



**MINISTRY OF BUSINESS,  
INNOVATION & EMPLOYMENT**  
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# **2014 Anti-dumping Duty Reassessment**

## **Canned Peaches from South Africa**

### **Non-Confidential Final Report**

**Dumping and Countervailing Duties Act 1988**

**February 2014**

Trade Remedies

Trade and International Environment Branch  
Ministry of Business, Innovation and Employment

ISBN 978-0-478-43310-4



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## Executive Summary

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### Introduction

1. On 9 August 2013 the Ministry of Business, Innovation and Employment (the Ministry) completed a review of the anti-dumping duties which currently apply to imports of canned peaches from South Africa.

2. Immediately following the completion of the review, the Ministry initiated this reassessment of the anti-dumping duties to consider the appropriate form and level of duties that should apply. An interim reassessment report was released on 12 December 2013.

3. The goods that are subject to reassessment are described as:

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

4. Anti-dumping duties have been in place on canned peaches from South Africa since 1996, when an investigation into dumping of the goods was completed.

### 2007/8 Review and Reassessment

5. The anti-dumping duties were last reviewed in 2007/08 and the anti-dumping duty rates were continued, and then revised as a result of a reassessment of the duty.

6. The current anti-dumping duty is in the form of reference prices. Reference prices indicate to exporters and importers the level at which prices are not dumped and therefore are not causing injury to the industry which is attributable to dumping. The duty was applied based on the type and can size of the imported goods. The current rates of anti-dumping duty are shown in Table 1 in this report.

### 2013 Review

7. The 2013 review found that the South African exporter of canned peaches was dumping and was likely to continue to do so should the anti-dumping duty be removed. The dumped goods were found to be undercutting the prices of canned peaches produced by the New Zealand domestic industry (Heinz Wattie's Ltd). The volume of dumped imports from South Africa declined in absolute terms and relative to domestic production and consumption. The New Zealand industry, as would be expected, was not found to have suffered material injury as a result of imports from South Africa while the current anti-dumping duties have been in place. However, it was concluded that material injury was likely to recur, if the anti-dumping duties were to be removed.

### 2013 Duty Reassessment

8. The focus of this reassessment, therefore, is to determine the form and the rate that the anti-dumping duty should take. That is, whether the anti-dumping duty

should remain as reference prices (that is, a benchmark price) and what the price should be, or whether it should take a different form. Reference prices exclude from the payment of duty canned peaches imported at prices higher than the benchmark price.

9. The Ministry received two submissions on the interim reassessment report, one from the South African Fruit and Vegetable Cannery Association (SAFVCA) (a group which the exporter, Langeberg and Ashton Foods Ltd, belongs to), and one from the South African Department of Trade and Industry (DTI).

10. The Ministry has also considered the possibility of the duty in the form of an *ad valorem* rate, which would add a percentage amount of duty onto the value-for-duty of each shipment of canned peaches.

11. After considering alternative forms of duty, the Ministry proposes that, for the exporter investigated (Langeberg & Ashton Foods Pty Ltd (L&AF)) anti-dumping duties on canned peaches from South Africa should be in the form of reference prices on a per kilogram basis for each type (not size) of canned peaches. The Ministry further proposes that this duty be set at the full margin of dumping for the South African exporter. The rates of the reference prices proposed are recorded in Table 5 of this report.

12. A separate *ad valorem* (percentage) residual rate of 11 percent for other South African exporters of canned peaches is also proposed. The residual rate is based on the weighted average dumping margin of the exporter for which the individual rate was established. An *ad valorem* (percentage) residual rate is proposed because this rate can be disclosed to other exporters and their New Zealand importers. The reference prices calculated for L&AF are confidential to that company, because they are based on its domestic selling prices.

### **Change in the Rate of Duty**

13. The current duty is in the form of separate reference prices for different exporters for different types and sizes of canned peaches. The amount of duty actually collected over the recent one year period of the dumping investigation (calendar year 2012) represented █ percent of the value for duty of the subject goods imported over this period. These duties, however, were set more than five years ago and so would have become less effective over that time. Had the proposed new duties based on the updated dumping investigation data been in place over the one year period, the Ministry estimates that the duty collected would have represented █ percent of the value for duty of the subject goods, imported over that same period.

### **Date from Which Duty Should Apply**

14. Reassessed rates normally take effect from the day after the date the Minister determines the reassessed rates of duty (the day after the date of signing the *Gazette* notice) and it is proposed that in this case the reassessed duty should apply from this date.

# 1. Background to Reassessment

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## 1.1 Introduction

15. Dumping is defined in section 3(1) of the Dumping and Countervailing Duties Act 1988 (the Act) and occurs when an exporter sells goods to New Zealand at a lower price than it sells the same or similar goods for in its own country. In essence, dumping is price discrimination between an export and a domestic market. It is not illegal, but injurious dumping can be remedied by the imposition of anti-dumping duties at the border to enable fair competition in the New Zealand market.

16. Dumping does not always cause material injury to the domestic industry. Material injury occurs when dumped goods are imported in sufficient quantity to cause a decline in factors such as output or profits as a result of exports undercutting, depressing or suppressing the domestic industry's prices. Injury may also be caused in a number of other ways. Dumped imports may also threaten to cause material injury.

17. Anti-dumping duties on canned peaches from South Africa were first imposed in 1996, and have been reviewed and reassessed every 5 years since then. This review and reassessment of the level of the duties follows the last 5-yearly review (known as a "sunset" review).

18. The current duties were based on dumping margins established in the 2007/08 review for two exporters of canned peaches from South Africa. In the absence of information from those exporters, the anti-dumping duties were based on the best information available. Subsequent to the 2007/08 review and reassessment (which covered all types and sizes of canned peaches), a further reassessment (applied for by an importer) was conducted, which reassessed only the anti-dumping duties for "Choice" grade canned peaches.

