MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

TRADE
AND REGULATORY
COOPERATION
DECEMBER 2014

New Shipper Reassessment (Rhodes Food Group (Pty) Ltd)

Canned peaches from South Africa

Non-confidential Final Report

Dumping and Countervailing Duties Act 1988

New Zealand Government

Table of Contents

Abbreviations

The following abbreviations are used in this Report:

Act (the)	Dumping and Countervailing Duties Act 1988
Anti-Dumping Agreement (the)	WTO Agreement on Implementation of Article VI of GATT 1994
AUD	Australian Dollars
Chief Executive (the)	Chief Executive of Ministry of Business, Innovation and Employment
CIF	Cost, Insurance and Freight
EBIT	Earnings Before Interest and Tax
FOB	Free on Board
HWL	Heinz Watties Ltd
Langeberg & Ashton	Langeberg & Ashton Foods Ltd
Ministry (the)	Ministry of Business, Innovation and Employment
NZD	New Zealand Dollars
POI	Period of Investigation
Rhodes	Rhodes Food Group (Pty) Ltd
SACD	South African Container Depot
ZAR	South African Rand

EXECUTIVE SUMMARY

Introduction

1. A sunset review of the anti-dumping duty on canned peaches from South Africa was completed by the Ministry of Business, Innovation and Employment (the Ministry) in 2013 and a reassessment of the rates of duty was approved by the Minister on 28 May 2014. A new shipper reassessment for the rate of duty applicable to Rhodes Food Group (Pty) Ltd was initiated on 7 April 2014.

Canned peaches subject to the investigation

2. The goods which are the subject of the investigation (the subject goods) are:

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

New shipper reassessment process

3. World Trade Organisation (WTO) rules provide that a separate rate of duty may be established for an individual exporter or producer provided they did not export the goods to New Zealand during the period of investigation examined in the last review, and provided they are not related to an exporter or producer which did export the goods to New Zealand during the period of investigation.

4. An application for a new shipper reassessment was made by Rhodes Food Group, a South African manufacturer and exporter of canned peaches. Rhodes did not export canned peaches to New Zealand during the period of investigation for the 2013 sunset review. Rhodes is not related to the exporter involved in the 2013 sunset review, Langeberg & Ashton Foods Ltd. The criteria for a new shipper reassessment are therefore met.

5. Rhodes is currently subject to the residual rate of duty, which is set at 11 percent of the Customs' value for duty.

6. Heinz Wattie's Ltd (HWL) is the only New Zealand producer of canned peaches, and made the application for the original investigation and subsequent reviews. HWL provided the information requested by the Ministry to enable it to update the industry's non-injurious prices.

7. Notification of the initiation of the reassessment was published in the New Zealand Gazette, and Rhodes and HWL were notified directly. Interested parties for this reassessment and those that were identified in the 2013 sunset review were given the opportunity to comment on an interim report. The Ministry received comments from Rhodes and Langeberg & Ashton.

8. Any change in the level of anti-dumping duty resulting from this reassessment is only applicable to exports to New Zealand by Rhodes.

Conclusion

9. This report concludes that reference prices of ZAR [redacted] per kg for choice grade canned peaches, ZAR [redacted] per kg for standard grade peaches, and ZAR [redacted] per kg for sub-standard grade peaches be established for exports of canned peaches by Rhodes.

1. Introduction

1.1 Background

10. A sunset review of the anti-dumping duties applying to canned peaches from South Africa was completed by the Ministry of Business, Innovation and Employment (the Ministry) in 2013, and reassessed rates of duty were imposed on 28 May 2014 as a result of a reassessment following this review.

11. The application for a new shipper reassessment was made by Rhodes Food Group (Pty) Ltd, a South African manufacturer and exporter. Rhodes did not export canned peaches to New Zealand during the period of investigation of the 2013 sunset review, nor is it related to any exporter that did export to New Zealand at that time.

12. This reassessment was accordingly initiated on 7 April 2014.

1.2 Disclosure of information

13. The Ministry makes available all non-confidential information via the Public File for this investigation. Any interested party is able to request both a list of the documents on this file and copies of the documents.

1.3 Interested parties

New Zealand industry

14. Heinz Wattie's Ltd (HWL) constitutes the New Zealand industry for canned peaches and was the applicant for the original investigation and subsequent sunset reviews. Non-injurious prices (NIPs) have been established each time on the basis of information provided by HWL, in order to determine whether duties at less than the margin of dumping should apply.

15. HWL has provided updated information for this reassessment, which has been used to update the values of the industry's NIPs.

1.4 Exporters

16. Rhodes is the manufacturer and exporter of the goods which made the request for a reassessment. Rhodes made a submission on the interim reassessment report.

17. Langeberg and Ashton Foods Ltd (Langeberg & Ashton) is a South African manufacturer and exporter of canned peaches which was involved in the last sunset review and reassessment. Langeberg & Ashton also made a submission on the interim reassessment report.

