



**MINISTRY OF BUSINESS,  
INNOVATION & EMPLOYMENT**  
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**TRADE AND  
SUPPLY CHAINS**



**Trade (Anti-dumping and Countervailing Duties) Act 1988**

# **Full Review**

# **Canned Peaches from South Africa**

# **Stage 1 Final Report**

**MBIE/AD/R/2025/001**

**NON-CONFIDENTIAL**

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## Abbreviations and Acronyms

This report contains the following abbreviations and acronyms:

Acronym	Meaning
<b>Act, the</b>	The Trade (Anti-dumping and Countervailing Duties) Act 1988
<b>AD Agreement, the</b>	The WTO Agreement on Implementation of Article VI of the GATT 1994
<b>AUD</b>	Australian Dollar
<b>chief executive</b>	Chief executive of the Ministry of Business, Innovation and Employment
<b>CIF</b>	Cost, Insurance, Freight
<b>Customs NZ</b>	New Zealand Customs Service
<b>EBIT</b>	Earnings Before Interest and Taxes
<b>EFC</b>	Essential Facts and Conclusions
<b>EFC Report</b>	Stage 1 Essential Facts and Conclusions Report
<b>FOB</b>	Free on Board
<b>FY</b>	The financial year ended or ending December
<b>GATT 1994</b>	General Agreement on Tariffs and Trade 1994
<b>GOSA</b>	Government of South Africa
<b>HS</b>	Harmonised System
<b>HWL</b>	Heinz Wattie's Ltd
<b>Langeberg</b>	Langeberg and Ashton Foods Ltd
<b>MBIE</b>	Ministry of Business, Innovation and Employment
<b>Minister</b>	Minister of Commerce and Consumer Affairs
<b>MT</b>	Metric ton (tonne)
<b>NZ</b>	New Zealand
<b>NZD</b>	New Zealand Dollar(s)
<b>POR(D)</b>	Period of review for dumping assessment, 1 January to 31 December 2024
<b>POR(I)</b>	Period of review for injury assessment: <ul style="list-style-type: none"> <li>• 1 January 2021 to 31 December 2024 for actual injury</li> <li>• Out to 31 December 2026 for forecast injury</li> </ul>
<b>Review</b>	A full review of anti-dumping duties on canned peaches from South Africa (also known as a "sunset review"), authorised under section 17D of the Trade (Anti-dumping and Countervailing Duties) Act 1988
<b>RFI</b>	Request for further information
<b>ROI</b>	Return on investment
<b>Rhodes</b>	Rhodes Foods Pty Ltd.
<b>SA</b>	South Africa
<b>ZAR</b>	South African Rand
<b>Stats NZ</b>	Statistics New Zealand
<b>Subject goods</b>	Imported goods that are the subject of the review
<b>TradeData</b>	TradeData International Pty Ltd
<b>USD</b>	United States Dollar
<b>VAT</b>	Value added tax
<b>VFD</b>	Value for duty
<b>WTO</b>	World Trade Organization

## 1. Summary

### 1.1. Purpose

1. This Report sets out MBIE's findings following Stage 1 of a full review of anti-dumping duties on canned peaches imported from South Africa. In accordance with section 17F(5) of the Trade (Anti-Dumping and Countervailing Duties) Act 1988 (Act), the Chief Executive of the Ministry for Business, Innovation and Employment (MBIE) is required to report these findings to the Minister of Commerce and Consumer Affairs (Minister).
2. The Report includes three annexes – **Confidential Annex 1** sets out confidential information provided by interested parties to support the Minister's decision-making; **Annex 2** contains a summary of submissions from interested parties on the essential facts and conclusions likely to form the basis for the Minister's Stage 1 determination), and **Annex 3** contains, in full, legal provisions referenced in the Report.
3. In accordance with section 17G(1), within 180 days after the start of Stage 1 of this review (but no later than 30 days after notified parties are advised of the essential facts and conclusions), the Minister must make final Stage 1 determinations. For the present review, this 180-day period concludes on 8 September 2025. The Minister must therefore make Stage 1 determinations by this date (but no earlier than 7 September 2025).

### 1.2. Legal framework for review

4. This full review is being conducted in accordance with the Act and the World Trade Organization (WTO) Agreement on the Implementation of Article VI of GATT 1974 (the "Anti-Dumping Agreement" or "AD Agreement"). Reports adopted by the WTO Dispute Settlement Body (DSB) provide guidance where the Act is silent, or there are questions as to its interpretation.
5. Section 17C of the Act provides that the purpose of a full review is to investigate, in relation to an anti-dumping duty, whether:
  - (a) continued imposition of the duty is necessary to offset dumping; and
  - (b) material injury or threatened material injury to an industry, or material retardation of the establishment of an industry, would be likely to continue or recur if the duty expired or were otherwise removed or varied.
6. Article 11.3 of the AD Agreement requires anti-dumping duties to be terminated no later than five years after they are imposed or last reviewed unless an investigating authority determines in a review, before the termination date, that "*... the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury*". The New Zealand Court of Appeal has (in another context) interpreted "would be likely" to mean "*a real and substantial risk..., a risk that might well eventuate.*"<sup>1</sup> Comparable guidance can be found in WTO dispute settlement findings. For example, in *US — Oil Country Tubular Goods Sunset Reviews* the Appellate Body agreed that the term "likely" in Article 11.3 applies equally to dumping and injury, and equates to "probable" rather than "possible" or "plausible".<sup>2</sup>
7. Section 17D(4) provides that the existing duty remains payable during the period of investigation until either terminated or replaced with a new duty following a determination.

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<sup>1</sup> Commissioner of Police v Ombudsman [1988] 1 NZLR 385.

<sup>2</sup> See WTO Appellate Body Report, WT/DS268/AB/R, *US — Oil Country Tubular Goods Sunset Reviews* at [308].  
WTO Appellate Body Report, WT/DS184/AB/R, *US — Hot Rolled Steel* at [192].  
WTO Appellate Body Report, WT/DS244/AB/R, *US — Corrosion-Resistant Steel Sunset Review* at [111].

8. Section 17F sets out the procedure for Stage 1 of a full review, reflecting section 17C above. It provides that the Chief Executive must investigate, in relation to an anti-dumping duty whether:
  - (a) continued imposition of the duty is necessary to offset dumping; and
  - (b) material injury or threatened material injury to an industry, or material retardation of the establishment of an industry, would be likely to continue or recur if the duty expired or were otherwise removed or varied.
9. Section 17G(1) states that within 180 days after the start of full review Stage 1 (but not less than 30 days after the written advice is given by the Chief Executive under section 17F(2)), the Minister must make a determination with regards to the matters set out in paragraph 8 above.
10. If the Minister makes an affirmative determination the Minister must, as required under section 17G(2):<sup>3</sup>
  - (a) determine the rate or amount of anti-dumping or countervailing duty, in accordance with section 10E, that will form the basis for full review Stage 2 (this may or may not be the same rate as already in place;<sup>4</sup> and
  - (b) direct the Chief Executive to immediately start full review Stage 2.
11. If the Minister makes a negative determination, the Minister must, as required section 17G(3), terminate the imposition of the duty under section 17Y(1).<sup>5</sup>
12. The Minister must give notice of a determination as soon as practicable after the determination, as required under section 17G(4).

## 1.3. Proceedings

### 1.3.1 Previous Proceedings

13. Anti-dumping duties were first imposed on canned peaches from South Africa in August 1996, following an application from HWL. Since then, on application from HWL, MBIE has conducted reviews of those duties in 2001, 2007, 2013 and 2019. The 2019 review resulted in *ad valorem* (i.e., percentage based) duties being reinstated at the rates below.

**Table 1: Current Anti-Dumping Duties on Canned Peaches from South Africa**

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

### 1.3.2 Current Proceedings

14. On 12 December 2024, MBIE received an application from Heinz Wattie's Ltd (HWL), the sole entity in the New Zealand canned peach industry, seeking a full review of anti-dumping duties applicable to imports of canned peaches from South Africa. The grounds for review are that the cessation of existing anti-dumping duties will result in dumped imports from South Africa, causing a recurrence of material injury to the New Zealand preserved peach industry. In particular, HWL claimed that the termination of

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<sup>3</sup> That is, a determination that continued imposition of the duty is necessary to offset dumping, and that material injury/threatened material injury to an industry would be likely to continue/recur if the duty expired or were otherwise removed/varied.

<sup>4</sup> Section 10E sets out how a rate or amount of duty may be determined.

<sup>5</sup> Section 17Y(1) provides for the termination of an anti-dumping or countervailing duty.

anti-dumping duties would likely result in the recurrence of significant import volumes, causing:

- recurrence of material injury through price undercutting, price depression and price suppression; and
- a resulting decline in output and sales; a fall in market share; a drop in profits and return on investments; a decrease in utilisation of production capacity; and adverse effects on cash flow, inventories, employment and growth.

15. On 12 March 2025, pursuant to section 17D of the Act, the Chief Executive started full review stage 1 on the basis that HWL's application contained positive evidence justifying the need for the review.<sup>6</sup>
16. On 8 August 2025, as required under section 17F(2), MBIE released an Essential Facts and Conclusions Report (EFC Report) outlining the essential facts and conclusions likely to form the basis of the Minister's Stage 1 determination. Two parties submitted comments – Rhodes Food Group Pty. Ltd. (Rhodes) – a South African manufacturer – and Brooke Holdings Ltd. (Brooke Holdings) – a New Zealand importer. These comments were considered in the preparation of the present Report.
17. In the absence of this full review, the anti-dumping duties in question would have ceased to apply from 13 March 2025, being 5 years from the date duties were previously due to expire.<sup>7</sup> However, following the start of the review, duties were continued and will continue to apply pending the review's outcome.

## **1.4. Treatment of Information**

### **1.4.1 Consideration of information**

18. Section 17F(3) of the Act provides that the Chief Executive must give interested parties a reasonable opportunity to present all evidence relevant to the review and, on request, opportunity to meet with other interested parties with adverse interests.
19. Article 11.4 of the AD Agreement provides that Article 6 (which relates to evidence and procedure) shall apply to any review carried out under Article 11. Article 6.1 provides that all interested parties in a review shall be given notice of the information which the authorities require and ample opportunity to present relevant evidence. Article 6.2 provides that throughout the review all interested parties shall have full opportunity for the defence of their interests. Article 6.6 provides that, except in circumstances where parties refuse to cooperate, authorities shall, during the course of a review, satisfy themselves of the accuracy of the information supplied, on which their findings are based.
20. Article 6.14 provides that the procedures set out in Article 6 are not intended to prevent the authorities from proceeding expeditiously, including to reach determinations or apply measures.
21. Section 6 of the Act and Article 6.8 of the AD Agreement provide guidance on how to proceed where sufficient information has not been furnished or is not available:
  - Section 6(1) provides that, where the Chief Executive is satisfied that sufficient information to ascertain export price (per section 4) or normal value (per section 5) is not furnished or is not available, the Chief Executive shall determine these values with regard to all available information.
  - Similarly, Article 6.8 provides that 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, determinations may be made on the basis of the facts available.

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<sup>6</sup> Section 17D provides that the chief executive must start a full review of a duty after receiving an application from an interested party that includes positive evidence justifying the need for a full review.

<sup>7</sup> Section 13A of the Act specifies the period during which an anti-dumping duty applies

- Annex II, which sets out procedures relating to the request for and provision of information from interested parties) must observed in the application of Article 6.8. Paragraph 7 provides:

*If the authorities have to base their findings, including those with respect to normal value, on information from a secondary source, including the information supplied in the application for the initiation of the investigation, they should do so with special circumspection. In such cases, the authorities should, where practicable, check the information from other independent sources at their disposal...and from the information obtained from other interested parties during the investigation. It is clear, however, that if an interested party does not cooperate and thus relevant information is being withheld from the authorities, this situation could lead to a result which is less favourable to the party than if the party did cooperate.*

- Section 6(2) provides, for the purposes of subsection (1), that the Chief Executive may disregard any information they consider to be unreliable.

22. In practice, in keeping with the above:

- MBIE seeks and obtains information directly relevant to the proceeding. Such information includes questionnaire responses and other information from interested parties; the application and submissions from the New Zealand industry; Customs NZ and statistical data; information through MBIE's research; and other relevant data such as exchange rates, interest rates and prices.
- MBIE also satisfies itself as to the accuracy of the information provided. To do so, MBIE may use verification visits, desktop verification and other engagement with interested parties to review the information available and assess its reliability.
- Interested parties can make submissions at any time during the review, including in response to information provided by other parties.

23. In the present review, MBIE's consideration of the information available is based on the relevant provisions of the Act and the AD Agreement:

- MBIE has considered the information provided by HWL, intermediary traders / importers, one participating foreign manufacturer / exporter and Customs NZ, and information identified through MBIE's independent research (including information referenced in past proceedings). In addition to HWL's application, information provided by interested parties was requested through questionnaires, and through subsequent requests for further information (RFIs)/clarification.
- MBIE has satisfied itself of the accuracy of the information provided, through engagement with cooperating interested parties and, in the case of HWL and the cooperating South African manufacturer / exporter, on-site verification visits. Non-confidential versions of the verification reports are available on the Public File.

#### 1.4.2 Protection of Information

24. Section 3F of the Act provides that an interested party may ask the Chief Executive to provide copies of information relevant to trade remedy proceedings.<sup>8</sup> This requirement does not apply to confidential information (unless consent is given by the submitter) or information that would be likely to be withheld if it were requested under the Official Information Act 1982.

25. In accordance with section 3F, MBIE maintains a Public File for the current review:

- The Public File contains non-confidential versions of the relevant review documents. Interested parties can request the Public File document list and copies of the documents held in the File.

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<sup>8</sup> An investigation, a full review, a reassessment, or a new exporter reassessment.

- In preparing non-confidential documents for the Public File, MBIE requests that interested parties submitting information they wish to have treated as confidential provide a non-confidential version or summary of that information, or reasons why there can be no summary.
  - MBIE also informs interested parties that, under section 3F(4) of the Act, the Chief Executive may disregard any information for which the submitter does not provide a satisfactory non-confidential version (or appropriate alternative).
26. For the present Report, MBIE has considered confidentiality requests from interested parties and is satisfied that the following types of information should be treated as confidential:
- Documentation relating to transactions, information relating to costs and prices, information relating to commercial relationships, and non-public financial information.
  - Information relating to the domestic industry and the analysis of injury.
27. As such, the analysis in this Report is presented as a summary of information, with tables and charts assisting in the summarisation of the material. **Confidential Annex 1** contains confidential data to support the Minister's decision-making, which is cross-referenced in the body of this Report.

## 1.5. Report Details

28. In this Report, unless otherwise stated, years are years ending 31 December and dollar values are New Zealand dollars (NZD). In tables, column totals may differ from individual figures because of rounding. The term VFD refers to value for duty for Customs NZ purposes.
29. The period of review for the dumping assessment (POR(D)) is the year ended 31 December 2024 [POR(D)], while the period of review for the injury assessment (POR(I)) is from 1 January 2021 to 31 December 2025 for actual injury, and out to 31 December 2026 for forecast injury.
30. Volumes are expressed on a metric ton (MT) basis unless otherwise stated. Exports to New Zealand were invoiced in Australian dollars (AUD) and United States dollars (USD). The exchange rates used are those relating to specific transactions, where available. Otherwise MBIE used Customs NZ exchange rates or other rates it considers most appropriate in the circumstances, as indicated in the text.

## 1.6. Submissions on the Stage 1 EFC Report

31. On 8 August 2025, in accordance with section 17F(2) of the Act, MBIE released the Stage 1 EFC Report to notified parties and invited them to make written submissions on it. Submissions were received from Rhodes and Brooke Holdings. Annex 2 includes summaries of the comments made and MBIE's responses to them. Where appropriate, the matters raised have been taken into account in the preparation of this Stage 1 Final Report.



## 2. Subject Goods, New Zealand Industry and Interested Parties

### 2.1 Subject Goods

32. The imported goods that are the subject of the review (subject goods) are described as:  
*Canned peaches (halves, slices and pieces) packed in various concentrations of sugar syrup and in can sizes ranging from 110 grams to 3 kilograms (A10).*
33. The subject goods that have been imported in the POR(D) for the current review comprise peach slices, dices and halves in juice and syrup in 410g, 415g, 825g, and A10kg cans. The goods are currently classified under Tariff Item 2008.70.09 and Statistical Key 00L. This classification is provided for convenience and Customs NZ purposes only, the written description being dispositive. Note this key also includes goods outside the subject goods description, including preserved nectarines, nectarine pulp or puree, and preserved peaches in presentations other than cans, which are out of the scope of the present review.

#### 2.1.1 Tariff classification

34. The subject goods attract a Normal rate of duty of 5 per cent.

Table 2: Tariff Classification<sup>9</sup>

Tariff item	Stat Key	Unit	Description	Duty	Pref.
2008.70.09	00L	kg	Fruit, nuts and other edible parts of plants, otherwise, etc. – Peaches, including nectarines – - Other	5%	Free *See Below CA Free LDC 4

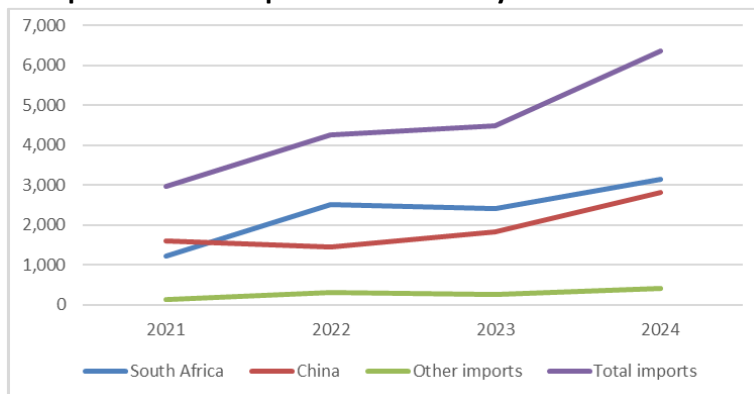
\*Unless otherwise indicated AAN, AU, CN, CPT, HK, KR, LLDC, MY, Pac, PPP, SG, TH, TPA and TW rates in the Preferential Tariff are Free.

35. There have been no tariff concessions for canned peaches since 2008. There are also no current tariff concessions under tariff item 2008.70.09 applying to goods of the subject goods description.

#### 2.1.2 Imports of Subject Goods

36. **Figure 1** shows total imports of canned peaches from 2021 to 2024. **Confidential Figure A1** in Annex 1 includes specific import volume figures.

Figure 1: Imports of canned peaches – 1 January 2021 to 31 December 2024 (MT)



<sup>9</sup> Extract from the Customs NZ Working Tariff Document, Section IV: Chapter 20: Preparations of vegetables, fruit, nuts or other parts of plants: <https://www.customs.govt.nz/globalassets/documents/tariff-documents/the-working-tariff-document-section-iv-1-july-2021.pdf>

37. South Africa and China were significant exporters of canned peaches to New Zealand (by quantity) during this period, with imports from South Africa making up 49 per cent of total imports in the POR(D). Only canned peaches from Greece and from one producer in South Africa are currently subject to anti-dumping duties.
38. MBIE notes that container weights can be expressed in several ways. For the purposes of this review, the weight value used by MBIE is the net weight, including both fruit and preserving liquid, but not including the container.

## **2.2 Like goods and the New Zealand industry**

39. To establish the existence and extent of the New Zealand industry for the purposes of an injury assessment, there must be New Zealand producers of goods which are like goods to the subject goods.
40. Section 3(1) of the Act provides that like goods means other goods that are like those goods in all respects or, in the absence of such goods, goods with characteristics closely resembling those goods.
41. Section 3A of the Act provides that the term “industry, in relation to any goods” means –
- (a) the New Zealand producers of like goods; or
  - (b) New Zealand producers of like goods whose collective output constitutes a major proportion of the New Zealand production of like goods.