19. The current duties were scheduled to expire on 12 February 2013. However, an application for a review of the continued need for the duties was made by the New Zealand industry, Heinz Wattie's Ltd (HWL), which is the sole producer of canned peaches in New Zealand. HWL applied for the continuation of the duties prior to their expiry. A review was initiated by the Ministry of Business, Innovation and Employment (the Ministry) on 11 February 2013 (prior to the expiry of the duties). The Ministry was satisfied that positive evidence, justifying the need for a review, had been provided by HWL.

20. In its application for the continuation of the duties, HWL claimed that the removal of the duties would allow imports of canned peaches from South Africa to recommence being sold to New Zealand at dumped prices, causing a recurrence of material injury to the New Zealand industry.

21. The review was completed by the Ministry on 9 August 2013. The Ministry found that the South African exporter was dumping and concluded that should the duty be removed the dumping would continue, and therefore anti-dumping duties

were necessary to prevent a recurrence of material injury to the New Zealand industry.

22. The Act allows the Minister of Commerce to determine a new rate or amount of anti-dumping duty following the completion of a review, including any changes in the formula used to establish an anti-dumping duty. However, section 14(6) of the Act first requires a reassessment of the current form and level of the anti-dumping duties.

23. This reassessment of the anti-dumping duty was initiated on 9 August 2013 (the day the review was completed). The reassessment addresses whether it is appropriate for the form and the rate of the anti-dumping duty to be changed to reflect the new dumping and injury margins as well as any changes in the pricing and selling arrangements currently employed by importers, as found in the review.

24. The current duties will continue at their present rates until this duty reassessment is completed and new rates apply.

## **1.2 Imported Goods**

25. The imported (subject) goods covered by this reassessment are described as:

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

26. Under the Working Tariff of New Zealand canned peaches imported from South Africa enter New Zealand under tariff item and statistical key 2008.70.09.00L. The Normal Customs duty rate which applies to these goods when imported from South Africa is 5 percent of the value-for-duty (VFD) of the goods.

## **1.3 Interested Parties**

### **New Zealand Industry**

27. Heinz Wattie's Ltd. (HWL) is the sole manufacturer of canned peaches in New Zealand and therefore under the Act constitutes the New Zealand industry.

### **Exporters**

28. The review found that there was only one significant exporter of the subject goods, Langeberg and Ashton Foods Pty Ltd (L&AF), over the period of investigation.

29. L&AF provided the Ministry with sufficient information (from a questionnaire response, additional submissions and from an "on-the-spot" verification visit that Ministry officials made to the company's premises in South Africa) which allowed dumping margins to be calculated during the review. The Ministry has drawn from all the information available to it to reassess the form and the rate of the anti-dumping duty.

## **Importers**

30. The review found there were three importers importing the subject goods from L&AF. Each importer was given the opportunity to provide information related to their imports of canned peaches from South Africa. The importers were Brooke Holdings Ltd, Foodstuffs Own Brands Ltd and Progressive Enterprises Ltd. Information provided by the importers and the exporter was used in calculating a non-injurious export price when considering the appropriate level of duties.

### **1.4 Export Price, Normal Value and Dumping Margin**

31. In the 2013 review of canned peaches, the Ministry established a dumping margin for exports of canned peaches by L&AF from South Africa. This was based on information provided by the exporter and the New Zealand importers.

32. The Ministry used the transaction-to-transaction methodology to calculate the dumping margin because this was considered to be the fairest method in the circumstances of the case. To make an appropriate comparison, each export transaction value was compared with an appropriate normal domestic value established as close as possible to the time the export sale was made.

33. The dumping margin for the exporter was then calculated by taking the export price and the normal value of each transaction and multiplying each of these by the export volume of that transaction. The resulting export price and normal value were separately summed, the total export price was subtracted from the total normal value, and the difference, when expressed as a percentage of the total export price, was the dumping margin.

34. This exercise was done at the ex-factory level for sales by L&AF, which is the preferred point of comparison under Article 2.4 of the Anti-Dumping Agreement. In calculating the ex-factory values the Ministry made a number of adjustments from the base normal values and export prices to ensure a fair comparison between sales of canned peaches for domestic consumption in South Africa and the export sales to New Zealand. As the total export price was lower than the total normal value, the exports were considered to be dumped.

### **1.5 Disclosure of Information**

35. The Ministry makes available all non-confidential information to any interested party through its public file system in accordance with the requirements of section 10 of the Act and Article 6 of the Agreement. Non-confidential versions of all submissions made by an interested party in this reassessment have been placed on the public file. Interested parties are entitled to request the non-confidential submissions, if they wish.

### **1.6 Submissions on the Interim Reassessment Report Relating to Dumping Margin Calculations**

36. The Ministry received two submissions on the interim reassessment report, one from the South African Fruit and Vegetable Canners Association (SAFVCA) (a group



which the exporter, Langeberg and Ashton Foods Ltd, belongs to), and one from the South African Department of Trade and Industry (DTI).

37. SAFVCA has reiterated a number of arguments made previously in regard to the sunset review itself. Firstly, it considers the methodology used in the original investigation to calculate dumping and injury should have been used in the sunset review, and that an incorrect methodology has been used to calculate the normal value. DTI has also made this argument. SAFVCA consider that the findings of the sunset review are flawed, causing the proposed duties to also be flawed.

38. Both DTI and SAFVCA have stated that the comparison methodology used by the Ministry is flawed. SAFVCA claimed that the Ministry has failed to make necessary adjustments to make the comparison at the same level of trade, including allowing for differences between domestic and export volumes.

39. SAFVCA also considered that the Ministry has incorrectly deemed the goods exported by L&AF to be private label, resulting in an unreasonable and unrepresentative comparison of the normal value. SAFVCA considered that the Ministry should make an adjustment to account for significant price differentials between private label and branded product.