1.5 Importers

18. Rhodes exports to [redacted] and to [redacted], a New Zealand distributor who on-sells canned peaches to [redacted].

1.6 Imported goods

19. The goods which are the subject of the application, hereinafter referred to as canned peaches, or "subject goods", are:

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

20. Canned peaches enter under Tariff Item 2008.70.09 and Statistical Key 00L of the Tariff of New Zealand.

1.7 Present anti-dumping duties

21. The anti-dumping duties have been in place on canned peaches from South Africa since 1996. The last review and reassessment was completed in 2013/14. Exports of canned peaches by Rhodes are currently subject to the residual rate of 11 percent of the Customs value for duty. There is one named exporter, Langeberg & Ashton Foods, which has reference prices set for its exports of canned peaches.

2. Dumping assessment

22. Dumping occurs when an exporter sells canned peaches to New Zealand at a price lower than they are sold for in South Africa. The price at which canned peaches are sold in South Africa is referred to as the normal value. In essence dumping is price discrimination between an export and a domestic market.

23. This section of the report explains the method of comparing export prices with normal values and how these prices have been established over the period of investigation (POI), i.e. the year ended 31 March 2014, to determine whether canned peaches from South Africa were imported into New Zealand at dumped prices.

Methodology

24. The Ministry has undertaken the comparison of export prices and normal values on a transaction-to-transaction basis, which is the methodology used in the 2013 review and is also considered appropriate for Rhodes.

25. The use of the transaction-to-transaction methodology is in accordance with Article 2.4.2 of the Anti-Dumping Agreement which states that the existence of margins of dumping shall normally be established on the basis of either a weighted average-to-weighted average comparison or a transaction-to-transaction comparison.

26. The export price and normal value have been compared at the ex-factory level, which is the preferred point of comparison under Article 2.4 of the Anti-Dumping Agreement, as a comparison at this point removes any differences in downstream costs from the dumping calculation.

27. Deductions have been made from, and adjustments made to, the base export prices and normal values to arrive at ex-factory values and to ensure a fair comparison.

28. To calculate an overall dumping margin for Rhodes, the Ministry has multiplied the export price and the normal value of each transaction by the export volume of that transaction. The resulting export price and normal value amounts were summed and the total export price was subtracted from the total normal value and the difference, when calculated as a percentage of the total export price, was the overall dumping margin for Rhodes. If the export price was lower than the normal value, the goods were considered to be dumped.

29. The following paragraphs provide an explanation of how export prices and normal values have been established for Rhodes.

Information used

30. The Ministry has used information from Rhodes to establish export prices and normal values. All information that has been supplied to the Ministry has been used in the preparation of this report where it can be reasonably relied upon.

2.1 Export prices

Introduction

31. Export prices are the prices at which canned peaches are exported from the country of export to New Zealand, that are arm’s length transactions, other than costs or charges incurred in preparing the goods for shipment additional to those incurred on domestic sales and any other costs, charges

and expenses resulting from the exportation of the goods or arising after their shipment from the country of export, as required by section 4 of the Act.

32. The following paragraphs provide an analysis of export prices for Rhodes.

Export sales and distribution

33. Rhodes sold [redacted] kilograms of canned peaches to [redacted] over the POI, and during that time, [redacted]. Rhodes also sold [redacted] kilograms of canned peaches to [redacted] over the POI. Rhodes does not have any corporate affiliations with either of its New Zealand customers.

34. Over the POI, Rhodes exported to New Zealand sliced and halved canned peaches, predominantly preserved in syrup, although some canned peaches were preserved in lite syrup or juice. Can sizes were 410/420g or 3.06kg. To [redacted], Rhodes exported its own "Rhodes" branded peaches, while it exported private label peaches to [redacted] (that is, [redacted] and [redacted] brands). Both Rhodes and [redacted] labelled peaches are choice grade. [redacted] labelled peaches are standard grade.

35. [redacted] was invoiced in ZAR, while [redacted] was invoiced in AUD. The currency conversion from AUD to ZAR has been made for each shipment using the interbank exchange rate obtained from www.oanda.com at the date each transaction was invoiced.

Base prices

36. All exports of canned peaches from Rhodes to New Zealand were made on a free on board (FOB) basis. Rhodes does not offer any discounts or rebates on its export sales. The invoiced FOB prices are therefore considered the base prices in the calculation of ex-factory export prices to New Zealand.

Adjustments

Export packing

37. An export packing cost of ZAR [redacted] per container has been deducted from the base prices. Rhodes provided invoices from the South African Container Depot (SACD) for most export shipments to New Zealand as evidence of this cost.

Handling

38. Rhodes calculated a cost per container for handling. The costs include a terminal handling charge, cargo dues, documentation fee, container service charge, cross haul, cross haul lift, cartage ("transport full") and pre-advice ("CTO documents"). These charges cover all the costs of moving the goods from the South African Container Depot (SACD) onto the ship. As evidence of these costs, Rhodes provided invoices from SACD for cross haul, cross haul lifts, cartage and CTO documents; [redacted] and [redacted] for the documentation fee, container service charge, and terminal handling charge, and invoices from [redacted] for the cargo dues. The charges equate to ZAR [redacted] per container, which has been deducted from the base prices.