### **2.2.1 Like Goods**

42. To determine whether the goods produced in New Zealand are like goods, MBIE considers their physical characteristics, function and usage, pricing patterns, marketing and distribution, substitutability and commercial interchangeability, and any other factors, with no one of these factors being necessarily determinative. Where the domestic goods are not like the imported goods in all respects, MBIE must determine whether the domestic goods have characteristics closely resembling the imported goods
43. In the present case:
- HWL, the sole New Zealand producer of canned peaches, produces a range of styles of canned peaches (halves, slices and dices) packed in various media (such as syrup, fruit juice and lite - artificial sweetener in water). The peaches are packaged in various can sizes (including 400g/410g, 820g, and 2.95kg/3kg) under the Wattie’s and Oak brands.
  - During the POR(D), imports of the subject goods from South Africa included peach slices, dices and halves in syrup, light syrup and juice in 415g, 825g and A10 cans.
44. MBIE is of the view that the subject goods and the domestically produced goods are very similar in appearance (noting possible differences in peaches varieties used and variations in the concentration of syrup) and are sold through similar outlets for similar functions (food service and retail). On this basis, and given interested parties have not suggested otherwise, MBIE concludes that the canned peaches produced by HWL have characteristics closely resembling the subject goods and so are like goods.

### **2.2.2 New Zealand Industry**

45. MBIE considers that HWL, as the sole New Zealand producer of like goods, constitutes the New Zealand industry for the purpose of this full review.

## **2.3 Notified Parties and Interested Parties**

### **2.3.1 Definitions**

46. Section 3(1) of the Act defines “notified parties” (i.e. parties to be given notice under section 3E), as the exporters’ Government; exporters and importers known to have an interest; and the applicant.

47. While the Act does not define “interested parties”, Article 6.11 of the AD Agreement defines the term as including the following, and “...domestic or foreign parties other than those mentioned”:
- (i) an exporter, foreign producer or importer of the subject good, or a trade or business association of which a majority of members are producers, exporters or importers of the good;
  - (ii) the government of the exporting Member; and
  - (iii) a producer of the like product in the importing Member, or a trade and business association of which a majority of members produce the like product in the territory of the importing Member.

### 2.3.2 Government of South Africa

48. MBIE has continued to notify the Government of South Africa (GOSA) of its progress during Stage 1 of this review. MBIE has not received any submissions from GOSA following initiation of this review.

### 2.3.3 Exporters / Foreign Producers

49. MBIE identified two South African manufacturers exporting the subject goods to New Zealand during the POR(D) – Rhodes and Langeberg & Ashton Foods (Langeberg). Both were sent questionnaires:
- Rhodes provided a comprehensive foreign manufacturer questionnaire response, an RFI response and subsequent supplementary information. MBIE verified this information during an on-site verification visit. A non-confidential version of the verification report is available on the Public File.
  - Langeberg initially indicated it would participate in this review however, prior to providing any information, notified MBIE of its withdrawal. In the absence of such information, MBIE has used the best available information for assessments relating to Langeberg.

### 2.3.4 Importers

50. MBIE provided the following New Zealand importers with questionnaires – these parties were either identified as importers of the subject goods through Customs NZ import data for the POR(D) or had participated in previous proceedings, and indicated their willingness to participate in the current review:
- Barkers Food Processors
  - Brooke Holdings Ltd
  - Foodstuffs Own Brand Ltd (Foodstuffs) (i.e. New World, PAK'nSAVE, Four Square and Gilmours)
  - Woolworths New Zealand Ltd (Woolworths) (i.e. Countdown, Super Value and Fresh Choice).
51. Of these importers, Brooke Holdings, Foodstuffs and Woolworths provided questionnaire responses.

### 2.3.5 Applicant (New Zealand Industry)

52. As set out in section 2.2.2 above, HWL constitutes the New Zealand industry for this review. In addition to its application, HWL provided an RFI response. MBIE conducted a verification visit to confirm this information. A non-confidential version of the verification report is available on the Public File.
53. Article 4.1(1) of the AD Agreement provides that when producers themselves import allegedly dumped products, the term “domestic industry” may be interpreted as referring to the rest of the producers. In its application, HWL noted that it needs to import canned peaches in times of short supply. MBIE notes that HWL is New Zealand’s only producer of canned peaches and is satisfied HWL’s imports would not exclude it from consideration as the domestic industry.

### 2.3.6 Other Interested Parties

54. No interested parties other than those listed above as notified parties came forward/were identified.

### 3. Review of Dumping

#### 3.1 Basis for investigation of dumping

##### 3.1.1 Dumping

55. The objective of a full review is to establish whether a duty is necessary to offset injurious dumping. Section 3 of the Act defines dumping as:

*... 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.*

56. The dumping assessment determines export prices and normal values in accordance with the of the Act, and where relevant, the AD Agreement, and makes a proper comparison between them to establish whether and to what extent dumping is occurring. Export prices are determined in per section 4 of the Act and normal values per with section 5.
57. In accordance with section 5(3) of the Act and Article 2.4 of the AD Agreement, MBIE normally seeks to compare the export price with the normal value at the ex-factory level<sup>10</sup> and in respect of sales made at as nearly as possible the same time. In making the comparison, allowance is made, as appropriate, for differences which affect price comparability. These include differences in terms and conditions of sale, such as discounts and rebates, payment and delivery terms, levels of trade and physical characteristics. Prices are compared net of any taxation.
58. As noted in section 1.5 above, section 6 of the Act provides that, where sufficient information is not available or has not been provided, export prices and normal values can be determined having regard to all available information. Section 6 also provides that the Chief Executive may disregard any information considered to be unreliable.

##### 3.1.2 Likelihood of continuation or recurrence

59. In the context of a full review, MBIE establishes whether there is current dumping (i.e. whether the export price of the goods is less, or is likely to be less, than the normal value following fair comparison), and whether dumping is likely to continue or recur. When determining the latter, MBIE needs to be satisfied that, based on positive evidence, certain events are likely to occur, and that those events mean that dumping is likely to continue or recur:
- Relevant WTO DSB decisions consider “positive evidence” to relate to the quality of the evidence on which authorities may rely in making a determination. In that context, “positive” was understood to mean evidence of an affirmative, objective and verifiable character which must be credible.
  - The New Zealand Court of Appeal (in another context) interpreted “would be likely” to mean “a real and substantial risk...a risk that might well eventuate”. The WTO Appellate Body agreed that “likely” in Article 11.3 means “probable” rather than “possible” or “plausible”<sup>11</sup>.

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<sup>10</sup> An ex-factory/ex-works price is the price at which goods are sold at the factory door. It does not include freight, transit insurance and other associated costs incurred to get the goods to a buyer.

<sup>11</sup> See WTO Appellate Body Report, WT/DS268/AB/R, US — Oil Country Tubular Goods Sunset Reviews at [340].

## 3.2 Current Dumping

### 3.2.1 Information Used

60. In the present review, MBIE based its analysis of dumping on the information provided by the cooperating South African producer, Rhodes, through questionnaire and RFI responses and during a verification visit. MBIE also considered information in importers' questionnaire responses.
61. MBIE is satisfied that the information provided by Rhodes, and verified by MBIE, is reliable and provides a reliable basis for determining its own export prices and normal values, as well as the basis for normal values for the non-participating South African producer, Langeberg (see below).
62. While MBIE considered alternative options to information provided by Rhodes for Langeberg's dumping assessment and concluded that the former to be the best available information.

### 3.2.2 Price Comparisons

63. MBIE undertook the comparison of export price and normal value for both South African producers based on weighted average prices, by can size (see Table 2), at the ex-factory level. Where required, adjustments were made to reflect physical differences between each export product and its closest corresponding domestic product. Prices were compared net of taxation.

Table 2: Can sizes

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

64. A10 cans are provided primarily to the food service, manufacturing and institutional markets, while the other can sizes are sold through retail outlets, primarily supermarkets.

## 3.3 Export price

### 3.3.1 Definitions

65. Export prices are normally determined in accordance with section 4(1) of the Act, which deals with transactions where the goods imported into New Zealand have been purchased by the importer from the exporter. The export price for an arm's length transaction is calculated in accordance with section 4(1)(a) of the Act by determining:
  - **The base price:** The price paid for the goods by the importer.
  - **Less adjustments:** To take the base price back to the ex-factory level and to ensure a fair comparison with the normal value:
    - Costs, charges and expenses of preparation to export that are additional to such costs incurred for sales for home consumption (section 4(1)(a)(i).
    - Any other costs, charges and expenses resulting from the exportation or arising after their shipment from the country of export (section 4(1)(a)(ii).

### 3.3.2 MBIE's approach

66. MBIE is of the view that sales relating to export price calculations in the current review were made at an arm's length, and information on the sale price is available. As such, export prices were calculated in accordance with section 4(1)(a).

67. MBIE's export price calculations draw on information from documentation (usually invoices) for each shipment of imports, showing the price paid or payable for the goods by the purchaser and other costs incurred in the exportation of the goods, supported by any necessary research.
68. The base price is the transaction price paid, whether by the importer or an intermediary. Adjustments generally cover costs such as inland freight between the factory and the port, port charges and bank charges, overseas freight and insurance (depending on the terms of sale). Fair comparison adjustments relating to differences in the cost of items such as credit and packaging may also be made, where appropriate, to the full extent of the costs involved to the export price.
69. Where an intermediary company acting as a facilitator of the sales may ship the goods, adjustments are made for the intermediary's commission or margin, and any other costs associated with the trade, to ensure an ex-factory equivalent is achieved.

### 3.3.3 RFG Foods Pty Ltd (Rhodes)

70. Export prices calculated for Rhodes are set out in **Confidential Tables A3 and A4** in Annex 1.

#### **Base prices**

71. MBIE is satisfied, based on the information available, that Rhodes's exports of the subject goods to New Zealand were on an arm's length basis. Prices charged to New Zealand customers provided the base prices for the calculation of Rhodes's export prices. Base prices were calculated on a per kg basis and were exclusive of VAT.
72. Rhodes's exports to New Zealand consisted of slices, dices and halves in juice and light syrup in 410g, 825g and A10 cans. Rhodes provided MBIE with invoices for its export sales to New Zealand during the POI(D). Rhodes invoiced these sales in AUD for one importer and USD for the other. Associated sales data was provided in ZAR, which was used to calculate a base price per kg. MBIE checked and confirmed Rhodes conversion rates, using exchange rates derived from <https://www.x-rates.com>.

#### **Adjustments**

73. Adjustments to the base price were made as necessary to account for export packaging costs, freight, port handling charges and cost of credit to determine the export price on an ex-factory per kilogram basis and ensure a fair comparison.

### 3.3.4 Langeberg & Ashton Foods (Langeberg)

74. Export prices calculated for Langeberg are set out in **Confidential Table A3 and A5** in Annex 1. As Langeberg did not provide any information MBIE has, in accordance with section 6(1) of the Act, relied on available information (i.e. Customs NZ data, information from importers of Langeberg products, and data from Rhodes) to determine Langeberg's export prices.

#### **Base prices**

75. Langeberg's exports to New Zealand consisted of peach slices and dices in juice, light syrup and syrup in can sizes of 415g, 825g and 3kg (A10). Based on the available information, MBIE understands that the subject goods were exported to New Zealand by Langeberg in arm's length transactions.
76. Prices charged to New Zealand customers were used as base prices. MBIE calculated separate weighted average ex-factory export prices per kilogram for 415g, 825g, and A10kg cans of the subject goods exported during the POI(D).

## Adjustments

77. Adjustments to the base prices were made as necessary to account for freight, customs and port handling charges, and inland transport. These adjustments were based on data provided by Rhodes and were used to calculate ex-factory prices per kg to and ensure a fair comparison.

### 3.4 Normal value

78. Section 5(1) of the Act defines the “normal value of any goods imported or intended to be imported into New Zealand” as:

*... 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.*

79. Section 5(2) of the Act provides that a normal value may be constructed where the Chief Executive is satisfied that it cannot be determined under subsection (1) because:
- (a) there is an absence of relevant sales for the purpose of determining a price under that subsection;
  - (b) the relevant market’s situation is such that sales that would otherwise be relevant for the purpose of determining a price under subsection (1) are unsuitable for that purpose; 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 information in relation to relevant sales by other sellers of like goods in a reasonable time.
80. Section 5(6) of the Act provides that goods are *not* deemed to have been paid in the ordinary course of trade where the Chief Executive is satisfied, in relation to goods imported or intended to be imported to New Zealand, that –
- (a) the price paid for like goods –
    - (i) sold for home consumption in the country of export in arm’s length transactions; or
    - (ii) sold in the country of export to a third country in arm’s length transactions, -Is, and has been for an **extended period** of time **and in respect of a substantial quantity** of like goods, **less than** the sum of **[emphasis added]** –
    - (iii) such amount as the Chief Executive deems to be the cost of production or manufacture of the like goods in the country of export; and
    - (iv) such amounts as the Chief Executive determines to be reasonable amounts for administrative and selling costs, delivery charges, and other charges necessarily incurred in the sale of the like goods by the seller of the goods; and
  - (b) it is likely that the seller of those like goods will not be able to fully recover the amounts referred to in subparagraphs (iii) and (iv) of paragraph (a) within a **reasonable period of time** –
81. MBIE also takes guidance, as appropriate, from the provisions of the AD Agreement:
- **Article 2.2.** provides for the **construction of normal values**, including in situations “when, because of the particular market situation or the low volume of the sales in the domestic market of the exporting country, such sales do not permit a proper comparison...”
  - **Footnote 2 to Article 2.2.** provides, with regards to **low volumes of sales** that “...sales ... shall normally be considered a sufficient quantity for the determination of the normal value if such sales constitute 5 per cent or more of the sales of the product under consideration to the importing Member...”.
  - **Footnote 4 to Article 2.2.1** provides that **the extended period of time** “...should normally be one year but shall in no case be less than six months”.

Section 5(3) of the Act provides that “where the normal value of goods imported or intended to be imported into New Zealand is the price paid for like goods, 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.”

82. In the present review, MBIE is satisfied that the information Rhodes (the only participating South African manufacturer) provided on its domestic transactions were undertaken at an arm’s length basis in the ordinary course of trade (see section 3.4.1 below) and so has not constructed normal values.

### 3.4.1 RFG Foods Pty Ltd (Rhodes)

83. Normal values calculated for Rhodes are set out in **Confidential Tables A3 and A4** in Annex 1.

#### **Base prices**

84. MBIE is satisfied that Rhodes’s domestic sales were made in the ordinary course of trade on an arm’s length basis. In making this assessment, MBIE checked whether sales were profitable and made in sufficient quantities. On the basis of information provided by Rhodes regarding its costs to produce and sell the domestic products being used in the price comparison, and information from Rhodes’s financial records for the POR(D), MBIE established that domestic sales were made within an extended period of time (i.e. one year) in substantial quantities (i.e. domestic sales constitute over 5% of export sales to NZ), and at prices that provided for the recovery of all costs within a reasonable period.
85. On this basis, the invoice prices charged to domestic customers in ZAR provided a base price per kg exclusive of VAT for the calculation of normal values.

#### **Adjustments**

86. In accordance with section 5(3) of the Act, in order to ensure a fair comparison between Rhodes’s export prices and the normal value of its comparable, domestically sold products, adjustments were made for differences in terms of sale (such as domestic discounts, rebates), and for physical differences between the exported product and the comparable product sold domestically. Physical difference adjustments accounted for the higher cost of using juice in exported goods compared with syrup in the nearest domestic equivalent type, where there were no equivalent domestic sales of canned peaches in juice.

### 3.4.2 Langeberg & Ashton Foods (Langeberg)

87. Normal values calculated for Langeberg are set out in **Confidential Tables A3 and A5 in Annex 1**. In accordance with section 6(1), in the absence of information provided by Langeberg, MBIE has used the best available information to determine Langeberg’s normal values. To do so, MBIE has used the normal values established for Rhodes for products comparable to Langeberg’s exported products.

## 3.5 Findings Relating to Current Dumping

88. MBIE compared the export prices and normal values established for Rhodes and Langeberg for each exported product on a weighted average basis. MBIE established that during the POR(D):
- **Rhodes:** The export price to New Zealand exceeded the normal value for all product lines, and that the overall weighted average margin for Rhodes showed no dumping.



- **Langeberg:** Exports of 410g and 825g cans of sliced peaches in juice and light syrup were dumped, while exports of A10 cans were not dumped.
- **Other producers:** Article 9.4(i) of the AD Agreement provides that where the examination of exporters has been limited to particular exporters, the anti-dumping duty to be applied to exporters or producers not included in the examination shall not exceed the weighted average margin of dumping established with respect to the selected producers. The “All other producers” rate noted below reflects this requirement.

89. **Confidential Tables A3-A5** in Annex 1 contain the export prices and normal values established by MBIE, and MBIE’s dumping calculations. MBIE has made the following findings:<sup>12</sup>

**Table 3: Findings regarding dumping**

<b>Langeberg and Ashton Foods Ltd</b>	
A10 cans	No dumping
All other can sizes	Dumping
<b>Weighted average</b>	<b>Dumping</b>
<b>Rhodes Foods Pty Ltd</b>	
<b>Weighted average - All can sizes</b>	No dumping
<b>All other producers</b>	
<b>Weighted average – All can sizes</b>	No dumping

### 3.6 Likelihood of Continuation or Recurrence of Dumping

90. MBIE has reviewed the likelihood that dumping will continue or recur on the basis set out in section 3.1.2 above, in the light of the information provided and verified during the review. A finding in the affirmation required MBIE to be satisfied that, based on positive evidence, certain events are likely to occur, and that those events mean that dumping is likely to continue or recur. While undertaking this assessment, MBIE has applied the likelihood tests described in section 1.2 of this Report.
91. In keeping with MBIE’s normal practice, the events that MBIE has considered include:
- Whether dumping is currently occurring and the magnitude and the scope of the dumping.
  - The commercial arrangements governing the pricing of exports to New Zealand from South Africa.
  - Possible developments in the market in South Africa which could affect the normal values of the goods and their availability for export to New Zealand.

#### 3.6.1 Current and likely future dumping margins

92. MBIE has concluded that Langeberg’s exports of A10 cans and all of Rhodes’s exports are *not* currently being dumped. These products are also not currently subject to an anti-dumping duty. Conversely, MBIE has concluded that all other exports from Langeberg to New Zealand are currently being dumped. MBIE notes that these dumped products are currently subject to an anti-dumping duty.
93. MBIE notes that the products currently being dumped were also identified as being dumped following the 2019 full review, and that dumping margins are higher now than they were in 2019. MBIE considers dumping at the levels assessed to be an indication that, in absence of any anti-dumping duties, the dumping identified will continue.

<sup>12</sup> Note dumping margins have been withheld in the publicly released body of the Stage 1 Final Report to preserve commercial confidentiality. Given the presence of a single participating manufacturer, these values can be used to determine prices for that manufacturer as well as other parties under consideration.

### 3.6.2 Commercial arrangements

94. Commercial arrangements for the export price of the subject goods may be an indicator of the likelihood of the continuation or recurrence of dumping. MBIE notes that New Zealand importers have sourced canned peaches from a number of countries. South Africa is currently the second largest source of imports of the subject goods to New Zealand. The main New Zealand importers – Foodstuffs and Woolworths – would be able to use competition between the two South African producers, and the prospect of sourcing from other countries, in their price negotiations with the South African producers. MBIE considers that these factors have contributed to current export price levels. There is currently no evidence to suggest that these factors are likely to change in the coming period.
95. In light of the above circumstances, MBIE considers that the commercial nature of price negotiations affecting the export price of the subject goods is such that the discontinuation of current duties would likely result in the continuation of the identified dumping.