40. SAFVCA also claimed that there is no evidence to suggest that L&AF's prices are in any way linked to the anti-dumping duties, and there is no intention or likelihood of dumping continuing or recurring. SAFVCA consider that the Ministry have simply concluded that dumping will recur/continue because the duties will expire.

### **Ministry's Response**

41. The above claims have been made previously by L&AF, and the Ministry has responded to the claims in the final report on the sunset review. The Ministry's response at that time can be found in paragraphs 163 to 168 of that report.

42. There is no requirement in the Anti-Dumping Agreement that, in carrying out a sunset review of an existing duty, the methodology used in calculating dumping and injury must be the same as that used in the original investigation (which in this case, was in 1996). An original investigation is concerned with determining whether dumped imports have caused or threatened to cause material injury to a domestic industry, whereas a sunset review is concerned with determining the likelihood of a continuation or recurrence of dumping and injury should the duty expire. The investigations are different and therefore methodologies may be different.

43. The Ministry has used transaction-to-transaction methodology to calculate export prices, normal values and a dumping margin, all at an ex-factory level. Appropriate adjustments were made to the export prices and normal values before they were used to calculate a dumping margin. The Ministry used sales to one domestic customer to calculate normal values and make appropriate comparisons with the export prices of canned peaches sold to New Zealand. The Ministry considered that the arms' length selling prices to this customer were the most suitable information to use.

44. An adjustment for volume was not considered by the Ministry to be necessary for fair comparison, as the Ministry considered that the volume of sales from L&AF to [REDACTED] (its domestic customer) was representative of the volume of sales to each of L&AF's New Zealand customers.

45. An adjustment for differences between private label and branded products was also considered to be unnecessary by the Ministry, as both the export prices and normal values established by the Ministry were private label products, i.e. no prices for branded products were used. The Ministry considered the types of sales it used in establishing transaction values on each market were of similar product types.

46. The Ministry has concluded that there is currently dumping, but it is not causing material injury, however, the Ministry considers that dumping will continue and material injury will recur. That is, L&AF are likely to continue charging the same prices, meaning that dumping will continue at the current levels. However, the Ministry concluded that without anti-dumping duties in place to protect the domestic industry it will likely suffer material injury, necessitating that anti-dumping duties continue to be imposed.



## 2. Reassessment of Anti-dumping Duties

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### 2.1 Methods of Imposing Duty

47. Anti-dumping duties are intended to remedy injury attributable to dumping, not to punish an exporter or provide a domestic industry with protection beyond the impact of the dumping. For this reason, the duty should only remedy the amount of injury attributable to dumping.

48. Considerations taken into account in deciding an appropriate form of the anti-dumping duty include the ability to ensure a dumping margin is not exceeded, the ability to maintain fairness between parties, predictability of the duties payable, and ease of administration at the border. These considerations are discussed in more detail in Box 1 below.

49. There are three forms of anti-dumping duty:

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

50. A specific duty is a set amount of duty payable per unit imported. It is based on the monetary value of the margin of dumping or the margin of injury.

51. An *ad valorem* duty is based on the margin of dumping or the margin of injury as a percentage of the value for duty.

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

#### **Box 1: The Pros and Cons of the Three Methods of Imposing Anti-dumping Measures**

##### ***A Specific Duty Approach***

A specific duty is a set amount payable per defined unit. A specific duty is convenient to apply, impossible to evade by incorrectly stating the value for duty, and the amount of duty payable is clear. However, problems may arise when dealing with a wide range of goods or where exchange rates fluctuate to the extent that margins of dumping will be exceeded without constant reassessments of the specific amount. A specific duty expressed as a monetary amount will operate effectively when prices and exchange rates are consistent and stable enabling the dumping remedy to remain relevant to the margin of dumping.

**Ad Valorem Rate Duty**

An *ad valorem* rate is a fixed percentage of duty usually applied to the value for duty of the defined goods. *Ad valorem* duty rates can be provided to all parties, and therefore are transparent. They are also convenient to apply and are unlikely to be substantially affected by exchange rate movements. They are appropriate where a large range of goods exist or where new models appear.

As with other approaches, the possibility exists for collusion between exporter and importer to manipulate invoice values of goods subject to duty, particularly if imported in conjunction with similar goods. Under this approach, a particularly low, and potentially more injurious, export price would result in a lower duty, which may be insufficient to remove injurious dumping. Conversely, a particularly high, and less injurious export price, would attract a higher duty, perhaps higher than is necessary to remove injurious dumping.

**Reference Price Duty**

A reference price is a set value per unit below which duty is payable. Reference prices are most suitable when dealing with movements in export price and exchange rates (if expressed in the currency of the normal value). They are particularly useful for dealing with situations where a lesser duty is applicable, that is, a duty set at less than the margin of dumping but at a level that would still not be injurious to the industry.

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

Reference price duties are claimed to be more easily evaded than other forms of duty by overstating the VFD of the goods. Another drawback is that they are set at a fixed level based on a snapshot of price and cost, which obviously change over time and so may become less accurate. Significant changes which may occur over time in prices and exchange rates can be addressed by a reassessment of reference prices.

Also, reference prices are often not suited to goods where there is a wide range of individual sizes and types of goods sold at significantly different prices. Under these circumstances individual reference price mechanisms may need to be set for each type and size of imported good, which can lead to difficulties with importation and delay the free flow of goods over the border. An alternate approach to resolve the problems that an extensive list of reference prices creates is to place the reference price on an aggregated group of the goods in question. An aggregated group reference price, however, dampens the attractiveness of the transaction-based component of a reference price mechanism as it aggregates to some extent, individual product types and sizes becoming a proportionate duty, similar to the duties resulting from specific or *ad valorem* methodologies.