Inland transport

39. Goods are transported from Rhodes' plant in Tulbagh to SACD. Rhodes provided the full year's transport costs for inland transport provided by [redacted]. Rhodes calculated that [redacted] percent of all products exported would be labelled in Tulbagh (sometimes product is labelled in Groot Drakenstein, which incurs an additional transport cost). Rhodes used this figure to

calculate the number of cans transported from Tulbagh to SACD, and this figure was then used to calculate the actual cost of transport per can. Rhodes calculated a cost of ZAR [redacted] cents per can for exports until September 2013 and ZAR [redacted] cents per can for exports between October 2013 and March 2014.

40. Inland transport rates for 3kg cans calculated using the costs per can provided by Rhodes were considerably lower per kilogram than transport rates for any of the other transactions. The Ministry has therefore calculated a weighted average transport rate from the information provided for all other transactions, and applied this rate to transport for 3kg cans.

Cost of credit

41. The invoice date of each export shipment to New Zealand is considered by the Ministry to establish the material terms of sale and the date from which Rhodes' credit terms commence. Rhodes provided the Ministry with payment dates for each transaction, evidenced by payment advice. The Ministry therefore used the actual credit term for each transaction. Rhodes also provided the Ministry with evidence of the South African Reserve Bank's prime lending rate over the period, which averaged 8.58 percent. The Ministry used this information to make an adjustment for cost of credit.

Export prices

42. Rhodes export prices for canned peaches have been calculated by deducting from the FOB invoiced base prices the adjustments outlined above. Ex-factory export prices range from ZAR [redacted] per kilogram (for 420g choice grade peach halves in syrup or lite syrup) to ZAR [redacted] per kilogram (for 410g choice grade peach slices in pear juice).

2.2 Normal values

Introduction

43. The normal value is the price at which Rhodes sells canned peaches on the domestic market in South Africa. The types of sales that can be used to determine normal values are set out in section 5 of the Act, which can generally be described as arm's length sales of like goods in the ordinary course of trade for home consumption in the country of export, in this case South Africa. Where an exporter makes no such sales, sales by other sellers of like goods in South Africa can be used to establish normal values.

44. In the absence of relevant and suitable sales in the ordinary course of trade, normal values can be either: (a) constructed on the basis of the sum of cost of production and, on the assumption that the goods had been sold for home consumption in the ordinary course of trade in South Africa, reasonable amounts for administrative and selling costs and other costs incurred in the sale, and a rate of profit normally realised on sales of goods of the same general category in the South African domestic market; or (b) established on the basis of selling prices to a third country.

45. Section 5(3) of the Act requires that in order to effect a fair comparison the normal value and export price shall be compared at the same level of trade, in respect of sales made at nearly the same time and with due allowance for differences that affect price comparability.

46. The following paragraphs discuss normal values for Rhodes.

Distribution

47. Rhodes sold [redacted] kilograms of canned peaches on the domestic market over the POI. These canned peaches were sliced and halved preserved in syrup, in 410g, 825g or 3.06kg size cans.

Sales on the domestic market are of both choice and standard grade peaches and branded and private label sales.

Selection of domestic sales transactions

48. Rhodes sold to a large number of domestic customers over the POI, including wholesalers and retailers, such as supermarkets. Sales to Rhodes' domestic customers are arm's length sales in the ordinary course of trade. Rhodes provided the Ministry with a spread sheet detailing each of its sales transactions on the South African domestic market over the POI.

49. The Ministry has compared each of Rhodes' domestic sales with the cost to make and sell the product. Some individual sales transactions were identified as being made at a loss but these sales did not meet the criteria in section 5(6) of the Act and Article 2.2.1 of the Anti-Dumping Agreement that would allow these sales to be disregarded. The volume of domestic sales over the POI is well in excess of the 5 percent threshold in footnote 2 of the Anti-Dumping Agreement; that is, the volume of sales of canned peaches on the South African market is considerably more than 5 percent of the volume of sales to New Zealand.

50. The Ministry chose a number of individual domestic customers in order to cover all the types of canned peach export sales and complete transaction-to-transaction comparisons. The customers chosen were [redacted] and [redacted]. Both [redacted] and [redacted] are part of the [redacted] supermarket group of companies. The Ministry selected transaction for a product type and size as equivalent as possible to that exported to New Zealand and as close as possible to the date of the export sale. All of the selected transactions were made at a profit.

51. The Ministry chose private label (i.e. supermarket home brands) sales in all instances. While Rhodes sold its own branded product to [redacted], it does not incur any advertising or other similar costs on those sales. A similar situation applies for export sales to [redacted] – the private label sales to [redacted] do not incur any additional advertising or similar costs for Rhodes, as [redacted] maintains costs such as advertising on its own brands. Advertising costs on private label sales are usually the responsibility of the buyer, meaning the seller does not incur these costs, while the seller is likely to incur some of these expenses on branded sales. The Ministry therefore considers that domestic private label sales are more comparable to the export sales than domestic branded sales, even though those exports are branded products.

