighted Average Dumping Margin	20%

3.2 FINDINGS OF THE PREVIOUS REASSESSMENTS

3.2.1 The reassessment completed in December 1996 showed that the weighted average dumping margin was 12 percent, down from the 20 percent found in the investigation, due to increased export prices. The NV (VFDE) amounts applicable to N1M (410g) choice grade slices and halves, A2.5 (825 gm) choice grade slices and halves, A10 (3kg) choice grade slices and halves, A10 (3kg) substandard slices and A10 (3kg) substandard halves were reassessed. The rate applied to other can sizes and product styles was reassessed to 12 percent *ad valorem*.

3.2.2 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.

3.3 PURPOSE OF REVIEW OF DUMPING

3.3.1 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.

The likelihood of dumped imports is considered in section 4.

3.4 EXPORT PRICES

Export prices are determined in accordance with section 4 of the Act which provides, *inter alia,* as follows:

> (1) Subject to this section, for the purposes of this Act, the export price of any goods imported or intended to be imported into New Zealand which have been purchased by the importer from the exporter shall be—
>
> (a) Where the purchase of the goods by the importer was an [arm's] length transaction, the price paid or payable for the goods by the importer other than any part of that price that represents—
>
> (i) Costs, charges, and expenses incurred in preparing the goods for shipment to New Zealand that are additional to those costs, charges, and expenses generally incurred on sales for home consumption; and
>
> (ii) Any other costs, charges, and expenses resulting from the exportation of the goods, or arising after their shipment from the country of export;

Langeberg Foods International

Export Sales Distribution

3.4.1 During the POD(R) all export sales of the subject goods to New Zealand by Langeberg were made to Brooke Holdings. Brooke Holdings [redacted]. [redacted] receives an agent’s commission of [redacted] of the sales amount under both of these arrangements.

3.4.2 There were only two shipments of the subject goods over the POD(R), both of 3kg (A10) cans. The [redacted] shipments were [redacted] canned peaches.

Base Price

3.4.3 The actual transaction values for all shipments of the subject goods by Langeberg over the POD(R) were used to establish base export prices. Brooke Holdings provided copies of the invoices for these shipments. All information on base prices has been established on a per kilogram basis. Sales were invoiced in US dollars on a CIF basis.

3.4.4 Invoice amounts were converted into rand at the interbank rate at the date of the invoices. The interbank rates were obtained from the Oanda currency conversion site on the Internet (http://www.oanda.com.converter/classic).

Adjustments

3.4.5 The review team had no information from Langeberg as it chose not to participate in the review. The review team has therefore used information from the original investigation and information provided by Brooke Holdings to calculate the adjustments required.

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

3.4.7 The review team considers the CPI to be the most relevant adjustment mechanism to reflect price movement from the 1995 investigation for the purpose of updating the cost of adjustments for the review. The CPI measures price increases of goods and services for daily ordinary consumption. The review team 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 February 2001.

3.4.8 The table below shows the movement in the CPI for South Africa for the period from the calendar year 1995 to February 2001. The figures have been obtained from the *International Monetary Fund's International Financial Statistics*, September 2001 edition.

Movement In Prices: South Africa
(base year = 1995 calendar year)

1995	February 2001	Change as % of 1995
100	143.8	43.8%

3.4.9 The information above shows that the CPI has increased by 43.8 percent since 1995 (the period examined in the original investigation) to February 2001.

Packaging, Handling and Documentation

3.4.10 In the original investigation it was reported that packing costs for exports were similar to those incurred for sales in the domestic market. Nevertheless, 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 in the original investigation was _____ rand per kilogram. Updating this amount by the movement in the CPI gives an adjustment of _____rand per kilogram. It was considered reasonable to assume that these costs are still relevant for the POD(R) and an adjustment of _____rand per kilogram was made.

Inland Freight

3.4.11 An adjustment of _____ rand per kilogram was made in the original investigation for the cost of inland freight from factory to port. For the review this amount was adjusted by the movement in the CPI to give a cost of _____ rand per kilogram. It was considered reasonable to assume that this cost is still relevant for the POD(R) and an adjustment of _____ rand per kilogram was made.

Shipping

3.4.12 An adjustment for shipping charges of _____ rand per kilogram was made in the original investigation. For the review this amount was adjusted for the movement in the CPI to give an adjustment of _____rand per kilogram. It was considered reasonable to assume that this cost is still relevant for the POD(R) and an adjustment of _____ rand per kilogram was made.

Overseas Freight

3.4.13 The base export price per kilogram was adjusted for overseas freight by the actual amounts recorded in the Customs' data for overseas freight.

Insurance

3.4.14 The base export price per kilogram was adjusted for insurance by the actual amounts recorded in the Customs' data for insurance.

Agent's Commission

3.4.15 A commission of ____ percent of the invoice price is paid to _________. _____________ pays the invoice amount less the commission. The base price has been adjusted for the amount of the commission.

Cost of Credit

3.4.16 HW in its application made an adjustment for differences in the cost of credit based on the 91-day treasury bill rate offered by the South African Reserve Bank of 10.4% plus a ___ percent premium and based on an average of ___ days credit to domestic customers. Brooke Holdings advised that its credit terms are __ days from the date of the bill of lading. An adjustment was made to the export price of ____percent (__days-__ days/365 x ____%).

Export Price Calculations

3.4.17 Export prices for the two shipments of A10 cans (_____________ ___________________) were calculated by deducting from the base price, amounts for the adjustments referred to above.

3.5 NORMAL VALUES

3.5.1 Normal values are determined in accordance with section 5 of the Act, which, *inter alia*, provides as follows:

> (1) Subject to this section, for the purposes of this Act, the normal value of any goods imported or intended to be imported into New Zealand shall be the price paid for like goods sold in the ordinary course of trade for home consumption in the country of export in sales that are arm's length transactions by the exporter or, if like goods are not so sold by the exporter, by other sellers of like goods.
>
> (2) Where the [Chief Executive] is satisfied that the normal value of goods imported or intended to be imported into New Zealand cannot be determined under subsection (1) of this section because—
>
> (a) There is an absence of sales that would be relevant for the purpose of determining a price under that subsection; or
>
> (b) The situation in the relevant market is such that sales in that market that would otherwise be relevant for the purpose of determining a price under subsection (1) of this section are not suitable for use in determining such a price; or
>
> (c) Like goods are not sold in the ordinary course of trade for home consumption in the country of export in sales that are arm's length transactions by the exporter and it is not practicable to obtain within a reasonable time information in relation to sales by other sellers of like goods that would be relevant for the purpose of determining a price under subsection (1) of this section, —
>
> the [Chief Executive] may determine that the normal value, for the purposes of this Act, shall be either—
>
> (d) The sum of—
>
> (i) Such amount as is determined by the [Chief Executive] to be the cost of production or manufacture of the goods in the country of export; and
>
> (ii) On the assumption that the goods, instead of being exported, had been sold for home consumption in the ordinary course of trade in the country of export, —
>
> (A) Such amounts as the [Chief Executive] determines would be reasonable amounts for administrative and selling costs, delivery charges, and other charges incurred in the sale; and
>
> (B) An amount calculated in accordance with such rate as the [Chief Executive] determines would be the rate of profit on that sale having regard to the rate of profit normally realised on sales of goods (where such sales exist) of the same general category in the domestic market of the country of export of the goods; or
>
> (e) The price that is representative of the price paid for similar quantities of like goods sold at arm's length in the ordinary course of trade in the country of export for export to a third country.
>
> (3) Where the normal value of goods imported or intended to be imported into New Zealand is the price paid for like goods, in order to effect a fair comparison for the purposes of this Act, the normal value and the export price shall be compared by the [Chief Executive] —
>
> (a) At the same level of trade; and
>
> (b) In respect of sales made at as nearly as possible the same time; and
>
> (c) With due allowances made as appropriate for any differences in terms and conditions of sales, levels of trade, taxation, quantities, and

physical characteristics, and any other differences that affect price comparability.

3.5.2 In certain circumstances, normal values can be established under section 6 of the Act, which provides as follows:

> (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.
>
> (2) For the purposes of subsection (1) of this section, the [Chief Executive] may disregard any information that the [Chief Executive] considers to be unreliable.

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

3.5.4 The information available on normal values is that from the original investigation and that provided by HW in its application for a 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. The review team considers it likely that the information provided by HW 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 review team applied the percentage movement in the South African Producer Price Index since the original investigation to the normal values established in that investigation. The resulting normal values were found to be reasonably close to those provided by HW. Base normal values were therefore established on the basis of the information provided by HW (see below).

Base Prices

3.5.5 In its application for a review, HW provided normal values based on data acquired through [redacted], a market research company in South Africa. The survey provided Tiger Foods' FIS wholesale prices of KOO brand canned peaches to bulk buy retailers and general supermarkets (Langeberg is a subsidiary of Tiger Foods). The price to bulk buy retailers was lower than those to general supermarkets, presumably because of greater sales volume. [redacted] noted that Tiger Foods' wholesale price is the same for all product styles (i.e. halves, slices or pieces). The normal values provided by HW were for 410g and 850g cans only.

3.5.6 The review team considers the normal values provided by HW that are most comparable to the export sales to New Zealand are those relating to general supermarkets rather than to bulk buy retailers because of the relatively small volumes exported to New Zealand. For the same reason, the review team considers that sales to general supermarkets are at a comparable level of trade to the export sales to New Zealand.

3.5.7 The normal values provided by HW related only to [redacted] peaches. In the original investigation normal values were established for both [redacted] and [redacted] canned peaches. The normal value for the [redacted] for this review was therefore derived by applying the price ratio of [redacted] from the original investigation to the HW data. [redacted]. The normal values provided by HW were adjusted accordingly to derive normal values for [redacted] canned peaches.

3.5.8 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 in the period of investigation were 3kg cans only. HW provided normal values for 410g and 825g cans only. The per kilogram base price for 3kg cans was therefore derived by applying the per kilogram price ratio between 825g and 3kg cans from the original investigation. This ratio was applied to the per kilogram normal value calculated by HW for the 825g cans to derive per kilogram normal values for 3kg cans for this review.

3.5.9 Base prices are therefore the Tiger Foods' FIS prices to general supermarkets provided by HW, adjusted as set out above.

Adjustments

<u>Value Added Tax (VAT)</u>

3.5.10 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.

<u>Discounts</u>

3.5.11 In its application for a review HW made an adjustment of [redacted] percent 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 review team considers it likely that some discounts are still provided. In the absence of information from Langeberg on its current discounts, an adjustment of [redacted] percent has been made.

<u>Swell Allowance</u>

3.5.12 In the original investigation it was reported that 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. [redacted]. The review team considers it likely that [redacted]. An adjustment of [redacted] percent has been made based on the adjustment made in the original investigation.

Inland Freight, Insurance, Storage and Handling

3.5.13 A combined adjustment of __ percent was made for the above item in the original investigation. The review team considers that these costs will still be incurred. An adjustment has therefore been made for these costs at __ percent of net sales value.

Disallowed Adjustments

3.5.14 In the original investigation other adjustments were made for trade allowance, bulk discount, cash discount, rebates, sales commission and line discounts. Other than the general adjustments set out above for discounts, in the absence of any information from Langeberg, no adjustments have been made for these items.

Normal Value Calculations

3.5.15 Normal values were calculated by deducting from the base prices, amounts for the adjustments referred to above.

3.6 COMPARISON OF EXPORT PRICE AND NORMAL VALUE

3.6.1 In order to establish whether imports over the POD(R) were dumped, a comparison of the export prices as established in section 3.4 of this report and the normal values established in section 3.5 has been made. The result of this comparison for the two importations over the POD(R) is shown in the table below.

Product style and can size	Dumping Margin (% of Export Price)
Peach Slices, Syrup A10, ________, ____________	__
Peach Slices, Syrup A10, _________, ___________	Not Dumped

3.6.2 Based on the recent export price and normal value information, __ percent (by weight) of the subject goods imported into New Zealand from South Africa during the POD(R) is being dumped. This represents a decrease of __ percent in the proportion of dumped goods since the original investigation.

3.6.3 Following the release of the Interim Report, Brooke Holdings submitted that the Ministry has incorrectly concluded that the subject goods are being dumped, as Brooke Holdings has not paid any anti-dumping duties on its imports of canned peaches from South Africa. The review team is of the view that it is possible that Brooke Holdings has not paid any anti-dumping duties as the NZCS has been collecting anti-dumping duties based on the rates calculated in the last reassessment, which was carried out in March 1998. For the purposes of the current review, whether or not goods have been dumped is based on normal values and export prices for the 12 month period between July 2000 and June 2001.

3.7 LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING

Introduction

3.7.1 The Ministry's approach to sunset reviews is recorded in section 1.3. In considering the likelihood of a continuation or recurrence of dumping, the review team has applied the general principles set out in this section of the report.

3.7.2 Of the two shipments of the subject goods over the POD(R) the [redacted] canned peaches were dumped at a margin of [redacted] percent of export price, while the [redacted] was not dumped. According to Article 11.3 of the Anti-Dumping Agreement, the present review must also focus on the likelihood of a continuation or recurrence of dumping should the anti-dumping duties be allowed to expire.

3.7.3 In assessing the likelihood of a recurrence of dumping of the [redacted] A10 cans and other can sizes, the review team needs to consider the effect of the current duties on pricing e.g. whether the exporter has increased prices up to the NV (VFDE) amounts. The review team 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.

Likelihood of Continuation of Dumping

3.7.4 Based on current prices and available evidence, the review team considers it likely that the A10 cans of [redacted] canned peaches will continue to be dumped should the duties be removed. Any movement in export prices resulting from the removal of duties is likely only to be a downward one.

Likelihood of Recurrence of Dumping

3.7.5 As noted above the subject goods exported to New Zealand over the POD(R) were 3kg cans only. To estimate whether other can sizes were likely to be dumped (even with the duty in place), the review team obtained from Brooke Holdings, Langebergs' price lists for exports to New Zealand. The most recent price lists available were for 1999 and 2000. Prices for 410g cans appeared on both the 1999 and 2000 list while prices for 825g cans appeared only on the 1999 list. (Brooke Holdings advised that there had been [redacted] between these price lists and current prices.)

3.7.6 An estimated export price for 410g and 825g cans was determined by establishing the price differential ratio between 410g and 3kg cans and between 825g and 3kg cans from Langeberg's price list. This ratio was then applied to the actual invoice prices of the 3kg cans from the POD(R) to derive base export prices for 410g and 825g cans. These base prices were adjusted using the same adjustments set out in section 3.4 above. Base normal values for the 410g and 825g cans were taken from HW's application and adjusted using the same adjustments as set out in section 3.5 above. The dumping margins calculated by this process are as follows :

Product style and can size	Dumping Margin (% of Export Price)
Peach Slices, Syrup N1M (410g), _______	__%
Peach Slices, Syrup N1M (410g, _______	__%
Peach Slices, Syrup A2.5 (825g), _______	__%
Peach Slices, Syrup A2.5 (825g), _______	__%

3.7.7 On the basis of the calculation above, the available data shows that the ___ _____ of the 410g cans as well as ______ of the 825g cans would have continued to be dumped if they were still being imported into New Zealand even with the duties in place.