### 3.6.3 South African market

#### *Costs and sales at a loss*

96. Factors affecting normal values in South Africa may also provide an indication of the likelihood of continuation or recurrence of dumping. Any decrease in prices of the goods sold for domestic consumption would lower normal values and, if export prices remained the same or increased, would consequently lower the dumping margin. On the other hand, any increase in domestic prices due to cost increases would be less likely to affect the dumping margin. This is because cost increases would likely also be recovered through an increase in export prices (subject to contractual requirements).
97. In its engagement with MBIE, Rhodes noted that its business is export-driven, and that it only makes a small profit on domestic sales. Given this profit margin, it is unlikely that Rhodes's domestic prices, and therefore normal value would decrease further. MBIE has no other evidence that suggests future cost changes, or other factors which could result in a change in current normal values.
98. In light of this information, MBIE does not consider there to be evidence of any significant future changes to normal value (relative to export price) which could affect the extent to which dumping of canned peaches exported to New Zealand is likely to continue or recur.

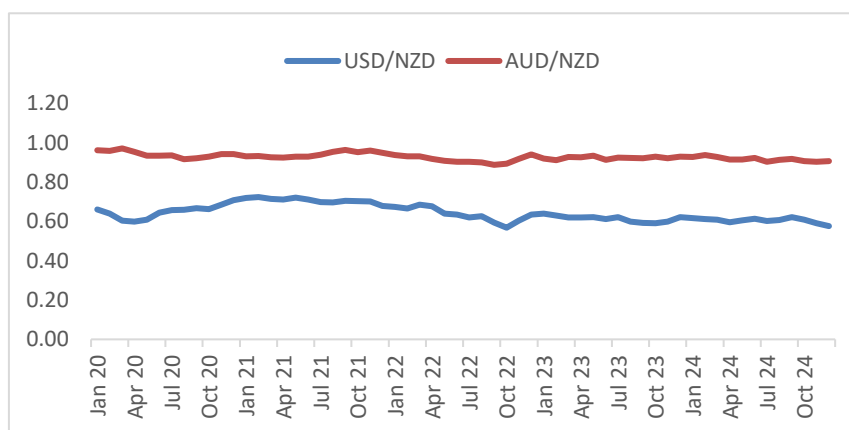
#### *Exchange rates*

99. The determination of dumping can be affected by movements in exchange rates. Figure 4 shows the effect of exchange rate movements for AUD and USD (the currencies in which imports from South Africa are invoiced) in relation to NZD:<sup>13</sup>

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<sup>13</sup> <https://www.rbnz.govt.nz/statistics/series/exchange-and-interest-rates/exchange-rates-and-the-trade-weighted-index>

**Figure 4: Monthly New Zealand dollar moving average exchange rate with USD and AUD**



100. Figure 4 shows that the NZD has depreciated slightly against the USD over the years, but that fluctuations have been marginal. A similar trend is present in NZD/AUD exchange rates. It is therefore not possible to conclude that exchange rate movements involving the NZD will encourage any significant changes to New Zealand's demand for increase in imports priced in USD or AUD.

### **Product availability**

101. Changes to product availability could affect the future price of the subject good relative to the comparable normal value. During MBIE's verification visit to Rhodes, Rhodes noted that it was at production capacity for the subject good, with no plans to expand production. MBIE understands, based on the information provided, that this in part can be attributed to a global decline in consumption of canned peaches. Taken together, these factors suggest a continuation (or decline, in response to a reduction in demand) of current production for Rhodes. MBIE has no further information suggesting future changes to product availability resulting in relatively different rates of change for export prices relative to normal value for other producers.
102. On this basis, MBIE does not consider that product availability will be a significant indicator of the extent to which dumping of canned peaches exported to New Zealand is likely to continue or recur.

### **Conclusions on South African market conditions**

103. On consideration of the available evidence, MBIE concludes that it is unlikely that any developments in the South African market would affect the normal values of the goods and/or their availability for export in New Zealand as:
- Significant changes to South African prices or costs are not likely in the near future.
  - Exchange rate trends do not provide conclusive evidence of rate fluctuations that would change New Zealand's demand for imports from South Africa.
  - The information available does not suggest changes to availability of the subject goods, and therefore to their prices in the near future.

## **3.7 Conclusions Relating to Dumping and Likelihood of Recurrence**

### **3.7.1 Current dumping margins**

104. MBIE has compared the export prices established in section 3.3 with the normal values established in section 3.4 and found that the subject goods produced by Langeberg, except A10 cans, are being dumped, while the subject goods produced by other producers, and A10 cans produced by Langeberg, are not being dumped. **Confidential Tables A3-A5** in Annex 1 contain dumping margins.

### **3.7.2 Likelihood of continuation or recurrence**

105. MBIE has concluded that it is likely (that is, probable), that the identified dumping will continue, and that dumping is unlikely to recur for currently non-dumped subject goods given:

- The subject goods currently being dumped were found to have been dumped following the 2019 full review, and current dumping margins are higher than 2019 margins despite the presence of an anti-dumping duty. MBIE considers dumping at the levels assessed to be an indication that, in absence of any anti-dumping duties, the dumping identified will continue.
- It is unlikely that export prices will increase in the absence of an anti-dumping duty. This is because South Africa is currently the second largest source of subject goods into New Zealand, and the commercial nature and competitive context of price negotiations with importers leaves room for the ongoing negotiation of low export pricing.
- Based on the available evidence on South African market conditions, there are unlikely to be any market developments that would affect the normal values of canned peaches in South Africa relative to their export price to New Zealand.

106. On the basis of these factors MBIE concludes that, if current duties are discontinued:

- The dumping of subject goods by Langeberg, with the exception of A10 cans, is likely to continue.
- Dumping of A10 cans by Langeberg and of all subject goods by Rhodes is unlikely to recur.

## 4. Review of Injury

### 4.1 Legal Requirements

#### 4.1.1 Basis for determinations

107. Section 8(1) of the Act sets out the basis for considering whether material injury or threatened material injury to an industry would be likely to continue or recur if anti-dumping duties were removed. Section 8(1) requires MBIE to examine the volume of imports of the dumped goods, the effect of the dumped goods on prices in New Zealand for like goods, and the consequent impact of the dumped goods on the relevant New Zealand industry. MBIE interprets this to mean that injury is to be considered in the context of the impact on the industry arising from the volume of the allegedly dumped goods, their effect on prices, and the consequent impact on the industry.
108. In assessing the likelihood of the continuation or recurrence of material injury if duties are removed, MBIE has considered what is likely to happen in the foreseeable future and has made an objective examination of the evidence available. The extent to which MBIE is able to make judgements on the likelihood of events occurring in the foreseeable future will depend on the circumstances of each case and the information available to it. In this case, MBIE considers the foreseeable future to be out to 31 December 2026, which aligns with the consideration of forecasts for various injury factors.
109. The focus of the injury analysis is on the likelihood of material injury recurring if the duties were removed. This is on the basis that, with anti-dumping duties currently in place for the dumped subject goods, MBIE would not expect the industry to currently suffer material injury caused by that dumping.

#### 4.1.2 Matters the Chief Executive shall have regard to

110. Section 8(2) of the Act lists matters to which the Chief Executive shall have regard, without limiting the generality of section 8(1) and without limiting the matters that the Chief Executive may consider, when determining whether or not any material injury to an industry has been or is being caused, or is being threatened. These matters are listed below, and considered later in this Report:
- The extent to which there has been or is likely to be a significant increase in the volume of dumped goods, either in absolute terms or relative to production or consumption in New Zealand (section 8(2)(a)).
  - The extent to which the prices of dumped 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 (section 8(2)(b)).
  - The extent to which the effect of the dumped goods is or is likely significantly to depress prices for like goods of New Zealand producers or significantly to prevent price increases for those goods that otherwise would have been likely to have occurred (section 8(2)(c)).
  - The economic impact of the dumped goods on the industry, including actual or potential decline in output, sales, market share, profits, productivity, return on investments, and utilisation of production capacity; factors affecting domestic prices; the magnitude of the margin of dumping; and actual and potential effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investments (section 8(2)(d)).
  - Factors other than the dumped goods that have injured, or are injuring, the industry, including the volume and prices of goods that are not sold at dumped prices; contraction in demand or changes in the patterns or consumption; restrictive trade practices of, and competition between, overseas and New Zealand producers; developments in technology; and the export performance and productivity of the New Zealand producers (section 8(2)(e)).

- 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 (section 8(2)(f)).

111. The factors set out in section 8(2)(a) – (d) help to determine the nature of any injury to the domestic industry by dumping. The factors set out in sections 8(2)(e) and (f) help to determine causation by assessing whether any injury suffered by the domestic industry is attributable to factors other than the dumped subject goods.
112. For the purposes of section 8, the Chief Executive may disregard any information that the Chief Executive considers to be unreliable (section 8(3)).

## 4.2 Injury information submitted by HWL

113. For the purpose of the injury analysis, HWL has provided:

- Financial information in quarters from 1 January 2021 to 31 December 2025. These figures were a combination of actual figures to 31 May 2025 and projected figures to the end of 2025.
- Forecasted financial information for the 2026 full financial (calendar) year, both in the case of the continuation and removal of anti-dumping duties. HWL considers that the effect on its financial performance of any duties removed at the end of the review will largely be felt in 2026.

114. MBIE has examined HWL’s projections in light of the company’s past performance (with duties in place to prevent injurious dumping) and projected future performance (both with and without duties) in making its findings on the likelihood of recurrence of injury.

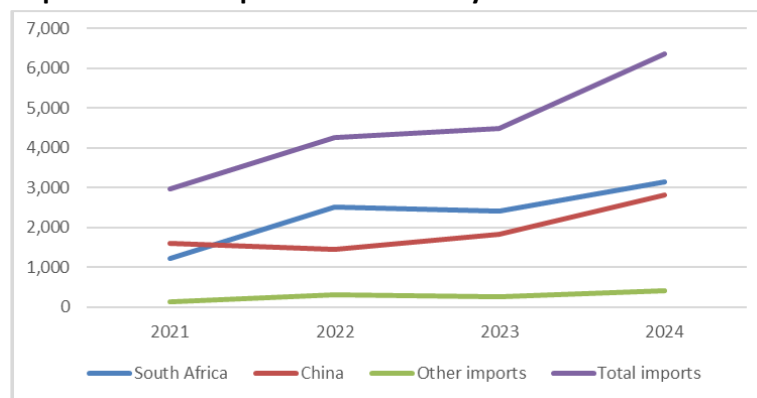
## 4.3 Import Volume Effects

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

### 4.3.1 Import Volumes

116. **Figure 1** (reproduced below) and **Confidential Figure A1** in Annex 1 show import volumes from 2021-2024.

**Figure 1: Imports of canned peaches – 1 January 2021 to 31 December 2024 (MT)**



117. As noted in section 2.1 above, the tariff item covering the subject goods also includes goods outside the definition of the goods subject to review. MBIE has, where possible, removed from the data any goods not obviously covered by the subject goods description.
118. Figure 1 shows that South African imports increased sharply from 2021 to 2022, were static from 2022 to 2023 and increased from 2023 to 2024. This increase since 2021 likely reflects the results of the 2019 review where duties were removed from one South African exporters at the time who was found not to

be dumping. Imports from South Africa currently represent 49 percent of imports from all countries.

### 4.3.2 Likely Import Volumes

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

- The price advantage (in the absence of current anti-dumping duties) such imports may hold.
- The capacity and intent of the South African canned peach industry to substantially increase its exports to New Zealand.
- The ease of entry into the New Zealand market.
- The ability and intent of importers to handle a significant increase in imports from South Africa.
- Exchange rates
- Evidence from previous behaviour

### 4.3.3 Price advantage held by imports from South Africa

120. The price undercutting analysis described in section 4.5.1 below considers the price advantage<sup>14</sup> held by imports from South Africa over goods produced by the New Zealand industry. This analysis, summarised in **Confidential Table A6** in Annex 1, shows that, in the absence of anti-dumping duties, the estimated likely ex-wharf value per kilogram of South African canned peaches significantly undercuts the ex-factory price of HWL's Oak brand with which it competes directly.<sup>15</sup>

121. Other than South Africa, the main countries exporting preserved peaches to New Zealand are China, Greece and Spain. Of these, China is the only country not currently subject to anti-dumping duties. To determine the price advantage held by imports from South Africa over imports from these countries, MBIE has compared the likely ex-wharf price for South African canned peaches, without anti-dumping duties in place, with the weighted average ex-wharf prices for preserved peaches from those countries.

122. The likely ex-wharf value for canned peaches from South Africa, in the absence of anti-dumping duties is lower than ex-wharf values for preserved peaches from Australia, Greece and Spain, but not China. MBIE therefore concludes that, without anti-dumping duties in place, South African canned peaches would hold a significant price advantage over New Zealand manufactured canned peaches and canned peaches from all other countries, except China, supplying the New Zealand market. This is reflected in the price differential between South African prices and the prices of other competing products. This price advantage is further increased given the highly elastic nature of the preserved peach market in New Zealand – i.e. small price changes will result in relatively higher changes in quantities demanded.

123. On the basis of the analysis above MBIE considers that, without anti-dumping duties in place, South African canned peaches are likely to carry a price advantage in New Zealand when compared with HWL's products and imports from other main overseas exporters with the exception of China.

### 4.3.4 Capacity and intent of the South African industry

124. Langeberg did not provide information in respect of the attractiveness of the New Zealand market for its export goods or on its capacity to increase export volumes to New Zealand. This means MBIE has not had the information to gauge the extent to which the company would likely increase its exports to New Zealand if the current anti-dumping duties were removed.

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<sup>14</sup> Price advantage is the competitive advantage held by firms that can offer a product at a lower price than competitors.

<sup>15</sup> Ex-wharf value is the price of goods sold at the point they arrive in their country of destination. This means the buyer is responsible for all costs and risks associated with the goods from that point onward, including transportation and any associated fees.

125. Information gathered from Rhodes indicates that it is currently producing at very close to maximum capacity and has no plans to increase its production capacity. The company also stated that even if it identified a potential opportunity in the international market, it could not increase its production capacity as it cannot acquire more fresh peaches. In making this point, the company noted that it demonstrated in the 2019 review that contracted farmers obtain a higher price when selling fresh peaches for consumption as opposed to fresh peaches destined for canning, including to international markets. This reflects MBIE's broader finding in the 2019 South African review that the South African industry, in general, appeared to have limited capability to provide substantially increased volumes of canned peaches to New Zealand
126. HWL claims that South African producers may have discretionary stocks in South Africa available for New Zealand buyers looking to make once-off purchases. The company also noted that regardless, the New Zealand supply chain is already set up with significant volumes of imports already coming from South Africa. It is also possible, noting the relatively small size of the New Zealand market, and the lack of evidence to the contrary, that relatively small increases in imports could contribute to a recurrence of material injury to the domestic industry.
127. Based on the information available, MBIE concludes that while there may be limited capacity for South African exporters to increase supply to New Zealand in large enough quantities to cause material injury (i.e. such an increase cannot be precluded), the evidence is not conclusive. MBIE has therefore considered this factor but has not given it particular weight.

#### 4.3.5 Ease of entry into the New Zealand markets

128. In its application, HWL noted that:
- The "New Zealand wholesale market for the supply of canned peaches to distributors and retailers is highly competitive. There are no long-term supply contracts in place for customers, and house brand supply contracts are up for constant tender. All supermarkets stock brands of canned peaches other than those supplied from HWL. HWL therefore has no exclusive customers with the market always open to new sources of supply."
  - The New Zealand market for canned peaches is sensitive [which MBIE understands means sensitive to price and volume changes].
  - Certain importers/distributors in the New Zealand market are continuing to use business models previously used when sourcing significant volumes of cheap, dumped imports from abroad.
129. On the basis of the information above, and in the absence of evidence to the contrary, MBIE concludes that there continues to be ease of entry to the New Zealand market, with are few barriers preventing new sources of supply.

#### 4.3.6 The ability and intent of importers to manage import increases

130. In previous reviews and investigations, MBIE has found the listed key factors influence importers' choice of what country to import from. MBIE remains of the view that these factors continue to be key to importers decisions and, accordingly, has considered them in the present case:
- **Price:** Prices for South African imports can be competitively negotiated in the context of international prices, and trends in the size of the New Zealand market. As noted in section 3.6.2 above, this is due to the commercial nature of associated price negotiations and importers' access to multiple suppliers.<sup>16</sup>

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<sup>16</sup> All importers in section 2.4 below have websites indicating they import food products from a range of countries.



- **Anti-dumping duties:** As noted at section 1.6.3 above, the removal of anti-dumping duties on canned peaches from South Africa will likely increase the price advantage held by those products. This would provide an incentive for importers to consider importing from South Africa.
- **Availability of stock:** Currently, the bulk of imports into New Zealand from South Africa are made by the supermarket chains for private label lines, which HWL no longer supplies. As such, all stock must be sourced either from South Africa or other competing countries of export. The evidence of availability of South African stock in the short term is not conclusive. HWL claims that South African producers may have discretionary stocks in South Africa available for New Zealand buyers looking to make once-off purchases. However, Rhodes has noted that any increase in imports would be affected by the size of the South African peach crop and the consequent availability of product.
- **Supply arrangements:** HWL has noted that it understands that many of the importers previously and currently involved in importing canned peaches to New Zealand remain active. In the absence of evidence to the contrary, this indicates existing relationships with South African suppliers which, were increased stock available, can be drawn upon to increase imports to New Zealand.
- **Perception / Demand:** HWL has stated that supermarket chains are allocating more shelf space to private label products which are supplied through imports of canned peaches into New Zealand at the expense of its brands. It explained that supermarket chains prefer these products as they generate a higher margin in comparison to its brands since they can procure them at competitive prices from international markets. MBIE does not have any evidence to the contrary.

131. On balance, in light of the information above, MBIE concludes that New Zealand importers can (and are interested in) managing increased imports from South Africa. While the evidence above does not support a conclusive finding with regards to stock availability, the findings for all other factors set out above, taken as a whole, suggest that the removal of anti-dumping duties is still likely to be a major determinant of the extent of any increase in imports.

#### 4.3.7 Exchange rates

132. A further consideration in assessing the likelihood of an increase in import volumes of the subject goods from South Africa is the movement of the NZD against the USD and AUD, which are the currencies in which imports from South Africa are invoiced. Figure 4 above, shows exchange rate movements.
133. As noted in paragraphs 99 and 100 above, exchange rate fluctuations across both currencies have been marginal. Further, Rhodes fixes its prices when sales are concluded for a 12-month period prior to the start of the canning season. This means that invoice prices during the contract period are not affected by movements in exchange rates. MBIE does not have exchange rate information in relation to other foreign producers, noting that Rhodes was the only producer who participated in this review.
134. On this basis, MBIE considers that exchange rate movements will not encourage an increase in imports.

#### 4.3.8 Evidence from previous behaviour

135. Because anti-dumping duties have been in place continually since 1996 on imports of canned peaches from South Africa, there is limited recent information on previous behaviour to inform conclusions on the likelihood of an increase in imports if the current anti-dumping duties are removed. One factor that can be observed, particularly given the increase in import volumes following the 2019 removal of duties on Rhodes is that demand for imports from South Africa are highly price elastic.

136. Given this market situation, MBIE considers it likely that importers will source a lower priced alternative should an economic incentive be present. Duty removal could be such an incentive, and could result in importers increasing imports from South Africa.