52. Rhodes does not sell standard grade 3kg cans on the domestic market, and stated that all its domestic sales of 3kg cans are sold to the food service sector, which uses choice grade peaches. Rhodes did however export standard grade 3kg cans to [redacted] under [redacted] label. The Ministry has therefore compared these sales to 825g standard cans sold to [redacted] on a per kilogram basis as it considered these sales to be the next closest comparison.

<u>Submissions on the interim report</u>

53. Langeberg & Ashton considers that the use of transaction-to-transaction methodology may lead to an incorrectly lower than average sales price, affecting the dumping margin. It stated that the 825g size is not highly promoted at the retail level in South Africa and thus would not reflect the average selling price of peaches in South Africa correctly. Additionally, it states that halves are not promoted as frequently as slices and this would have an impact on the selling price. Langeberg & Ashton consider that these selections would have a compound effect to increase the average selling price, making the comparison questionable.

54. Langeberg & Ashton has stated that the sales at a loss discussed in paragraph 49 have effectively reduced the average price sold for the range during the period, reducing the value of local sales and providing a smaller differential to export prices.

55. Langeberg & Ashton consider that the price of private label sales would be significantly lower than branded sales. The company also stated that private label sales in South Africa [redacted]. Langeberg & Ashton considers this cost should be taken into account in the pricing.

<u>Ministry's response</u>

56. The Ministry has carefully selected representative companies, and sales to these companies, to use in the establishment of normal values to compare to export prices. It has ensured that the sales used are at a profit, and are as close as possible to the volume and date of sale of the export transactions. The Ministry considers the use of the transaction-to-transaction methodology is appropriate in this case, as there are a number of different product types sold in both the export and domestic markets making a direct comparison between each export sale and an appropriate domestic transaction preferable. Furthermore, the Ministry feels it is appropriate to use the same methodology it used in the recent sunset review concerning Langeberg & Ashton. This ensures a consistent approach to calculating dumping margins is adopted.

57. The Ministry considers that the comparison of standard grade 825g cans sold in the South African market to the standard grade 3kg cans sold to [redacted] is appropriate. The Ministry does not consider that advertising at the retail level, particularly the volume of advertising, is a relevant consideration in establishing normal values in this case (paragraph 59 also discusses advertising). The Ministry would make an adjustment for advertising on the basis that it is necessary to ensure a fair comparison of the export prices and normal values. It does not consider such an adjustment is necessary in this case. On a similar note, the Ministry has found in past investigations and reviews that the cut of peaches (in particular, the difference between slices and halves) does not have a significant effect on the selling price, and therefore that halves are comparable to slices.

58. The individual sales transactions that were sold at a loss referred to above have not been used in the Ministry's transaction-to-transaction comparison. In all instances the Ministry has used a sale that was made at a profit, and the overall normal value is based on these transactions.

59. The Ministry considers that domestic market private label sales are more directly comparable to the sales to New Zealand customers. Rhodes does not incur advertising costs on its branded export sales to New Zealand and nor does it incur advertising costs directly on its domestic sales of private label canned peaches. Rhodes confirmed that while it incurs advertising costs on the domestic market (included in trade agreements), these costs are a general advertising cost for each customer and are not specific to peaches. The Ministry does not consider it appropriate to make an adjustment for such advertising on the basis that it does not affect price comparability of peaches.

60. The Ministry does not consider that any of the points Langeberg & Ashton have raised require any adjustment to the methodology used.

Level of trade

61. Due allowance for difference in levels of trade is able to be made; however any adjustment for differences in level of trade must affect price comparability. The difficulty in making such an adjustment is distinguishing between price differences relating to level of trade and price differences relating to dumping itself. In most cases the exporter/producer does not consider level of trade (or the level in the distribution chain) to be a relevant consideration in setting prices to its New Zealand

customers even if it sells on the domestic market at different prices according to where on the distribution chain its customer sits.

62. In the present case, Rhodes sells to two New Zealand companies that act as distributors, taking possession of the goods and on-selling them to supermarket chains. Rhodes has said that it does not consider level of trade in its prices to its New Zealand customers. These sales have been compared with sales to supermarket chains on the South African market. Many of these sales appear to be completed in a similar way to sales on the New Zealand market. That is, Rhodes makes sales to supermarket distribution centres, at which point the customer is responsible for the goods. The Ministry does not consider there are differences in level of trade which affect price comparability.

Base prices

63. In the calculation of Rhodes' ex-factory normal values, base prices are the invoice prices (in ZAR) specified in Rhodes' questionnaire response. Rhodes provided a representative sample of invoices as evidence of the invoice prices.

Adjustments

64. Rhodes has provided trade agreements for each customer the Ministry has used in its transaction-to-transaction analysis, and many of the adjustments outlined below are evidenced by these agreements.

Rebates

65. Rhodes offers a 'basic rebate', negotiated as part of its trading terms with domestic customers. The rebate for [redacted] is [redacted], covering all product; that for [redacted] is [redacted], applying only to [redacted] products (which is the brand of peaches that the Ministry has used in its analysis where it has used this company); and for [redacted], the rebate is [redacted], for all products. The Ministry has adjusted the invoice prices to reflect these rebates as appropriate.