## 2.2 2007 Reassessment and 2008 (limited) Reassessment

53. Historically, the Ministry's preference has been to impose duties through a reference price mechanism where it is practicable to do so, for the reasons set out in Box 1 above. This was the approach taken by the Ministry in the 2007 reassessment (that followed a sunset review) and the 2008 (limited) reassessment of the anti-dumping duties.

### Consideration of the Lesser Duty

54. Section 14(5) of the Act requires that the Minister has regard to the desirability of ensuring the amount of duty is not greater than is necessary to prevent material injury to the New Zealand industry. To this end, in the 2007 and 2008 reassessments, the Ministry sought to determine if a lesser duty was applicable by comparing the extent to which HWL's non-injurious price (NIP) had been undercut by the dumped exports.

55. After conducting the above exercise, anti-dumping duties were applied to grouped types and sizes of canned peaches from South Africa in the form of reference prices. The anti-dumping duties were imposed for each exporter through non-injurious free-on-board (NIFOB) and normal value (value for duty equivalent), (NV(VFDE)) amounts. A NIFOB is a reference price duty of less than the full margin of dumping, while a NV(VFDE) is a reference price at the full margin of dumping.

### Current Rates of Anti-dumping Duty

56. The rates of anti-dumping duty that currently apply to imports of canned peaches from South Africa appear below in Table 1.

**Table 1: Current Rates of Anti-Dumping Duty**  
(Rand/kg, unless otherwise stated)

Product type and size	Langeberg & Ashton		Del Monte		Other Suppliers	
	Choice	Sub-std	Choice	Sub-std	Choice	Sub-std
410gm	10.36	8.65	NZ\$	8.75	12.21	8.75
825gm	9.91	7.11	10.02	7.19	10.02	7.19
3kg	9.78	7.01	9.89	7.09	9.89	7.09
Alternative Duty*:						
410gm	-	-	12.21	-	-	-
825gm	-	-	-	-	-	-
3kg	-	-	-	-	-	-

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

## Residual Rate

57. The residual (or “other suppliers” rate) above was based on the highest duty rate established for the two exporters involved in the 2007 reassessment.

## 2.3 Proposed Methods of Imposing Anti-dumping Duty

### Introduction

58. The Ministry’s practice is to consider the suitability of all methods of imposing anti-dumping duties in the circumstances of each case.

59. During the 2013 review it was determined that the South African exporter had supplied canned peaches at dumped prices into the New Zealand market and that it would likely continue to export the goods at dumped prices if the anti-dumping duty was removed. It was also determined that if the duties were removed HWL would likely experience a recurrence of material injury.

60. A single dumping margin was calculated for the exporter in line with WTO jurisprudence. To be consistent with New Zealand’s WTO obligations, the calculation of dumping margins should be made for “the product as a whole”, not for individual models<sup>1</sup>. This also means that an individual single margin of dumping is required to be calculated for each exporter.

61. With regard to the imposition of duties, because an individual margin of dumping must be established for each exporter, by implication, any duty will also need to apply to each exporter separately. However, the amount of an anti-dumping duty levied in respect of an exporter shall not exceed its margin of dumping<sup>2</sup>. The Appellate Body noted that this is the overarching requirement in Article 9.3, i.e. that the anti-dumping duty “shall not exceed the margin of dumping as established under Article 2” (as stated in the Anti-Dumping Agreement). This requirement is an important consideration in the Ministry’s decision to impose a particular form of duty and also whether the duty should consist of one aggregated rate for each exporter’s entire range of imported goods or if separate rates should be established for categories or product types of imported goods.

#### **Box 2: Ensuring Anti-Dumping Duty Isn’t Paid in Excess of the Margin of Dumping**

In practice, duty is collected on individual export transactions and it is up to the authorities to ensure that the total amount of anti-dumping duty paid is not greater than the margin of dumping. At a practical level this can have varying results, as shipments usually contain a mix of product types and the prices of each product type in a shipment may vary. Also exchange rates move, sometimes considerably over a comparatively short period, changing the

<sup>1</sup> WT/DS322 & related Appellate Body decisions “US Measures Relating to Zeroing”.

<sup>2</sup> US – Final Anti-Dumping Measures on Stainless Steel from Mexico (WT/D344/AB/R April 2008).

relative costs and prices of the imported goods.

The above issues may arise regardless of the form of duty put in place and, under the Act, an importer is able to apply for a refund of anti-dumping duty if fluctuations in prices mean that the amount of anti-dumping duty paid by that importer exceeds the margin of dumping calculated over the imports by an importer of canned peaches within a set period of time.

The refunds process covers set periods of 6 months and an application can be made by providing export price and normal value information to support a claim that the duty in excess of the dumping margin has been paid. Further information on anti-dumping duty refunds is available on the Economic Development website of the Ministry of Business Innovation and Employment (MBIE).

### Proposed Form of the Anti-dumping Duty

62. With respect to the exporter in this case, and the principles outlined above (including that the overall amount of anti-dumping duty paid should not exceed the margin of dumping), it needs to be determined whether the anti-dumping duty should take the form of a reference price or prices, or take another form of duty (such as *ad valorem* rates), and what duty rate should apply.

63. Box 1 outlines the different types of anti-dumping duty that can be imposed. The anti-dumping duties currently in place are in the form of reference prices for different product types and sizes. In the 2013 review, it was found that the New Zealand industry is experiencing no current injury caused by dumping of the imports from South Africa, while the reference price duties have been in place, indicating that the duties (in the form of reference prices) have been effective in levelling the playing field for the domestic industry. The duties currently applying to canned peaches from South Africa are imposed on an aggregated product-type and size basis, that is, there is a separate rate of duty for each exporter's different type and size of canned peaches.