#### **4.4 Conclusion on Import Volumes**

137. On the basis of the information above MBIE concludes, on balance, that the removal of duties would likely result in a significant increase in the volume of dumped imports from South Africa as:
- The main drivers of imports from South Africa are the purchasing decisions by the New Zealand supermarket chains. Demand for South African imports is highly price elastic, creating a strong incentive for importers to increase import volumes of lower (duty-free) priced South African imports.
  - Without anti-dumping duties in place, South African canned peaches are likely to carry a price advantage in New Zealand when compared with HWL's products and imports from other main overseas exporters with the exception of China.
  - Entry into the New Zealand market continues to be easy, and there are few barriers preventing new sources of supply.
  - On balance, MBIE considers New Zealand importers can (and are interested in) managing increased imports from South Africa. Importers already have systems and relationships in place with South African exporters and can be incentivised by more competitive pricing. While evidence does not support a conclusive finding with regards to stock availability, findings on all factors still suggest that the removal of duties is likely to be a major determinant of the extent of import volume increases.
  - Evidence is inconclusive on whether increases in South African exports (within limited production capacity) to the relatively small New Zealand market could cause material injury. There is also no evidence of exchange rate movements affecting import volumes to New Zealand.

#### **4.5 Price Effects**

138. Section 8(1)(b) of the Act provides that the Chief Executive shall examine the effect of the dumped goods on prices in New Zealand for like goods. Section 8(2) of the Act goes on to identify price undercutting, price depression and price suppression as matters to which the Chief Executive shall have regard.
139. Sections 8(2)(b) and (c) of the Act require that the Chief Executive should have regard to the extent to which 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, and the extent to which the effect of the dumped goods is or is likely significantly to depress prices for like goods of New Zealand producers or significantly prevent price increases for those goods that otherwise would have been likely to have occurred (i.e. suppress prices).
140. When considering a review of anti-dumping duties that are already in place, consideration needs to be given to the likely price effects in the absence of anti-dumping duties. HWL looks to maintain Wattie's as its premium brand, with the Oak brand most likely to be in direct competition with the subject goods if anti-dumping duties were to cease.

#### 4.5.1 Price Undercutting

141. 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 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. Price undercutting refers to the extent to which the prices of the subject goods are lower than prices in New Zealand for like goods of New Zealand producers.
142. The purpose of the price undercutting comparison is to establish whether or not there is price undercutting attributable to dumping. Price undercutting is not in itself a determinant of the existence or extent of injury, i.e. the margin or frequency of price undercutting is not the sole measure of the extent of the economic impact on the industry. That impact is to be measured in terms of all the factors set out in section 8(2)(d) of the Act, outlined in section 5.4 of this Report.
143. Prices are compared at the point that the imported goods first compete with the goods made in New Zealand. This generally means the ex-wharf price of imported goods is compared to the ex-factory price for the domestic goods.
144. For the purposes of establishing a price undercutting margin if the current anti-dumping duty were removed, HWL compared its estimated South Africa ex-wharf import price (derived using TradeData) to its current ex-factory prices (for Wattie's and Oak) which it claims it would need to price at, in order to maintain what it considers is a viable profit margin, for both brands. The result of HWL's price undercutting exercise is that the company would suffer significant price undercutting for its Oak brand in the absence of anti-dumping duties on South African canned peaches. HWL clarified that its Oak products compete directly with the imported private label products, and that needs to maintain a premium on its Wattie's brand to cover costs and make a margin contribution. HWL stated that private label product is priced below both its Wattie's and Oak brands.
145. **Confidential Table A6** in Annex 1 sets out MBIE's price undercutting calculations. MBIE calculated a weighted average ex-wharf price for South African imports of canned peaches which was the weighted average of the values for duty (VFD) but adding ocean freight and insurance and converted to NZD (see Import cost/KG in **Confidential Table A6** in Annex 1). MBIE undertook this calculation using Customs NZ data, which allows for the closer capture of subject goods under the relevant Tariff lines. MBIE compared this average South African import value with the weighted average HWL price for the Oak brand (being the direct competitor), less an amount for internal distribution cost, to derive a weighted average ex-factory selling price for Oak. This results in the Net Sales Value/KG figure for OAK in **Confidential Table A6** in Annex 1.
146. MBIE found that the ex-wharf value of imports of South African peaches undercut the ex-factory price of HWL's Oak brand. On this basis, MBIE concludes that HWL would likely incur significant price undercutting (refer Oak undercutting percentage in **Confidential Table A6**) if the anti-dumping duties on South African canned peaches are removed.

#### 4.5.2 Price Depression

147. Section 8(2)(c) of the Act provides that the Chief Executive shall have regard to the extent to which the effect of the dumped goods is, or is likely significantly, to depress prices for like goods of New Zealand producers.
148. Price depression occurs where prices achieved by the New Zealand manufacturers are lower than those achieved in a period unaffected by allegedly dumped or subsidised goods. Price depression is not in itself a determinant of the existence or extent of injury. There must be a consequent impact on the industry, measured primarily in terms of the factors set out in section 8(2)(d) of the Act.

149. In an investigation, price depression is usually calculated by comparing the price in a market affected by dumping to the price in the same market before the dumping occurred. In a full review, an assessment needs to be made of whether the removal of anti-dumping duties will likely result in price depression caused by dumping. In the present case, this has been done by using forecasted figures for 2026, as set out below.
150. In its application, HWL set out its pricing strategy and the effect on prices for both the Wattie's and Oak brands when dumped imports enter the market. HWL provided forecasts (without duties) for 2026. HWL considers that the full impact of cheaper, dumped imports from South Africa, as a result of any removal of duties, would be largely felt in 2026 once importers have established their supply chains with the South African manufacturers. HWL claims that a removal of duties will result in Wattie's and Oak products needing to be discounted by the level of price undercutting to the Oak brand, while maintaining the Wattie's brand relative premium.
151. Figure 5 below details HWL's historical selling prices (for Oak and Wattie's combined) between 1 January 2021 and 31 December 2025 and its 2026 forecast selling price, in the absence of duties. **Confidential Figure A7** in Annex 1 includes y-axis values. Figure 5 also details HWL's 2026 forecast selling price if the duties were to continue so that a direct comparison can be made with the company's 2026 forecast selling price in the absence of duties.

**Figure 5: Price Depression (NZD/kg)<sup>17</sup>**



152. The data shows that HWL's average price per kilogram increased from 2021 to 2023 but decreased in 2024 and slightly increased in 2025 (refer to 2026 figures with and without dumping in **Confidential Figure A7**). Its average selling prices is projected to increase in 2026 if the anti-dumping duties continue. The company stated that the continued imposition of anti-dumping duties to level the playing field will enable it to increase its prices to reflect recent cost increases.
153. However, based on the level of price undercutting that has been projected by HWL (in the absence of anti-dumping duties), its average selling prices is forecast to remain static in 2026, if the duties expire. This reflects HWL's stated inability to increase prices of both Oak and Wattie's brands to account for the recent cost increases referred to in the paragraph above. As would be expected, any price decline would be more significant for Oak, than it would be for Wattie's, due to Oak's positioning in the market against the cheaper imported product.

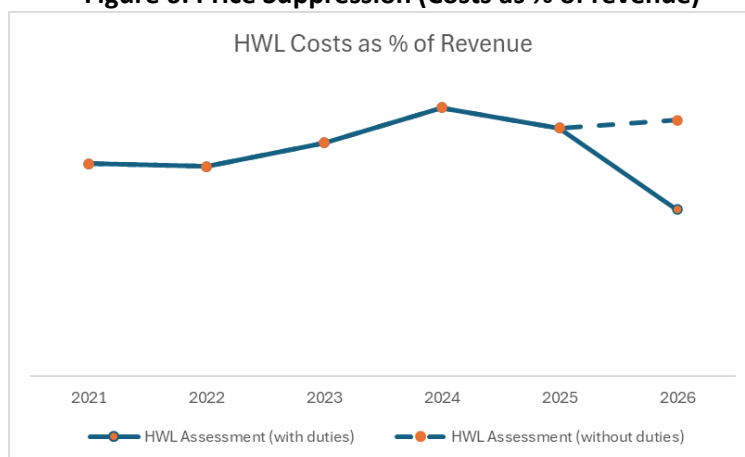
<sup>17</sup> Y axis values deleted, X axis does not cross at 0, gridlines deleted, in order to protect the confidentiality of information where making the information available would have a significantly adverse effect on the submitter of confidential information.

154. On the basis of the information provided by HWL and verified by MBIE, MBIE concludes that it is unlikely the dumped imports will contribute to significant price depression, in the absence of anti-dumping duties. However, this should be factored against the company's projections that the removal of the duties on South African imports will result in significant price suppression, rather than significant price depression, due to HWL being unable to increase its prices to reflect recent cost increases (see section 4.5.3 below).

### 4.5.3 Price Suppression

155. Section 8(2)(c) of the Act also provides that the Chief Executive shall have regard to the extent to which the effect of the dumped goods is or is likely significantly to prevent price increases for those goods that otherwise would have been likely to have occurred.
156. Price suppression occurs when New Zealand producers are unable to increase prices, for example, to recover cost increases. Price suppression is not in itself a determinant of the existence or extent of injury. There must be a consequent impact on the industry, measured in terms of the factors set out in section 8(2)(d) of the Act. Cost increases that are not able to be recovered by price increases will be reflected in an increased ratio of costs to sales revenue. Where cost savings have been made, the lack of any price increase will not normally be regarded as price suppression.
157. HWL argue that the effects of dumped canned peaches from South Africa (if the duties were removed) would be significant price suppression as HWL would be unable to offset price undercutting by cost savings and price increases elsewhere. HWL claim that the dumped imports would cause cost increases because increased market share taken by dumped imports would lead to increased processing costs per ton that could not be recovered.
158. Figure 6 below details HWL's historical costs as a percentage of revenue between 1 January 2021 and 31 December 2025 and its 2026 forecast figures, in the absence of duties. **Confidential Figure A8** in Annex 1 contains y-axis values. In respect of the company's 2026 forecast figures, HWL claims that its Wattie's and Oak brands will need to be discounted in 2026 by the level of its estimated price undercutting to the Oak brand which will negatively affect its sales revenue. The 2026 forecast figures in Figure 6 are based on this scenario playing out.

Figure 6: Price Suppression (Costs as % of revenue)<sup>18</sup>



<sup>18</sup> Y axis values deleted, X axis does not cross at 0, gridlines deleted, in order to protect the confidentiality of information where making the information available would have a significantly adverse effect on the submitter of confidential information.

159. The data shows that historically HWL's costs as a proportion of revenue for canned peaches increased gradually from 2021 to 2024 but decreased in 2025 and are projected to decrease further in 2026, if the anti-dumping duties continue, reflecting HWL's intention to increase prices to account for expected cost increases. See **Confidential Figure A8** for percentage change values discussed.
160. However, if the duties expire, costs as a percentage of sales revenue are projected to increase in 2026 compared with current levels reflecting the continued pressure the company claims it is facing from unfair competition from imported product. Figure 6 above clearly demonstrates the price suppression effect of the price undercutting that HWL has projected in the absence of duties. Figure 6 also demonstrates that if the duties continue and HWL is able to compete with imports on a level playing field, the company expects it will be able to fully recover expected costs increases and achieve a return to profit in 2026.
161. On the basis of the information collected from HWL, MBIE concludes that if the anti-dumping duties are removed, HWL would likely experience continued and significant price suppression. Conversely, if the duties remain in place, company would be in a position to set its prices at a level which would recover cost increases and prevent price suppression.

#### 4.5.4 Conclusion on Price Effects

162. On the basis of the information above, and in considering the effect of the dumped goods on prices in New Zealand for like goods, MBIE's overall conclusion is that:
- The removal of duties is likely to result in significant price undercutting, based on a comparison of ex-wharf import prices from South Africa and HWL's ex-factory prices (see **Confidential Table A6**).
  - The removal of duties is not likely to result in a significant declines in the prices for domestic like goods in response to the prices of the imported goods (i.e. price depression is unlikely).
  - If dumping is not remedied through the imposition of duties, HWL is likely to experience significant price suppression. I.e. HWL will not be able to recover costs increases through increased prices in a manner that would have otherwise occurred (see **Confidential Figure A8**).
163. As noted earlier, the price effects examined above are not in themselves a determinant of injury. There must be a consequent impact on the industry, in particular when measured, inter alia, in terms of the factors and indices set out in section 8(2)(d) of the Act. Injury caused to the New Zealand industry is assessed in terms of the economic impact in the following section of this Report.

## 4.6 Consequent Impacts

164. In the examination of the consequent impact of the dumped goods on the relevant New Zealand industry provided for in section 8(1)(c) of the Act, section 8(2)(d) sets out matters the Chief Executive shall have regard to.

### 4.6.1 Economic Impact

165. Section 8(2)(d) of the Act sets out a number of factors the Chief Executive shall have regard to in relation to the economic impact of the dumped or subsidised goods on the industry, in terms of whether there are actual or potential declines.

#### **Output**

166. As set out in section 8(2)(d)(i), the Act requires that actual and potential decline in output (i.e. domestic production volume) be considered as an injury factor. Dumped imports can affect the industry's output through increased supply of imported goods to the market and through price competition.

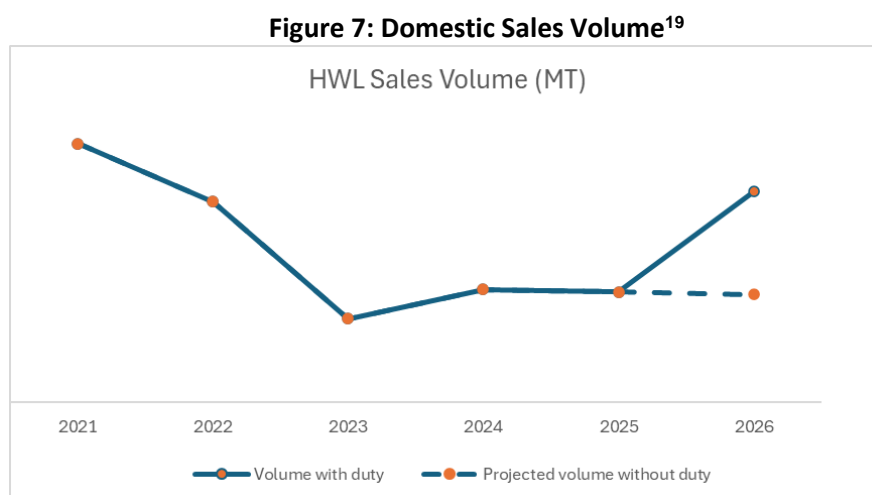
167. Changes in output by domestic producers reflects production decisions in response to changes in the market situation, which could arise from a combination of changes in demand, from competition, or from movements in prices and costs. A decline in output can be reflected in declines in sales revenue. Output figures can reflect production for domestic sales or for other purposes.
168. In respect of canned peaches, sales volume has historically closely followed output (i.e. production volume). This is because HWL's output has previously been dependent on the size and quality of the peach crop available each year and its contracts with growers. HWL noted, however, that in the current market environment containing a high volume of imported goods, production has been limited to demand which has meant that HWL has had to recently forego production of part of the peach crop. The cost of foregoing production is the cost of the raw material (i.e. the raw peaches that were not processed) and the labour needed to pick the fruit off the trees.
169. In the circumstances above, MBIE considers that output is likely to mirror sales volume in terms of the likely impact of the removal of the anti-dumping duties. As noted below, HWL has projected stagnant sales volumes in 2026, if the current anti-dumping duties are removed. However, its 2026 sales volumes will be well below the volumes achieved in 2021 and 2022 (years in which HWL considers were unaffected by unfairly traded imports from South Africa and China). It follows then that, the removal of duties is likely to have an adverse impact on HWL's output.

### Sales Volume and Revenue

170. As required by section 8(2)(d)(i), impacts on sales are to be considered as an injury factor. Movements in sales revenue reflect changes in sales volumes and prices of the goods sold. Dumped imports can affect both factors through increased supply of goods to the market and through price competition.

### Sales Volume

171. Figure 7 below shows HWL's historical sales volumes of canned peaches from 1 January 2021 to 31 December 2025, and 2026 forecast sales volumes both with anti-dumping duties imposed and in the absence of anti-dumping duties. **Confidential Figure A9 in Annex 1** contains y-axis values. These figures exclude imports by HWL in order to reflect sales of only domestic production.



172. The data shows that sales volumes of Oak and Wattie's brands combined decreased from 2021 to 2023 but increased slightly in 2024 and remained stable in 2025.

<sup>19</sup> Y axis values deleted, X axis does not cross at 0, gridlines deleted, in order to protect the confidentiality of information where making the information available would have a significantly adverse effect on the submitter of confidential information.

173. For 2026, HWL has projected that its sales volume will increase to 2022 levels if the anti-dumping duties on South African imports remain but will remain static in 2026 if the duties are removed. This reflects the situation of HWL being prevented from regaining its sales volume and market share to levels previously realised during a period when the company considers it was able to compete with unfairly priced imports through a level playing field. As such, the removal of duties is likely to have an adverse impact on HWL's sales volume.

### Sales Revenue

174. Figure 8 below shows HWL's historical sales revenue of canned peaches from 2021 to 2025 and 2026 forecast sales revenue both with anti-dumping duties imposed and in the absence of anti-dumping duties. **Confidential Figure A10** in Annex 1 contains y-axis values. As with sales volume figures above, these figures exclude imports by HWL in order to reflect revenue only from domestic sales.

**Figure 8: Domestic Sales Revenue<sup>20</sup>**



175. The data shows that sales revenue for Oak and Wattie's brands combined was static from 2021 to 2022 but has declined since then and remains well below the 2021 and 2022 levels.
176. HWL has projected that its sales revenue will increase in 2026, if the anti-dumping duties continue, reflecting its forecast price increases which the company stated it would need to effect in order to match projected cost increases. In other words, if the duties remain on imports of canned peaches from South Africa, HWL considers it would be in a position to pass on recent and projected cost increases to its selling prices. However, if the duties are removed, HWL has projected that its sales revenue will remain static, reflecting its inability to incorporate cost increases into its prices due to having to compete with the lower-priced imports from South Africa. MBIE considers the decline reflected in Figure 8 above, and reflected by figures in **Confidential Figure A10** in Annex 1 to be significant.
177. On the basis of the information above collected from HWL, MBIE concludes that sales volumes and revenue would likely be significantly affected if the current anti-dumping duties on canned peaches from South Africa were removed to the extent that the company would be prevented from incorporating cost increases into its selling prices which would in turn prevent it from achieving a financially viable level of sales revenue.

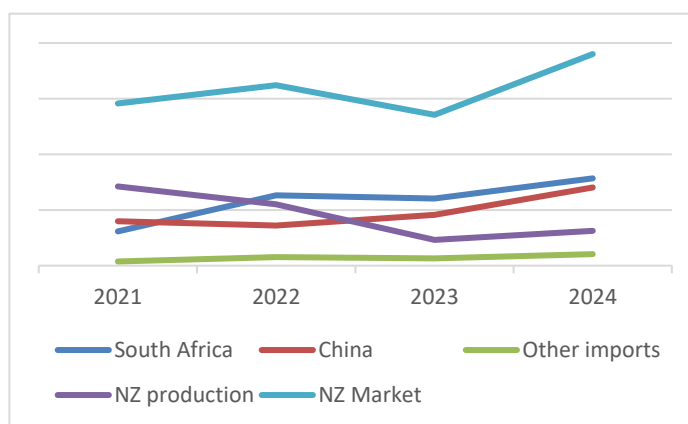
<sup>20</sup> Y axis values deleted, X axis does not cross at 0, gridlines deleted, in order to protect the confidentiality of information where making the information available would have a significantly adverse effect on the submitter of confidential information.