<u>Submissions on the interim report</u>

66. Langeberg & Ashton has said that, for clarity, the rebate applies to fully branded and private label products in the majority of instances across the South African market e.g. Spar, Shoprite and Pick and Pay.

<u>Ministry's response</u>

67. The Ministry has made an adjustment for rebates in all instances that an adjustment is appropriate.

Settlement allowance

68. Rhodes provides a settlement allowance which is negotiated into domestic trade agreements. Rhodes stated that the average settlement allowance is [redacted]. The Ministry has made an adjustment for the actual settlement allowance that was negotiated in the trade agreements provided, which ranged between [redacted] and [redacted].

<u>Submissions on the interim report</u>

69. Langeberg & Ashton have said that the norm in South Africa ranges from [redacted] to [redacted] percent.

<u>Ministry's response</u>

70. The Ministry's adjustment is in line with Langeberg & Ashton's statement and it has made an adjustment at the actual level for which Rhodes provides.

Quality Assurance

71. Rhodes offers a quality assurance discount, negotiated into trade agreements. For [redacted], this is [redacted], and for [redacted], [redacted]. [redacted] does not receive this discount.

Growth Incentive

72. Rhodes offers a growth incentive, which is also negotiated into domestic trade agreements. It therefore differs per customer, although it is usually based on a sliding scale. Rhodes stated that a growth incentive is calculated on a calendar years' worth of sales, and a customer will invoice Rhodes [redacted] in the year and be paid in one payment. Rhodes provides for a maximum growth rebate over the calendar year, and would consider this maximum in all negotiations and calculations in respect of each customer. Rhodes stated that in most cases for the 2013 calendar year, [redacted] growth was achieved.

73. The Ministry was not provided with growth incentive amounts for each of the customers used in the establishment of normal values. The highest incentive amount in the trade agreements that Rhodes provided to the Ministry was [redacted] (for [redacted] growth by [redacted]). Since Rhodes provides for the highest amount, the Ministry has made an adjustment to normal values based on this percentage amount.

<u>Submissions on the interim report</u>

74. Langeberg & Ashton have stated that because Rhodes accounts for the full growth incentive, the maximum growth incentive should be factored into normal pricing rather than a single growth incentive. The materiality of the growth incentive should be considered against the total weighted average of the growth incentive.

<u>Ministry's response</u>

75. The Ministry has accounted for the maximum growth incentive amount that is available to it. The growth incentive is based on a sliding scale for each customer and is not factored into normal pricing but rather is accounted for as a separate payment as outlined above. The Ministry has used the highest value in the scale for the customer it has used as a comparison.

Distribution centre allowance

76. Most of Rhodes' prices are on a delivered into customer distribution centre basis (including transportation costs between the factory and the distribution centre). Rhodes offers an allowance where deliveries are made to a distribution centre rather than as a direct shipment to a store. This allowance is also negotiated as part of trading terms. Rhodes stated that for a major retailer distribution centre, an allowance is offered at an average [redacted]. Rhodes provided the Ministry with a schedule showing distribution centre allowances for a number of customers.

77. The distribution allowance negotiated with [redacted] was [redacted] and for [redacted] it was [redacted] Rhodes also provided an invoice to [redacted] on which warehouse allowances of [redacted] were accounted for. [redacted] does not receive a distribution allowance.

78. The Ministry has made an adjustment for the distribution centre allowance based on the actual allowance for each customer.

Brand integrity allowance

79. Rhodes has agreed with [redacted] to provide a brand integrity allowance of [redacted] percent of the gross value of the goods, which allows [redacted] to conduct authenticity

testing or quality analysis on products that Rhodes packs for them. This is only offered to [redacted].

80. The Ministry has made an adjustment at the actual rate agreed.

Inland transport

81. Rhodes provided actual freight costs for each domestic customer in the spread sheet provided as part of its questionnaire response. Rhodes also assessed domestic freight as a percentage of turnover based on its knowledge of freight costs by customer and by region, and it calculated an average by customer group (e.g. [redacted]). The rates ranged between [redacted] and [redacted] percent of turnover. Rhodes stated that the average freight rate historically assigned to [redacted] is [redacted] percent, although it does vary. The average freight rate for [redacted] for the year to May 2014 was much lower at [redacted] percent. Rhodes also provided invoices from [redacted] (the domestic transport company Rhodes uses) as evidence of its costs. The rates invoiced by [redacted] are similar to the actual figures for each transaction.

82. The Ministry has used the actual figures for each transaction; however it checked the percentage inland transport represented of the net sales value for the customers chosen. Most of the rates were between [redacted] and [redacted] percent of the net sales value. The rate for [redacted] represented only [redacted] percent of the net sales value; however, [redacted]' individual transactions were much larger than the other customers, indicating that a lower rate per shipment may have been negotiated because of the larger volume involved.