64. As noted above, the development of WTO jurisprudence in the area of the calculation of dumping margins indicates that to be consistent with WTO obligations a dumping margin should be calculated for the "product as a whole" for each exporter investigated, not for individual models. However, the Appellate Body commented in *US – Final Anti-Dumping Measures on Stainless Steel from Mexico (WT/DS344/AB/R, April 2008)* (at paragraph 121) that "[t]he Anti-Dumping Agreement is neutral as to the different systems for levy and collection of anti-dumping duties." In terms of the different systems used to levy and collect anti-dumping duties, the Appellate Body also commented in that paragraph that the amount of duties collected on a prospective basis [the system used in New Zealand] is subject to review, such that, while duties are only "collected" in individual export transactions "[w]here the prices are less than the prospective normal value, ... a review can be requested if the prospective normal value has been improperly determined so as to result in collection of anti-dumping duties in excess of the ceiling prescribed in Article 9.3" [Article 9.3 states that "The amount of the anti-dumping duty shall not exceed the margin of dumping as established under Article 2"].



65. The requirement that a single dumping margin be calculated for the product as a whole for each exporter therefore does not necessarily prevent reference prices from being established for separate models or categories which make up the product as a whole, provided that the duty collected as a result does not exceed the margin of dumping for the product as a whole for an exporter. As the Appellate Body has noted in the case referred to in the paragraph above, where this does occur an importer is entitled to request a refund.

### **L&AF's Preliminary Comments on the Form of Duty**

66. In response to a question from the Ministry on the possibility of using a single reference price for all product types, L&AF submitted that it would be incorrect to use a single reference price duty as this would be disadvantageous to South African exporters because there are various product differences that affect price comparability, including the grade of fruit, the cut, the preservative medium, and the container type.

67. L&AF said that the differences in the products incur different costs and have different selling prices and price premiums. L&AF said that these differences affect a product's "tradability" which in turn affects selling prices, and so it considers that a single reference price would be "wholly inappropriate". L&AF submitted that if reference prices had to be used, there should be several reference prices for each type and size of product sold in order to accurately reflect the product differences. It also said that as the products have variable costs and consequently variable prices, any reference prices should take these into account.

68. The Ministry notes that the only type of container subject to the reassessment is cans; it does not include bottles, plastic jars, or plastic containers also mentioned in L&AF's submission. The Ministry also notes that the current duties are not distinguished by cut or by preservative medium and that L&AF stated during the review that the current duties had not influenced the fixing of its prices to New Zealand.

### **Ministry's Response to L&AF's Submission and Overall Conclusion**

69. The Ministry considers that a reference price approach is the most effective and practical method of applying duties to canned peaches given the circumstances of this case. It is transparent, it clearly signals the amount of anti-dumping duty applicable and it indicates an average price level at which the goods are not dumped. Duty will only be collected, therefore, when the goods are priced below the reference price. In this respect, reference prices have the advantage of being the least trade-restrictive of the different forms of collecting anti-dumping duty. One disadvantage, however, is that a reference price is based on a snapshot of prices and costs and therefore may become less accurate over time.

70. The Ministry was considering a single reference price across all product types and sizes which would have had the advantage of being simple to administer at the border and, being based on the weighted average normal value per kilogram over the period of investigation, would reflect the actual normal value on which the dumping margin was based. A single reference price does, however, have disadvantages, as it is based on an average value, and there may be some variation in the effective rate

of duty collected on different importations because the product mix would differ compared with the product mix over the period of investigation on which the duty is based.

71. L&AF has objected to a single reference price for the reasons set out in paragraphs 66 and 67 above. The most significant differences in L&AF's prices are reflected in the different types (or grades) of product (i.e. Choice, Standard and Sub-Standard). On a price per kilogram basis, the size of the can does not have a significant influence where the product is of the same type.

72. The above considerations suggest that the type of product is the main driver of the price and that the can size (on a per kilogram basis) has much less influence on the product's 'tradability' and therefore different selling prices per kilogram for different can sizes are not necessary. It would seem a reasonable approach, therefore, that rather than setting one reference price duty that cuts across all types, separate reference prices could be set on a per kilogram basis for each type of product exported to New Zealand.

73. Separate reference prices for different product types would have the advantage of reflecting differences in the prices per kilogram of those product types. Separate reference prices have the disadvantage of being more difficult to administer at the border and of being based on a range of normal values that may result in duty being collected that is greater or less than the margin of dumping for the product as a whole. They also make it more complex to assess whether the margin of dumping is being exceeded. However, there are only a few product types being exported to New Zealand, although there is the potential for new styles of canned peaches to be introduced into the market, particularly from a new exporter. Because there would be no established anti-dumping duty rates for these new styles of canned peaches, this could result in potential difficulties. However, a percentage duty rate based on the average margin of dumping could be applied to any new exporter of these goods.

74. On balance, the Ministry considers that the reassessed duty for Langeberg and Ashton should be based on reference prices for the different types on a per kilogram basis. This means that anti-dumping duty is only payable on those products with a VFD per kilogram below the reference price. For those products priced above the reference price no duty would be applicable.

75. Should an importer consider that it is paying, in total, anti-dumping duty in excess of the margin of dumping, it has recourse to the refunds process that is in place (see Box 2 above).

76. Because reference prices calculated on the basis above would be confidential to L&AF, and could therefore not be released to other exporters, the Ministry proposes that a residual rate for all other exporters should be set on an *ad valorem* (percentage) basis. The Ministry does not consider it is feasible to have a residual rate that could not be disclosed to new exporters and their importers.

## 2.4 Submissions on the Interim Report Relating to the Reassessment of the Duty

77. SAFVCA has criticised a single reference price along similar lines to the argument which was made by L&AF previously and outlined above. As such, it has reiterated the differences in products which affect price and comparability, including grade, cut, preservative, and storage medium. SAFVCA stated that these differences were taken into account in the original investigation and are illustrated by the fact that the current duties are applied to can size as well as grade. DTI also expressed some concern over the method of imposing reference prices.