## Market Share

178. MBIE must consider the any changes to the current market share situation if anti-dumping duties are removed. Analysis of market share must consider changes in the size of the total market. A decline in the domestic industry's market share when the total market is expanding will not necessarily indicate that material injury is being caused, particularly if the domestic industry's sales are also growing, because the New Zealand industry is not entitled to a particular market share.
179. Figure 9 below shows changes in the size of the New Zealand market for canned peaches, and in market share held by domestic and overseas producers. **Confidential Figure A11** in Annex 1 contains y-axis values. Figures are derived from Customs NZ import data relating to the subject goods.
180. Figure 9 indicates that the size of the New Zealand market for canned peaches remained steady from 2021 to 2023 but increased in 2024. Over the same period, the market share held by the New Zealand industry declined, as shown in **Confidential Figure A2** in Annex 1, while the market share of imports from South Africa and China increased.

Figure 9: Market Share 2021-2024 (%)<sup>21</sup>



181. In its application, HWL:
- Provided total figures for the New Zealand market for preserved peaches, categorised by the share commanded by each of the available brands and noted that South Africa continues to be a significant source of canned peaches taking market share from the domestic industry.
  - Stated that if dumped canned peaches from South Africa return to the New Zealand market (through the removal of anti-dumping duties), its market share would be either taken by those dumped imports or, if HWL defended its market share by increasing its trade marketing activity to compete on price, HWL's cost base would increase.
  - Cited evidence from previous dumping investigations where the entry of dumped peaches into the New Zealand market had resulted in a loss of market share for HWL branded peaches. HWL considers that a similar effect would likely occur if the South African imports were not remedied through the imposition of anti-dumping duties. Evidence presented in the 2006 Chinese and 2011 Spanish investigations was identified, in which imports had grown to significant shares, in particular customers in specific locations over a short period. The volumes involved were in the region of 100-300 tonnes. In both situations, MBIE conducted dumping investigations which resulted in anti-dumping duties being imposed against Chinese and Spanish imports.

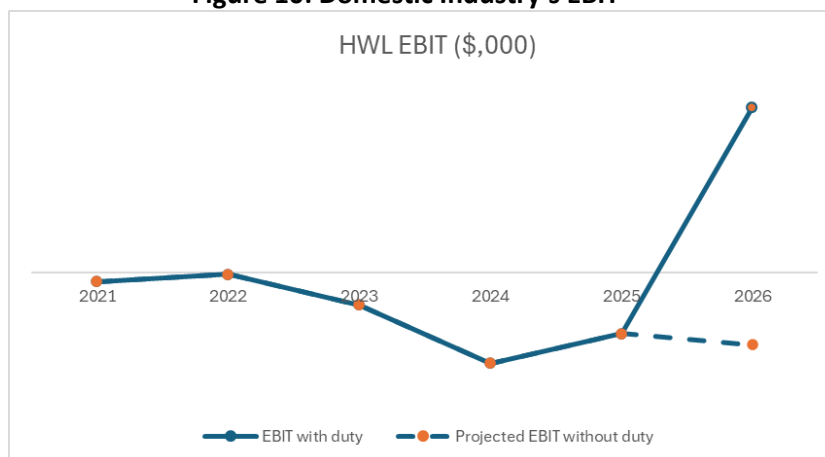
<sup>21</sup> Y axis values withheld in order to protect the confidentiality of information where making the information available would have a significantly adverse effect on the submitter of confidential information.

182. MBIE notes that the removal of anti-dumping duties on one of the two South African producers following the 2019 full review appears to have resulted in increased import volumes from South Africa. Figure 9 above also shows a decrease in HWL's market share and an increase South African producers' market share has increased, alongside an overall increase in the size of the New Zealand market. This suggests that the removal of duties on Langeberg would enable New Zealand importers to make use of reduced import prices to increase South African import volumes into New Zealand.
183. Based on its assessment of likely import volumes from South Africa, HWL's projected domestic sales volumes, and the competitive pricing of subject goods from South Africa, MBIE concludes it is likely that HWL's market share will continue to drop if anti-dumping duties are not continued.

### **Profits (Earnings Before Interest and Taxes / EBIT)**

184. Section 8(2)(d)(i) of the Act requires that impacts on profits be considered as an injury factor. Dumped imports can affect gross profit and net profit by affecting sales prices, sales volumes and/or costs.
185. Figure 10 below shows HWL's historical EBIT (Earnings Before Interest and Taxes) on sales of its Oak and Wattie's brands combined from 1 July 2021 to 31 December 2025 and its 2026 forecast EBIT levels, both with anti-dumping duties imposed and in the absence of anti-dumping duties. **Confidential Figure A11** in Annex 1 contains y-axis values. The figures exclude imports by HWL in order to reflect EBIT levels for domestic production.

**Figure 10: Domestic Industry's EBIT<sup>22</sup>**



186. The data shows that EBIT increased from 2021 to 2022 but has decreased significantly since then. More importantly, the figures show that the company has been operating at negative EBIT levels since 2021 when, along with 2022, it was close to breaking even. 2021 and 2022 are years where HWL considers it was best able to compete on a level playing field with both South African imports (through the imposition of anti-dumping duties) and Chinese imports.
187. HWL contends that, in 2026, if anti-dumping duties are removed:
- There will be a significant increase in cost of goods relative to revenue along with a significant decline in EBIT. HWL claims this would be due to it having to increase the amount of trade marketing activity and other trade spend incurred in order to protect its market share which will directly impact on its profit.
  - HWL's projected continued negative EBIT levels, in the absence of a duty, reflect HWL's price undercutting calculations.

<sup>22</sup> Y axis values deleted, gridlines deleted, in order to protect the confidentiality of information where making the information available would have a significantly adverse effect on the submitter of confidential information.

188. In 2026, with duties in place, HWL has projected its EBIT levels will increase significantly which reflects the company's expected ability to increase its selling prices to reflect recent cost increases. It also reflects the company's expected ability to increase its sales volume which would be the result of the company being able to compete on a level playing field with the South African imports through the continued imposition of anti-dumping duties.
189. On the basis of the information above, MBIE concludes that the removal of duties would adversely affect HWL's profits.

### **Productivity**

190. Section 8(2)(d)(i) of the Act requires that impacts on productivity be considered as an injury factor. Productivity is the relationship between the output of goods and the input of resources used to produce them. Changes in productivity are affected by output levels and by the level of production capacity utilisation.
191. In its application, HWL stated that currently, imports of canned peaches from South Africa are not adversely affecting its productivity because there is an anti-dumping duty in place on South African imports. HWL has also stated that any measure of productivity is mainly affected by the level of seasonal labour employed when the crop needs processing, so total labour costs are variable, depending on the total size of the crop, the size of the fruit, yield and factory efficiency in processing.
192. MBIE is of the view that HWL's productivity is not directly affected by whether anti-dumping duties are in place or not, at least in the short term, as changes in productivity are largely affected by seasonal labour requirements based on factors other than canned peach output levels. Because labour size and costs are contingent on the size of the crop, yield and finished tonnage and based on HWL's purchasing requirements from growers, productivity has not been a particularly useful factor when assessing injury caused by dumped imports. Therefore while MBIE has considered this factor it has not given it particular weight.

### **Return on investment (ROI)**

193. Section 8(2)(d)(i) of the Act requires that impacts on the return on investment be considered as an injury factor. Return on investment (ROI) measures profit against the value of the investment in a business. Movements in the ROI affect the ability of the industry to retain and attract new investment. Declines in return on investment can result from a decline in profit or an increase in the level of investment within the business. ROI is normally expressed as EBIT as a percentage of assets or shareholders' funds employed in the production of like goods.
194. HWL has undertaken recent investment in its processing facility by installing a new colour sorter and peach pitters, which are used solely for processing peaches. The colour sorter has been operating since 2022 while the peach pitters are being refurbished and have been put on hold pending the current market environment.
195. More generally, the canned peach business shares assets, at various stages of production, with other products and categories. Canned peach production represents a small percentage of total throughput using the shared production machinery. This makes it difficult to extract any meaningful information on return on investments specifically relating to canned peaches. I.e. considering impacts of canned peach assets alone, for the purpose of assigning injury due to the dumping, is not possible or at the very least meaningless.
196. MBIE is of the view that, for the reasons set out in [96] above, it is difficult to meaningfully identify the impact of a removal of anti-dumping duties on canned peaches on HWL's return on investment. This has meant that it has not been possible to make a conclusion about this factor therefore, while MBIE has considered this factor it has not given it particular weight.

### ***Utilisation of production capacity***

197. Section 8(2)(d)(i) of the Act requires that impacts on utilisation of production capacity be considered as an injury factor. The utilisation of production capacity reflects changes in the level of production, although in some cases it will arise from an increase or decrease in production capacity. In either case, a decline in the utilisation of production capacity will lead to an increase in the unit cost of production due to increased fixed overheads per unit, and a consequent loss of profit, unless offsetting savings are found elsewhere.
198. HWL's production capacity for canned peaches is constrained by the size of the crop that its contracted orchardists can deliver. All fruit is supplied and processed in the first quarter of each year. In the past there have been constraints on seasonal labour availability, which led to some peaches not being harvested. HWL provided its theoretical capacity in the absence of such constraints, but this in itself depends on what volume of fruit HWL wants to hold in storage and continue processing after the harvest has finished.
199. The impact of dumped imports on the utilisation of production capacity will depend on the extent to which increases in such imports reduce throughput in the New Zealand industry. In previous peach investigations and reviews, MBIE has taken the view that production capacity is not a useful measure of injury, given the number of variables involved, including that capacity is limited by the quantity of raw peaches available for production of canned peaches each year, competition for the parts of the canning line which are common to other seasonal fruit and vegetables, and also by the storage life of the raw fruit.
200. In the present review, MBIE is of the view that it is difficult to meaningfully identify the impact of a removal of anti-dumping duties on production capacity utilisation rate. This is because the level of production is dependent on other factors including competition with other parts of the canning line and HWL's purchasing requirements from growers. MBIE has therefore considered this factor but not given it particular weight.

### ***Factors affecting domestic prices***

201. Section 8(2)(d)(ii) of the Act lists this as one of the factors to which the Chief Executive must have regard. MBIE examines this factor in the context of the economic impact of dumped goods on the industry.

### ***Magnitude of the margin of dumping***

202. Section 8(2)(d)(iii) of the Act refers to the magnitude of the margin of dumping as a factor to which the Chief Executive must have regard. This factor 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 (noting undercutting affects the New Zealand industry's prices and volumes).
203. In the present case, MBIE is of the view that if anti-dumping duties are removed, the magnitude of the margin of dumping will likely contribute to the injurious effects of the dumped goods given:
- Findings set out in section 3.5 of this Report that in the absence of anti-dumping duties, dumping by Langeberg will likely continue, and that the current dumping margin is higher than the margin determined following the 2019 full review, despite duties currently in place.
  - Findings set out in section 4.4 of this Report that in the absence of anti-dumping duties, the subject goods from South Africa will carry a significant price advantage over the New Zealand industry's prices. This will likely result in continued price undercutting and price suppression as discussed in sections 4.5.1 and 4.5.3 above.

- The dumping margin identified (**Confidential Table A3**) is greater than the price undercutting (**Confidential Table A6**) thereby indicating that the magnitude of the margin of dumping will contribute to the injurious effect of the dumped goods if the duties are removed.

### ***Other actual and potential negative effects***

204. Section 8(2)(d)(iv) of the Act refers to the actual and potential negative effects on a range of identified factors as matters to which the Chief Executive must have regard as part an injury assessment.

### ***Cash flow***

205. Cash flow is the total amount of money being transferred into and out of a business, especially as it affects liquidity, and provides an indication of the ability of producers to self-finance their activities.
206. HWL considers that cash flow broken down to the level of canned peaches is not a meaningful indicator of injury due to the shared resources common to both canned peaches and other products HWL manufactures. A major feature is the seasonal nature of the cash flow for peaches which means that expenditure and revenue are very uneven in relation to production and sales. In past reviews and investigations, cash flow was not considered a good indicator of injury for the above reasons. In the present review, HWL has not claimed any adverse effect on cash flow in this review.
207. MBIE acknowledges the difficulty in separately measuring any possible negative effects on cash flow resulting from the sale of canned peaches as opposed to other products that share common production facilities including the extent to which any possible negative effects on cash flow may be attributable to the dumped imports. However, in the absence of duties, MBIE considers that any potential adverse impact on sales revenue and EBIT, as outlined above at section 4.6.1 of this Report, is likely to have negative effects on HWL's cash flow.

### ***Inventories***

208. Increasing inventories at the end of a financial period can be a sign of injury, bearing in mind the context of the normal conditions and practices of the industry concerned. In previous cases, and observed by MBIE in this review, the canning of peaches over a relatively short period once a year means that inventory is at its peak soon after production and then declines as inventory is sold down over the next 12 months. Considering these practices, MBIE acknowledges that HWL is particularly exposed to injury from dumped imports shortly after yearly production when inventory levels are high and where any lowering of its prices would have a particularly significant adverse effect if inventories are to be maintained for longer periods.
209. HWL provided **Confidential Figure A12** in Annex 1 showing the inventories of peaches on-hand since January 2021 (on a bi-monthly basis). This figure indicates the role of other factors, such as the seasonal nature of production on inventory levels. HWL noted that year-on-year, it is unknown what will precisely happen in terms of seasonal variability and adverse events, for example unforeseen late frosts. Although peach crops are becoming more stable, recent severe weather events illustrate the impact that adverse events can have on peach crops and inventory levels. HWL also noted that it projects to have carryover inventories heading into the 2026 crop due to the loss of market share from alleged dumped China preserved peaches.
210. In light of the information above, MBIE has concluded that, because of the way HWL manages its inventory level, the amount of inventory on hand is not a good indication of injury given HWL aims to sell its full inventory over the season. MBIE is therefore of the view that it is difficult to meaningfully identify the impact of a removal of anti-dumping duties on inventory levels. Therefore, while MBIE has considered this factor it has not given it particular weight.

### Employment and wages

211. HWL stated that with a level playing field there would not be adverse effects on employment and wages due to that fact that the company sources the entire peach crop and converts all of this to canned preserved peaches. In any given season HWL employs seasonal staff on an 'as required' basis from the recruitment agencies with whom it has a contract to supply labour. The number of staff varies each year and is dependent on the volume of peaches to be processed.
212. HWL's employee and wage rate data shows that average annual wage rates have fluctuated since 2021 but are currently around the level they were in 2021. Total employee hours worked have also fluctuated since 2021, reflecting the availability of seasonal workers especially during the COVID-19 pandemic, and are currently lower than the level experienced in 2021. Employment numbers, wages and hourly rates are all applicable to quarter one of each calendar year as this is when canned peaches are produced.
213. In past reviews, MBIE considered that if anti-dumping duties were removed it was unlikely that there would be any adverse effects on employment and wages directly relating to the production of canned peaches. This is because employee numbers and wages were contingent on production volumes which is generally dependent on the size and quality of the peach crop available each year and HWL's contracts with growers. MBIE therefore previously considered that, even in the absence of anti-dumping duties, HWL would continue to process contracted peach crops from growers, maintaining employment and wage level.
214. In the present review, however, HWL noted that production has been limited to demand rather than size and quality of the peach crop. This was because, during the 2025 production season, HWL made the decision to not process a certain tonnage of crop due to the current market environment affecting demand for HWL's canned peaches. The company calculated an estimated foregone cost in employment and wages to the Hawke's Bay community by considering the amount of third-party seasonal labour wages paid and how much more would have been added pro-rata for the tonnage of peach crop it did not process.
215. In the present circumstances, the level of employment and wages, if anti-dumping duties are removed from South African imports, will therefore be dependent on HWL's level of canned peach production (output). In the circumstances outlined above, and in particular because of the non-committal nature of its future purchasing requirements with growers, MBIE considers that output is likely to mirror sales volume in terms of the likely impact of the removal of anti-dumping duties. As noted above, HWL has projected stagnant sales volumes in 2026, if the current anti-dumping duties are removed, but that the 2026 sales volumes will be well below the volumes achieved in 2021 and 2022 (years in which HWL considers were unaffected by unfairly traded imports from South Africa and China).
216. On this basis, MBIE concludes that HWL's employment and wages will be adversely affected if anti-dumping duties on South African imports are removed.

### Growth

217. HWL claims that the removal of duties would have a significant adverse effect on growth of (i.e. ability to expand) the business as a whole. The company noted that processing the peach crop was an important part of its business and any significant decline would affect its ability to produce other processed fruit and vegetables and would increase its fixed costs.
218. MBIE concludes that, in the absence of anti-dumping duties, any potential adverse impact on sales revenue, EBIT and return on investment, as outlined above, is likely to have a negative effect on growth of the business.

### **Ability to raise capital and to make investments**

219. HWL stated that it invested significant capital in 2022 due to its favourable view of the industry moving forward. Underpinning this view is the use of trade remedies to create a level playing field by defending the local industry when it is forced to compete with dumped imports. HWL has noted that as long as the imposition of trade remedies removes the injurious effects of dumped imports, HWL will continue to invest in the industry. However, the company also noted that further investment is on hold due to the alleged dumped peaches from China which makes it untenable to raise capital successfully.
220. MBIE considers that any impacts of duty removal on HWL's sales, profits and return on investment could be expected to affect HWL's ability to raise capital and invest in canned peach processing plant. Equally, MBIE notes that HWL produces a range of seasonal and non-seasonal fruit and vegetable products that use its production plant, and peaches only take up a small share of total production capacity. This presents challenges to reaching a meaningful conclusion about what capital requirements and investments are directly related to peach production. This in turn limits MBIE's ability to consider the effect of duty removal on these factors.
221. In light of the information above, MBIE has concluded that it is difficult to reach any meaningful conclusion on capital requirements and investments that is specific to canned peaches. Therefore, while MBIE has considered this factor it has not given it particular weight.

### **4.6.2 Conclusions on Economic Impact**

222. MBIE is satisfied that there is a reasonable basis to conclude that consequent upon the likely price effects (as addressed in section 4.5 above) and if anti-dumping duties are not continued:
- HWL is likely to experience an adverse effect on its output, revenue, market share, profits, EBIT, cashflow, employment, wages and growth.
  - The magnitude of the margin of dumping by the South African producer shown to be dumping will likely contribute to the injurious effects of the dumped goods if the duties are removed.
  - It is difficult to meaningfully identify the injurious impact of a removal of anti-dumping duties on inventory, productivity, ROI and utilisation of production capacity given these factors are dependent on broader factors including the company's purchasing requirements with growers and the difficulty in separately measuring any possible negative effects on these factors relating to canned peaches as opposed to other products that share common production facilities. MBIE has therefore considered these factors but not given them particular weight.
  - Similarly, it is difficult to reach any meaningful conclusion on capital requirements and investments that is specific to canned peaches as they comprise a small share of total production capacity. MBIE has therefore also considered these factors but not given them particular weight.

### **4.6.3 Other Causes of Injury**

223. In the examination of whether material injury would be caused or threatened by means of the continuation or recurrence of dumping of goods imported into New Zealand, section 8(2)(e) 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—
- the volume and prices of goods that are not sold at dumped prices;
  - contraction in demand or changes in the patterns of consumption;
  - restrictive trade practices of, and competition between, overseas and New Zealand producers;
  - developments in technology; and

- the export performance and productivity of the New Zealand producers.

224. The Chief Executive is also required by section 8(2)(f) of the Act to have regard to the nature and extent of importations of dumped goods by New Zealand producers of like goods, including the value, quantity, frequency, and purpose of any such importation.

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

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

### Non-dumped imports

226. Section 8(2)(e)(i) of the Act refers to the volume and prices of goods that are not dumped as factors other than the dumped goods that may have injured or are injuring the industry.