Cost of credit

83. The invoice date of each transaction is considered by the Ministry to establish the material terms of sale and the date from which Rhodes' credit terms commence. Rhodes provided proof of payment for a number of domestic customers in the form of remittance advice and bank statements. The Ministry used an average credit term for each customer using this evidence where possible, otherwise it used an average credit term for all customers. The average term for all customers was [redacted] days. The Ministry also used the South African Reserve Bank's prime lending rate over the period, an average of 8.58%.

<u>Submissions on the interim report</u>

84. Langeberg & Ashton commented that the prime lending rate is not a normative lending rate for an organisation [redacted] and would inflate the selling prices. Langeberg and Ashton consider the actual lending rate should be used which is [redacted], reducing the cost of credit and the impact on pricing.

<u>Ministry's response</u>

85. The Ministry was advised by Rhodes that 8.58 percent adequately reflects its borrowing rate. The prime lending rate is the main borrowing rate shown on the South African Reserve Bank's website. The Ministry notes that the borrowing rate used for Langeberg & Ashton in the sunset review was [redacted] percent, that is, approximately [redacted] percent [redacted] than the rate used for Rhodes. The Ministry considers that even if the 8.58 percent rate is higher than Rhodes' actual borrowing rate, this difference is inconsequential in terms of its impact on normal values.

Normal values

86. Normal values have been calculated by deducting from the base prices the adjustments outlined above. Ex-factory normal values range between ZAR [redacted] per kilogram (for 825g standard grade peach slices in syrup) and ZAR [redacted] per kilogram (for 410g choice grade peach slices in syrup).

2.3 2014 sales to [redacted]

87. Rhodes has signed a contract for the 2014 calendar year with [redacted] in order to establish a long term relationship. This contract has fixed quantities and prices. Rhodes has stated that the prices negotiated with [redacted] for 2014 are higher than the prices it charged for the one-off shipments to [redacted] in 2013. Rhodes has therefore asked the Ministry to consider the sales that are yet to be made to [redacted] for the remainder of the 2014 season. Rhodes provided the Ministry with the contract it has negotiated with [redacted] in order to make this consideration.

88. Using the contract prices and an average of the adjustments outlined for export prices above, ex-factory export prices to [redacted] for the remainder of 2014 are on average slightly higher than the prices [redacted] paid in 2013. However, they are still lower than the normal values and thus still dumped.

<u>Submissions on the interim report</u>

89. Rhodes considers that its 2014 sales to [redacted] are significantly higher than its 2013 sales. Rhodes stated that the prices of sales already made in 2014 are [redacted] to [redacted] percent higher than 2013 sales prices and the contract prices are [redacted] to [redacted] percent higher than the 2013 prices (including adjustments, using the highest figures calculated by the Ministry). Further, Rhodes considers that 2014 sales to [redacted] are not made at less than the normal values and therefore any dumping margin is negative (i.e. not dumped). Rhodes submitted that the Ministry should further consider this issue, as it has an effect on the overall dumping margin for Rhodes.

90. Langeberg & Ashton have commented that the review period is set and the pricing comparisons should be sustained for that period. Applying the local sales value against a contract should not be considered.

<u>Ministry's Response</u>

91. The difference between Rhodes' 2013 and 2014 sales to [redacted] is between approximately [redacted] and [redacted] percent at the ex-factory level. While the 2014 prices are higher than the 2013 prices, when compared to the 2013 normal values, they are still dumped, by an estimated margin of [redacted] percent.

92. The remaining contracted sales have not been included in the calculation of the dumping margin for Rhodes. The dumping margin only accounts for sales during the year to 31 March 2014.

93. The Ministry considers that it is not appropriate to have regard to sales that have or will occur outside of the POI. The POI ensures that export sales are compared with normal value transactions which occurred at as near as possible the same time as the export sales. The Ministry does not have normal value information for after March 2014 and would not usually compare contract prices against actual sales prices, as sales prices may differ from the contract when the sale occurs.

94. For the above reasons, the Ministry does not consider that 2014 contracted sales to [redacted] should be included in the calculation of the dumping margin.

2.4 Comparison of export price and normal value

95. The Ministry has compared the export prices and normal values on a transaction-to-transaction basis. This involves matching the export sale to New Zealand with a comparable arm's length sale made in the ordinary course of trade on the South African domestic market, and adjusting the domestic price, where necessary, for differences affecting price comparability.

96. The Ministry has calculated an overall dumping margin for Rhodes on the basis set out in paragraph 28 above.

97. Rhodes' overall dumping margin is 8 percent, indicating that exports by this company are dumped.

3. Duty Considerations

3.1 Methods of Imposing Duty

98. 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.

99. 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.

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

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

101. 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.

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

103. 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.

3.2 Proposed Form of the Anti-Dumping Duty

104. In the reassessment following the last sunset review, the Ministry imposed reference prices for different types (that is, grades) of canned peaches on a per kilogram basis for imports from Langeberg & Ashton. The Ministry considered that a reference price approach was the most effective and practical method of applying duties to canned peaches given the circumstances of the case because reference prices are transparent, clearly signal the amount of anti-dumping duty applicable and indicate an average price level at which the goods are not dumped. Reference prices have the advantage of being the least trade-restrictive of the different forms of 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.