78. SAFVCA considered a single reference price to be wholly inappropriate, and that individual reference prices are more effective, transparent, and more clearly indicate the average price level at which goods are not dumped, and more clearly signal the amount of anti-dumping duty applicable. SAFVCA said that a single reference price will lead to higher duties being imposed on certain products when compared to individual reference prices.

79. The most significant difference in prices is related to the different grades of product, but SAFVCA considered that the Ministry was incorrect in its assessment that can size does not have a significant influence on prices of the same product type. SAFVCA referred to the current duties, which it considered indicate a significant difference in price of the same product type of various sizes.

80. SAFVCA considered the residual anti-dumping duty is incorrect, as it is based on incorrect calculation and comparison of the normal value, export price and dumping margin. Furthermore, SAFVCA considered a residual rate to be inappropriate, as other South African exporters have a negligible share of New Zealand imports of canned peaches from South Africa and cannot possibly cause injury to the New Zealand industry. It also argued that the Ministry has not made any determination as to the likelihood of injurious dumping continuing or recurring for other South African exporters. DTI requested some clarification on the residual rate.

### Ministry's Response

81. The Ministry is no longer proposing a single reference price covering all product types, grades, and sizes. It is proposing individual reference prices according to the grade of product.

82. The Ministry has calculated the percentage difference in prices of different sizes of canned peaches which are of the same grade. While there is a difference in price between can sizes, the Ministry does not consider it to be significant. L&AF rightly indicate that the current duty rates appear to represent some significant differences in price of the same product type of various sizes; however, the Ministry notes these rates were calculated on information gathered in 2007. Prices have changed, and the more recent information indicates that the differences are not significant.

83. As already established, the Ministry considers that the export price, normal value, and dumping margin have been calculated correctly. The amount of the residual rate, which is based on L&AF's dumping margin at the VFD level, is

therefore accurate, in the Ministry's opinion. The calculation of this amount is explained at paragraph 102. It is the Ministry's usual practice to impose a 'residual' or 'all other exporters' rate of duty. This covers the possibility of a new shipper exporting the subject goods while they are subject to duty, or of a current exporter establishing a new identity in order to evade duties. While L&AF is currently the only company exporting canned peaches from South Africa to New Zealand, there have been other companies doing so in the past, and it is possible that other South African canned peach producers may wish to export to New Zealand in the future. Any company subject to this rate may apply for a new shipper review in order to establish a rate of duty specifically for their company if they feel that course of action is justified.

## 2.5 Calculation of Proposed Anti-dumping Duties

### Introduction

84. Section 14(5) of the Act requires that the Minister has regard to the desirability of ensuring the amount of duty is not greater than is necessary to prevent material injury to the New Zealand industry. To establish appropriate reference prices to be applied to imports of canned peaches from South Africa, the Ministry needs to consider whether the rates should be set at either rates less than the margin of dumping, (if that is sufficient to remove the injury likely to be caused by dumping), or at rates representing the full margin of dumping.

85. To determine whether a lesser duty should apply, the Ministry has used a comparison of the normal value (value for duty equivalent) (NV(VFDE)) amount (that is, the normal value with the addition of relevant costs to free-on-board (FOB) level), which is an average non-dumped price, with the non-injurious FOB price (NIFOB) (the New Zealand industry's average ex-factory price excluding trade spend, and less the average costs incurred in importing the goods between FOB and ex-wharf levels of trade). If the NIFOB is less than the NV(VFDE) this normally indicates a lesser duty should apply.

### Calculation of a NV(VFDE) Reference Price

86. A NV(VFDE) represents the non-dumped price of imports at the FOB level, that is, the level at which the goods are loaded onto the vessel ready to be exported. A NV(VFDE) starts with the weighted average normal value at the ex-factory level. Any costs incurred to export the goods to the point of being loaded onto the vessel in the exporting country (the free-on board level) are then added. Such costs would normally include inland freight, handling, Customs' clearance costs and any agent's fees that would be taken into account in the New Zealand Customs' value-for-duty (VFD). The resulting value is the NV(VFDE) amount.

87. The Ministry calculated the NV(VFDE) amounts for the South African exporter, L&AF, on this basis. Any imports priced at or above this amount will be considered non-dumped and therefore will not be subject to any duty. Any imports priced below this amount will be subject to the anti-dumping duty.

88. Table 2 below shows the calculation of the NV(VFDE) amounts on the basis described above.

**Table 2: Calculation of Exporters NV(VFDE) Amount (ZAR per Kg)**

	Choice	Std.	Sub-Std.
Normal Value (ex-factory) per Kg (ZAR)			
Total Costs to FOB per Kg (ZAR)			
NV(VFDE) per Kg (ZAR)			
Average Exchange Rate (ZAR: NZD 0.1349)			
NV(VFDE) per Kg (NZD)*			

\* To enable the NV(VFDE) amount to be compared to the NIFOB amount to determine whether a lesser duty should apply, the NV(VFDE) has been converted from ZAR to NZD using the average exchange rate for the 6 month period from 1 November 2012 to 30 April 2013.

## Calculation of a NIFOB Amount

### Calculation of a Non-injurious Price (NIP)

89. In order to calculate a NIFOB amount it is necessary to first establish a non-injurious price (NIP) for the domestic industry, that is, the price at which a domestic producer can sell its goods in the domestic market in the absence of dumped goods. There are a number of methods that can be used to calculate a NIP including:

- The use of current prices (adjusted by price depression incurred during the period of injury, if necessary);
- The current cost of production, plus industry profit taken at a time when the industry was unaffected by dumped imports;
- The use of pre-injury prices scaled up by a relevant index
- Determining the lowest price non-dumped product in the market.