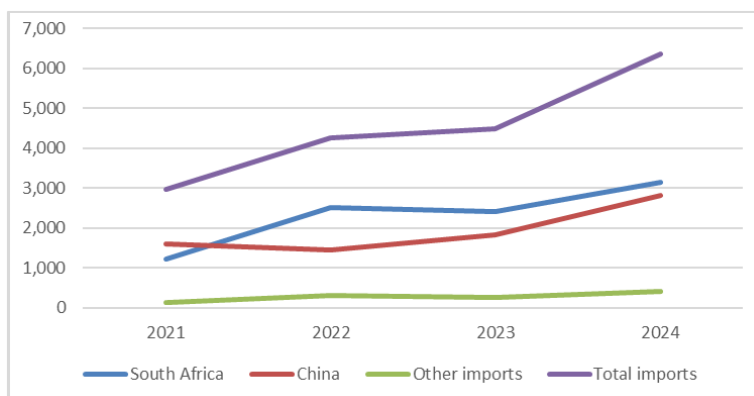
227. In its application, HWL stated that it is not aware of any material injury being caused through fairly traded competitor branded products. HWL's main competition is from imported private label canned peaches and fruit snacks in pottles or puree pouches.

228. For context, anti-dumping duties currently apply to imports from Greece, Spain and South Africa. Further, on 15 July 2025, MBIE started a dumping investigation into Chinese preserved peaches but no decision into whether the goods are dumped has been reached yet.

229. MBIE used Customs NZ data to analyse the levels of imports from the main supplying countries and other sources for all of the subject goods. Customs NZ data shows the import volumes over the calendar years 2021 to 2024. The data shows that imports in order of volume were primarily from South Africa and China, with smaller volumes from Australia, Spain and Greece and all other countries combined.

230. Figure 1 (replicated below) and **Confidential Figure A1** in Annex 1 shows that since 2021 imports from South Africa have increased along with imports from China. Import volumes from Australia, Spain and Greece and the rest of the world remain relatively small compared to China and South Africa. As noted above, an anti-dumping duty applies to imports from Spain and Greece.

**Figure 1: Imports of canned peaches – 1 January 2021 to 31 December 2024 (MT)**





231. In section 4.4 above, MBIE found that, without anti-dumping duties in place, South African canned peaches would hold a significant price advantage over New Zealand canned peaches and canned peaches from all other countries, except China, supplying the New Zealand market. Of the main countries supplying New Zealand with preserved peaches, China is the only country not currently subject to anti-dumping duties.
232. The information on the import volume and import prices of Chinese preserved peaches suggests that HWL is facing volume and pricing competition from Chinese imports along with continued volume and pricing competition from South Africa although the price competition from the South African imports is mitigated to a certain extent by the anti-dumping duties in place on one of the two South African producers exporting to New Zealand. Whether the Chinese imports are dumped and/or causing material injury to HWL will only be determined once the investigation has been completed. However, whether or not the Chinese imports are dumped, the information collected in this review shows that HWL is facing volume and pricing competition from imports other than from the South African imports.

### ***Changes in demand and patterns of consumption***

233. Section 8(2)(e)(ii) of the Act refers to contraction in demand or changes in the patterns of consumption as factors other than the dumped goods that may cause injury to the industry.
234. HWL considers that the main driver of sales remains price. HWL notes that there has been a recent decrease in demand for canned fruit in general, led by a decline in ambient fruit demand. The company attributes this decline in demand to changes in consumption patterns reflecting an organic decline of the preserved peach market which have led to a decline in demand.
235. MBIE's own research indicates that there is some consumer concern that canned fruit may not be as nutritious as fresh fruit, although this is disputed. There also appears to be a gradual trend away from the use of high fructose corn syrup.<sup>23</sup>
236. MBIE concludes that, while consumer preferences may be changing gradually, there is no evidence of a significant change in the pattern of consumption or demand in New Zealand. MBIE is satisfied that any injury arising from this factor has not been attributed to dumping.

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

237. In its application, HWL stated that it is not aware of any restrictive trade practices currently affecting the New Zealand industry.
238. MBIE notes that in New Zealand competition is regulated by the Commerce Commission. MBIE is nevertheless required under section 8(2)(e)(iii) of the Act to assess restrictive trade practices of, and competition between, overseas and New Zealand producers as factors other than the dumped goods that may have injured or are injuring the industry.
239. In this respect MBIE notes that the Commerce Commission undertook a 2022 study<sup>24</sup> into whether competition in the grocery sector is working well, and if not, what could be done to improve it. While the Commerce Commission noted there were a number of issues facing suppliers and consumer, MBIE notes that the Commerce Commission's findings did not refer to the impact of anti-dumping action on competition. There was also no evidence brought to MBIE's attention that suppliers of preserved peaches to New Zealand's two supermarket chains would experience different treatment depending on whether goods are produced in New Zealand or imported.

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<sup>23</sup> <https://produceprocessing.net/article/canning-industry-focused-on-drawing-new-customers/>

<sup>24</sup> <https://comcom.govt.nz/about-us/our-role/competition-studies/market-study-into-retail-grocery-sector>

240. MBIE notes that there are significant volumes of imports of canned peaches available from countries such as Australia, South Africa, China, Spain and Greece which ensures that the New Zealand market is not monopolised by the New Zealand industry. While anti-dumping duties are imposed on imports of canned and preserved peaches from a number of these countries, the duties are targeted at producers and product types that were found to have been dumped. The duties are not imposed on all exporters and all product types from these sources. No information has been provided in the review to indicate that conditions of competition in the New Zealand market between overseas producers and the New Zealand producer have changed in recent years.
241. MBIE is satisfied that any injury arising from restrictive trade practices or changes in competition between overseas producers and the New Zealand producer has not been attributed to dumping.

### ***Developments in Technology***

242. Section 8(2)(e)(iv) of the Act refers to developments in technology as factors other than the dumped goods that may have injured or are injuring the industry.
243. HWL noted in its application that it didn't believe there is any evidence of a technology development relevant to the consideration of material injury and that it understands its method of processing peaches is similar to that of other processors. HWL noted that it continues to produce in cans and explained that recently it has invested in newer equipment that is based on better technology that will improve product quality.
244. MBIE is aware that there are products entering the market in plastic containers, rather than in cans, but this has been the case for some time and does not reflect any recent significant development in technology. HWL does not have the capacity to produce peaches in plastic pottles and plastic jars. HWL continues to produce peaches in cans and has no plans to change this.
245. MBIE has no information that would indicate there has been a significant change in technology that could contribute to or cause material injury to the domestic industry. MBIE is satisfied that any injury arising from developments in technology have not been attributed to dumping.

### ***Exports of New Zealand Producers***

246. Section 8(2)(e)(v) of the Act refers to the export performance and productivity of the New Zealand producers as factors other than the dumped goods that may cause injury to the industry.
247. In any given year, HWL exports a negligible volume of canned peaches to the Pacific Islands mainly to the food service sector. MBIE considers that such a relatively small export volume, at the prices achieved, would not have injured HWL. Productivity would not be adversely affected either, as these peaches are produced at the same time as the rest of HWL's canned peach production.
248. MBIE concludes that the export performance and productivity of the New Zealand producer are not a cause of injury to the New Zealand domestic industry.

### ***Imports by the New Zealand Industry***

249. Section 8(2)(f) of the Act requires the Chief Executive to have regard to the nature and extent of importations of dumped goods by New Zealand producers of like goods, including the value, quantity, frequency, and purpose of any such importation.
250. HWL did not import any canned peaches from South Africa during the dumping investigation period (1 January to 31 December 2024). HWL stated that in times of short supply it needs to import canned peaches, which may be subject to trade remedies. HWL canned peach imports, apart from country of origin declarations, are labelled the same as the New Zealand products and are sold at the same regular price. The sale of these products in the New Zealand market protects the market share, shelf

space and consumer goodwill for New Zealand canned peaches in a time of shortage which, the company claims, does not cause injury to HWL.

251. Customs NZ data confirms that HWL did not import canned peaches from South Africa over the POR(D) although it did import from China to supplement its domestic production in the wake of Cyclone Gabrielle's impact on the domestic peach crop. HWL's imports are subject to the payment of anti-dumping duties in the same manner as other importers' imports of these goods.
252. MBIE is satisfied that any injury from imports by the New Zealand industry has not been attributed to dumping.

### ***Other matters***

253. Factors other than imports of the subject goods, could be affecting the performance of the domestic industry, including the impact of bad weather events.

### **Severe weather events**

254. As noted above, Cyclone Gabrielle impacted upon Hawkes Bay peach orchards which affected HWL's ability to use local harvest to meet total domestic demand during 2023 and 2024. The company needed to import canned peaches from abroad and this issue has been addressed above under "Imports by the New Zealand Industry".

### **Imports from China**

255. As noted above, MBIE recently initiated an anti-dumping investigation into preserved peaches from China. In its application for the present review, HWL referenced these imports from China, which it claimed are also currently being dumped and causing material injury. MBIE is yet to make any dumping or material injury findings in respect of these Chinese imports.
256. While undertaking the injury analysis for the present review, as discussed at section 4.1.1 above, MBIE's assessment focusses on the likely impact of the removal of anti-dumping duties on South Africa during the forecast injury period to 31 December 2026, assuming all other factors remain unchanged. This is on the basis that:
- With anti-dumping duties currently in place for the dumped subject goods from South Africa, MBIE would not expect the industry to currently suffer material injury caused by that dumping.
  - The 2026 period is the period during which HWL considers that the effect of the removal of current duties on South African imports on its financial performance will largely be felt.
257. MBIE is therefore of the view that any potentially injurious effects of Chinese imports are not being attributed to the South African goods subject to this review.

## **4.6.4 Conclusions on other causes of injury**

258. The demonstration of a causal relationship between dumped imports and any current or likely injury must be based on an examination of all relevant evidence and known factors other than the dumped imports causing/likely to cause injury to the domestic industry. Any injury, or likely continuation or recurrence of injury, caused by factors other than dumping must not be attributed to dumped imports.
259. MBIE is satisfied that injury caused by other causes of injury set out in the Act has not been attributed to dumped imports, and that there is sufficient evidence that future dumping from South Africa is likely to cause a recurrence of material injury to HWL. This is on the basis that:
- While consumer preferences may be changing gradually, there have been no significant changes in the pattern of consumption or demand in New Zealand, therefore any injury arising from this factor has not been attributed to dumping.

- There is no evidence of any injury arising from restrictive trade practices or changes in conditions of competition between overseas producers and the New Zealand producer, therefore such injury has not been attributed to the dumping of imports from South Africa.
- MBIE has no information indicating there has been a significant change in technology that could contribute to or cause material injury to the domestic industry, therefore any consequent injury has not been attributed to the dumping from South Africa.
- Export performance and productivity of the New Zealand producer are not a cause of injury to the New Zealand domestic industry on the basis that:
  - HWL's negligible volume of exports, at the prices achieved, would not have injured HWL.
  - Productivity would not be adversely affected due to the exports as HWL produces its exported peaches at the same time as the rest of HWL's canned peach production.
- Injury from imports by the New Zealand industry has not been attributed to dumping as HWL did not import any canned peaches from South Africa during the POI(D).
- Injury, or possible injury, caused by other factors are not being attributed to South African imports.

## 4.7 Conclusions on the Continuation or Recurrence of Injury

260. In relation to the likelihood of a recurrence of material injury should anti-dumping duties expire, MBIE concludes that:

- Previous behaviour, and the competitive pricing of canned peaches from South Africa, indicates that in the absence of anti-dumping duties, imports of canned peaches from South Africa will likely increase in volumes.
- A recurrence of dumping of subject goods from South Africa is likely to result in continued price undercutting, with consequent price suppression.
- Consequent upon the likely price effects and if duties are not continued:
  - There is likely to be an adverse effect on output, sales volume and revenue, HWL's market share and on EBIT, cashflow, employment, wages and growth (the last if HWL looks to match the lower priced, dumped imports from South Africa).
  - Reductions in sales volume or significant effects on HWL's market share are unlikely in the foreseeable future (the latter depends on whether HWL decides to defend its market share).
  - It is difficult to meaningfully identify the injurious impact of a removal of anti-dumping duties on productivity, ROI and utilisation of production capacity, particularly given the difficulty in separately measuring any possible negative effects on these factors relating to canned peaches as opposed to other products that share common production facilities.
  - Similarly, it is difficult to reach any meaningful conclusion on impacts on capital requirements and investments that are specific to canned peaches, and inventory levels are not a good indicator of given HWL aims to sell its full inventory over the season.
  - The magnitude of the margin of dumping by Langeberg is likely to contribute to the injurious effects of the dumped goods if the duties are removed.

261. MBIE has reviewed other causes of injury and is satisfied that the likelihood of injury arising from other causes has not been attributed to the dumped goods.

262. On the basis of the above considerations, MBIE concludes that if the anti-dumping duties expire, dumped imports of canned peaches from South Africa by suppliers other than Rhodes are likely to continue and result in the recurrence of material injury to the domestic industry.

## 5. Rate of Anti-Dumping Duty

### 5.1 Legal Basis

263. Section 17G(2)(a) of the Act requires that, if the Minister makes an affirmative determination under section 17G(1), they must determine the rate or amount of duty, in accordance with section 10E of, that will form the basis for full review Stage 2. Section 10E provides, in respect of dumped goods, that:
- The Minister may determine different rates or amounts of duty for named exporters and a residual rate or amount for all other exporters from the same country as a named exporter.
  - The Minister must, in determining the rate or amount of the duty, have regard to:
    - the desirability of ensuring that the rate or amount is not greater than is necessary to prevent the material injury or a recurrence of the material injury; remove the threat of material injury to an industry; or prevent the material retardation to the establishment of an industry; and
    - New Zealand's obligations as a party to the WTO Agreement.
  - The rate or amount must not exceed the difference between the goods' export price and normal value.

### 5.2 Calculation of Rate or Amount of Anti-dumping Duties

264. **Confidential Table A13** in Annex 1 contains MBIE's duty rate calculations. MBIE derived this rate by:
- Calculating a non-injurious free-on-board amount (NIFOB) based on the domestic industry's non-injurious price (NIP) for the like good categories.<sup>25</sup>
  - Calculating a normal value (value for duty equivalent) (NV(VFDE)) for products sold in South Africa.<sup>26</sup>
  - Comparing the NIFOB to the NV(VFDE). Where the NIFOB is lower than the NV(VFDE), a lesser duty than the margin of dumping may be appropriate, per section 10E(2)(a) of the Act.
265. In the present review, NIFOB amounts were derived by deducting from the ex-factory NIP for Oak canned peaches the costs incurred between the FOB level in South Africa and the ex-wharf level in New Zealand. These costs included sea freight and insurance, New Zealand port charges, and a 5% Customs duty. The ex-wharf level was chosen as the starting point because it represents the level at which the imported goods first compete with the domestic industry's like goods.
266. NV(VFDE) values were calculated by adding to the notional ex-factory normal values in ZAR for all known costs incurred by the South African supplier up to the FOB level in South Africa, and converting this amount to NZD using the average exchange rate over the POI(D) from [X-Rates.com](https://www.x-rates.com/).

### 5.3 Proposed Rates or Amounts of Anti-dumping Duties

267. In accordance with the section 10E(2)(a), which prioritises the minimum duty necessary to eliminate injury, MBIE recommends the following *ad valorem* rates of duty:

**Table 11: Anti-dumping duty rates**

Producer	Goods	Dumping margin	Proposed duty
Langeberg & Ashton Foods	A10 cans (2.95kg /3kg/ 3.06kg)	No dumping	0%
	Other can sizes (E.g. 410g/415g/420g/820g/825g)	Dumping	24.5%
Rhodes Foods Pty Ltd.	All can sizes	No dumping	0%
All other producers	All can sizes	No dumping	0%

<sup>25</sup> NIP is the price at which the domestic industry could operate (e.g. to recover all costs) but for the injury caused by the dumped goods. NIP was calculated by adding the price undercutting margin to the domestic ex-factory price/kg.

<sup>26</sup> NV(VFDE) represents likely non-dumped prices at the FOB level. It is the price at which goods produced by the foreign manufacturer for sale in their home country would have been exported to New Zealand, if exported at their normal value, at the FOB level in NZD (see paragraph 281).

## 6. Conclusions

268. MBIE has considered the legal tests for assessing dumping (sections 3-6 of the Act), material injury and causation (section 8 of the Act) in the context of a full review (section 17F-G of the Act). Given available evidence, MBIE's conclusions on the matters it must to investigate in Stage 1 are summarised below:

- **Dumping (sections 17F and 3-5 of the Act):** The subject goods produced by Langeberg, other than A10 cans, are currently being dumped, while subject goods produced by Rhodes, and A10 cans produced by Langeberg, are not being dumped. This finding is based on a proper comparison of the export prices and normal values established for Rhodes and Langeberg for each exported product on a weighted average basis (refer sections 3.1-3.5 of this Report).
- **Likelihood of continuation or recurrence:** If current anti-dumping duties expire, or are otherwise removed or varied, it is likely, that the identified dumping will continue while dumping is unlikely to recur for currently non-dumped subject goods (refer sections 3.6-3.7 of this Report) as:
  - The subject goods currently being dumped were found to have been dumped following the 2019 full review, and current dumping margins are higher than 2019 margins despite the presence of an anti-dumping duty. MBIE considers dumping at the levels assessed to be an indication that, in absence of any anti-dumping duties, the dumping identified will continue.
  - It is unlikely that export prices will increase in the absence of an anti-dumping duty. This is because South Africa is currently the second largest source of subject goods into New Zealand, and the commercial nature and competitive context of price negotiations with importers leaves room for the ongoing negotiation of low export pricing.
  - Based on the available evidence on South African market conditions, there are unlikely to be any market developments that would affect the normal values of canned peaches in South Africa relative to their export price to New Zealand.
- **Material injury (sections 17F and 8(2)):** Material injury to the domestic industry is likely to recur if duties expired or were otherwise removed or varied (refer section 4 of this Report) as:
  - **Import volumes (section 8(2)(a)):** On balance, the removal of duties would likely result in a significant increase in the volume of dumped imports from South Africa (refer sections 4.3-4.4 of this Report). This is because:
    - Demand for South African imports is highly price elastic, creating a strong incentive for importers to increase import volumes of lower-priced (duty-free) South African imports.
    - Without anti-dumping duties in place, South African canned peaches are likely to carry a price advantage in New Zealand when compared with HWL's products and imports from other main overseas exporters with the exception of China.
    - On balance, MBIE considers New Zealand importers can (and are interested in) managing increased imports from South Africa. Importers already have systems and relationships in place with South African exporters and can be incentivised by more competitive pricing.
    - Entry into the New Zealand market continues to be easy, and there are few barriers preventing new sources of supply.
    - Evidence is inconclusive on whether increases in South African exports (within limited production capacity) to a small New Zealand market could cause material injury. There is also no evidence of exchange rate movements affecting import volumes to New Zealand.
  - **Price effects (Sections 8(2)(b) and (c) of the Act):** The removal of duties is likely to result in significant price undercutting and price suppression in relation to prices for HWL's like goods. It is, however, unlikely to result in significant price depression (refer section 4.5 of the Report).