105. The Ministry considered the type (grade) of product to be the main driver of price at the time of the sunset review. Can size appeared to have less influence on the product's "tradeability".

106. The Ministry considers that a reference price approach is similarly applicable for exports of canned peaches by Rhodes. It is transparent and clearly signals the level at which goods are not dumped and the amount of anti-dumping duty that will be applicable. The Ministry considers it appropriate to maintain a similar split of reference prices as those it has established for Langeberg & Ashton; that is, to set reference prices based on the different grades of product.

Submissions on the interim report

107. Rhodes considers that, since HWL does not sell canned peaches in the three grades which are manufactured in the South African market, there should not be three distinct reference prices. HWL would compete with all three grades equally, in Rhodes opinion. A more sufficient level of protection would be achieved by averaging the proposed reference prices of all three grades of product, or at least the two grades currently supplied by Rhodes. Rhodes considers that this especially warrants consideration because [redacted].

Ministry's response

108. Langeberg & Ashton argued in the sunset review that there are various product differences that affect price comparability, including grade, cut, medium and container type. The Ministry considered in the sunset review that if a single reference price was put in place, there may be some variation in the effective rate of duty collected on different importations because the product mix would likely differ compared with the product mix over the POI. That is, it was likely that duty would be over or under-collected. In the sunset review, the Ministry considered that the differences in grade should be accounted for in the setting of duties as the differences in grade did seem to have an effect on price. The Ministry therefore set separate reference price duty rates for each of the three grades of canned peaches (choice, standard and sub-standard) exported by Langeberg & Ashton to New Zealand.

109. In respect of Rhodes, the Ministry considers that three reference prices, separated by grade, should be maintained. For consistency between the rates set for Rhodes and the rates set for Langeberg & Ashton, separate reference prices have been set for choice, standard and sub-standard grades of canned peaches. Separate reference prices for these different grades have the advantage of reflecting differences in the prices per kilogram of those grades and will, therefore, result in a more accurate collection of anti-dumping duty, if the reference price is triggered.

3.3 Consideration of lesser duty

110. Section 14(5) of the Act requires that the Minister shall have regard to the desirability of ensuring the amount of duty is not greater than is necessary to prevent material injury to the New Zealand industry.

111. To determine whether a lesser duty should apply, the Ministry has used a comparison of non-injurious free on board (NIFOB) amounts and normal value (value for duty equivalent) (NV(VFDE)) amounts. If the NIFOB is less than the NV(VFDE) this normally indicates that a lesser duty should apply. If the NIFOB is more than the NV(VFDE) this normally indicates that duty should apply at the full margin of dumping.

112. NV(VFDE) amounts are calculated by adding to normal values the costs incurred between the ex-factory and FOB levels in the country of origin. NIFOB's are calculated by deducting from the

industry's non-injurious price (NIP) the costs arising after FOB up to the level of trade at which the imported product first competes with the New Zealand industry's product.

Calculation of a NV(VFDE) reference price

113. 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.

114. The Ministry has calculated the NV(VFDE) amounts for Rhodes 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.

115. Rhodes did not export sub-standard grade peaches to New Zealand, nor did it sell any on the South African market. In order to set a duty rate for this grade, the Ministry has therefore calculated the proportionate difference in the duty rates set for Langeberg & Ashton for standard and sub-standard peaches, and adjusted the rate for standard peaches calculated for Rhodes by this amount.

116. Table 1 below shows the calculation of the NV(VFDE) amounts on the basis described above.

Table 1: NV(VFDE)

	Choice	Standard	Sub-standard
Ex-factory normal value per kg (ZAR)	[redacted]	[redacted]	
Total costs to FOB per kg (ZAR)	[redacted]	[redacted]	
NV(VFDE) per kg (ZAR)	[redacted]	[redacted]	[redacted]
Average exchange rate (ZAR:NZD 0.1208)*			
NV(VFDE) per kg (NZD)	[redacted]	[redacted]	[redacted]

* 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 over the period 1 April 2013 to 31 March 2014.

Calculation of a NIFOB amount

117. 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. In the sunset review, HWL's ex-factory selling price (exclusive of all discounts and rebates) at the time was considered to be its non-injurious price. The Ministry considered that the anti-dumping duties that were in place had been acting to prevent any injurious dumping occurring and therefore that the industry's prices were at levels achieved in the absence of dumping.

118. For the NIP established in the sunset review, the Ministry used HWL's latest financial year results, being the year to 30 April 2013. The NIP was based on HWL's net sales value per kilogram (excluding all trade spend costs) for the product as a whole (that is, for all types and sizes of like goods). In order to ensure the NIP was [redacted]

[redacted].

119. HWL provided the Ministry with updated financial information for canned peaches. Since the sunset review, HWL has changed its financial year to the calendar year. The latest financial year is therefore the year to December 2013. HWL's updated NIP, calculated on the basis set out in the paragraph above over this period, is NZ$[redacted] (which includes an adjustment for [redacted]).