3.7.8 Brooke Holdings in its response to the Interim Report stated that it is incomprehensible that the Ministry has concluded that the 410g and 825g cans would be likely to be dumped, particularly when it is not currently importing canned peaches in those particular sizes.

3.7.9 The review team notes that these particular can sizes were being imported at dumped prices prior to the imposition of the duty. The review team therefore considers it necessary to consider the likelihood of a recurrence of dumping of these can sizes. The export prices of the 410g and 825g cans are calculated on pricing information provided by Brooke Holdings. The review team also notes that the absence of imports of particular can sizes over the POD(R) does not per se, constitute evidence that a recurrence of dumping of these can sizes is not likely.

3.7.10 In its application for a review HW presented South African export statistics showing the quantity, value (at the FOB level) and per kilogram value of South African exports under the tariff item that includes canned peaches of the type subject to duty for the calendar year 2000. HW, from this information, calculated an ex-factory export price by deducting estimated costs and margins between ex-factory and FOB, for exports to the five largest destinations, Germany, Great Britain, Hong Kong, Japan and the Netherlands and also to Australia.

3.7.11 The review team 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.

3.7.12 The review team calculated export prices based on the data for the above countries, using the adjustments before FOB outlined in section 3.4 above, and using the normal values calculated in section 3.5 above. The results show the goods as being dumped on the basis of the export price to all six countries, with dumping margins ranging from ___ to ___ percent, the highest dumping margin being that based on prices to _______. HW said that since Australia was most similar to New Zealand in terms of trends, use of canned peaches, and market, it would be comparable to New Zealand. The review team however could not find any evidence as to similarities in market structure, pricing and consumption to better determine the best country for comparison.

3.7.13 A calculation based on the average export values to New Zealand recorded in the same South African statistics shows a dumping margin of [redacted] percent. The review team notes that the margin of dumping calculated by the above method is far greater than its dumping calculations based on the two actual 3kg canned peaches shipments (see section 3.6 above). The review team considers the likely reason for this discrepancy is that in the presence of anti-dumping duties, the South African export data for New Zealand represents a significantly greater proportion of exports of the larger ([redacted]) commercial size packs and less of the subject goods (over the POD(R) only [redacted] percent of imports from South Africa were of subject goods). The review team notes that the other countries represented in the data do not have anti-dumping duties in place against canned peaches from South Africa and are therefore more likely to have "normal" proportions of sizes of subject goods under this tariff item.

3.7.14 Langeberg chose not to participate in the investigation and therefore no information is available on its likely prices to New Zealand, should duties be removed.

3.7.15 Brooke Holdings, however, in its response to the importer's questionnaire stated that Langeberg had advised of its ability to secure higher prices from other markets and that Langeberg was not prepared to sell canned peaches at a loss to New Zealand. Brooke Holdings made similar submissions in its response to the Interim Report. No evidence, however, was provided to back these claims. The review team also notes that goods can be dumped without being sold at a loss. Brooke Holdings provided the review team with an order for peaches from Langeberg made in August 2001 in which 3kg [redacted] peaches are listed at US$[redacted] per carton rather than US$[redacted] per carton invoiced for the same peaches over the POD(R). [redacted] the 3kg [redacted] canned peaches [redacted] dumped and this suggests that Langeberg has [redacted] its export price to New Zealand. [redacted] the same document shows the [redacted] price is [redacted] than the 2000 list price. The review team concludes that it is unable to take this implied 2001 price into consideration, as it is unverified. Brooke Holdings had submitted earlier that the 2000 prices [redacted] and the [redacted] in price of the [redacted] peaches is inconsistent with the price [redacted] in the [redacted]. The review team also notes that the document is dated after the initiation of the review and pricing may therefore have been influenced by that event.

3.7.16 The review team has compared the prices of the subject goods in 1995 (when they first entered the New Zealand market and captured a substantial share) with the prices of the two shipments over the POD(R). There has been a [redacted] in prices over this period, indicating that prices may have been [redacted] in response to the imposition of anti-dumping duties.

3.7.17 The review team also looked at the price list provided by Brooke Holdings for 1996, 1998, 1999 and 2000. These price lists show an [redacted] in prices from 1996 to 1998 of between [redacted] and [redacted] percent. These price [redacted] are in line with the weighted average margin of dumping established in the reassessment completed in March 1998, of [redacted] percent, indicating prices were [redacted] as a result of the dumping duty. The 1996 list prices are significantly [redacted] than the 1995 prices established in the original investigation. While final duties were imposed in August 1996, the review team considers it likely that the 1996 prices were [redacted] as a result of the investigation, which was initiated in February 1996. The price list shows that, except for the [redacted] cans, prices were [redacted] from 1998 to 2000. The price of the [redacted] cans was [redacted] from 1998 to 1999, and then [redacted] in 2000 to a level [redacted] that of 1996, [redacted] that in 1995. Over all of the period covered by the price lists, only negligible volumes of the subject goods were imported.

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

3.7.19 As for the normal values, the review team has had no information that indicates that there are any factors that are likely to significantly change current normal values should duties be removed.

3.7.20 In its response to the Interim Report, Brooke Holdings stated that the conclusions reached by the Ministry on the likelihood of recurrence of dumping are pure conjecture and based on unverified information.

3.7.21 The review team is of the view that in reaching its conclusions, it has had regard to all available information in accordance with section 6 the Act and has come to the conclusions on the basis of its analysis of that information as set out above.

3.8 CONCLUSIONS RELATING TO DUMPING

3.8.1 The review team concludes that the A10 [redacted] canned peaches that were imported over the POD(R) were dumped based on the current calculation. The review team concludes that the A10 [redacted] canned peaches imported over the POD(R) were not dumped.

3.8.2 The review team concludes that the A10 [redacted] peaches will 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 the average South African export prices to other countries, the review team concludes there is sufficient positive evidence to conclude that there is likely to be a recurrence of dumping of other sizes and types of canned peaches.

4. INJURY INVESTIGATION

4.1 FINDINGS OF THE ORIGINAL INVESTIGATION

4.1.1 The original investigation into the dumping of canned peaches from South Africa, finalised on 2 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 dumping that contributed to the injury.

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

4.2 INJURY FOR THE PURPOSES OF A REVIEW

Injury Factors

4.2.2 Section 8 of the Act deals with injury to industry and *inter alia* states:

> (1) In determining for the purposes of this Act whether or not any material injury to an industry has been or is being caused or is threatened or whether or not the establishment of an industry has been or is being materially retarded by means of the dumping or subsidisation of goods imported or intended to be imported into New Zealand from another country, the [Chief Executive] shall examine—
> (a) The volume of imports of the dumped or subsidised goods; and
> (b) The effect of the dumped or subsidised goods on prices in New Zealand for like goods; and
> (c) The consequent impact of the dumped or subsidised goods on the relevant New Zealand industry.
>
> (2) Without limiting the generality of subsection (1) of this section, and without limiting the matters that the [Chief Executive] may consider, the [Chief Executive] shall have regard to the following matters:
> (a) The extent to which there has been or is likely to be a significant increase in the volume of imports of dumped or subsidised goods either in absolute terms or in relation to production or consumption in New Zealand:
> (b) 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:
> (c) The extent to which the effect of the dumped or subsidised goods is or is likely significantly to depress prices for like goods of New Zealand producers or significantly to prevent price increases for those goods that otherwise would have been likely to have occurred:

(d) 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, wages, growth, ability to raise capital, and investments.

Likely Continuation or Recurrence of Injury

4.2.1 The Ministry's approach to sunset reviews is recorded in section 1.3 above. In considering the likelihood of a continuation or recurrence of injury, the review team has applied the general principles set out in this section of the report.

4.2.2 The Ministry carries out reviews on the basis of the above provisions in the Act and the Agreement. The Ministry interprets these provisions to mean that injury or likely continuation or recurrence of injury is to be considered in the context of the impact on the industry, or likely impact, arising from the volume or likely volume of the dumped goods and their effect or likely effect on prices.

4.3 IMPORT VOLUMES

Section 8(2)(a) of the Act provides that the Chief Executive shall have regard to the extent to which there has been or is likely to be a significant increase in the volume of imports of dumped or subsidised goods either in absolute terms or in relation to production or consumption in New Zealand.

4.3.1 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 was therefore estimated from the proportion that the subject goods represented of all imports over the POD(R). This proportion (_____ percent) has been applied to all of the years in the table below. Import volumes from countries other than South Africa have been estimated at 99 percent. (see paragraphs 2.3.1 and 2.3.2 above).

4.3.2 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 3.6. In that section, it was noted that __ percent of imports of subject goods during the POD(R) were dumped.

4.3.3 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 are in June years. The figures for HW sales are in April years, being HW's financial year. HW advised that over the period covered by the table, it only imported canned peaches in the _________ period, when most of its imports were subject to short fall concessions. HW's sales include sales of imported peaches. HW imports have therefore been excluded from "other imports" to avoid double counting of these imports.

Table 4.1 : Import Volumes (Kg)

	98/99	99/00	00/01
Dumped Imports	<5,000	<5,000	<5,000
Other Imports			
HW Sales			
Total NZ Market			
Change in:			
Dumped Imports			
Other Imports			
HW Sales			
Total NZ Market			
Dumped Imports as % of:			
- HW Sales			
- NZ Consumption			

4.3.4 Final anti-dumping duties were imposed in August 1996. Since then the volume of dumped subject goods has decreased significantly and for the period ended June 2001, the overall volume of dumped imports was ___ percent lower than those found to be dumped in the same period ending June 1999.

4.3.5 In relation to production and consumption in New Zealand, the volume of dumped imports has shown a significant decrease since the original investigation and is negligible in relation to both New Zealand production and consumption. For the period ending June 2001, dumped subject goods represented only ____ percent of New Zealand sales, compared with the ___ percent in the same period in 1999. In the period ending June 2001, the dumped subject goods represented ____ percent of New Zealand consumption compared to ____ percent in same period in 1999. In 1995, the last full year not affected by anti-dumping duties, dumped imports represented ____ and ___ percent respectively of domestic production and the total New Zealand market.

4.3.6 Following the release of the Interim Report, Brooke Holdings stated that the "Lead Acid Batteries from Indonesia, Korea, Malaysia, Singapore and Taiwan -December 1999" (Lead Acid Batteries), which was a review case, is similar to the current review investigation. Brooke Holdings stated that the Lead Acid Batteries case was terminated as there were minimal or no imports and there was little evidence of dumping. Brooke Holdings is of the view that on the basis of a small number of import transactions relating to subject goods and minimal dumping, the Ministry should terminate this review investigation.

4.3.7 The review team is of the view that the Lead Acid Batteries case can be distinguished from the present case on the basis of what is likely to happen to import volumes if duties are removed. In the Lead Acid Batteries case, the review team was not satisfied that there would be substantial increase in import volumes of dumped goods if the duties were removed. In the present review there is a substantial body of evidence that suggests that imports of dumped canned peaches from South Africa are likely to increase if anti-dumping duties are removed as set out below. The review team also notes that the conclusions arrived at will depend on the circumstances and evidence of each case.

<u>Volume Effects Should Duties be Removed</u>

Pre-Dumping Duty Situation

4.3.8 HW stated that if anti-dumping duties were to be removed, imports of these products would regain a market share approximating the ___ percent share held prior to the imposition of anti-dumping duties in 1995/96. Based on its sales volume and the loss in 1995/96 of a ___ percent market share, HW has forecast that approximately ___ tonnes of canned peaches will come into the market if the dumping duties were removed. HW stated that any such increase would impact adversely on its sales of New Zealand produced canned peaches in 2002 and its production in 2003.

4.3.9 The review team notes that HW's estimate of the ___ percent market share held by dumped imports prior to the imposition of anti-dumping duties was taken from AC Neilsen data relating to only those supermarket outlets where South African peaches were available. Data from the original investigation shows that the market share held by South African dumped peaches was ___ percent in 1995. However, import volumes of South African peaches forecast by HW of ___ tonnes represents ___ percent of the 2000 market, and is therefore consistent with the market share held in 1995 prior to the imposition of duties.

4.3.10 HW said the subject goods are commodity products that are interchangeable with domestic like goods. HW said the subject goods compete on price, which means that a small price differential will favour imports over domestic products. HW stated that if the South African imports enter the market at the "magic price point" of ___, it would be relatively easy for them to gain a ___ percent market share in New Zealand. HW provided 1995 AC Neilsen data showing that there was a surge in South African canned peaches volume when pricing fell below these key price points.

Ease of and Barriers to Entry

4.3.11 HW stated that the house brand market is very open to new suppliers. HW stated that it currently holds ___ worth of finished goods for its house brand customers. ___. HW is of the view that given an aggressive selling approach by the South African suppliers, the impact could be felt within a three-month period. According to HW, house brands make up about ___ percent of the New Zealand market, as evidenced by the AC Neilsen data.

4.3.12 HW said that Progressive and Woolworths use the corporate brand managers, Daymon and Associates, who procure the supply of house brand peaches on their behalf in return for a fee. HW deals directly with Daymon and Associates. Progressive tenders for supply of house brands through Daymon and Associates, ___, which is reviewable at the ___. HW said supermarkets, through ___ would be more than willing to switch to a different supplier if they got a better deal.

4.3.13 Brooke Holdings submitted that it would be difficult to introduce canned peaches from any "new" origin in the retail sector as the existing brands such as Wattie's, Oak and SPC have developed strong consumer loyalties and retailers are not willing to reduce the shelf space of proven performers in order to try unknown brands. Brooke Holdings considers South Africa as a new origin. HW submitted that Brooke Holdings is wrong to claim that it would be difficult to introduce canned peaches from any "new" origin into New Zealand. HW provided the review team with market data demonstrating the speed with which the South African imports captured market share in certain key retail accounts in 1996.

4.3.14 Brooke Holdings also submitted that the very low prices being offered by Ardmona from Australia, with the added benefit of no duty, would generally prohibit canned peach imports from other origins. Brooke Holdings further submitted that Australia was by far the largest source of imported canned peaches and that as a consequence, it exerted a dominant influence on market activities in New Zealand. According to Brooke Holdings, it is the Australian product that sets market benchmarks, particularly on price.

4.3.15 Brooke Holdings considers the food service market has preferred brands. Brooke Holdings also considers wholesale warehouses recognise that restaurants, hotels and institutions (classified as the food service market) are conservative buyers preferring to stick with the established brands. Brooke Holdings also raised this argument in its response to the Interim Report.

4.3.16 HW was of the view that there is little barrier to entry to the food service market as well as the retail market. HW said that branding does not matter in a food service market, as the consumers do not see where the products are coming from, and that price and acceptable quality are most important in this market.

4.3.17 HW stated that it [redacted] to the supermarkets of its branded products (Wattie's and Oak), supply being made on [redacted]. HW stated that it has [redacted] reviews of its dealings with the customers who buy its branded products. HW was of the view that the supermarkets are competing with its branded products by promoting, shelf positioning and competitively pricing their top tier house brands, like "Signature", "Pams" and "First Choice". HW stated that it had lost its right to produce [redacted], possibly to SPC Australia. HW said this indicates that there are just as few barriers to entry to the house brand market as the branded market. HW said it had retained the contract for other [redacted] house brand labels. HW noted that in 1996, the South African canned peaches entered the New Zealand market through Progressive Enterprises, which currently has [redacted] percent of the market for house brands.