90. When an anti-dumping duty is already in place, the Ministry normally considers the domestic industry's current ex-factory selling price (exclusive of all discounts and rebates) to be its non-injurious price. In other words, the Ministry normally considers that the anti-dumping duties have acted to prevent any injurious dumping occurring and that the industry's prices are at levels achieved in the absence of dumping.

91. In the current case, HWL claim that with the current level of anti-dumping duty in place it has not been injured by imports from South Africa. In addition, anti-dumping duties are in place against all the major sources of canned and preserved peaches imported into New Zealand (other than for Australia against which anti-dumping duties cannot be imposed). During the review it was reported by more than one importer that there was particularly low priced Australian product in the market, however HWL said that it was not being injured by such imports. The review found that although HWL's prices were being undercut there was no evidence of price

depression or price suppression. Therefore the Ministry considers that HWL's ex-factory NIP can be based on the industry's average ex-factory price.

92. The Ministry has calculated a NIP (\$ ) on the basis of HWL's latest financial year, which is the 12 months to 30 April 2013. The NIP has been calculated based on HWL's net sales value (NSV) (which excludes all trade spend costs) for the product as a whole (i.e. for all types and sizes of like goods). HWL's NSV for this period was divided by the total metric tonnes sold and the resulting average price per tonne was converted to a price per kilogram. No price depression adjustment was required in order to ensure the NIP was based on a non-injurious price. However, an adjustment was made for , to ensure the NIP was calculated at the ex-factory level.

### Calculation of a NIFOB

93. A NIFOB is calculated by deducting from the industry's NIP the costs for an importer arising between the FOB level of trade and the level of trade at which the domestic industry's products first compete with the importer's products.




94. As HWL does not sell canned peaches categorised into the three grades for which NV(VFDE) amounts have been calculated, only a single NIFOB amount could be calculated by the Ministry. The calculation of the NIFOB has taken into account the costs incurred from the FOB level in South Africa to the ex-wharf level in New Zealand, as most of the imported canned peaches compete with the domestic industry's product at the ex-wharf level.

95. One importer provided its costs for importing canned peaches from the exporter. These costs, where they have been supplied, have been used to calculate the NIFOB and the best available information has been used to fill any gaps.

96. Table 3 below shows the NIFOB amount established on the basis of importing the goods from the exporter, as described above.

**Table 3: Calculation of NIFOB Amount**

	Average NZD per Kg
Non-injurious Price (NIP)	
Less average costs FOB to ex-wharf	
Insurance	
Freight	
Port clearance charge	
Bank & Documentation fees	







Bunker Adjustment Factor	
Customs Duty (5%)	
<b>NIFOB</b>	

## 2.6 Comparison of NV(VFDE) and NIFOB Amounts

97. As noted above, whether a lesser duty should apply is determined by comparing the NV(VFDE) with the NIFOB amount. A lesser duty applies if the NIFOB is lower than the NV(VFDE), as the NIFOB will be less than the full margin of dumping while still being sufficient to remedy the injury caused by dumping. The lowest resulting price will be the reference price anti-dumping duty.

98. A comparison of the NIFOB and the NV(VFDE) amounts, as calculated above, are shown in Table 4 below.

**Table 4: Comparison of NIFOB and NV(VFDE) Amounts**

Langeberg & Ashton Foods Ltd	NIFOB (NZD)	NV(VFDE) (NZD)	Lower price
Product Type			
Choice			NV(VFDE)
Std.			NV(VFDE)
Sub-Std.			NV(VFDE)

99. The comparison shows that the NIFOB is greater than the NV(VFDE) in all cases, by a significant margin, so applying a duty less than the margin of dumping is not relevant in this case and duty at the full margin of dumping (the NV(VFDE)) value should be applied.

## 2.7 Proposed Reassessed Rate of Duty

100. On the basis of the information outlined above, the Ministry proposes that L&AF be subject to reference price anti-dumping duties equating to the weighted average NV(VFDE) amounts calculated.

101. The Ministry also considers that the NV(VFDE)'s should be set in ZAR which is the currency in which the goods are sold in the exporter's market. An alternative duty rate (which was established when the duties were last reassessed) is not required as the duty is set at the full margin of dumping.

### Residual Rate of Duty for ‘All Other Exporters’

102. The Ministry proposes that an “All Other Exporters” anti-dumping duty rate be set at 11 percent of the value-for-duty which is the dumping margin for L&AF calculated as a percentage of the export price adjusted to the FOB level. This rate of duty would be applied to exports of canned peaches from exporters other than L&AF should any other exporter commence exporting canned peaches from South Africa to New Zealand.




103. As noted above, an ad valorem percentage residual duty is proposed because residual rates in the form of reference prices would need to be the same as those calculated for L&AF and would therefore be confidential to L&AF and could not be released to other exporters. The Ministry does not consider it is feasible to have a residual rate that could not be disclosed to new exporters and their importers.

### Conclusion

104. The Ministry concludes that the reassessed duty applying to L&AF should be reference prices in the form of NV(VFDE) amounts set in South African Rand (ZAR), and that an “All Other Exporter” *ad valorem* rate of 11 percent apply to all other exporters as shown in Table 5 below.

105. The Ministry further concludes that the reassessed rate of duty take effect from the day after the date the Minister determines the reassessed rates of duty.

**Table 5: Proposed Level of Anti-dumping Duties**

	Type	Reference Price VFD per Kg (ZAR)
L&AF	Choice	
L&AF	Std.	
L&AF	Sub-Std.	
‘Other’ Exporters’ Rate	All types	11 % of VFD

## 2.8 Impact of the Anti-dumping Duty

106. The impact of the anti-dumping duty on the market for canned peaches in New Zealand is difficult to predict with any certainty. The New Zealand canned peach market is very price competitive and the importers respond to this by sourcing canned peaches from a number of countries depending on the relative costs to them.



