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Non-Confidential: Initiation of Reassessment

Dumping Application: Canned Peaches from Langeberg & Ashton Foods, South Africa

Introduction

1. In an email dated 18 April 2008, Brooke Holdings Limited (“Brooke Holdings”), an importer of canned peaches from South Africa submitted an application for a reassessment of the anti-dumping duties currently in place on South African canned peaches and in particular on ‘choice’ grade canned peaches supplied by Langeberg & Ashton Foods (Pty) Ltd (“L&A”).

2. This report provides details on the current anti-dumping duties in place in respect of South African canned peaches sourced from L&A, assesses the evidence provided in support of a reassessment and recommends that you initiate a reassessment of the current anti-dumping duties on ‘choice grade’ canned peaches exported from L&A, South Africa.

Background

3. Anti-dumping duties on canned peaches originating from South Africa were reassessed on 12 February 2008, following the completion of a reassessment investigation. The reassessment investigation itself followed a review of the anti-dumping duties in place on imports of canned peaches from South Africa (including L&A) which was completed by the Ministry of Economic Development (“the Ministry”) on 26 November 2007. The review concluded that if the current anti-dumping duties were removed there would be a likelihood of a continuation or recurrence of dumping leading to material injury to the New Zealand industry and that the anti-dumping duties for all exporters should be reassessed to new levels.

4. The reassessed anti-dumping duties are in the form of Normal Value (Value for Duty Equivalent) (NV(VFDE)) and Non-injurious Free-on-board (NIFOB) reference prices for ‘choice’ and ‘sub-standard’ grade 410gm, 825gm and 3kg cans.

Goods subject to the reassessment

5. The goods subject to the current anti-dumping duties 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)”

6. In its request, Brooke Holdings stated that it would like to apply for a reassessment of the anti-dumping duties currently in place on 'choice' grade canned peach slices and peach halves packed in containers up to A10/3kg and in all mediums (syrup, light syrup, juice or water) as supplied by L&A.

Standing to request a reassessment

7. Brooke Holdings is an "interested party" pursuant to Article 6.11 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("the AD Agreement") and is therefore able to request a reassessment under section 14(6)(b) of the Dumping And Countervailing Duties Act 1988 ("the Act".)

The request for a reassessment

8. On 27 February 2008, the Ministry received an email from Brooke Holdings stating that the company had recently met with its principal, L&A, to discuss the results of the 2008 reassessment of anti-dumping duties on canned peaches from South Africa. The company stated that L&A had provided it with pricing information that would indicate that the Ministry's calculations of dumping margins for canned peaches undertaken in the 2007 review are "incorrect". In the 2007 review, the Ministry had in fact used the 'facts available' provisions of the Act and AD Agreement to base its normal values because the South African producers (including L&A) had not cooperated with the Ministry in providing this information.

9. In an email dated 18 April 2008, Brooke Holdings stated that it would like to apply for a reassessment of the anti-dumping duties currently in place on 'choice' grade canned peaches from L&A. It provided information, in varying degrees of detail, in support of its application for a reassessment.

10. The remainder of this report analyses the information provided by Brooke Holdings in respect of L&A's domestic and export sales of canned peaches in terms of the legal requirements necessary to initiate a reassessment under the AD Agreement and the Act.

Legal provisions regarding AD duty reassessments

11. Reassessments are provided for in section 14 of the Act, as follows:

(6) The [Chief Executive] may initiate a reassessment of any rate or amount of anti-dumping ...duty determined under subsection (4) of this section, including any elements of any formula used to establish such a rate or amount,—

- (a) On the initiative of the [Chief Executive]; or
- (b) Where a request for a reassessment is submitted to the [Chief Executive] by an interested party who submits evidence justifying the need for a reassessment; or
- (c) Following the completion of a review carried out under subsection (8) of this section—

and the Minister may determine a new rate or amount in accordance with subsection (4) of this section, and, in that event, shall give notice of the new rate or amount.

12. A reassessment investigation, if initiated, will look solely at the rate or amount of anti-dumping duty currently imposed on exports of 'choice grade' canned peaches from L&A, the outcome of which could be an increase, decrease, the setting of a zero rate of duty or no change to the current duty. An injury analysis is not usually undertaken during a reassessment, other than determining whether a "lesser duty" should apply. Any analysis is limited to assessing whether the dumping margins and normal values established during the original investigation or the previous review or reassessment have changed and therefore the extent to which the duties are still effective in offsetting the dumping or remedying the injury suffered by the New Zealand industry. Questionnaires will be sent to interested parties (including L&A) and verification visit(s) may be conducted. An interim report would normally be circulated and interested parties given the opportunity to make submissions on it. Any submissions on the interim report would be considered in the final report containing recommendations to the Minister of Commerce on the correct level of anti-dumping duties.