4.3.18 HW also addressed the historic ease of entry of dumped peaches originating from South Africa and Europe to the New Zealand retail and food service industry markets. According to HW, both these markets have become more open over the last five years, which would allow dumped South African canned peaches to quickly gain market share through:

- existing channels and relationships
- targeted marketing

- the rise of broad based distributors in competition with traditional merchants in the price and service sensitive food service industry

- tenders for house brand/private label contracts, which are now externally managed on behalf of supermarket purchasers by world-wide agencies such as Daymon and Associates.

4.3.19 HW submitted that the New Zealand tariff on imports of canned peaches from South Africa has reduced from 11.5 percent in 1996, when anti-dumping duty was first imposed, to seven percent at present. HW said this is an added incentive to increase imports of canned peaches into New Zealand by existing importers. The review team notes that any imports due to lower tariffs could not be attributed to dumping.

Conclusion

4.3.20 The review team concludes that barriers to entry to the New Zealand market are extremely low because of:

- the ability of house brand customers to terminate contracts with HW [redacted].

- the existence of South African canned peaches and other products in the food service market and supermarkets.

- the [redacted] with the supermarkets for HW branded products.

- the ability of house brand customers to switch suppliers with ease.

- the ability of brokers to source the subject goods from anywhere in the world, including South Africa, to take advantage of market opportunities.

Importing and Distribution Practices

4.3.21 HW said that entry into the New Zealand house brand market by the South African product would be a simple and low cost exercise if done [redacted]. This is of concern to HW because if the anti-dumping duties are removed, [redacted] could source cheap canned peaches from South Africa to supply supermarkets with house brands.

4.3.22 HW stated that the importers and exporters in the original 1996 dumping investigation continue to sell and distribute food products in the domestic market, and there are therefore existing distribution networks, which would allow trading of canned peaches on the New Zealand market to begin with ease if the duties were removed.

4.3.23 Brooke Holdings stated that it is a small company that imports several hundred containers per year, of which about one fifth of one container would be canned peaches. Brooke Holdings said it therefore does not have a marketing, selling and distribution structure for canned peaches.

4.3.24 HW said that Brooke Holdings, a major importer of canned peaches from South Africa during the original investigation, continues to import canned peaches from South Africa. The review team confirmed that this is the case, the NZCS data showing Brooke Holdings as the only importer of canned peaches over the POD(R).

4.3.25 HW provided the review team with AC Neilsen data (March 1999 to May 2001), showing that Foodtown Supermarkets Limited continues to sell Silverleaf canned pears and guavas from Langeberg. . HW said this indicates and demonstrates that Foodtown has an existing relationship with Langeberg and shows the ease with which canned peaches could be marketed, sold and distributed in the New Zealand market using the same relationship, import and distribution channels. Brooke Holdings' imports of canned peaches from South Africa are currently restricted to supplying the .

Ability of Current Importers to Handle Increased Imports

4.3.26 Brooke Holdings said that it would be prepared to buy competitively priced canned peaches from anywhere in the world, including South Africa. Brooke Holdings said, however, it does not foresee any substantial increase in its imports from Langeberg simply because its pricing is higher than products from HW and Australia.

4.3.27 All importers (see section one above) were asked in the questionnaire about their ability to handle increased exports of canned peaches by South Africa. Brooke Holdings responded by saying that it gave no consideration to any financial or logistic impact on its company that may be brought about by increased volume of canned peaches from South Africa. The review team did not receive any response from other importers on this issue.

4.3.28 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.

Conclusion

4.3.29 The review team concludes 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.

Capacity of the South African Manufacturers and Exporters

4.3.30 HW stated that the South African peach industry has suffered a large decline in the volume of its exports over the last two years i.e., a decline of 10 percent in 1999 and a decline of 14 percent in 2000, due to a decline in sales notably to the European Union countries such as Belgium, Germany, Great Britain and the Netherlands. HW said this has resulted in a marginal build up of stock levels.

4.3.31 HW also submitted that this market problem has been exacerbated by the favourable South African weather conditions resulting in an 11 percent increase in canned peaches output for 2000/01. In support of this submission, HW provided a copy of an article from *Food News,* dated 22 June 2001. HW said that this marginal build up of stock and favourable weather conditions would result in the availability of significant quantities of canned peaches for exports to other markets such as New Zealand.

4.3.32 Brooke Holdings submits that reliance should not be placed on the *Food News* article, as this publication is a trade journal that reports commodity prices and market, climatic and crop conditions, all of which is speculative and written to encourage sales. Brooke Holdings provided comments made by Langeberg on this data. Langeberg provided what it said was the actual tonnage of canned peaches produced by canners in South Africa, which showed that canned peach production [redacted]. This is an increase of about [redacted] percent, confirming that the figures referred to by *Food News* are correct. Langeberg, in a letter to Brooke Holdings in December 2000, estimated its own production of canned peaches in 2001 as [redacted] tonnes.

4.3.33 HW also provided a Semi-Annual Report 2001 prepared by United States Department of Agriculture (USDA), dated 25 May 2001 on canned deciduous fruit production in South Africa. The USDA report shows that the production of canned peaches in South Africa for export increased by about 25 percent from 60,149 tonnes in 1999/00 to 75,300 tonnes in 2000/01. The report also shows the end stock (inventory) for the 2000/01 period at 5,100 tonnes. HW noted that this inventory level is nearly the size of the entire New Zealand market. HW said that the South African export statistics of preserved peaches for the calendar year 2000 show only 47,200 tonnes of exports, compared to its export production of 75,300 tonnes, which would have resulted in surplus stock.

4.3.34 Brooke Holdings provided a letter (dated 30 October 2001) to the review team that it received from Langeberg, which stated that approximately 1,000 tonnes of raw peaches were lost due to a recent hail storm in South Africa. [redacted], the review team considers that the total canned peaches production in South Africa would be [redacted] by about [redacted] tonnes. The review team considers that given that South Africa produced [redacted] tonnes of canned peaches in 2001 (see above paragraph), this makes only a very slight difference to the overall canned peach production in South Africa.

4.3.35 The review team also referred to a Summary Report of a meeting held on 19-20 March 1998 by the WTO Committee on Agriculture, where the Government of South Africa raised its concerns over its loss of market share of canned peaches in Japan from 38 percent to 18.3 percent. The Government of South Africa said this was largely due to subsidies paid to EC producers, which resulted in their market share increasing from 0.6 percent to 27.8 percent.

4.3.36 Langeberg, in response to Brooke Holdings' queries, stated that over the past [redacted] years, its sales to Europe have decreased slowly because of price. Langeberg also stated that the South African industry has moved more to the Far East, where it competes on equal footing as far as duties are concerned. Langeberg said the Far East [redacted], with Europe and the rest of the world being [redacted].

4.3.37 Langeberg stated that its market share in Japan is of concern as this is also a lucrative market for Greek canned peaches. Langeberg also stated that it is confident of achieving its targeted sales in Japan because of the quality of peaches, despite the price competition from Greece. Langeberg said that it had very little unsold canned peaches from last season, which it would sell by the start of the new season production. Brooke Holdings, in its response to the Interim Report, made similar statements on Langeberg's stock levels and export markets.

4.3.38 The review team notes that, because Langeberg has largely not co-operated with the review, this information is unverified. The review team also notes Langeberg is only part of the South African industry and its situation may not be representative of the whole industry.

4.3.39 The review team also looked at other ongoing investigations and trade actions in other jurisdictions concerning the subject goods.

4.3.40 HW stated that Argentina has recently notified of a decision to impose safeguard measures (provisional) against imports of canned peaches in the form of an *ad valorem* tariff surcharge of US$0.50 per kilogram. HW said this meant there would be one less export market available for South African peaches and increased competition in other existing markets due to exports diverted from Argentina, however, the review team referred to a WTO notification dated 23 July 2001 that stated the proposed date of the introduction of the definitive measure was 8 August 2001, and South Africa, being a developing country was exempted from the application of the safeguard measures.

4.3.41 There is no other evidence of the imposition of anti-dumping, countervailing or safeguard measures by any other country, other than New Zealand, in respect of goods of the same description or in respect of similar goods.

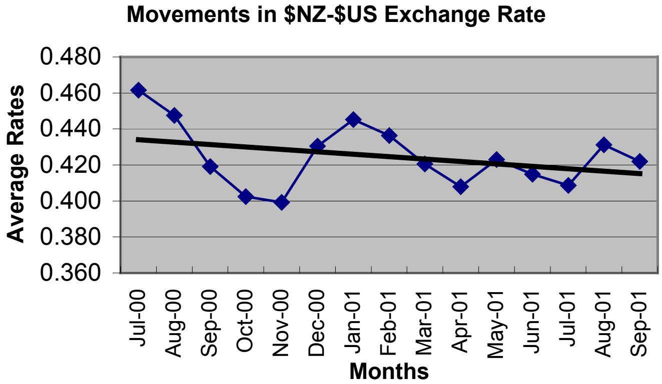
Conclusion

4.3.42 The review team concludes that South African producers have sufficient freely disposable capacity to substantially increase exports of canned peaches to New Zealand.

Exchange Rates

4.3.43 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 exchange rate between the US and New Zealand dollars. Brooke Holdings' imports of canned peaches are invoiced in US dollars.

4.3.44 The following table based on Oanda interbank exchange rates over the period 1 July 2000 to 30 September 2001, shows the declining value of the New Zealand dollar against the US dollar. From July 2000 to September 2001, the average monthly interbank rate has declined from 0.462 to 0.422, a decline of 9 percent. In these circumstances, with canned peaches being sold and invoiced in $US (for Brooke Holdings), the cost of imports from this source would have risen significantly, on the assumption that South African exporters have held prices at the same level in US dollars.



4.3.45 The review team notes that over the same period (July 2000 to Sept 2001), the average monthly interbank exchange rate of the South African rand to US dollar, has declined from 0.145 to 0.116, a decline of 20 percent. To maintain the same return in rand, South African exporters could have decreased their US dollar prices by a greater extent than the decline in the New Zealand dollar against the US dollar, while maintaining the same return in rand.

4.3.46 Following the release of the Interim Report, Brooke Holdings submitted that a shift in exchange rates of the magnitude that it has experienced over the past five years has in many cases made the imported product expensive and uncompetitive. Brooke Holdings stated that this has been the case with canned fruits imported from South Africa, which are invoiced in US dollars. Brooke Holdings also stated that the exchange rate has provided Heinz Wattie's with a level of protection far greater than that provided by anti-dumping measures.

4.3.47 The Rand has depreciated against the US dollar to a significantly greater extent than has the New Zealand dollar. Whilst, it is not possible for the Ministry to predict future exchange rate trends, the extent to which the depreciation of the NZ dollar against the US dollar would provide a disincentive to import from South Africa will depend on whether South African exporters have reduced their US dollar prices. The Langeberg price list provided by Brooke Holdings showed that the US dollar price of the A10 cans (the can size imported by Brooke Holdings over the POD(R)) were kept at the [redacted] from 1998 to 1999, and then [redacted] in 2000 to a level [redacted] that of 1996. The review team is not aware of the current prices for A10 cans, as Brooke Holdings did not submit its 2001 price list. Brooke Holdings, however, advised that there had been [redacted] between the 2000 prices and current prices (see para 3.7.17).

Conclusion

4.3.48 Even if South African exporters have not reduced their US dollar prices to reflect the depreciation of the rand against the US dollar, the review team concludes it is unlikely that the relatively small depreciation of the NZ dollar would be a significant disincentive to import from South Africa. This is particularly so in light of the likelihood that imports from other countries are invoiced in US dollars and in the light of the impact of a depreciating NZ dollar on HW's cost structure.

Conclusion on Import Volumes

4.3.49 The review team concludes that since the original investigation, imports of canned peaches from South Africa have decreased significantly in absolute terms, and relative to production and consumption in New Zealand and now have only a negligible presence in the New Zealand market. This indicates that the anti-dumping duties have significantly reduced the volume of imports.

4.3.50 The review team 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 have the capacity to significantly increase exports of canned peaches to New Zealand.
- Movements in exchange rates do not provide a significant disincentive to import from South Africa.

4.3.51 It has also been concluded that there is likely to be significant price undercutting should duties be removed (see below). The review team concludes that should duties be removed, it is likely that there would be a significant increase in import volumes.

4.4 PRICE EFFECTS

4.4.1 Price Undercutting

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.

4.4.1.1 Price undercutting reflects the extent to which prices of the imported goods are lower than those of domestic products.

4.4.1.2 The prices of dumped imports and domestic production are compared at the point of first competition in New Zealand, i.e., the first point of sale in the New Zealand market. This will normally be the ex-factory price for goods produced in New Zealand and the importers 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 importer's 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.

4.4.1.3 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.

Level of Trade and Relevant Prices

4.4.1.4 HW was of the view that its ex-factory selling price before the deduction of trade spend should be compared to the importer's ex-store price. HW advised that trade spend represented the various forms of promotion expenditure that it pays on behalf of its customers and does not include general advertising to promote HW brands. HW said that its trade spend should not be deducted for price undercutting comparison purposes as it is a brand leader and its trade promotion expenditure is more significant than other brands in the market that tend to "ride on the back" of HW trade spend.

4.4.1.5 HW also stated that there was an equivalent trade spend on the South African canned peaches when they were last on the New Zealand market. HW were unable to say with certainty if the South African supplier or the NZ supermarkets bore the burden of this trade spend.

4.4.1.6 Brooke Holdings submitted that it has a philosophy of providing product to the wholesale and retail trade without padding the price to cover expensive advertising campaigns. Brooke Holdings submitted that HW, like most multi-nationals, creates consumer driven demand by pouring vast resources into promoting their brands, which eliminates wholesaler and retailer influence on the market. Brooke Holdings stated that HW's marketing strategy is costly and is reflected in the pricing structure of its products.

4.4.1.7 On the issue of price, Brooke Holdings also submitted that in June 2001, in conjunction with another company [redacted], it participated in the "Heinz World Wide Canned Fruit Tender". Brooke Holdings said this tender covered the supply to HW of about 177,000 cartons of canned fruits, the largest single item being canned peaches. Brooke Holdings said that the tender process required the participant to "log on" and at a pre-determined time, submit their pricing for each category. Brooke Holdings said its price from its South African supplier was unsuccessful, indicating that its price was higher than other contenders. Brooke Holdings stated that it was able to determine at that time that its landed prices of South African canned peaches were higher than the retail prices of the equivalent Australian products. Brooke Holdings reiterated these statements in its response to the Interim Report. The review team considers that while this indicates that the prices quoted by Langeberg were higher than other suppliers' non-dumped prices for a particular tender, it does not necessarily mean that Langeberg's price would not undercut HW's prices.

4.4.1.8 As noted above, Brooke Holdings does not provide to its customers a trade spend equivalent to that provided by HW. The review team considers that Brooke Holdings' price is likely to reflect the absence of such a trade spend. The review team therefore considers that the relevant HW price for price undercutting comparison is that net of trade spend.

4.4.1.9 The review team concludes that the appropriate level of trade and prices to be used for price undercutting purposes is the industry's ex-factory price net of trade spend, versus the importer's ex-store price.