120. HWL does not sell canned peaches categorised into the three grades in which peaches are sold on the South African market, so only a single NIFOB amount is able to be calculated by the Ministry.

121. The calculation of the NIFOB amount has taken into account the costs incurred from the FOB level in South Africa to the ex-wharf level in New Zealand, as this is the level at which the imported canned peaches compete with the domestic industry's product.

122. Both [redacted] and [redacted] provided information on the costs of importing canned peaches from Rhodes over the POI for this reassessment. Both companies provided the information for all types of canned peaches they import and indicated costs between FOB and ex-factory of freight, insurance, and Custom's duty (which is 5% of the VFD). [redacted] also accounted for anti-dumping duty, which the Ministry has not included. An average of these costs from both companies has been used to calculate the NIFOB. Table 2 below shows the NIFOB amount that has been established on the basis outlined above.

Table 2: NIFOB

	Average NZD per kg
Non-injurious price (NIP)	[redacted]
Less average costs FOB to ex-wharf	[redacted]
NIFOB	[redacted]

Comparison of NV(VFDE) and NIFOB amounts

123. 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.

124. A comparison of the NIFOB and the NV(VFDE) amounts, as calculated above, is shown in Table 3 below.

Table 3: NIFOB and NV(VFDE) comparison

Product grade	**NIFOB (NZD)**	**NV(VFDE) (NZD)**	**Lower price**
Choice	[redacted]	[redacted]	NV(VFDE)
Standard	[redacted]	[redacted]	NV(VFDE)
Sub-standard	[redacted]	[redacted]	NV(VFDE)

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

Submissions on the interim report

126. Rhodes has stated that the Ministry should further consider the calculation of the NIFOB amount for HWL and as a result the imposition of a lesser duty. Rhodes points out that [redacted]. It assumes that [redacted] would not cause injury and would be at approximately the non-injurious price level. Rhodes considers that if the average ex-factory export price ([redacted]) is taken as a non-injurious price and average costs between FOB and ex-wharf are deducted, it is difficult to come to a conclusion that the NIFOB is not lower than the NV(VFDE).

Ministry's response

127. The NIFOB calculated for HWL is significantly higher than the ex-factory export prices calculated for Rhodes' sales to [redacted]. The Ministry does not use export prices in order to calculate a non-injurious price, as, [redacted], the prices may be skewed by the presence of dumping. The non-injurious price is the price at which the New Zealand manufacturer would be able to sell its products in the absence of dumping, not the cost for which they would be able to import product.

128. If the NIFOB was taken to establish a rate of duty for Rhodes, it would be significantly higher than the margin of dumping, and duty would be over-collected. The Ministry considers that the NV(VFDE) amounts are the appropriate amounts on which to set a rate of duty.

3.4 Refunds

129. Section 14(10) of the Act states that where a reassessment under subsection (6) results in a lower duty being imposed on any goods, the Minister may require Customs to refund, with effect from the date of initiation of the reassessment, the difference between the duty paid and the lower duty.

130. Exports from Rhodes have been subject to the current residual rate, at 11 percent, which is likely to have collected a higher amount of duty than would have been payable had the proposed reference price duty been in place. The Ministry therefore intends to recommend that the Minister require Customs to refund any excess duty paid since the reassessment was initiated. If the Minister agrees with this recommendation, importers from Rhodes' will be able to apply to Customs for a refund if they consider that the reassessed rates of duty are lower than the rate of duty they have paid, for any canned peaches imported since the initiation of the reassessment.

3.5 Conclusions

131. The Ministry concludes that the canned peaches exported to New Zealand by Rhodes were dumped at a dumping margin of 8 percent of the export price. The Ministry further concludes that the rates of anti-dumping duty for exports of canned peaches by Rhodes should be established at the full margin of dumping, at the rates set out in the table below.

Table 4: Rates of duty

Grade	**Reference price NV(VFDE) per kg (ZAR)**
Choice	
Standard	
Sub-standard	

132. The reassessed rates of duty for Rhodes are recommended by the Ministry to take effect from the day after the date the Minister determines the reassessed rates of duty.

4. Recommendations

133. It is recommended that the Minister:

- Agree to reassess the rate of anti-dumping duty for Rhodes Food Group in accordance with sections 14(6) and 14(4) of the Act because Rhodes is considered a “new shipper” of canned peaches from South Africa.

- Agree to establish three separate duty rates for exports of the subject goods by Rhodes Food Group in the form of reference prices of ZAR [redacted] per kg for choice grade, ZAR [redacted] per kg for standard grade, and ZAR [redacted] per kg for sub-standard grade.

- Agree that these new rates of anti-dumping duty should apply from the day after the date the Minister determines the new rates of anti-dumping duty in accordance with section 17(c)(i) of the Act.

- Approve the refund of any anti-dumping duty paid in excess of the reassessed rate of anti-dumping duty under section 14(10) of the Act, from the date of the initiation of the reassessment on 7 April 2014 to the date the new rate comes into effect.

- Sign the attached *Gazette* notice publicly notifying the above decisions.