- **Consequent economic impacts** (refer sections 4.6.1-4.6.2 of this Report):
  - **Section 8(2)(a):** Duty removal is likely to adversely affect HWL's output<sup>27</sup>, revenue<sup>28</sup>, market share<sup>29</sup> and profits<sup>30</sup>. ROI and production capacity utilisation depends on broader factors making it difficult to meaningfully identify the impact of duty removal. As such, MBIE has considered these factors but not given them particular weight.
  - **Factors affecting domestic prices (Section 8(2)(d)(ii)):** MBIE has examined this factor in the context of the **broader** economic impact of dumped goods on the industry.
  - **Magnitude of margin of dumping (Section 8(2)(d)(iii)):** The magnitude of the current margin of dumping by Langeberg (**being** both significant, and higher than identified in 2019 despite the imposition of duties) is likely to contribute to injury if duties are removed.
  - **Other actual and potential negative effects (Section 8(2)(d)(iv)):** The removal of duties is likely to result in an adverse impact on HWL's cashflows<sup>31</sup>, employment and wages,<sup>32</sup> and growth<sup>33</sup>. MBIE has considered, but not given particular weight to, effects on inventory and HWL's ability to raise capital and make investments. This is because it is difficult to meaningfully identify the injurious impact of a removal of duties on those factors.
- **Causation (Section 8(2)(e)):** MBIE is satisfied that the likelihood of injury arising from other causes, including potential impacts of imports from China, has not been attributed to the dumped goods from South Africa. (refer sections 4.6.3-4.6.4 of this Report)
- Given the above findings, on balance, the continued imposition of duties on the subject goods for South African producers other than Rhodes, and on A10 cans produced by Langeberg, is necessary to offset dumping and prevent material injury to the New Zealand industry.

269. On this basis, MBIE recommends that the Minister make the following Stage 1 determinations:

- An affirmative determination that the continued imposition of the current duties on the imports, other than A10 cans, produced by Langeberg is necessary to offset dumping and that material injury to the industry would be likely to recur if the duties expire.
- A consequent determination of ad valorem anti-dumping duties at the rates set out in section 5 above, and direct MBIE to immediately start full review Stage 2 regarding the dumped products.
- A negative determination in relation to imports produced by all other South African producers, and A10 cans produced by Langeberg, that the imposition of duties is *not* necessary to offset dumping and that material injury to the industry is *not* likely to recur if the duties expire

## Trade and Supply Chains Communications, Infrastructure and Trade

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<sup>27</sup> 2026 sales are projected to decrease if duties are removed and increase if duties remain in place.

<sup>28</sup> HWL's projections suggest that the removal of duties would prevent it from incorporating cost increases into its selling prices, which would in turn prevent it from achieving a financially viable level of sales revenue.

<sup>29</sup> The market share trend since the 2020 removal of duties on one South African manufacturer shows an increase in the size of the New Zealand market, an increase in the market share (and volume) of South African imports and a corresponding decrease in HWL's market share.

<sup>30</sup> 2026 EBIT is projected to increase significantly if duties remain and decrease significantly if duties are removed.

<sup>31</sup> This is on the basis that any adverse impacts on sales revenue and EBIT, discussed above, are likely to have negative effects on HWL's cash flow.

<sup>32</sup> This is on the basis that employment and wage levels will depend on output, and output is likely to mirror sales volume (which is likely to be adversely affected if duties are removed).

<sup>33</sup> This is on the basis that any potential adverse impact on sale revenue, EBIT and ROI is likely to have an adverse impact on the growth of the business.

## **7. CONFIDENTIAL Annex 1 – Dumping and Injury Calculations**



## 8. Annex 2 – Summary of Submissions

A. Rhodes Food Group submission	MBIE's comments
<b>A1 Imported subject product can sizes</b>	
Rhodes noted there were instances in the EFC Report where imported subject product can sizes needed to be amended to reflect imported can sizes during the POR(D). Rhodes noted that it exported only the subject products in 410g, 825g and 3kg variants and is unaware of any South African canner producing 415g, 850g and 2.65kg variants.	MBIE notes this submission and has updated typographical errors referencing subject product can sizes accordingly. MBIE notes that these updates do not affect the outcomes of MBIE's quantitative analysis.
<b>A2 Findings related to the continuation or recurrence of dumping</b>	
<p>Rhodes submitted that the factors listed in paragraph 111 of the EFC Report, which sets out MBIE's findings relating to the continuation or recurrence of dumping, do not support MBIE's conclusion in paragraph 112 that: <i>"The dumping of A10 cans from L&amp;AF and of all subject goods from Rhodes is unlikely to recur."</i></p> <p>Rhodes submitted that all subject goods it exported to New Zealand Rhodes are not subject to anti-dumping duties and are not being dumped. It also noted that it is unlikely that dumping will continue or recur in respect of these goods if it continued to operate without duties in place.</p>	MBIE agrees that no subject goods from Rhodes are subject to anti-dumping duties and are not currently being dumped. As mentioned by Rhodes, MBIE notes that the subject goods exported by Rhodes are not being dumped. MBIE considers the statement <i>"The dumping of A10 cans from L&amp;AF and of all subject goods from Rhodes is unlikely to recur"</i> , aligns with this submission made by Rhodes.
<b>A3 Price Advantage</b>	
Rhodes submitted, in relation to paragraphs 130 – 134 that, as subject goods from Rhodes are not subject to anti-dumping duties and are not being dumped, Rhodes subject goods do not have a price advantage in the absence of anti-dumping duties. Paragraphs 130-134 consider the likelihood of a recurrence of significant volumes of dumped imports sufficient to cause material injury.	MBIE acknowledges that Rhodes subject goods are not subject to anti-dumping duties nor are they being dumped. MBIE notes the price advantage paragraphs in question relate to the likelihood that South African imports as a whole (i.e. not only from Rhodes) could, in the absence of duties, be priced competitively in the New Zealand market as compared to domestic producers and other countries. MBIE considers this to be a broader assessment of price advantage carried by South African producers, rather than individual consideration of particular producers. MBIE also notes that its broader price

	advantage findings do not, in the present review, affect Rhodes' position in relation to dumping or the likely recurrence of dumping.
<b>B. Brooke Holdings Submission</b>	<b>MBIE Comments</b>
<b>A1. Dumping by Langeberg and Ashton Foods</b>	
Brooke Holdings submits that MBIE's determination that Langeberg's retail packs are dumped—while Rhodes's are not— is difficult to comprehend as both manufacturers operate in similar growing, procurement, production, economic and export environments. Brooke Holdings submits that the disparity of findings appears to stem from a flawed interpretation of 'Normal Value' given that Brooke Holdings notes that MBIE used Rhodes' domestic pricing (based on choice grade peach) as a benchmark against Langeberg's export pricing, which largely consists of lower-priced irregular slices. Brooke Holdings notes that Langeberg packs three grades (choice, standard, irregular), and both companies sell choice grade domestically. Brooke Holdings notes that notably, no dumping was found for A10/3kg packs in either the 2019 or current review, even though Langeberg treats these similarly to retail packs in terms of cost and pricing, suggesting a methodological inconsistency.	<p>MBIE's finding that Rhodes is not dumping, but Langeberg is, is based on differences in the export price of both producers. In response to Brooke Holdings' submission regarding normal value calculations, MBIE acknowledges that there may differences in the export product grade, which would ideally be fully reflected in the comparable domestic products from which normal values are calculated. Noting Langeberg's formal decision not to participate in this review, and in the absence of its normal value information, MBIE does not have available information on the costs of non-choice grade peaches used in domestic South African products.</p> <p>As such, it has not been possible to make any further adjustments with regards to peach grade for the Langeberg normal value calculation. In these circumstances, MBIE has used the best available information to determine a normal value for Langeberg using normal value information provided Rhodes. While MBIE considered alternative options to using information provided by Rhodes, MBIE considered the information provided by Rhodes to be the best available information. While MBIE's consequent findings may not fully reflect Langeberg's current operations or circumstances, MBIE is of the view that, given the high volume of Langeberg's exports to New Zealand, an assessment, even if imperfect, is needed.</p>
<b>A2. Impact of South African production capacity on import volumes</b>	
Brooke Holdings submits that the South African canned fruit industry is export-driven and operating near full capacity, with no ability to acquire additional fresh peach for increased production, and that this directly contradicts claims by the New Zealand domestic industry that Langeberg could flood the market with cheap canned peach if anti-dumping duties were removed. Brooke Holdings submits that over nearly three decades, such claims have never materialized, and HWL itself has experienced difficulty sourcing additional	MBIE acknowledges Brooke Holdings' view that the South African canned fruit industry is export driven and operating near full capacity. Given the competing evidence from HWL and Rhodes, and in the absence of evidence from Langeberg, MBIE has found that the evidence on South African producers' capacity (as a whole) to increase export volumes to New Zealand is inconclusive. MBIE also notes that it is difficult, in the absence of information on Langeberg's production capacity and intent, to make a more definite

volumes from Langeberg when needed, even importing “dumped” stock to cover domestic shortfalls.	finding with regards to that manufacturer.
<b>A3. Evidence of injury</b>	
Brooke Holdings notes the EFC Report’s findings that Rhodes’ canned peach exports to New Zealand are not dumped and do not cause injury. Brooke Holdings submits that Langeberg’s exports are priced similarly to Rhodes on a grade-to-grade basis, and both companies lack surplus capacity or stock. This makes it implausible that removing duties on Langeberg would result in injury to HWL. The argument that Langeberg’s exports would harm the domestic industry is further weakened by the fact that HWL has previously relied on South African imports to meet demand.	MBIE notes that, based on the information available as part of this review, there is evidence of price undercutting and price depression adversely affecting certain economic factors for HWL. It is on this basis that MBIE has found that the continued dumping is causing material injury to HWL.  With regards to HWL’s purchase of South African imports, MBIE notes that HWL did not purchase South African imports during the POR(D). HWL has submitted that such purchases do not cause injury as they are made to offset domestic shortages and sold at HWL’s regular prices. Conversely, sales not made by HWL are priced differently and, as identified in MBIE’s analysis, do cause injury to the domestic industry.
<b>A4. Market share shifts</b>	
Brooke Holdings submits that HWL’s claims of market share loss due to South African imports overlook the role of private label dynamics. Brooke Holdings notes that South African canned peaches are sold exclusively under private labels in New Zealand, which supermarkets increasingly promote, and that HWL previously supplied this segment but exited around 2007, creating a gap that Langeberg was invited to fill. Brooke Holdings submits that recent increases in South African exports (2021–2023) were driven by domestic supply shortages in New Zealand due to weather events, not pricing. Brooke Holdings submits that, given the lack of surplus capacity in South Africa and declining global demand for canned fruit, HWL’s market share is likely to continue declining regardless of anti-dumping duties, making continued penalties on Langeberg unjustified.	MBIE notes that, based on the information available, despite an increase in the size of the market in 2024, HWL’s market share has decline and the market share of South African exporters has increased. While prior decreases in market share may have been driven by domestic supply shortages in New Zealand due to weather events, the fact that there has been a further decline for HWL in 2024, rather than a recovery, and a further increase in South African market share in 2024, suggests that pricing does play a role in HWL’s decline in market share.

## 9. Annex 3 – Legal Provisions

### A1.1. Trade (Anti-dumping and Countervailing Duties) Act 1988

#### 3 Interpretation

(1) In this Act, unless the context otherwise requires,—

**chief executive** means the chief executive of the Ministry

**Customs** or **the Customs** has the meaning given to Customs by [section 5\(1\)](#) of the Customs and Excise Act 2018

**day**, except in [sections 13A\(1\), 17, 17B\(4\), 17K\(2\), 17O\(3\) to \(5\), 17S\(4\), and 17W\(4\)](#), means any day of the week other than a day in the period beginning with 25 December in any year and ending with 15 January in the following year

**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

**emergency** has the meaning given to it in [section 4](#) of the Civil Defence Emergency Management Act 2002

**exporter** has the meaning given to it in [section 5\(1\)](#) of the Customs and Excise Act 2018

**foreign country** means any country other than New Zealand

**foreign Government** means—

- (a) the Government of a foreign country:
- (b) a provincial, State, municipal, local, or regional Government or authority of a foreign country:
- (c) a body that exercises authority for an association of foreign countries:
- (d) a person, agency, or institution acting for, or on behalf of, a Government or body referred to in paragraph (a) or paragraph (b) or paragraph (c)

**full review stage 1** means stage 1 of a full review as described in [sections 17F](#) and [17G](#)

**full review stage 2** means stage 2 of a full review as described in [sections 17H to 17J](#)

**goods** means all kinds of movable personal property, including animals

**importer** has the meaning given to it in [section 5\(1\)](#) of the Customs and Excise Act 2018

**investigation step 1** means step 1 of an investigation as described in [sections 10C to 10E](#)

**investigation step 2** means step 2 of an investigation as described in [sections 10F to 10H](#)

**like goods**, in relation to any goods, means—

- (a) other goods that are like those goods in all respects; or
- (b) in the absence of goods referred to in paragraph (a), goods which have characteristics closely resembling those goods

**Minister** means the Minister of the Crown for the time being responsible for the administration of this Act

**Ministry** means the department of State that, with the authority of the Prime Minister, is responsible for the administration of this Act

**new exporter** means an exporter who—

- (a) exports goods into New Zealand that are subject to an anti-dumping or a countervailing duty imposed under this Act; and
- (b) did not export those goods into New Zealand during the period of the original investigation that led to the duty being imposed; and
- (c) is not related to an exporter who did export those goods into New Zealand during the period of the original investigation that led to the duty being imposed

**notified parties** means—

- (a) the Government or Governments of the country or countries of the export of goods to which the notice relates; and
- (b) exporters and importers known by the chief executive to have an interest in those goods; and
- (c) the applicant in relation to those goods; and
- (d) where the Minister or the chief executive is taking action under [section 18](#), the Government of the third country on behalf of whom the Minister or the chief executive is taking action

**shipment** has the meaning given to it in [section 2\(1\)](#) of the Tariff Act 1988

**specific subsidy** means a subsidy that is specific to an enterprise or industry, or a group of enterprises or industries, within the jurisdiction of a foreign Government

**specified period** means (other than in [section 14AA](#)),—

- (a) in the case of goods of Singaporean origin, 3 years; and
- (b) in the case of goods of any other origin, 5 years

**subsidised goods** means goods in respect of the production, manufacture, growth, processing, purchase, distribution, transportation, sale, export, or import of which a specific subsidy has been or will be paid, granted, authorised, or otherwise provided, directly or indirectly, by a foreign Government

**subsidy** includes any financial or other commercial benefit that has accrued or will accrue, directly or indirectly, to persons engaged in the production, manufacture, growth, processing, purchase, distribution, transportation, sale, export, or import of goods, as a result of any scheme, programme, practice, or thing done, provided, or implemented by a foreign Government; but does not include the amount of any duty or internal tax imposed on goods by the Government of the country of origin or country of export from which the goods, because of their exportation from the country of export or country of origin, have been exempted or have been or will be relieved by means of refund or drawback

**Tariff** has the meaning given to it in [section 2](#) of the Tariff Act 1988

**WTO Agreement** means the Agreement establishing the World Trade Organization adopted at Marrakesh on 15 April 1994.

- (2) For the purposes of this Act, a purchase or sale of goods shall not be treated as an arm's length transaction if—
- (a) there is any consideration payable for or in respect of the goods other than their price; or
  - (b) the price is influenced by a relationship between the buyer, or a related person, and the seller, or a related person; or
  - (c) in the opinion of the chief executive, the buyer, or a person related to the buyer, will, directly or indirectly, be reimbursed, be compensated, or otherwise receive a benefit for, or in respect of, the whole or any part of the price.
- (3) Where goods are imported into New Zealand and are purchased by the importer from the exporter (whether before or after exportation) for a particular price and the chief executive is satisfied, after having regard to—
- (a) the amount of the price paid or to be paid for the goods by the importer; and
  - (b) such other amounts as the chief executive determines to be costs necessarily incurred in the importation and sale of the goods; and
  - (c) the likelihood that the amounts referred to in paragraph (a) and paragraph (b) will be able to be recovered within a reasonable time; and
  - (d) such other matters as the chief executive considers relevant,—
- that the importer, whether directly or through a related person, sells those goods in New Zealand (whether in the condition in which they were imported or otherwise) at a loss, the chief executive may treat the sale of those goods as indicating that the importer or a related person will, directly or indirectly, be reimbursed, be compensated, or otherwise receive a benefit for, or in respect of, the whole or any part of the price for the purposes of subsection (2)(c).
- (4) For the purposes of this Act, a person shall be deemed to be related to another person if—
- (a) one of them directly or indirectly controls the other (within the meaning of subsection (5)); or
  - (b) both of them are directly or indirectly controlled by a third person (within that meaning); or
  - (c) together they directly or indirectly control a third person (within that meaning).
- (5) For the purposes of subsection (4), a person controls another person if the first-mentioned person is in a position, whether legally or operationally, to exercise restraint or direction over the other person.
- (6) For the purposes of this Act, where, during the exportation of goods to New Zealand, the goods pass in transit from a country through another country, that other country shall be disregarded in ascertaining the country of export of the goods.

### 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.

## Part 2 Notice and access to information

### 3F Access to relevant information

- (1) An interested party may ask the chief executive to provide copies of information relevant to an investigation, a full review, a limited review, a reassessment, or a new exporter reassessment.
- (2) Subsection (1) does not apply to—
  - (a) confidential information (unless the submitter of the confidential information consents to the confidential information being made available); or
  - (b) other information that the chief executive would be likely to withhold if it were requested under the [Official Information Act 1982](#).
- (3) The chief executive may request a submitter of information to provide the chief executive with—
  - (a) a summary, for access by interested parties, of confidential information or other information that the chief executive would be likely to withhold if it were requested under the [Official Information Act 1982](#); or
  - (b) reasons why a summary cannot be provided.
- (4) If no document is provided after a request under subsection (3) or if the chief executive is not satisfied with a document provided, the chief executive may disregard the relevant information from the investigation, full review, limited review, reassessment, or new exporter reassessment.
- (5) In this section, confidential information means information about which the submitter of the information has shown a good reason for the chief executive to believe 1 or more of the following:
  - (a) that making the information available would give a significant competitive advantage to a competitor of the submitter of confidential information:
  - (b) that making the information available would have a significantly adverse effect on—
    - (i) the submitter of confidential information; or
    - (ii) the person from whom the information was acquired by the submitter of the information; or
    - (iii) any person to whom the information relates:
  - (c) that the information should be treated as confidential for reasons other than the reasons described in paragraphs (a) and (b).

## **Part 3 Dumping, subsidy, and material injury**

### **4 Export price**

- (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; or
  - (b) where the purchase of the goods by the importer was not an arm's length transaction, and the goods are subsequently sold by the importer in the condition in which they were imported to a person who is not related to the importer, the price at which the goods were sold by the importer to that person less the sum of the following amounts:
    - (i) the amount of any duties and taxes imposed under any Act; and
    - (ii) the amount of any costs, charges, or expenses arising in relation to the goods after exportation; and
    - (iii) the amount of the profit, if any, on the sale by the importer or, where the chief executive so directs, an amount calculated in accordance with such rate as the chief executive determines as the rate of profit on the sale by the importer having regard to the rate of profit that would normally be realised on sales of goods of the same category by the importer where such sales exist; or
  - (c) where the purchase of the goods by the importer was not an arm's length transaction, and the goods are subsequently sold by the importer in a condition different from the condition in which they were imported, a reasonable price determined by the chief executive in the circumstances of the case.
- (2) Where—
- (a) goods are or are to be shipped to New Zealand on consignment and there is no known purchaser in New Zealand for the goods; or
  - (b) there is no exporter's sale price or no price at which the importer or a person not related to the importer, has purchased or agreed to purchase the goods,—

the export price, for the purposes of this Act, shall be determined in such manner as the chief executive considers appropriate having regard to all the circumstances of the exportation.



## **5 Normal value**

- (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) 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) 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),—

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.