Physical Characteristics

4.4.1.10 The NZCS data revealed that the two shipments of subject goods imported over the POD(R) were [redacted] of canned peaches imported. The first shipment was of [redacted], whereas the second shipment was of [redacted]. Brooke Holdings said there are [redacted] between the [redacted]. Brooke Holdings said that the [redacted].

4.4.1.11 There is a [redacted] in the price charged by Langeberg for [redacted] peaches. HW does not produce a product equivalent to the [redacted] produced by Langeberg. The review team considers that there are no notable differences in the physical characteristics of canned peaches produced by HW and the [redacted] imported by Brooke Holdings that would require an adjustment for price undercutting purposes. However, the review team considers that an adjustment should be made to HW's ex-factory price of the Wattie's and Oak brand of canned peaches to allow a fair comparison with the ex-store price of [redacted] canned peaches imported by Brooke Holdings.

4.4.1.12 The net CIF price of the [redacted] is [redacted] percent [redacted] than that of the [redacted]. The review team is of the view that, for price undercutting purposes, HW's ex-factory price for its Wattie's and Oak canned peaches be [redacted] by [redacted] percent to allow a fair comparison with the [redacted] imported peaches.

4.4.1.13 The review team is also of the view that the imported product should be compared only to HW's branded (Wattie's and Oak) 3kg cans because (a) the per kilogram price varies with the size of the can and (b) both importations of the subject goods are of [redacted] products.

Differences in Credit Terms

4.4.1.14 Brooke Holdings advised that of its two importations of the subject goods, the [redacted].

4.4.1.15 There are [redacted] the credit terms for Brooke Holdings' [redacted] shipment and HW's credit terms [redacted].

4.4.1.16 There are [redacted] in the credit terms given for Brooke Holdings' [redacted] and those provided by HW. For this importation Brooke Holdings [redacted].

4.4.1.17 HW advised that its standard credit terms are payment on the [redacted]. HW said that most customers pay around the [redacted] and the average length of credit is [redacted] days. The review team calculated the differences in cost of credit to be [redacted] percent. The review team used the Reserve Bank of New Zealand published wholesale 90-day bill rate of 5.71 and added a premium of [redacted] percent, at the date of the invoice. ([redacted]/365 x [redacted] percent).

4.4.1.18 In relation to the [redacted], an adjustment was therefore made to reduce HW's prices by [redacted] percent.

Price Undercutting Comparison

4.4.1.19 Brooke Holdings has provided the review team with its cost build up to selling price information for its two importations of A10 canned peaches over the POD(R). [redacted]. [redacted]. The customer for the [redacted] was invoiced by Brooke Holdings on a [redacted] basis. Brooke Holdings [redacted] price for the [redacted] has been adjusted to an ex-store equivalent price by deducting from the [redacted] price Brooke Holdings' [redacted].

4.4.1.20 HW provided its average monthly ex-factory per kilogram prices, net of trade spend, for the year ended 30 June 2001. In the absence of information from HW on its average per kilogram selling prices for the year ended 30 June 2001, the review team calculated a simple average of the monthly average prices, net of trade spend. Adjustments have been made for physical differences and differences in credit terms as outlined above.

4.4.1.21 Following the release of the Interim Report, Brooke Holdings submitted that HW's prices be adjusted for price undercutting purposes because it does not necessarily follow that HW is landing imported canned peaches at the same price as it manufactures them. The review team is of the view that a price adjustment is not needed for price undercutting purposes as HW does not [redacted] imported and its manufactured canned peaches in terms of its [redacted] and [redacted].

4.4.1.22 HW, in its response to the Interim Report, submitted that Brooke Holdings, in supplying canned peaches to supermarket retailers, will have to provide a settlement discount of [redacted] percent of list sales value (LSV) and some form of minimal promotional programme representing at least [redacted] percent of the LSV. Accordingly, HW has requested the Ministry to take these items into account when assessing the ex-importer's store price for the purpose of its price undercutting analysis. As Brooke Holdings has previously stated that it [redacted] and has a philosophy of providing product to its customers without padding the price to cover expensive advertising campaigns, the review team is of the view that adjustments requested by HW are unnecessary.

4.4.1.23 Following the release of the Interim Report, HW submitted that its ex-factory prices, net of trade spend, that it initially provided were understated due to what is termed "CO-OP spend" that is included in the trade spend. HW stated that the CO-OP spend can be split into two categories. The first category consists of items that are effectively discounts that are taken off the selling prices e.g. off invoice discounts and coupon redemptions. The second category consists of items that are reimbursements for costs that the retailer will incur as a result of a sales campaign. These costs are generally advertising costs e.g. printing and delivery of circulars and coupon books, the purchase of instore display space and other forms of advertising.

4.4.1.24 HW also stated that because this second category of CO-OP spend represents HW's promotions of its product range in exactly the same way as its television and print media advertising that is undertaken independently of the retailer, and is a fixed cost which it incurs regardless of whether it sells a single can during the promotion, it should be excluded from trade spend. The result would be an increase in HW's average net selling prices.

4.4.1.25 HW has calculated the promotional CO-OP spend to be [redacted] percent of the LSV for [redacted]. HW also submitted that this promotional CO-OP spend adjustment is required to the Ministry's current calculation of the net selling price to reflect the true price to the retailer.

4.4.1.26 The review team notes that the circulars, coupons and instore displays are still a form of promotion for the supermarkets, which presumably the supermarkets would carry out regardless of whether HW pays them or not. The review team is therefore of the view that the payment from HW of CO-OP spend to supermarkets is partly a reimbursement to the supermarkets for their cost of advertising.

4.4.1.27 The review team considers that this CO-OP spend can be distinguished from HW's television and print media advertising, which is not part of trade spend. In the case of CO-OP spend, HW's is paying money [redacted], whereas expenditure on television and print media advertising [redacted] to companies in the business of selling advertising.

4.4.1.28 The review team, for the above mentioned reasons, has decided not to adjust the HW net selling price by the CO-OP spend for price undercutting purposes as requested by HW in its submissions.

4.4.1.29 The review team compared Brooke Holdings' ex-store prices of 3kg (A10) [redacted] sliced canned peaches, being the only size and type imported over the POD(R), to the following HW canned peaches:

- The A10 size Wattie's Peach slice in Syrup
- The A10 Oak Peach slice in syrup

4.4.1.30 On the basis set out above, the following table shows a comparison of HW's prices with those of Brooke Holdings.

Table 4.2: Price Undercutting/kg (YE Jun 2001)

	HW Ex-factory vs Importers Ex-store			
	Ex-factory price	Ex-store Price [redacted]	Under-cutting	%HW Price
Wattie's A10	[redacted]	[redacted]	nil	-
Oak (3 x A10 carton)	[redacted]	[redacted]	nil	-
Oak (6 x A10 carton)	[redacted]	[redacted]	nil	-
	Adjusted Ex-factory Price	Ex-store Price [redacted]		
Wattie's A10	[redacted]	[redacted]	nil	-
Oak (6 x A10 carton)	[redacted]	[redacted]	nil	-
Oak (3 x A10 carton)	[redacted]	[redacted]	nil	-

4.4.1.31 The above table shows that there is no price undercutting by the [redacted] or the [redacted] canned peaches of HW's equivalent Oak and Wattie's brand peaches.

4.4.1.32 The review team is of the view that caution is required in drawing any conclusion from this comparison. Although the price undercutting calculation is done on a per kilogram basis, only one particular size can (A10-3kg) has been compared, this being the only size imported over the POD(R). It is also likely that the existence of the anti-dumping duty has affected the price of the South African imports.

Conclusion

4.4.1.33 From the comparison above, the review team concludes that prices of domestically produced canned peaches are not being currently undercut by South African canned peaches.

Price Undercutting Effect Should Duties be Removed

4.4.1.34 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 2000, of exports from South Africa to Germany, Great Britain, Hong Kong, Japan, the Netherlands and Australia taken from South African export statistics. 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 one above and therefore covers a wider range of peach products than the subject goods.

4.4.1.35 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. HW calculated an ex-importers store price for 410g, 825g and 3035g(A10) cans from the average per kilogram price on the basis of a constant per kilogram price for each can size. HW then calculated a simple average ex-importers store price from the six prices (one for each of the countries referred to above).

4.4.1.36 The average 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 price of [redacted] for a 410g can, which it compared to its current retail price for the Wattie's and Oak brands, to estimate margins of price undercutting of [redacted] and [redacted] percent respectively.

4.4.1.37 HW also referred to the AC Neilsen data, which showed the retail pricing patterns of the 425g South African canned peaches, in particular the Silverleaf brand, in the period preceding the original investigation in 1996 before the imposition of anti-dumping duties. The retail price of the 425g canned peaches in August 1995 [redacted] by [redacted] percent from when it first entered the market in April 1994. In looking at the total key accounts of major supermarkets, the Silverleaf market share [redacted] from [redacted] percent in April 1994 to [redacted] percent in Aug 1995.

Ministry's Approach-Price Undercutting Calculations

4.4.1.38 The review team agrees that HW's use of export prices to other countries, with no anti-dumping duties in place, as the basis to estimate likely prices in NZ in the absence of anti-dumping duties, is reasonable. The review team considers, however, that Brooke Holdings' information relating to its profit margin and costs after FOB should be used to calculate estimated importer's ex-store prices for price undercutting purposes, as they are more accurate and current.

4.4.1.39 The review team therefore used the average per kilogram FOB export prices for 2000 provided by HW for the six countries mentioned above. These prices were converted into New Zealand dollars using the most recent exchange rate, which was sourced from the Oanda website. The rate on 7 October 2001, being the most recent rate at the time of writing this report, was NZ$1= 3.83 rand.

4.4.1.40 The review team made adjustments to the average per kilogram FOB prices to calculate ex-importer's store price, based on information provided by Brooke Holdings. The adjustments included insurance, freight, wharfage/handling fees, transport/devanning, bank charges, storage and administration, customs duty and importer's margin. An importer's profit margin of [redacted] percent was used, based on the margin achieved by Brooke Holdings on its two importations over the POD(R).

4.4.1.41 The ex-importer's store prices calculated as above from the average export FOB price for the six countries was compared to HW's forecast sales revenue per kilogram, both before and after deduction of the trade spend for the financial year 2001/02. (the forecast revenue per kilogram being lower than the actual results for 2000/01)

4.4.1.42 The review team considers that the HW price used for this comparison should be both before and after the deduction of trade spend as the extent to which (if any) an equivalent trade spend is included in the average export prices is not known.

4.4.1.43 Details are shown in the table below.

Table 4.3: Price Undercutting Should Duties be Removed (per kg)

	Germany	Great Britain	Hong Kong	Japan	Netherlands	Australia
Importer's Ex-Store Price	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Gross Price:						
HW Gross Price	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Price Under-cutting	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
% Price Under-cutting	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

Net Price:

HW Net Price	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Price Under-cutting	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
% Price Under-cutting	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

4.4.1.44 The information from the above table indicates that there would be price undercutting before and after trade spend should duties be removed if exports to New Zealand were made at prices similar to those of other export markets.

4.4.1.45 In its response to the Interim Report, Brooke Holdings queried the inclusion of HW's gross price in the above table. The review team comments that the main purpose of using HW's prices before and after trade spend was to illustrate that price undercutting would occur regardless of whether trade spend was included or not in the price.

4.4.1.46 The review team is of the view that New Zealand, being such a small market compared to the six countries that were looked at for price undercutting purposes, would be more a price follower rather than a price setter. The review team considers it reasonable to expect that the canned peaches would be imported into New Zealand at either the same prices as those countries or even lower prices.

4.4.1.47 It is unclear which of these six countries is most comparable to New Zealand in terms of the export prices likely to be achieved in the New Zealand market. However, as price undercutting is indicated on the basis of the prices to all six countries, the review team considers it likely on the basis of prices to other export markets that price undercutting is likely to occur should duties be removed.

4.4.1.48 The review team also found that there has been a [redacted] in prices since 1995 when the anti-dumping duties were imposed (see paragraph 3.7.16 and 3.7.17 above) indicating prices were [redacted] in response to the duties, further suggesting that reductions in prices are likely should duties be removed.

4.4.1.49 Brooke Holdings, in its response to the Interim Report stated that it is illogical for the Ministry to conclude that Langeberg [redacted] since 1995 in response to the imposition of duties when the purpose of imposing anti-dumping measures is to [redacted] of the imported product to remove the injury suffered by the industry. The review team agrees with this submission, and is unclear how the submission from Brooke Holdings negates the suggestion that [redacted] may well be a temporary response on behalf of the exporter to counteract the anti-dumping duties imposed.

Conclusion

4.4.1.50 The review team concludes that, should duties be removed, it is likely that prices of canned peaches from South Africa would undercut the prices of the New Zealand industry.

4.4.1.51 Price Depression

Section 8(2)(c) of the Act provides that the Chief Executive shall have regard to the extent to which the effect of the dumped or subsidised goods is or is likely significantly to depress prices for like goods of New Zealand producers.

4.4.1.52 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.

4.4.1.53 In case of a review, the assumption made is 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.

4.4.1.54 In the original investigation, it was found that the average prices of HW products showed an overall decline for the period 1993-5. 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.

4.4.1.55 In the present review, HW has provided average selling prices for the financial years 1999 to 2001 for Wattie's, Oak and house brands on a per kilogram basis, as well as an overall average selling price for canned peaches on a per kilogram basis for those years. The average selling prices are both before and 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. The gross and net prices are before and after trade spend.

Table 4.4: Average Selling price (per Kg)
(YE April)

	1999	2000	2001
Overall prices:			
Gross	____	____	____
As a % of 1999		____	____
Net	____	____	____
As a % of 1999		____	____

4.4.1.56 The figures in the table show a ____ decline in overall net price over the period since 1999, which is attributable to a decline in the price of the ____ ____ which has more than offset ____ increases in the ____ and ____ ____. When gross prices are considered, there has been a ____ in overall prices over the period, showing that there has been an ____ in trade spend per kilogram.

4.4.1.57 HW stated that it reduced its prices in October 2000 to March 2001 for its Wattie's and Oak brands after its ____ ____ ____ ____. HW said that this was unsuccessful, as the canned fruit market is extremely price sensitive, and resulted in HW having excess stock. As a result, HW reduced prices in October 2000 to sell its excess stock.

4.4.1.58 Given the existence of the 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. The volume of imports of dumped subject goods over the period from 1998/99 to 2000/01 has been negligible and is unlikely to have contributed significantly to the price depression. There is also no evidence over the POD(R) that the subject goods have undercut the prices of the NZ industry, further indicating that dumped imports are unlikely to have contributed to the price depression.

4.4.1.59 In its response to the Interim Report, Brooke Holdings submitted that in a recent meeting, [redacted] revealed that Langeberg's new seasons pricing for its lowest grade sliced peaches was more than [redacted] than HW's price delivered [redacted]. Brooke Holdings said that considering the returns Langeberg secures in other markets, it is not prepared to sell into New Zealand at the low levels offered by HW. As the review team does not have Langeberg's new season pricing information or any substantive evidence from Brooke Holdings on the price, it is unable to make any judgement on the likely impact of Langeberg's new season prices.

Conclusion

4.4.1.60 There has been a small decline in overall net selling prices but this is unlikely to be attributable to dumped imports.