Exchange rates between the currencies, which are constantly moving, also have an impact on the net cost to the importer.

107. As outlined above in Table 4 a lesser duty is not applicable, so the appropriate level of duty should be equivalent to the full margin of dumping. For L&AF this is to be applied as reference prices on the VFD per kilogram, and to all other exporters as an *ad valorem* (percentage) rate applied to the VFD. Because the current duty is in the form of separate reference prices for different types and sizes of product and there are separate rates for two named exporters and a residual (other) rate for all other exporters, it is difficult to directly compare the proposed new rates with the current duty rates.

108. To gauge the extent to which the proposed rates of duty on types of canned peaches represents an increase in the effective rate of duty on the current rates, the Ministry has calculated the amount of anti-dumping duty paid on imports of the subject goods as a percentage of the value for duty of those imports for the year ended December 2012. The actual total duty collected over this period represented █ percent of the value for duty of the subject goods. The proposed new reference price amounts are set at rates which are equivalent to the non-dumped prices found for the different types (but not sizes) of canned peaches and therefore the amount of duty collected will reflect the amount of dumping within those grouped types. For example, if the new rates proposed for L&AF had been applied to the L&AF's exports over the calendar year 2012 the amount of duty collected would have been █ percent of the VFD over that period.

109. L&AF states that, as the current duties are effective, and the New Zealand industry is not currently suffering material injury, it is not necessary for the duties to increase. The Ministry notes that while the new rates are effectively an increase, this reflects the change in circumstances over the last 5 years. The duties are based on the dumping margin and represent a level where the goods will not be considered dumped and therefore not injurious to the New Zealand industry.

110. The evidence from the review was that the current reference price duties did not influence the price at which L&AF exported the subject goods to New Zealand. The Ministry therefore considers that this comparison of the actual amount of duty collected in 2012, compared with the amount of duty collected if the new rates had been imposed on the same goods, provides a reasonable indication of the extent to which the effective rate of the duty will increase. While the increase in the rate of duty is significant in percentage terms this largely reflects the fact that the current reference prices were set more than five years ago and are out of date in relation to the amount of dumping found from the investigation. The Ministry notes, however, that the impact of the duty will differ depending on the product types imported, that is, the greater the dumping of a product type the higher the applicable duty will be. If the product is not dumped (i.e. the VFD is at or above the reference price for that type) no duty will apply.

111. It is not clear to what extent the new reference prices will affect the net cost of imports of subject goods, as the Ministry is aware that █.

During the review L&AF indicated that it had been trying to increase its prices to

cover increased costs of production over the last few years, and that its prices to New Zealand had not been affected by the level of the anti-dumping duties. The Ministry has no information about the new season's prices and so does not know how close these will be to the reference prices. It is likely that the new rates will impact to some degree on the importers' buying decisions, however, it is considered that the proposed increase in duty is unlikely to be significant enough to translate directly into significant price increases at the level of the retail customer. This is because the importers are in competition with each other in securing the quantity and quality of canned peaches they require, for the lowest average prices they can achieve. The larger importers are also likely to source from more than one country, and there are other importers of canned peaches that import from other countries which are also competitors in the New Zealand retail market.

112. Two of the three importers involved in this review and reassessment have the largest food distribution networks in New Zealand, and prices to their customers appear to be more reactive to their competitors' prices (which may change frequently at the point of sale), rather than be influenced by the imported cost of the goods *per se*. For this reason, the Ministry considers that if there is any flow on effect from the increase in duty rates, any such impact at the retail level on prices would likely be minimal.

113. The proposed rates of anti-dumping duty for L&AF are in the form of NV(VDFE) reference prices which are based on the average normal value prices per kilogram of the types of canned peaches exported during the POR(D), calculated at an FOB level. The rates are higher than some of the current average export prices of individual products but lower than other prices (on a per kilogram basis). The Ministry is proposing reference prices, which means duty would be paid only if the average export price for that type of peaches is lower than the relevant reference price (proposed in Table 5). Setting reference prices provides benchmark average prices at which the goods are considered not to be dumped, but would still assist the New Zealand industry (HWL) by preventing dumped goods from entering the market.

114. The Ministry considers that the proposed reference price anti-dumping duty for L&AF is not likely to reduce the volume of imports from South Africa unless the net cost to importers increases significantly relative to other sources of imports. However, because canned peaches have to be imported to satisfy demand in New Zealand, if importers consider the prices are no longer competitive from South Africa, they will look to switch their imports to other sources.

## 2.9 Refunds of Anti-dumping Duty

115. Section 14(10) of the Act provides that if a reassessment results in a lower duty being imposed the Minister may require the New Zealand Customs' Service to refund, with effect from the date of initiation of the review, the difference between the duty paid and the lower duty. However, if the reverse situation applies the shortfall is not required to be paid.

116. The Ministry notes that it is likely that the new rate of duty proposed will not require any refund of excess anti-dumping duty paid, as on current estimates the rates proposed are higher overall than the current rates.



## Appendix 1

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(a) A full copy of the Anti-Dumping Agreement on the Implementation of Article VI of the GATT 1994 (Anti-Dumping Agreement) can be found at:

[www.wto.org/english/res\\_e/booksp\\_e/analytic\\_index\\_e/anti\\_dumping\\_05\\_e.htm](http://www.wto.org/english/res_e/booksp_e/analytic_index_e/anti_dumping_05_e.htm)

(b) A full copy of the Dumping and Countervailing duties Act can be found at:

[www.legislation.govt.nz/act/public/1988/0158/latest/DLM137948.html?search=ts\\_act\\_dumping+and+countervailing\\_resel&p=1&sr=1](http://www.legislation.govt.nz/act/public/1988/0158/latest/DLM137948.html?search=ts_act_dumping+and+countervailing_resel&p=1&sr=1)