- (4) Where the normal value of goods exported to New Zealand is to be ascertained in accordance with subsection (2), the chief executive shall make such adjustments as are necessary to ensure that the normal value so ascertained is properly comparable with the export price of those goods.
- (5) Where—
- (a) the actual country of export of goods imported or intended to be imported into New Zealand is not the country of origin of the goods; and
  - (b) the chief executive is of the opinion that the normal value of the goods should be ascertained for the purposes of this Act as if the country of origin were the country of export,—
- the chief executive may direct that the normal value of the goods shall be so ascertained.
- (6) Where the chief executive is satisfied, in relation to goods imported or intended to be imported into New Zealand, that—
- (a) the price paid for like goods—
    - (i) sold for home consumption in the country of export in sales that are arm's length transactions; or
    - (ii) sold in the country of export to a third country in sales that are arm's length transactions,—is, and has been for an extended period of time and in respect of a substantial quantity of like goods, less than the sum of—
    - (iii) such amount as the chief executive determines to be the cost of production or manufacture of the like goods in the country of export; and
    - (iv) such amounts as the chief executive determines to be reasonable amounts for administrative and selling costs, delivery charges, and other charges necessarily incurred in the sale of the like goods by the seller of the goods; and
  - (b) it is likely that the seller of those like goods will not be able to fully recover the amounts referred to in subparagraphs (iii) and (iv) of paragraph (a) within a reasonable period of time,—
- the price so paid for those like goods shall be deemed not to have been paid in the ordinary course of trade.

## **6 Export price and normal value**

- (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, or the normal value of goods to be ascertained under section 5, the normal value or export price, as the case may be, shall be such amount as is determined by the chief executive having regard to all available information.
- (2) For the purposes of subsection (1), the chief executive may disregard any information that the chief executive considers to be unreliable.

## **8 Material injury**

- (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), 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 negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investments:
  - (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.

- (3) For the purposes of this section, the chief executive may disregard any information that the chief executive considers to be unreliable.

**10E Determining rate or amount of anti-dumping or countervailing duty**

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

**Part 6 Review and reassessment**

***Full review: purpose, start, and stages***

**17C Purpose of full review**

The purpose of a full review is to investigate, in relation to an anti-dumping or a countervailing duty, whether—

- (a) continued imposition of the duty is necessary to offset dumping or subsidisation; and
- (b) material injury or threatened material injury to an industry, or material retardation of the establishment of an industry, would be likely to continue or recur if the duty expired or were otherwise removed or varied.

**17D Start of full review**

- (1) The chief executive must start a full review of a duty after receiving an application from an interested party that includes positive evidence justifying the need for a full review.
- (2) The chief executive may start a full review of a duty at the chief executive's discretion.
- (3) Subsection (4) applies if—
- (a) the chief executive starts a full review of an existing duty; and
  - (b) the duty would, apart from subsection (4), cease to be payable during the period of the investigation.
- (4) The existing duty does not cease to be payable during the period of the investigation and remains payable until the duty is—

- (a) terminated following a negative determination under section 17G(1); or
- (b) terminated following a determination that continuing to impose the duty is not in the public interest; or
- (c) replaced with a new duty under [section 17K\(2\)](#).

#### **17E Full review stages**

- (1) If the chief executive starts a full review under section 17D, the chief executive must carry out full review stage 1 first and then, if directed to do so by the Minister under section 17G(2), carry out full review stage 2.
- (2) The chief executive must give notice of a decision to start each stage of a full review as soon as practicable after the decision is made, and that notice must include the date on which each stage of the full review started or will start.

### ***Full review stage 1: dumping, subsidy, and material injury***

#### **17F Full review stage 1: investigation**

##### *Dumping, subsidy, and material injury*

- (1) If the chief executive starts a full review, the chief executive must investigate, in relation to an anti-dumping or a countervailing duty, whether—
  - (a) continued imposition of the duty is necessary to offset dumping or subsidisation; and
  - (b) material injury or threatened material injury to an industry, or material retardation of the establishment of an industry, would be likely to continue or recur if the duty expired or were otherwise removed or varied.

##### *Procedure*

- (2) The chief executive must, within 150 days after starting full review stage 1, give the notified parties written advice of the essential facts and conclusions that are likely to form the basis for a determination to be made by the Minister under [section 17G\(1\)](#).
- (3) The chief executive must give interested parties a reasonable opportunity—
  - (a) to present, in writing, all evidence relevant to the full review and, on justification being shown, to present that evidence orally; and
  - (b) on request being made by an interested party, to meet other interested parties with adverse interests in order that they may present opposing views.
- (4) Subsection (2) does not require the chief executive to provide information that would not be available to an interested party under section 3F.
- (5) The chief executive must report the findings of full review stage 1 to the Minister.

#### **17G Full review stage 1: determination**

- (1) Within 180 days after the start of full review stage 1 (but not less than 30 days after the written advice is given by the chief executive under section 17F(2)), the Minister must determine whether—
  - (a) continued imposition of the duty is necessary to offset dumping or subsidisation; and

- (b) material injury or threatened material injury to an industry, or material retardation of the establishment of an industry, would be likely to continue or recur if the duty expired or were otherwise removed or varied.
- (2) If the Minister makes an affirmative determination, the Minister must—
  - (a) determine the rate or amount of anti-dumping or countervailing duty, in accordance with section 10E, that will form the basis for full review stage 2 (which may be the same rate or amount as originally applied or a different rate or amount); and
  - (b) direct the chief executive to immediately start full review stage 2.
- (3) If the Minister makes a negative determination, the Minister must terminate the imposition of the duty under [section 17Y\(1\)](#).
- (4) The Minister must give notice of a determination under subsection (1) as soon as practicable after the determination is made.
- (5) In this section,—

**affirmative determination** means a determination made by the Minister under subsection (1) that—

  - (a) continued imposition of the duty is necessary to offset dumping or subsidisation; and
  - (b) material injury or threatened material injury to an industry, or material retardation of the establishment of an industry, would be likely to continue or recur if the duty expired or were otherwise removed or varied

**negative determination** means a determination made by the Minister under subsection (1) that is not an affirmative determination.

### ***Full review: continued imposition of duty***

#### ***Subpart 5—Termination***

##### **17Y Termination of anti-dumping or countervailing duty**

- (1) The Minister may, by notice, terminate, in whole or in part, the imposition of an anti-dumping or a countervailing duty.
- (2) The date of termination specified in the notice may be before the date of the notice.

## **A1.2 World Trade Organization (WTO) Agreement on the Implementation of Article VI of GATT 1994**

**Article 2.2** When there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country or when, because of the particular market situation or the low volume of the sales in the domestic market of the exporting country<sup>34</sup>, such sales do not permit a proper comparison, the margin of dumping shall be determined by comparison with a comparable price of the like product when exported to an appropriate third country, provided that this price is representative, or with the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits.

**2.2.1** Sales of the like product in the domestic market of the exporting country or sales to a third country at prices below per unit (fixed and variable) costs of production plus administrative, selling and general costs may be treated as not being in the ordinary course of trade by reason of price and may be disregarded in determining normal value only if the authorities<sup>(3)</sup> determine that such sales are made within an extended period of time <sup>(4)</sup> in substantial quantities <sup>(5)</sup> and are at prices which do not provide for the recovery of all costs within a reasonable period of time. If prices which are below per unit costs at the time of sale are above weighted average per unit costs for the period of investigation, such prices shall be considered to provide for recovery of costs within a reasonable period of time.

**2.2.1.1** For the purpose of paragraph 2, costs shall normally be calculated on the basis of records kept by the exporter or producer under investigation, provided that such records are in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the product under consideration. Authorities shall consider all available evidence on the proper allocation of costs, including that which is made available by the exporter or producer in the course of the investigation provided that such allocations have been historically utilized by the exporter or producer, in particular in relation to establishing appropriate amortization and depreciation periods and allowances for capital expenditures and other development costs. Unless already reflected in the cost allocations under this sub-paragraph, costs shall be adjusted appropriately for those non-recurring items of cost which benefit future and/or current production, or for circumstances in which costs during the period of investigation are affected by

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<sup>2</sup> Sales of the like product destined for consumption in the domestic market of the exporting country shall normally be considered a sufficient quantity for the determination of the normal value if such sales constitute 5 per cent or more of the sales of the product under consideration to the importing Member, provided that a lower ratio should be acceptable where the evidence demonstrates that domestic sales at such lower ratio are nonetheless of sufficient magnitude to provide for a proper comparison.

<sup>3</sup> When in this Agreement the term "authorities" is used, it shall be interpreted as meaning authorities at an appropriate senior level.

<sup>4</sup> The extended period of time should normally be one year but shall in no case be less than six months.

<sup>5</sup> Sales below per unit costs are made in substantial quantities when the authorities establish that the weighted average selling price of the transactions under consideration for the determination of the normal value is below the weighted average per unit costs, or that the volume of sales below per unit costs represents not less than 20 per cent of the volume sold in transactions under consideration for the determination of the normal value.

start-up operations.<sup>(6)</sup>

**2.2.2** For the purpose of paragraph 2, the amounts for administrative, selling and general costs and for profits shall be based on actual data pertaining to production and sales in the ordinary course of trade of the like product by the exporter or producer under investigation. When such amounts cannot be determined on this basis, the amounts may be determined on the basis of:

- (i) the actual amounts incurred and realized by the exporter or producer in question in respect of production and sales in the domestic market of the country of origin of the same general category of products;
- (ii) the weighted average of the actual amounts incurred and realized by other exporters or producers subject to investigation in respect of production and sales of the like product in the domestic market of the country of origin;
- (iii) any other reasonable method, provided that the amount for profit so established shall not exceed the profit normally realized by other exporters or producers on sales of products of the same general category in the domestic market of the country of origin.

**Article 2.4** A fair comparison shall be made between the export price and the normal value. This comparison shall be made at the same level of trade, normally at the ex-factory level, and in respect of sales made at as nearly as possible the same time. Due allowance shall be made in each case, on its merits, for differences which affect price comparability, including differences in conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics, and any other differences which are also demonstrated to affect price comparability.<sup>7</sup> In the cases referred to in paragraph 3, allowances for costs, including duties and taxes, incurred between importation and resale, and for profits accruing, should also be made. If in these cases price comparability has been affected, the authorities shall establish the normal value at a level of trade equivalent to the level of trade of the constructed export price, or shall make due allowance as warranted under this paragraph. The authorities shall indicate to the parties in question what information is necessary to ensure a fair comparison and shall not impose an unreasonable burden of proof on those parties.

**2.4.1** When the comparison under paragraph 4 requires a conversion of currencies, such conversion should be made using the rate of exchange on the date of sale<sup>8</sup>, 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.

**2.4.2** Subject to the provisions governing fair comparison in paragraph 4, the existence of margins of dumping during the investigation phase shall normally be established on the basis of a comparison

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<sup>6</sup> The adjustment made for start-up operations shall reflect the costs at the end of the start-up period or, if that period extends beyond the period of investigation, the most recent costs which can reasonably be taken into account by the authorities during the investigation. [back to text](#)

<sup>7</sup> It is understood that some of the above factors may overlap, and authorities shall ensure that they do not duplicate adjustments that have been already made under this provision. [back to text](#)

<sup>8</sup> Normally, the date of sale would be the date of contract, purchase order, order confirmation, or invoice, whichever establishes the material terms of sale.



of a weighted average normal value with a weighted average of prices of all comparable export transactions or by a comparison of normal value and export prices on a transaction-to-transaction basis. A normal value established on a weighted average basis may be compared to prices of individual export transactions if the authorities find a pattern of export prices which differ significantly among different purchasers, regions or time periods, and if an explanation is provided as to why such differences cannot be taken into account appropriately by the use of a weighted average-to-weighted average or transaction-to-transaction comparison.

**Article: 3.5** It must be demonstrated that the dumped imports are, through the effects of dumping, as set forth in paragraphs 2 and 4, causing injury within the meaning of this Agreement. The demonstration of a causal relationship between the dumped imports and the injury to the domestic industry shall be based on an examination of all relevant evidence before the authorities. The authorities shall also examine any known factors other than the dumped imports which at the same time are injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the dumped imports. Factors which may be relevant in this respect include, *inter alia*, the volume and prices of imports not sold at dumping prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry.

**Article 4.1** For the purposes of this Agreement, the term "domestic industry" shall be interpreted as referring to the domestic producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products, except that:

- (i) when producers are related<sup>36</sup> to the exporters or importers or are themselves importers of the allegedly dumped product, the term "domestic industry" may be interpreted as referring to the rest of the producers;
- (ii) in exceptional circumstances the territory of a Member may, for the production in question, be divided into two or more competitive markets and the producers within each market may be regarded as a separate industry if (a) the producers within such market sell all or almost all of their production of the product in question in that market, and (b) the demand in that market is not to any substantial degree supplied by producers of the product in question located elsewhere in the territory. In such circumstances, injury may be found to exist even where a major portion of the total domestic industry is not injured, provided there is a concentration of dumped imports into such an isolated market and provided further that the dumped imports are causing injury to the producers of all or almost all of the production within such market.

**Article 6.1** All interested parties in an anti-dumping investigation shall be given notice of the information which the authorities require and ample opportunity to present in writing all evidence which they consider relevant in respect of the investigation in question.

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<sup>36</sup> For the purpose of this paragraph, producers shall be deemed to be related to exporters or importers only if (a) one of them directly or indirectly controls the other; or (b) both of them are directly or indirectly controlled by a third person; or (c) together they directly or indirectly control a third person, provided that there are grounds for believing or suspecting that the effect of the relationship is such as to cause the producer concerned to behave differently from non-related producers. For the purpose of this paragraph, one shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter.

- 6.1.1** Exporters or foreign producers receiving questionnaires used in an anti-dumping investigation shall be given at least 30 days for reply.<sup>37</sup> Due consideration should be given to any request for an extension of the 30-day period and, upon cause shown, such an extension should be granted whenever practicable.
- 6.1.2** Subject to the requirement to protect confidential information, evidence presented in writing by one interested party shall be made available promptly to other interested parties participating in the investigation.
- 6.1.3** As soon as an investigation has been initiated, the authorities shall provide the full text of the written application received under paragraph 1 of Article 5 to the known exporters<sup>38</sup> and to the authorities of the exporting Member and shall make it available, upon request, to other interested parties involved. Due regard shall be paid to the requirement for the protection of confidential information, as provided for in paragraph 5.

**Article 6.2** Throughout the anti-dumping investigation all interested parties shall have a full opportunity for the defence of their interests. To this end, the authorities shall, on request, provide opportunities for all interested parties to meet those parties with adverse interests, so that opposing views may be presented and rebuttal arguments offered. Provision of such opportunities must take account of the need to preserve confidentiality and of the convenience to the parties. There shall be no obligation on any party to attend a meeting, and failure to do so shall not be prejudicial to that party's case. Interested parties shall also have the right, on justification, to present other information orally.

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

**Article 6.8** 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.

**Article: 6.11** For the purposes of this Agreement, "interested parties" shall include:

- (i) an exporter or foreign producer or the importer of a product subject to investigation, or a trade or business association a majority of the members of which are producers, exporters or importers of such product;
- (ii) the government of the exporting Member; and
- (iii) a producer of the like product in the importing Member or a trade and business association a majority of the members of which produce the like product in the territory of the importing Member.

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<sup>37</sup> As a general rule, the time-limit for exporters shall be counted from the date of receipt of the questionnaire, which for this purpose shall be deemed to have been received one week from the date on which it was sent to the respondent or transmitted to the appropriate diplomatic representative of the exporting Member or, in the case of a separate customs territory Member of the WTO, an official representative of the exporting territory.

<sup>38</sup> It being understood that, where the number of exporters involved is particularly high, the full text of the written application should instead be provided only to the authorities of the exporting Member or to the relevant trade association.

This list shall not preclude Members from allowing domestic or foreign parties other than those mentioned above to be included as interested parties.

**Article: 6.14** The procedures set out above are not intended to prevent the authorities of a Member from proceeding expeditiously with regard to initiating an investigation, reaching preliminary or final determinations, whether affirmative or negative, or from applying provisional or final measures, in accordance with relevant provisions of this Agreement.

**Article: 11.3** Notwithstanding the provisions of paragraphs 1 and 2, any definitive anti-dumping duty shall be terminated on a date not 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 continuation or recurrence of dumping and injury.<sup>28</sup> The duty may remain in force pending the outcome of such a review.

**Article: 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.

## **Annex II BEST INFORMATION AVAILABLE IN TERMS OF PARAGRAPH 8 OF ARTICLE 6**

1. As soon as possible after the initiation of the investigation, the investigating authorities should specify in detail the information required from any interested party, and the manner in which that information should be structured by the interested party in its response. The authorities should also ensure that the party is aware that if information is not supplied within a reasonable time, the authorities will be free to make determinations on the basis of the facts available, including those contained in the application for the initiation of the investigation by the domestic industry.
2. The authorities may also request that an interested party provide its response in a particular medium (e.g. computer tape) or computer language. Where such a request is made, the authorities should consider the reasonable ability of the interested party to respond in the preferred medium or computer language, and should not request the party to use for its response a computer system other than that used by the party. The authority should not maintain a request for a computerized response if the interested party does not maintain computerized accounts and if presenting the response as requested would result in an unreasonable extra burden on the interested party, e.g. it would entail unreasonable additional cost and trouble. The authorities should not maintain a request for a response in a particular medium or computer language if the interested party does not maintain its computerized accounts in such medium or computer language and if presenting the response as requested would result in an unreasonable extra burden on the interested party, e.g. it would entail unreasonable additional cost and trouble.
3. All information which is verifiable, which is appropriately submitted so that it can be used in the investigation without undue difficulties, which is supplied in a timely fashion, and, where applicable, which is supplied in a medium or computer language requested by the authorities, should be taken into account when determinations are made. If a party does not respond in the preferred medium or computer language but the authorities find that the circumstances set out in paragraph 2 have been satisfied, the failure to

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<sup>28</sup> When the amount of the anti-dumping duty is assessed on a retrospective basis, a finding in the most recent assessment proceeding under subparagraph 3.1 of Article 9 that no duty is to be levied shall not by itself require the authorities to terminate the definitive duty.

respond in the preferred medium or computer language should not be considered to significantly impede the investigation.

4. Where the authorities do not have the ability to process information if provided in a particular medium (e.g. computer tape), the information should be supplied in the form of written material or any other form acceptable to the authorities.
5. Even though the information provided may not be ideal in all respects, this should not justify the authorities from disregarding it, provided the interested party has acted to the best of its ability.
6. If evidence or information is not accepted, the supplying party should be informed forthwith of the reasons therefor, and should have an opportunity to provide further explanations within a reasonable period, due account being taken of the time-limits of the investigation. If the explanations are considered by the authorities as not being satisfactory, the reasons for the rejection of such evidence or information should be given in any published determinations.
7. If the authorities have to base their findings, including those with respect to normal value, on information from a secondary source, including the information supplied in the application for the initiation of the investigation, they should do so with special circumspection. In such cases, the authorities should, where practicable, check the information from other independent sources at their disposal, such as published price lists, official import statistics and customs returns, and from the information obtained from other interested parties during the investigation. It is clear, however, that if an interested party does not cooperate and thus relevant information is being withheld from the authorities, this situation could lead to a result which is less favourable to the party than if the party did cooperate.

### **A1.3 Decisions of WTO Dispute Settlement Bodies**

- United States – Sunset Reviews of Anti-Dumping Measures on Oil Country Tubular Goods from Argentina, Appellate Body Report: WT/DS268/AB/R, adopted 29 November 2004, Access: [Download the report \(PDF\)](#)
- United States – Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan, Appellate Body Report: WT/DS184/AB/R, adopted 23 August 2001, Access: [Download the report \(PDF\)](#)
- United States – Sunset Review of Anti-Dumping Duties on Corrosion-Resistant Carbon Steel Flat Products from Japan, Appellate Body Report: WT/DS244/AB/R, adopted 15 December 2003, Access: [Download the report \(PDF\)](#)