Price Depression Should Duties be Removed

4.4.1.61 HW said that Wattie's is its premium brand [redacted]. [redacted] HW was of the view that it is difficult for the price to be increased again after a product has suffered price depression as a price expectation is created at the low price.

4.4.1.62 HW has forecast (for the financial year 2001/02) that if dumped goods returned to the market, its overall average net selling price would decrease by [redacted] percent per kilogram from those prices originally forecast for that year.

4.4.1.63 On a brand level, HW has forecast price depression of net selling prices of [redacted] and [redacted] percent for the Wattie's and Oak brands respectively for 2001/02, if dumped imports returned to the market. HW said the forecast reduction in the prices of the Wattie's brand is driven by the reduction in the Oak brand price [redacted]. HW said that the price depression forecast for the Oak brand is based on its estimated retail selling price of the South African product, should duties be removed, of [redacted] per 410 gram can, as set out under price undercutting in its application for review (see price undercutting above).

4.4.1.64 HW has not forecast any [redacted] should duties be removed in 2001/02. HW said it did not expect [redacted] (following any removal of duties), but said [redacted]. HW did not quantify the expected [redacted].

4.4.1.65 The following table shows HW's forecasts of its gross (before trade spend) and net (after trade spend) selling prices in 2001/02 on the assumption that the duty stays in place and on the assumption that it is removed.

Table 4.5: Forecast Average Selling Price (per kg) for 2001/02

	If Duties Remain	If Duties Removed
Overall prices:		
Gross	[redacted]	[redacted]
- % change		[redacted]
Net	[redacted]	[redacted]
- % change		[redacted]

4.4.1.66 The forecasts in the above table are based on the subject goods capturing about the same market share as they held prior to the imposition of anti-dumping duty in 1996. The above table shows that the gross and net prices of canned peaches will be depressed by [redacted] and [redacted] percent respectively if anti-dumping duties are removed. On a brand level, the review team found that the net price of Wattie's and Oak will be depressed by [redacted] and [redacted] percent respectively.

4.4.1.67 HW also cited the import of "Contel" brand canned peaches from Italy in 1999 as an example of what could happen to the price of its Wattie's and Oak brands should duties be removed. HW provided AC Neilsen data showing the price of "Contel" dropping and the price of [redacted] following the price down soon after. The AC Neilsen data also shows a sharp increase in the "Contel" market share (around March 2000) at about the same time as the average price per kilogram of "Contel" decreased in the New Zealand market.

4.4.1.68 Following the release of the interim report, HW queried the use of different per kg net prices for 2001 in tables 4.3, 4.4 and 4.5. The review team has used HW's forecast per net kg price in table 4.3 and 4.5 for 2001/02 because it deals with what is likely to happen in the future if duties are removed. On the other hand, table 4.4 deals with historical and current average selling prices in order to find out if HW has suffered any price depression over the period 1999 and 2001.

Conclusion

4.4.1.69 The review team concludes that HW's selling prices are likely to be depressed should the anti-dumping duties be removed.

4.4.2 Price Suppression

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

4.4.2.1 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.

4.4.2.2 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.

4.4.2.3 The original investigation found that total costs as a percentage of revenue had increased indicating price suppression.

4.4.2.4 The following table shows HW's cost of production, selling and administration expenses and total costs relative to sales.

Table 4.6: Price Suppression

	1999	2000	2001
Net Sales Revenue			
Cost of Production			
S&A Expenses			
Total Costs			
As % of Sales:			
- Cost of Production			
- S&A Expenses			
- Total Costs			

4.4.2.5 The table shows an increase of ___ percent in total costs relative to sales from 1999 to 2001 indicating prices may have been suppressed. On a brand level, the review team notes that there has been an increase in costs relative to sales from 1999 to 2001 for Wattie's, Oak and house brands.

4.4.2.6 There were, however, significant changes in the HW's accounting method used to derive cost of production and sales and administrative expenses over the period. In particular fixed factory production and administration costs were not allocated to ________________ in 1998/99, only partially allocated in 1999/00 and fully allocated in 2000/01 (and in the 2001/02 forecasts). The apparent price suppression in the table above will therefore be partially or fully attributable to accounting changes. It was not possible for HW to quantify the extent to which accounting changes contributed to the apparent price suppression.

4.4.2.7 As noted previously, in a market where a remedy is in place, it is assumed that injury due to dumped imports will not occur unless conditions have changed such as to make the remedy no longer fully effective. The volume of imports of dumped subject goods has been negligible and is unlikely to have contributed significantly to any price suppression.

Conclusion

4.4.2.8 Because of changes in the accounting treatment of certain costs, it is not possible to conclude whether prices have been suppressed. Even if prices have been suppressed, it is unlikely to be attributable to dumped imports.

Price Suppression Should Duties be Removed

4.4.2.9 HW said that it undertook significant consumer and trade-marketing activities in order to maintain market share and protect the price levels of its products when dumped imports from South Africa first appeared on the New Zealand retail market. HW stated that it expects similar trade marketing expenses would again be required should dumped canned peaches reappear in the market.

4.4.2.10 HW allowed for an increase of [redacted] in trade spend in its forecast figures for 2001/02 based on the assumption that duties would be removed. HW said that it was unable to predict precisely how it would increase its marketing spend as this would depend on how the South African canned peaches entered the New Zealand market and the amount of promotion they received. HW said if the South African peaches entered the market purely on a price basis, then it would react with [redacted]. If the South African peaches entered the market on the basis of increased advertising and promotional activity, HW said it would react by doing the same. HW said that this is reflected in its 2001/02 financial forecasts, where it has set aside an extra [redacted] and carrying out in-store demonstrations for its Wattie's brand of canned peaches.

4.4.2.11 The following table shows HW's forecasts for the 2001/02 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 4.7: Price Suppression (YE April 2002)

Overall:

	If Duties Remain	If Duties Removed
Net Sales Revenue	[redacted]	[redacted]
Cost of Production	[redacted]	[redacted]
S&A Expenses	[redacted]	[redacted]
Total Costs	[redacted]	[redacted]
As % of Net Sales		
- Cost of Production	[redacted]	[redacted]
- S&A Expenses	[redacted]	[redacted]
- Total Costs	[redacted]	[redacted]

4.4.2.12 The table shows a [redacted] increase ([redacted] percent) in the percentage of total costs relative to net revenue should duties be removed. This results from a reduction in the average selling price per kilogram and increases in the per kilogram costs of production and selling and administrative expenses. HW said, that its fixed overhead per carton would increase by if anti-dumping duties were removed due to lower production.

4.4.2.13 The forecasts for 2001/02, on the basis that the duties stay in place, also shows a significant rise in total costs as a percentage of net sales revenue, in comparison to the three previous years. HW said this arose from increases in the price of raw materials (sugar and tin plate) and increases in its labour costs. HW said that due to the current uncertainty in the market, in part due to the review of the anti-dumping duties, pressure from customers to hold prices down and an increase in the inflation rate, it has made a decision not to increase its prices further for canned peaches at this time to take into account the increased cost of production.

4.4.2.14 Brooke Holdings submitted in its response to the Interim Report that HW's reasons for not increasing prices have nothing to do with the possibility of South African canned peaches returning to the New Zealand market, but are the result of competition from other imported canned peaches and other products that compete directly with canned peaches e.g. baked goods and frozen desserts. Brooke Holdings also submitted that HW's forecasts of significant declines in EBIT could be attributed to the highly competitive nature of the canned fruit market and the food market in general.

4.4.2.15 The review team notes that HW is not claiming that this is the case and has previously stated that it competes with other non-dumped imports on a daily basis with brands like SPC from Australia and Contel products from Italy (see para 4.6.2). The review team also notes that pricing pressure from existing competition does not of itself remove the likelihood of price depression or suppression attributable to dumped imports should duties be removed, resulting in undercutting of HW prices by dumped imports.

Conclusion

4.4.2.16 The review team concludes that HW's prices are likely to be suppressed as a result of dumping should duties be removed.

Conclusion on Price Effects

4.4.2.17 The review team concludes there is no evidence of current price undercutting. The review team also concludes that the price depression evident over the last three financial years is unlikely to be attributable to dumped imports. It is not possible to come to a conclusion on whether there has been any price suppression.

4.4.2.18 The review team concludes there is likely to be a recurrence of price undercutting, price depression and suppression, should duties be removed.

4.5 ECONOMIC IMPACT

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, wages, growth, ability to raise capital, and investments.

4.5.1 **Output and Sales**

4.5.1.1 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.

Output

4.5.1.2 In the original investigation, it was found that 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.

4.5.1.3 HW stated that there is both excess grower capacity in New Zealand for the production of peaches for processing and spare production capacity for the processing of those peaches. HW stated [redacted]. HW said, however, this is not always sufficient to guard against fluctuations 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. [redacted].

4.5.1.4 The following table shows HW's production of canned peaches for each year from 1996 to 2001.

Table 4.8: HW's Total Output (tonnes)

	1996	1997	1998	1999	2000	2001
Peach (Syrup)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Peach (Other)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Total	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
- % of 1996	-	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

4.5.1.5 The above table shows a significant fluctuation in output reflecting the availability of peaches.

Conclusion

4.5.1.6 Fluctuations in output cannot be attributed to dumped imports.

Sales, Volume and Revenue

4.5.1.7 The original investigation found there was no decline in HW's sales volume or revenue.

4.5.1.8 The following table shows HW's sales volume and revenue for the financial years 1999 to 2001.

Table 4.9: Sales of Canned Peaches (YE April)

	1999	2000	2001
Sales (000 kg)	[redacted]	[redacted]	[redacted]
- Change on previous year		[redacted]	[redacted]
- % 1998	[redacted]	[redacted]	[redacted]
Net Revenue	[redacted]	[redacted]	[redacted]
- Change on previous year		[redacted]	[redacted]
- % 1998	[redacted]	[redacted]	[redacted]

4.5.1.9 The sales figures in the above table include HW's sales of imported canned peaches. HW stated that it was unable to isolate imports from its financial information as its imports are intermingled with domestic production, and that any injury trends would not be affected by the presence of imported product in the figures.

4.5.1.10 In the period from 1999 to 2000, the table shows that sales volumes decreased by a small amount but increased in 2001 to a level above that in 1999. The table also shows that net sales revenue declined slightly in 2000 and increased slightly in 2001 but to a level still slightly below that of 1999. [redacted]. HW said this resulted in lower sales as the canned fruit market is extremely price sensitive. [redacted].

Conclusion

4.5.1.11 There is no evidence of a significant decline in sales volume or revenue over the period.

Movement in Output and Sales Should Duties be Removed

4.5.1.12 HW said that output for the next season (Feb/Mar 2002) would not be affected as it has [redacted]. HW said if duties were removed, there would be a double impact on the production of canned peaches in Feb/Mar 2003 period due to a likely surplus of canned peaches from the 2002 production as well as a likely drop in production for that year. HW expects to produce all of its canned peaches for the next production season using raw peaches provided by the local growers because of favourable weather conditions, which have resulted in good blossoms on the trees.

4.5.1.13 HW said the impact of the removal of duty would not fall more significantly on its imports, as it is likely all imports would be sold by the time the review is concluded. HW provided its import schedule showing that it plans to sell all canned peach imports by ______________ or at the latest by the start of the new production season in 2002. HW stated that it has already committed itself to imports this year due to low production volumes caused by brown rot in the last season.

4.5.1.14 HW has submitted that if the anti-dumping duties are removed, its price depression calculation shows that the price of the Wattie's and Oak brands would be reduced by __ and __ percent per can respectively in line with the estimated retail prices of dumped South African peaches (see price depression above). HW applied these reduced prices to the year ended June 2001 sales volume figures. HW calculated that the effect of this price depression alone, without any loss of market share, would result in a loss of sales of approximately ________.

4.5.1.15 The following table shows HW's forecast sales volume and revenue for 2001/02 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 referred to in the paragraph above and on the loss of sales volume being similar to that before the imposition of duties, as referred to previously in this report.

Table 4.10: Canned Peaches Sales (YE April 2002)

	If Duties Remain	If Duties Removed
Sales (000 kg)	____	____
- Change(000 kg)		____
- Change(%)		____
Net Revenue	____	____
- Change ($)		____
- Change (%)		____

4.5.1.16 The above table quantifies the assumptions referred to above and shows a material impact on sales volume and revenue should duties be removed, in the form of a ____ tonne (__ percent) decline in sales volume and a ____ ______ (__ percent) decline in sales revenue.

4.5.1.17 The review team notes that even on the assumption that duties stay in place, HW is forecasting a significant decline in sales volume and revenue compared to the previous year. HW said the reasons for this were that the previous period had been an aggressive selling period due to ____________ ____ and the loss of some ______________________________ in the last tender. HW said that a decision not to increase prices (see paragraph 4.4.2.13 under price suppression) had also contributed to this forecast decline.

Conclusion

4.5.1.18 The review team has concluded that should duties be removed, there is likely to be a significant increase in import volumes, and there is likely to be significant price undercutting, price suppression and depression. The review team concludes that it is therefore likely there would be a consequent impact on sales volume and revenue. The review team also concludes that it is likely that the industry would, at least in the 2003 production year, suffer a reduction in its output volumes should duties be removed.

Market Share

4.5.1.19 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.

4.5.1.20 The original investigation found that the total New Zealand market and HW's share of the market had increased in 1994 and 1995, while at the same time dumped imports had increased their market share but at the expense of imports from other countries.

4.5.1.21 The following table shows movements in market share over the last three years. HW's sales figures are for year ended April and import figures are for years ended June.

Table 4.11: Market Share (kg)

	1999	2000	2001
Dumped Imports	<5,000	<5,000	<5,000
Other Imports			
HW Sales			
Total NZ Market			
Change in Volume:			
- Dumped Imports	-		
- Other Imports	-		
- HW Sales	-		
- Total NZ Market	-		
Percentage Share Held By:			
- Dumped Imports			
- Other Imports			
- HW Sales			

4.5.1.22 The table shows that HW's market share declined significantly in 2000 and then held at the same level in 2001. These changes occurred in a growing total market. The decline in market share in 2000 is consistent with the decline in sales volume in that year, the reasons for which are noted under "output and sales" above. The table also shows that the market share held by dumped imports was negligible over the whole period. The table also indicates that the market share held by imports from other sources has increased significantly at the expense of the share held by HW. The increase in market share held by other imports was due to increased Australian imports.

Conclusion

4.5.1.23 The market share held by the New Zealand industry has declined as a result of an increase in non-dumped imports, largely from Australia.

Movement in Market Share Should Duties be Removed

4.5.1.24 HW said that if dumped South African canned peaches returned to the New Zealand market, they could be expected to take a market share similar to that held prior to the imposition of duties. HW said that prior to the imposition of duties, dumped imports held a __ percent market share in those supermarkets where it was available. HW submitted that if duties were removed, it is likely that this market share would be gained across the full market.

4.5.1.25 HW said AC Neilsen data shows its current market share is about __ percent, which is close ____________________________ prior to the introduction of significant volumes of dumped imports. HW also provided the review team with a range of calculations showing the likely impact on its sales if 5, 10, 14 and 20 percent of the market share was taken by dumped imports.

4.5.1.26 HW submitted that if dumped imports entered the New Zealand market at the “magic price points” of _______, they could easily gain __ percent of the market share, which would equate to approximately ___ tonnes of canned peaches.

4.5.1.27 HW stated that about __ percent of the __ percent market share held by it is made up of its branded products (Wattie’s, Oak and Weight Watchers). HW said that it does not have _____________________ to the supermarkets of its branded product, supply being made on a _________________. HW said this means that the supermarkets may well choose not to stock Wattie’s canned peaches if they could get cheaper quality canned peaches from elsewhere.

4.5.1.28 HW said that it has __ percent of the house brand market and about __ percent of the __ percent market share held by it is made up of house brands. HW is of the view that the supermarkets are competing with its branded products by promoting, shelf positioning and competitively pricing their house brands. HW said that __ percent of the total New Zealand market consists of house brands. HW is of the view that this __ percent of the market is wide open to cheap imports, which supermarkets would not hesitate to switch to, if they got a better deal than that available from HW.

4.5.1.29 In the original investigation it was found that the market share held by dumped canned peaches increased at the expense of other imports from countries whose market share fell by nearly half between 1993 and 1995.

4.5.1.30 HW stated that it was unsure how it would tackle an increase in import volumes of canned peaches from South Africa if the duties are removed. HW said that if the South African canned peaches entered the New Zealand market at the “magic price points” of ________, then it will react by ________ ______, or, if South African canned peaches were heavily promoted, it would increase its advertising and marketing spend.

4.5.1.31 The review team is of the view that the impact on market share will relate to how HW responds to South African imports, i.e. if HW [redacted] in order to protect market share, then there will be less impact on market share, the main impact being on HW's [redacted].

Conclusion

4.5.1.32 The review team has already concluded, should duties be removed, that there is likely to be significant volume and price effects and a consequent impact on HW's sales volume. It is concluded, therefore that there is likely to be some impact on HW's market share attributable to dumped imports. The significance of the likely impact will depend on HW's strategy, the impact of dumped imports on imports from other countries and growth in the total market.

4.5.2 Profits

4.5.2.1 Changes in profit reflects changes in prices, sales volumes or costs. Dumped or subsidised imports can impact on any or all of these.

4.5.2.2 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.

4.5.2.3 HW provided its profit results for the purposes of the current review, which are shown in the following table.

Table 4.12: Earnings Before Interest and Tax (YE April)

	1999	2000	2001
Net Revenue	[redacted]	[redacted]	[redacted]
EBIT	[redacted]	[redacted]	[redacted]
Change on previous year		[redacted]	[redacted]
EBIT as a Percentage of Net Revenue	[redacted]	[redacted]	[redacted]
EBIT as a % of 1999		[redacted]	[redacted]
EBIT per Kg	[redacted]	[redacted]	[redacted]
Change on previous year		[redacted]	[redacted]
EBIT as a % of 1999		[redacted]	[redacted]

4.5.2.4 The above table shows that EBIT in total, per kilogram and relative to net revenue decreased [redacted] in 2000 and declined [redacted] in 2001.

4.5.2.5 The change in accounting treatment of certain costs noted under price suppression above has clearly contributed to the apparent decline in EBIT. As also noted under price suppression, HW was not able to quantify the impact of its accounting changes. A [redacted] depression of prices and a [redacted] decline in sales revenue may have contributed to the decline in EBIT. Given the negligible import volumes of dumped goods and the lack of price undercutting, it is unlikely that any decline in profits could be attributed to dumped imports.

Conclusion

4.5.2.6 It is not possible to conclude if there has been a real decline in EBIT. Even if profits have declined, it is unlikely to be attributable to dumped imports.

Movement in Profits Should Duties be Removed

4.5.2.7 HW stated that the effect on profits is difficult to determine. HW considers that the real effect on profits is likely to be from a combination of loss of volume, loss of sales revenue, an inability to recover increased production costs, higher marketing costs and price depression.

4.5.2.8 The following table shows HW's forecast for 2001/02 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 4.13: Forecast EBIT (YE April 2002)

	If Duties Remain	If Duties Removed
EBIT		
Change		
% Change		
% Net Revenue		
EBIT per Kg		
Change		
% Change		

4.5.2.9 The table quantifies the assumptions referred to above and shows a material impact in the form of a loss of EBIT of .

4.5.2.10 HW explained that the forecast revenue figures for house brands were the same whether or not duties stayed, as this was the HW price to its customers. HW said, however, the cost of production would go up due to a percent decrease in volume, with no change in fixed costs. HW said that its selling and administration costs would go up for the Wattie's brand as more store demonstrations and marketing would be required to compete. The selling and administration costs would not change for Oak as . HW said that its overall EBIT for canned peaches would decline with a fall in sales volume, increased costs of production and selling costs.

4.5.2.11 The review team notes that even on the assumption that duties stay in place, HW is forecasting a significant decline in EBIT compared to the previous year. The reason being that the previous period had been an aggressive selling period due to) and it had also lost some in the last tender. HW said that a decision not to increase prices (see paragraph 4.4.2.13 under price suppression) had also contributed to this forecast decline.

Conclusion

4.5.2.12 The review team concludes, based on its findings of the likely volume and price effects and consequent impact on sales volume and revenue, that it is likely that there will be a material loss of profit should duties be removed.

4.5.3 Productivity

4.5.3.1 Productivity is the relationship between the output of goods and the inputs of resources used to produce them. Changes in productivity are affected by output levels and by the level of capacity utilisation.

4.5.3.2 HW said it has a significant cost structure in place for the production of canned peaches and the removal of the duties would lead to a decline in productivity because of reduced throughput, reflected in a loss of efficiency and output per employee.

Conclusion

4.5.3.3 The review team concludes that if HW reduces its volume of canned peach production due to 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.

4.5.4 Return on Investments

4.5.4.1 A decline in return on investments will result from a decline in profits with or without a relative increase in the investment factor being used. Movement in the return on investments affects the ability of the industry to retain and attract investment.

4.5.4.2 HW stated that it is unable to provide specific information on return on investments, as most of its plant is not specific to canned peaches production. HW said [redacted].

Conclusion

4.5.4.3 The review team has no information on which to base a conclusion relating to return on investments 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.

4.5.5 Utilisation of Production Capacity

4.5.5.1 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.

4.5.5.2 HW stated that only part of the plant is used solely for canning peaches, i.e., the pitting, peeling and cutting equipment and this is only used for [redacted] to [redacted] working days per year. Can filling, sealing, sterilisation, britestacking and labelling are carried out all year around for the full range of canned products produced by HW.

4.5.5.3 HW said that the maximum capacity for the plant in Hastings would be approximately ______ tonnes per year for canned peaches (including fruit salads). According to HW, canned fruit salad uses approximately __ to __ percent of the peach crop processed each year.

4.5.5.4 HW said that the production capacity of canned peaches is limited by the storage life of the raw fruit and also the need to put other products, like canned fruits and vegetables, through the same plant.

4.5.5.5 The review team considers that any surplus production capacity that HW has available can be used only to the extent that there are raw peaches available to process.

Conclusion

4.5.5.6 Due to the multitude of canned products manufactured by HW and the limitations mentioned above regarding the availability of the raw peaches, the review team 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 HW projected a decrease in its output should duties be removed, it is likely the result would also be a decrease in its capacity utilisation rate.

4.5.6 Magnitude of the Margin of Dumping

4.5.6.1 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.

4.5.6.2 In the present review, for the A10 canned peaches, the review team found that there was no price undercutting and the margin of dumping for ______ _____ peaches was __ percent and there was no dumping for _____________ ______ peaches. 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.

4.5.6.3 While the review team 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 review team considers that it is unable to draw any useful conclusions related to the likely magnitude of the margin of dumping should duties be removed.

Conclusion

4.5.6.4 In relation to the data examined over the POD(R), the margin of dumping has not caused any price undercutting. The review team is unable to draw a useful conclusion on the magnitude of the margin of dumping should duties be removed.

4.5.7 Factors Affecting Domestic Prices

4.5.7.1 The review team is not aware of an adverse economic impact by the subject goods on factors affecting domestic prices, or of any likely impact, should duties be removed.

Other Adverse Effects

CashFlow

4.5.7.2 There was no evidence of any adverse impact on HW's cash flow over the historical period examined for injury.

4.5.7.3 HW noted there would be a cash flow impact of carrying additional inventory (see below) if duties were to be removed.

4.5.7.4 HW said that in addition to the cost of carrying additional inventory there would also be a cashflow impact equal to the estimated loss of revenue (see output and sales above).

Conclusion

4.5.7.5 There is no evidence of an historical impact on cash flow. It is likely there will be an adverse impact on cash flow should duties be removed.

Inventories

4.5.7.6 There is no evidence of any adverse impact on HW inventory during the historical period examined for injury.

4.5.7.7 HW said that it has already ______________________________ of raw peaches and will therefore not be able to reduce production in 2002 to adjust for lost sales should duties be removed. HW said it would therefore have to carry the surplus stock until 2003, when production would then be reduced to absorb the excess stock. On the basis of dumped imports capturing a __ percent market share HW has estimated that the cost of carrying the additional inventory for one year to be ________.

4.5.7.8 In response to the Interim Report, Brooke Holdings has submitted that given there is no evidence of an adverse historical impact on the various financial indicators examined above, no reason was then given for concluding that an adverse impact would occur on inventories (and on employment and growth).

Conclusion

4.5.7.9 The review team notes that a lack of evidence of an historical impact attributable to dumping (which would be expected with duties in place), does not provide grounds for concluding that there is unlikely to be an adverse impact should duties be removed. The review team has carried out an analysis of the likely impact on these financial indicators if the duties were removed and has concluded that most of these financial indicators would be adversely affected and has consequently concluded there would be a subsequent adverse impact on inventories.

4.5.7.10 There is no evidence of an historical impact on inventories. It is likely there will be a significant increase in inventories and an associated increase in carrying cost, should duties be removed.

Employment

4.5.7.11 The review team notes that there was no impact on employment during the historical period examined for injury with anti-dumping duties in place.

4.5.7.12 HW said that if duties were removed, ______________ the reduction in working hours and production time. HW was of the view that if duties are removed, it may have difficulty recruiting ______________.

4.5.7.13 HW said the number of hours worked by seasonal staff would probably reduce in proportion to the loss of throughput. For example, HW said that if it lost __ percent of the market to dumped South African imports, it would likely reduce its seasonal staff working hours by about __ percent.

4.5.7.14 HW said it takes on about ___ to ___ seasonal staff for fruit processing of which at least ___ would work on canned peaches, which would mean that the number of hours worked by approximately ____ staff would be reduced. HW said it also employs __ permanent staff in its seasonal department which canned peaches are a part of.

4.5.7.15 As indicated above under inventories, Brooke Holdings has made a submission in response to the Interim Report on the conclusions reached on the impact of employment. The comments made under inventories also apply here.

Conclusion

4.5.7.16 The review team concludes that there has been no adverse effect on employment over the last three years examined for injury.

4.5.7.17 The review team concluded under output that it is likely that if South African canned peaches capture market share at the same rate as they did prior to the 1996 investigation, the industry would suffer a loss of output in 2003. The review team therefore concludes that the likely loss in output volumes, as a result of the South African imports will have an adverse effect on the seasonal employment reflected in a reduction in hours worked. There is likely to be ______________.

Wages

4.5.7.18 In the historical period examined for injury, there is no evidence of an adverse impact on wages.

4.5.7.19 HW estimated its expenditure on labour at $________ per annum to process peaches. As noted above under employment HW, said that if South African imports gained a __ percent market share, this would translate to a __ percent reduction in wages, or $________ per annum. The review team notes however that the $_________ would also include the wages of ____________ who would be [redacted], the actual amount of any reduction in wages will be lower than this amount.

Conclusion

4.5.7.20 The review team concludes under employment that the likely loss in output volumes as a result of the South African imports would have an adverse effect on the seasonal employment [redacted]. The review team concludes that the likely reduction in seasonal work available will have an impact on the total wage bill but not on the wage rate, as HW will reduce staff hours rather than the wage rates.

Growth

4.5.7.21 The review team found no evidence of any adverse impact on growth over the historical period examined for injury.

4.5.7.22 HW was of the view that if duties are removed the resulting loss of sales to dumped imports will result in reduced consumer marketing activities, which will in turn impact on its ability to grow the market.

4.5.7.23 HW stated that it would be difficult to quantify the negative growth effects from the return of dumped imports.

4.5.7.24 As indicated above under inventories, Brooke Holdings has made a submission in response to the Interim Report on the conclusions reached on the impact of growth. The comments made under inventories also apply here.

Conclusion

4.5.7.25 The review team has concluded that there are likely to be volume and price effects and a consequent economic impact reflected in various factors, should duties be removed. As a matter of course it follows that growth will likely also be adversely impacted upon.

Ability to Raise Capital and Investments

4.5.7.26 There was no evidence of any adverse impact on the industry's ability to raise capital and investments over the historical period examined for injury.

4.5.7.27 HW said that capital must be utilised effectively. According to HW, if dumped canned peaches started entering the market, the cost of production will go up due to a reduction in volumes, prices will come down and profitability will decrease. HW said that the Heinz group has a world-wide budget for capital expenditure under which any proposed capital expenditure must meet a [redacted]. HW is of the view that its canned peaches operation would be struggling to meet this criterion if its profitability is affected due to South African dumped canned peaches.

4.5.7.28 HW said that the Heinz group has a preference to invest in [redacted] products as such products generally have a higher [redacted] than investment in [redacted]. HW was of the view that it would be difficult with this perception to get further investment from Heinz head office for canned peaches if the New Zealand market is not doing well due to the dumped South African canned peaches.

4.5.7.29 HW stated that it does borrow money on a ______________ but said that the peaches operation is not a sufficiently large part of its overall total operation to impact on its ability to borrow and it would be difficult to isolate the impact on its ability to raise capital investments

Conclusion

4.5.7.30 The review team concludes that the removal of antidumping duties would be likely to inhibit HW's ability to meet the ______________________________ criteria, as the South African imports would diminish HW market share and hence profitability for canned peaches. HW was not able to provide information on its ___________ on its investment in peach canning, therefore, the review team is unable to come to a conclusion on the likelihood of it not meeting the _________ threshold should duties be removed.

4.5.7.31 The information provided by HW on its ability to raise investments indicates that an adverse impact on its canned peaches operation resulting from the removal of duties will not adversely impact on its ability to raise investments in respect of its total operation. There is insufficient information available for the review team to come to a conclusion concerning the likely impact of the removal of duties on HW's ability to raise investments in respect of its peach canning operation.

4.6 OTHER CAUSES OF INJURY

4.6.1 Section 8(2)(e) and (f) of the Act provides that the Chief Executive shall have regard to factors other than the dumped goods which have injured, or are injuring, the industry, including-

> (e) Factors other than the dumped or subsidised goods that have injured, or are injuring, the industry, including—
> (i) The volume and prices of goods that are not sold at dumped prices or that are not subsidised; 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) The export performance and productivity of the New Zealand producers:
> (f) 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

4.6.2 HW said it competes with non dumped prices on a daily basis with SPC products from Australia, and had competed with Contel products from Italy in 1999/00. HW stated that there were no imports coming from any of the Asian countries.

4.6.3 HW advised that it recently lost its supplier contract for _________________ ______________________, probably, to SPC. HW also said that as SPC is much bigger than HW, it has the ability to stay in the New Zealand market if the duties are removed.

4.6.4 Brooke Holdings submitted that "…Australia was the largest source of imported canned peaches in New Zealand during the original investigation and as a consequence has exerted a dominant influence on market activities here". Brooke Holdings said that since then "…Australia's dominance of the New Zealand canned peaches market has continued to grow and today enjoys an unassailable position". Brooke Holdings said that the Australian product sets the "market benchmark" for price in New Zealand. Brooke Holdings also stated that the large volume of imports from Australia demonstrates that the demand of the New Zealand market exceeds HW's capacity to supply. The review team notes however that HW stated in its application that it has been able to maintain its market share at a similar level before dumped imports were significant in 1994 in the presence of the Australian imports. The review team's own market share tables however show HW has lost market share since 1999 to other imports. This discrepancy is likely to be attributed to the [redacted] which is included in the review team's calculations but not HW's calculations which are based on AC Neilsen data, suggesting that HW has [redacted].

4.6.5 HW cited the import of Contel brand canned peaches from Italy in 1999 as an example of what could happen to the price of Wattie's and Oak brand canned peaches should duties be removed. HW provided AC Neilsen data showing the price of Contel dropping and the price of [redacted] following the price down soon after. HW also drew attention to the AC Neilsen market share data showing a sharp increase in the Contel market share (around March 2000) at about the same time as the average price per kg of Contel decreased in the New Zealand market.

4.6.6 Since the duties were imposed in 1996, canned peaches from other sources have been gaining market share steadily, and of which Australian imports have gained the most market share with a total increase in volume since 1996 of [redacted] kg. In the 1999/00 year, HW lost [redacted] percent market share to other imports, largely to Australian imports. HW was not able to regain this market share in 2000/01.

4.6.7 The review team constructed an estimated ex-store price for imports from Australia by adding to the average CIF price for imports from Australia for the POD(R), the importers costs and margin provided by Brooke Holdings. The ex-store price estimated on this basis is significantly higher than both HW's overall net selling price and the likely South African prices should duties be removed. While prices calculated from average import values should be treated with caution, the average prices indicate that non-dumped imports from Australia are not under-cutting HW's prices. These average prices also indicate that should duties be removed, imports from Australia may lose sales to dumped South African imports, as was the case prior to the imposition of duties.

4.6.8 Following the release of the Interim Report, Brooke Holdings stated that it is meaningless to construct an estimated ex-store price as above for imports from Australia on the basis of average CIF prices. Brooke Holdings said a significant volume of imports from Australia are of high quality retail packs, whereas its South African imports are of A10 and A12 packs and almost all are of [redacted] quality. Brooke Holdings also said that the Ministry should approach the retail trade for information on prices that the supermarkets are paying for the canned peaches from Australia.

4.6.9 The review team notes that Brooke Holdings has not provided any evidence of prices of Australian canned peaches in high quality retail packs. The review team also notes that Australian canned peaches were significant in the New Zealand market at the time of the original investigation when it was established that HW suffered material injury as a result of South African imports. Since the imposition of the anti-dumping duties, Australian canned peaches have maintained a significant presence in the New Zealand market. Given the constant presence of Australian product in the New Zealand market and the prices estimated from the available information, the review team does not consider that Australian imports have any greater impact on HW than they have in the past, should duties be removed.

Conclusion

4.6.10 HW has lost market share to non-dumped imports since duties were imposed. The review team concludes, however, that the impact of non-dumped imports relates to the international competitiveness of the New Zealand industry and not to any cause that can be remedied through the imposition or retention of anti-dumping duties.

Contraction in Demand or Changes in Patterns of Consumption

4.6.11 In the original investigation HW commented on the perceived impact of lower priced South African peaches on brand loyalty. HW noted that the [redacted] between its Oak and premium Wattie's brand was becoming less distinct and thereby adding to the injury caused. The investigation team noted that the [redacted] between the Wattie's and Oak brands appeared to be increasing.

4.6.12 For the review, HW referred the review team to the AC Neilsen data, which shows the consumption levels of canned peaches (not including food services) at its peak in 1999 and marked increase in the consumption levels in 2001. HW said it anticipated that consumption levels will go down to normal levels in 2002 [redacted]. The review team notes that its market share table in section 4.5 shows the total New Zealand market as having grown steadily since 1999 but that this includes the food service sector that is not covered by the AC Neilsen data.

Conclusion

4.6.13 The review team concludes that the total market has been growing steadily in the last three years. The review team also concludes that consumption patterns and demand for canned peaches has not caused injury to HW, and is unlikely to cause injury to HW, if duties are removed.

Restrictive Trade Practices and Competition

4.6.14 HW said it is not aware of any restrictive trade practices in the canned peaches market. HW is of the view that New Zealand is an open market with low barriers to entry. The review team is not aware of any restrictive trade practices carried out by HW or any overseas producers.

Conclusion

4.6.15 The review team concludes that competition between HW and overseas producers is likely to be a significant cause of the relatively small amount of injury suffered by HW over the period under review, in a highly competitive market. The review team also concludes that this normal competition between HW and overseas producers is likely to continue in the same manner should duties be removed and is therefore unlikely to contribute to any increase in injury should duties be removed.

Developments in Technology

4.6.16 HW advised that since the original investigation, it has improved its technology related to the [redacted].

4.6.17 HW said that the South African industry uses [redacted] pitting equipment. HW noted that there are state of the art optical inspection systems in the market for sorting peaches, which would result in a reduction in cost of production of canned peaches in high wage countries such as the USA. HW said it relies on [redacted] inspection to sort peaches and does not believe the South African industry is using optical inspection systems. [redacted].

4.6.18 According to HW, the equipment used to peel, slice, dice and sterilise canned peaches is similar world-wide. HW said these machines have not changed since the last investigation.

4.6.19 HW said it spent [redacted] on updating its [redacted], which was completed last year. According to HW, this resulted in a more organised and efficient system of [redacted].

Conclusion

4.6.20 The review team concludes that developments in technology have not been a cause of injury to HW over the period under review and are not likely to be a cause of injury to HW should the duties be removed.

Export Performance by HW

4.6.21 HW said it exports small volumes of canned peaches to [redacted] (A10 cans only) and to various [redacted]. Exports to the [redacted] are made through [redacted], a HW customer. HW said it has no knowledge of the export price as all exports are carried out independently by [redacted].

4.6.22 The following table shows HW's export sales (and forecast export sales for 2001/02).

Table 4.14: HW Exports (financial year)

	1999	2000	2001	2002
Volume (tonnes)	[redacted]	[redacted]	[redacted]	[redacted]
Revenue ($M)	[redacted]	[redacted]	[redacted]	[redacted]

4.6.23 The table shows that HW's exports have declined since 1999. The review team considers that these exports are insignificant in relation to HW's domestic sales.

4.6.24 HW said it fulfils its exporting obligation even if there is a shortfall in its production of canned peaches. HW does not see exporting canned peaches beyond [redacted] and [redacted] as a viable on-going activity as it finds it difficult to compete in the international market. HW is of the view that if anti-dumping duties were removed, it would look at either (a) [redacted] (suffering lower production output and factory overhead recovery) or (b) clearing the stock [redacted] at a great expense. HW was of the view that clearing stock [redacted] would be a last resort, which would probably be [redacted].

Conclusion

4.6.25 The review team concludes that due to the insignificant volumes of canned peaches exported, HW export performance has not been a cause of injury to it over the POD(R) and is not likely to be a cause of injury should the duties be removed.

Supermarket Purchasing Power

4.6.26 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.

4.6.27 For the review, HW said that it was aware 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. HW submitted that local supply also removes the fluctuations associated with imports, with orders of smaller volumes and shorter lead times.

4.6.28 According to HW, there is also a premium associated with both Wattie's and the [redacted] Oak product. HW said both brands are recognised as being made in New Zealand with a high public profile and have a long tradition of superior quality within the New Zealand market. HW said that it also provided total brand support for its products, often in conjunction with its supermarket customers, unlike many other imported products available on the New Zealand retail market.

4.6.29 As noted variously above, HW's forecast for 2001/02 assuming duties stay in place, show a significant reduction in profit. HW said this is due to a decision not to increase prices due partly to pressure from customers to hold prices, indicating the purchasing power of supermarkets will clearly have an effect on HW's results for 2001/02.

Conclusion

4.6.30 The review team concludes that supermarkets in New Zealand have had the ability to influence prices and the level of supplier promotion during the historical period examined for injury. The review team also concludes that the ability of supermarkets to influence prices in a competitive market is likely to continue should the duties be removed and any adverse impact from that influence cannot be attributed to dumping.

House Brands

4.6.31 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.

4.6.32 For the review, HW said that the growth of supermarket house brands and the [redacted] to supply these products has increased price competition in New Zealand. Sales of house brand products, according to HW, [redacted] in the years ending June [redacted] to [redacted] until they [redacted] in [redacted] back below the level achieved in 1999. HW said that these increases in volume simply reflect a growing market in New Zealand for canned peaches (the market share table in section 4.5 shows an increase in the total New Zealand market from 1999 to 2001 of [redacted]).

4.6.33 HW stated that the total market (excluding the food service sector) increased from 1995 to 2001 by [redacted] percent. HW said that sales of house brand product over the same period grew by [redacted] percent. HW said that the market for these products does fluctuate over this period but an average [redacted] percent share now appears to apply in the New Zealand market. HW stated that house brands are positioned [redacted] and the same comments in respect of the premium associated with HW's branded products [redacted]. HW said 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.

Conclusion

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

Availability of Raw Peaches

4.6.35 In the original investigation HW commented that orchards supplying it currently had no other outlet for their fruit and if HW was unable to take their production on an ongoing basis, the growers would consider removing peach trees and changing to other fruit. HW said in the original investigation that, with the long lead-time from planting to commercial cropping, it would be difficult to get growers to revert to peaches if market share were to be regained later.

4.6.36 For the review, HW stated that if dumped imports from South Africa resumed, [redacted]. HW said in the long-term, [redacted]. HW said that once growers switched to growing some other fruit, it would become hard for HW to get the growers to supply them again, as planting peaches was a long term investment.

Conclusion

4.6.37 The review team concludes there is no evidence of any cause of injury related to the availability of raw peaches during the historical period examined for injury. The review team concludes that the availability of raw peaches is not likely to be a cause of injury to HW should the duties be removed.

Imports by the Industry

4.6.38 In the original investigation, the investigating team noted that HW had a practice of importing canned peaches in order to maintain its market presence when domestic production is insufficient to meet demand. Such imports were not differentiated from, and were sold side by side with, domestically produced goods. Imports had come from Spain and Greece at that time. HW stated that it was expensive to import canned fruit and in most [redacted] but was considered vital in order to retain market share.

4.6.39 For the review, HW said that while it [redacted] raw peach requirement, it imports when necessary to cover the shortfalls due to poor harvests. HW advised that no imports of canned peaches were required in [redacted] to [redacted] or [redacted] but HW had to import in [redacted] due to a poor harvest resulting from brown rot.

4.6.40 In [redacted], HW imported [redacted] tonnes of canned peaches from [redacted] and [redacted]. Such imports represented [redacted] percent (by volume) of all HW's sales in [redacted]. The review team notes that some of the imports were subject to tariff concessions. (see discussion below under concessions).

4.6.41 HW advised that the [redacted] harvest was also a poor one and it therefore has contracted to import canned peaches through to the end of [redacted] to cover the shortfall till the [redacted]. Such imports represent [redacted] percent (by volume) of forecast sales (assuming duties remain in place) for [redacted]. HW has said in its application that these imports protect market share and consumer goodwill in a time of shortage and are not a cause of injury. HW expects the 2002 harvest to be sufficient to meet all of its needs for the following year. HW stated that any termination of the dumping duty would affect sales of this New Zealand produced product.

4.6.42 As noted above, the financial data provided by HW (including the forecasts) includes imported canned peaches. HW stated that as it does not [redacted] the New Zealand produced peaches and the imported peaches, the financial data relating to imports couldn't be separated from the full financial results.

4.6.43 Brooke Holdings submitted that HW's claims that it imports out of necessity is misleading and that HW's statement that it "…has excess grower and production capacity…means that they should have sufficient margin to carry them through a poor crop". Brooke Holdings, in its response to the Interim Report, stated that HW's argument that its production capacity is under-utilised lacks credibility. Brooke Holdings further stated that the HW is incapable of satisfying the New Zealand market's demand for canned peaches, which is why it imports canned peaches from other countries. The review team notes however that HW has said that it plans to produce only what it sells for the year and does not plan to carry over stock. The review team considers that it would be unreasonable to expect HW to contract for an excess quantity of raw peaches on the possibility there might be a poor harvest resulting in a shortfall.

4.6.44 Brooke Holdings, said that it has been approached by an agent on behalf of HW for the supply of 42,500 cases of canned peaches from South Africa and that Langeberg and Brookes are considering this. As also noted in section 2.2 above this request was part of HW's import programme to cover shortfalls from the [redacted] harvest and will not include any imports from South Africa.

4.6.45 The review team notes that HW imports canned peaches in times of shortage caused by factors outside its control such as brown rot. HW does this to maintain its market share, which is a valid strategy. As the product is priced and sold in exactly the same way as its domestically produced products, this will not affect the price of the domestically produced product.

Conclusion

4.6.46 HW imports only when there is an unforeseen shortfall in the NZ harvest. The review team concludes this is valid commercial strategy by HW to protect its market share and presence in the market. The review team concludes that HW's imports are not a cause of sustained injury to itself.

Duty Concessions

4.6.47 In the original investigation it was reported that due to a decrease in the availability of raw peaches in late 1993, a number of importers applied for duty concessions on imported canned peaches. As HW did not object to the 'shortfall concessions' being granted, imports of [redacted] kilograms were made under concession in the period from June 1993- September 1994, of which [redacted] kilograms were sourced from South Africa in the period June 1994 to September 1994. During June 1993 to September 1994 period, imports on behalf of HW by [redacted] were sourced from [redacted], [redacted] and [redacted] totalling [redacted] kg or [redacted] percent of the concessionary imports in that year. In 1994 imports of [redacted] kg were made on HW's behalf, representing [redacted] percent of concessionary imports.

4.6.48 For the review, HW provided details of its imports due to the raw material shortfall as a result of brown rot in [redacted].

4.6.49 The total volume of canned peaches imported under concessions since the anti-dumping duties were first imposed through to June 2001 was [redacted] kilograms of which [redacted] kilograms were of South African origin and represented [redacted] percent of the total imports of canned peaches under concession. The rest of the concessionary imports came from [redacted] of which [redacted] imports represent [redacted] percent of the total. These figures relate to all imports under the tariff item covering the subject goods and may therefore include goods outside the definition of the subject goods.

4.6.50 Brooke Holdings expressed its concern about HW being an active importer of canned peaches whilst using the Ministry to "thwart competition from other importers". Brooke Holdings said that it had expressed 'dismay' at HW securing concessions for its imports from Greece last year. Brooke Holdings, in response to the Interim Report, reiterated these submissions and also stated that the recently granted tariff concession will 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. The review team is of the view that the concession granted is a temporary shortfall concession, which can be differentiated from the situation that is likely to arise should anti-dumping duties be removed.

4.6.51 HW's informed the review team that it had recently applied for tariff concessions for canned peaches from ______, which it is importing to maintain its market share till the ________________________________. The review team notes that these imports are due to the poor supply HW's experienced __________ as discussed earlier.

Conclusion

4.6.52 The review team is satisfied that the duty concession resulting from an application by HW was a one-off action by HW to protect it's market share and supplier commitments as a result of unforeseen shortfalls in the New Zealand harvest. The review team considers that concessions were granted in the past to other importers upon valid applications and concludes that concessions are not likely to be a cause of injury.

Conclusion on Other Causes of Injury

4.6.53 The review team concludes that competition from non-dumped imports, the purchasing power of supermarkets and the trend towards supermarket house brands are likely to have been a cause of injury to HW over the historical period examined for injury. The review team 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.

CONCLUSIONS RELATING TO INJURY

4.7.1 From information made available during the review, the review team has reached the following conclusions in relation to material injury suffered by the New Zealand industry since the completion of the original investigation in 1996:

Volume and Price Effects

- In absolute terms, the volumes of dumped imports have significantly decreased and are negligible in relation to both New Zealand production and consumption.
- The prices of the domestically produced canned peaches are not being undercut by South African canned peaches.
- Domestic prices are being depressed but this is not attributable to dumping.

- Evidence on price suppression is inconclusive. Even if prices have been suppressed, it is unlikely to be attributable to dumped imports.

Economic Impact

- The industry's output has fluctuated considerably, but this is related to fluctuations in the peach harvest and cannot be attributed to dumped imports.
- The industry's sales volumes have shown a slight increase over the review period, whilst sales revenue has slightly decreased. These effects are not attributable to dumped imports.
- The market share held by the domestic industry has decreased over the review period (in a growing total market) due to increased volumes of imports from sources other than South Africa.
- Industry profit levels have decreased, but this is not attributable to dumped imports.
- No positive evidence has been provided that shows any injurious effects 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 magnitude of the margin of dumping has not caused any price undercutting.
- Factors other than dumped goods have been a cause of injury to the industry.

The review team 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

4.6.54 In relation to the likelihood of a recurrence of material injury should anti-dumping duties be removed, the review team 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 sales volume and revenue, and a consequent reduction in output.
- As a result of volume and price effects, there is likely to be some 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 there will be material loss of profits.

- There is likely to be an adverse effect on productivity, utilisation of production capacity, cashflow, inventories, employment, wages and growth.

- There is insufficient evidence available to come to a conclusion on the likely impact on return on investments and the ability to raise capital and investments, or on the extent to which the magnitude of the margin of dumping is likely to contribute to injury.

- There is not likely to be an adverse impact on 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.

On the basis of these considerations, the review team 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.

5. CONCLUSION

5.1 From the information available, the review team concludes that some canned peaches from South Africa have been dumped during the review period but this has not caused material injury to the industry.

5.2 The review team concludes, on the basis of the information available, that should the existing anti-dumping duties be removed, it is likely that some dumping will continue and there will be a recurrence of dumping and material injury.

5.3 Accordingly, the review team concludes that :

(a) Anti-dumping duties on canned peaches from South Africa should not be revoked; and
(b) That there should be a reassessment of the anti-dumping duty on canned peaches from South Africa following the completion of this review.

6. REASSESSMENT OF ANTI-DUMPING DUTIES

The reassessment of anti-dumping duty following the completion of a review is provided for by section 14(6) of the Act as follows:

> (6) The [Chief Executive] may initiate a reassessment of any rate or amount of anti-dumping or countervailing duty determined under subsection (4) of this section, including any elements of any formula used to establish such a rate or amount, —
> (a) On the initiative of the [Chief Executive]; or
> (b) Where a request for a reassessment is submitted to the [Chief Executive] by an interested party who submits evidence justifying the need for a reassessment; or
> (c) Following the completion of a review carried out under subsection (8) of this section —
> and the Minister may determine a new rate or amount in accordance with subsection (4) of this section, and, in that event, shall give notice of the new rate or amount.

Sections 14 (4) and 14 (5) of the Act refer to the rate or amount of duty as follows:

> (4) The anti-dumping duty or countervailing duty in the case of goods to which this section applies shall be a rate or amount determined by the Minister, —
> (a) In the case of dumped goods, not exceeding the difference between the export price of the goods and their normal value; and
> (b) In the case of subsidised goods, not exceeding the amount of the subsidy on the goods.
>
> (5) In exercising the discretion under subsection (4) of this section, the Minister shall have regard to the desirability of ensuring that the amount of anti-dumping or countervailing duty in respect of those goods is not greater than is necessary to prevent the material injury or a recurrence of the material injury or to remove the threat of material injury to an industry or the material retardation to the establishment of an industry, as the case may require.

Basis of Reassessment

6.1 Under the provisions of section 14(6) of the Act the rate or amount of anti-dumping duty may be reassessed following the completion of a review. This section of the report therefore provides the basis for a recommendation to initiate a reassessment immediately following the completion of this review which will be based on, and reflect the findings of the review.

Existing Levels of Duty

6.2 Anti-dumping duty in the original investigation in 1996 was imposed at the full margin of dumping as Normal Value (Value for Duty Equivalent) (NV(VFDE)) amounts for exports by Langeberg. A residual rate of duty was also imposed in the form of an *ad valorem* percentage. The NV (VFDE) amounts and the residual rate were reassessed in 1996 and 1998. In the 1998 reassessment, separate NV (VFDE) amounts were established for exports by Langeberg for all product styles in 225g, 410g, 825g and 3Kg can sizes.

Method of Imposing Duty

6.3 Anti-dumping duties can be applied in a number of ways and can be imposed as a rate or amount, including any rate or amount established by a formula. The basic approaches are:

(a) a specific amount per unit of product;
(b) *an ad valorem* rate; and
(c) a reference price approach

6.4 Under the reference price approach, the duty payable is the difference between the transaction price and a reference price. The reference price would normally be based on the normal value, by means of NV (VFDE) amounts, or the non-injurious price (NIP), by means of Non-Injurious Free on Board (NIFOB) amounts.

6.5 The main objective of an anti-dumping duty is to remove the injurious impact of dumping. In deciding on the form of duty, considerations relating to ease of administration, ability to ensure the dumping margin is not exceeded, fairness between parties, and predictability all need to be taken into account. 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.

6.6 Section 14(4) of the Act provides that the Minister must not impose a duty that exceeds the margin of dumping for the dumped goods. The Solicitor-General has advised that the references to "export price" and "normal value" in this section are to be read as references to the export prices and normal values established in the investigation or to the values at the time the goods subject to the duty are imported.[6] Given this, the Ministry's approach is to adopt a form of duty that minimizes the possibility of exceeding the margin of dumping on shipments subsequent to the imposition of the duty by the Minister. The Ministry applies the same practice in a reassessment.

6.7 A specific duty, based on the monetary value of a margin of dumping, has the advantages of being convenient to apply and impossible to evade by incorrectly stating the value for duty (VFD). A specific rate clearly indicates to the importer the amount of duty payable. However, difficulties can arise where there is a wide range of goods involved, where exchange rates fluctuate to the extent that the margin of dumping will be exceeded without constant reassessments of the specific amount, or where the exporter otherwise changes prices so that the duty is either greater than the margin of dumping or less than the margin of dumping previously established. A specific duty expressed as a monetary amount can really operate only when prices and exchange rates are consistent and stable and where the transaction-to-transaction comparison does not result in a range of different dumping margins. An alternative approach to deal with this problem is to express a specific duty 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, such an

[6] Plasterboard from Thailand, Reassessment, September 1999.

approach does not deal with the problem of changes in export prices for reasons other than exchange rate movements or movements in normal values.

6.8 An *ad valorem* duty, based on the dumping margin expressed as a percentage of the export price, and itself expressed as a percentage of the dutiable value is convenient to apply and is not so affected by exchange rate movements. However, collusion between exporters and importers can lead to the manipulation of the invoice value of the goods concerned. An *ad valorem* rate is often appropriate where there is a large range of goods or where product variations appear, provided that the transaction-to-transaction comparison does not result in a range of different dumping margins. 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.

6.9 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 value for duty of the goods. Nevertheless, a reference price does have the advantage that it clearly signals to the exporter and importer what level of price is non-dumped or non-injurious, and provided it is carefully described, the problem of evasion can be dealt with.

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

AMOUNT OF ANTI-DUMPING DUTY

Introduction

6.11 In calculating reference prices, the review team proposes to calculate a reference price for all product styles in 410g, 825g and 3kg can sizes. The review team considers it unnecessary to calculate a separate reference price for 225g cans as the current AC Neilsen data provided by HW shows that this product is no longer sold on the New Zealand retail market and the NZCS data does not show any evidence of this product being imported by Brooke Holdings or any other importer from South Africa. The 225g cans are no longer manufactured by HW.

6.12 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. In the situation of a review and reassessment where the presence of an existing duty is likely to have resulted in an increase in export prices, an analysis of the need for a lesser duty based on the level of price undercutting related to the margin of dumping, is not useful. To establish whether a lesser duty should apply, the review team has therefore approached the issue by firstly calculating a NIFOB and secondly calculating a NV(VFDE) to check that the NIFOB has not exceeded the margin of dumping. 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 NIFOB's

6.13 NIFOB's are calculated by deducting from the industry's NIP those costs and importer's margin arising after FOB up to the level of trade at which the imported product first competes with the New Zealand industry's product. Under price undercutting above, the relevant level of trade at which the goods first compete on the New Zealand market was determined to be ex-factory (for HW) and ex-store (for the imported product).

Calculation of NIP

6.14 The review has found no evidence of injury to HW attributable to imports of the goods subject to anti-dumping duty. In this situation the review team considers HW's NIP to be the actual net selling prices achieved by HW over the POD(R).

6.15 HW provided price and volume information for each style, brand and size of canned peaches sold over the POD(R). The information contained both list sales prices and prices net of trade spend. The review team used the weighted average net sales values (prices net of trade spend) of each can size (i.e. all styles and brands for each size). The information contains some product lines that HW no longer manufactures. The review team has included these lines in its calculations as these product lines were being manufactured and sold during the POD(R). Therefore, the calculated NIP includes pricing and volume information of HW's deleted product lines.

6.16 [redacted].

6.17 The investigation team notes that HW does not actually produce a [redacted] of peach comparable to the [redacted] South African canned peaches. The review team therefore calculated a separate NIP for HW equivalent to [redacted] canned peaches. To derive an equivalent NIP for [redacted] peaches, the review team [redacted] the NIP calculated as above by [redacted] percent being the percentage difference between the net CIF export price of [redacted] and [redacted] (refer para 4.4.1.12 above).

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

Table 6.1: HW's NIP

Can Size	NIP/kg	NIP/kg ([redacted])
410 g	[redacted]	[redacted]
820 g	[redacted]	[redacted]
3 Kg	[redacted]	[redacted]

NIFOB Amounts

6.19 The purpose of a NIFOB is to ensure that the price of imported product, when considered at the FOB level, is such that when the canned peaches are sold at the ex-store level, the sale price equates to the NIP.

6.20 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.

6.21 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) 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.

6.22 The costs between FOB and ex-store were taken from information provided by Brooke Holdings relating to its two importations of the subject goods over the POD(R). A reasonable profit margin was calculated at percent also using Brooke Holdings' cost build up information relating to these imports over the POD(R).

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

Table 6.2: NIFOB (NZD/kg)

	410g		825g		3kg	
HW's NIP/kg						
<u>Less</u> Costs & Margins after FOB to Ex-Store						
-Sea Freight						
-Insurance						
-Clearance						
-Transport/Devanning						
-Bank Charges						
-Avg. Store & Admin Cost						

-Reasonable Profit Margin						
-Customs Duty						
Total Adjustments						
NIFOB (NZD/kg)						

Calculation of NV(VFDE) Amounts

6.24 A NV(VFDE) is calculated by adjusting the normal value to the FOB level. 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 (percent) and cost of credit (percent).

6.25 The following table shows the NV(VFDE) calculated for each can size.

Table 6.3: Normal Value (Value for Duty Equivalent) (Rand/kg)

	410g		825g		3kg	
Normal Values (Rand/kg)						
Plus costs from ex-factory to FOB level						
- Inland Freight						
- Shipping Charges						
- Handling/Packaging						
- Commission (%)						
- Cost of Credit(%)						
Total costs (Rand/kg)						
NV(VFDE) (Rand/kg)						
NV(VFDE) (NZD/kg)						

6.26 The NV(VFDE) per kilogram amounts in NZ dollars were calculated by converting the NV(VFDE) in rand per kilogram using the average rand/NZ$ exchange rate for the POD(R), which according to the www.oanda.com website was 1 rand =NZ$0.31070.

6.27 As the NIFOB price is lower than the maximum assessable duty at the NV(VFDE) rate for all the can sizes, the review team concludes that a lesser duty equal to the NIFOB should be applied as a reference price for each of the can sizes.

6.28 The review team proposes the following reference prices in the form of a NIFOB for 410g, 825g and 3kg canned peaches in all styles imported from South Africa. The review team also proposes that this reference price be applicable to all suppliers of canned peaches from South Africa. Unlike the last reassessment, the review team considers that a separate residual rate based on the weighted average margin of dumping should not be calculated for other suppliers as this is not appropriate where export prices may have been influenced by the existing levels of anti-dumping duties.

Table 6.4: Proposed Reference Price Levels for all Suppliers

Description	NIFOB Amount NZD/kg	
All product styles	________	________
410g	____	____
825g	____	____
3kg	____	____

6.29 The above table shows that, since the March 1998 reassessment, the proposed anti-dumping duties for ________ 410g, _____ 410g, 825g and 3kg have decreased, whereas the proposed anti-dumping duties for 825g and 3kg have increased. The review team is of the view that the NIFOB amounts should not be published at this stage as there may be some outstanding issues to be dealt with in the final reassessment report, which could affect the calculations of the NIFOB amounts, which in turn could result in confidential information being able to be calculated by interested parties. The review team, however, proposes to publish the NIFOB in the final reassessment report.

6.30 It is also proposed that should canned peaches falling within the description of the goods subject to anti-dumping duty be 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. For example, a 225g can of ________ peaches is closest in size to a 410g can. A 225g can is 55 percent of a 410g can by weight. The reference price would therefore be 55 percent of _____ or _____.

Conclusion

6.31 The discussion and calculations set down in this section are proposed as the basis for any reassessment of anti-dumping duties.

7. RECOMMENDATIONS

On the basis of the information obtained during the review, the review team recommends:

1. that the Chief Executive complete the review by agreeing that the continued imposition of anti-dumping duties on canned peaches imported from South Africa is necessary to prevent the recurrence of material injury to the New Zealand industry producing like goods;

2. that based on the proposal in section 6 of this report, the Chief Executive initiate a reassessment of the rate of the anti-dumping duty on canned peaches from South Africa immediately following the completion of this review; and

3. that the Chief Executive sign the attached *Gazette* notice relating to the completion of the review and the initiation of the reassessment.

……………………………………………………………

……………………………………………………………

Review Team

Recommendation Accepted/Not Accepted

Anne Corrigan
Manager, Trade Remedies Group
Acting under delegated Authority from the Chief Executive.