13. Reassessments are not bound by a legislative timeframe although the Ministry will endeavour to complete it as soon as possible.

14. If the reassessment results in a duty lower than the current duty, the Minister of Commerce may direct a refund, from the date of initiation of the reassessment, of the difference between the duty paid and the lower duty. The Act does not provide for retrospective collection of additional duties if a reassessment results in higher duties.

Ministry policy regarding AD duty reassessments

15. In making a determination to initiate a reassessment of anti-dumping duties under section 14(6)(b) of the Act, it is a matter of course that if the overseas producer was an interested party in the original investigation, the Ministry would not normally commence a reassessment until approximately six months after the final decision. While no time frame is specifically mentioned in the Act, the Ministry looks to the wording of Article 11.2 of the AD Agreement for guidance as to the period of time that should elapse before the Ministry reassesses AD duties. While the AD Agreement contains no provisions specifically concerning a "reassessment" of AD duties, Article 11.2 does provide that a "reasonable period of time" should have elapsed since a duty was first imposed before a "review of the need for the continued imposition of the duty" is initiated upon the request of an interested party should that interested party provide sufficient evidence that a review is needed. The Ministry interprets "a reasonable period of time" to mean at least six months and has applied this guideline to its consideration of requests for reassessments.

16. In its Application for a Reassessment, Brooke Holdings provided no information on whether or not there had been a significant change in circumstances which would have the Ministry consider in a more favourable light the company's application for a reassessment of the L&A anti-dumping duty rates within the six-month timeframe from when the duties were last reassessed. Therefore, the Ministry decided there was no basis for initiating a reassessment within the six-month period from when the duties were last reassessed.

Evidence provided in the application for a reassessment

Export prices

17. Brooke Holdings provided L&A's current export prices to New Zealand in the form of a "2008 Price List – CIF NZ Ports". However, the Ministry considers that L&A's export prices to New Zealand are not a good indication of likely export prices in the absence of anti-dumping duties. With the current anti-dumping duties in place, there is an incentive for South African exporters to export their goods to New Zealand at non-dumped prices because the payment of an anti-dumping duty is legitimately avoided.

18. In a review or reassessment, in calculating likely export prices to New Zealand in the absence of anti-dumping duties, the Ministry prefers to rely on export prices from the country of origin to export destinations other than New Zealand. In the present case, Brooke Holdings provided information on L&A's current export prices to Japan in the form of a "2008 Price List – C&F Japanese Ports".

19. Brooke Holdings did not provide evidence of L&A's prices to export destinations other than Japan, although the Ministry notes that 2006 South African FOB prices to Japan sourced from the TradeMap data base in the 2007 review were significantly lower than South African FOB prices to most other export destinations. This indicates that the company has not specifically chosen export prices to Japan because they are higher than prices to other countries.

20. On the basis of the information provided, the Ministry considers that L&A's 2008 C&F prices to Japan for 'choice' grade canned peaches are the appropriate export prices for comparing with the company's normal values, for the purpose of the initiation of the reassessment.

Information to be sourced during the investigation

Cost of overseas freight and other export-related costs, charges and expenses

21. Brooke Holdings did not provide freight costs and other export-related costs from South Africa to Japan in its Application for a Reassessment from which ex-factory export prices could be calculated. For the overseas freight cost from South Africa to Japan, the Ministry used a figure for overseas freight (and insurance) which it had used in the 2007 review to make some calculations concerning South African prices to Japan. The Ministry then used the FOB charges provided in Brooke Holding's Application for a Reassessment to calculate ex-factory export prices.

22. Once the reassessment is initiated, L&A will be requested to provide information on its actual freight costs and other export-related costs from South African to Japan in order to calculate a likely export price to New Zealand in the absence of anti-dumping duties.

Normal values

L&A sales to [text deleted due to confidentiality]

23. In its Application for a Reassessment, Brooke Holdings provided evidence of one L&A South African sales transaction involving sales of 'choice' grade “[text deleted due to confidentiality]” brand canned peaches (halves and slices) to “[text deleted due to confidentiality]” (“[text deleted due to confidentiality]”). “[text deleted due to confidentiality]” is a South African distributor of grocery food items. The price of the “[text deleted due to confidentiality]” brand was recorded on an invoice from L&A to “[text deleted due to confidentiality]” (dated 31 Jan 08).

Terms of trade

24. In its Application for a Reassessment, Brooke Holdings stated that L&A's prices to [text deleted due to confidentiality] were “[text deleted due to confidentiality]” and that [text deleted due to confidentiality] were applicable. L&A's invoice to [text deleted due to confidentiality] states that its payment terms are “[text deleted due to confidentiality]” which the Ministry reflected in the cost of credit adjustment made to the export price (see 'export price' section above).

25. From the information provided by Brooke Holdings in its Application for a Reassessment, the Ministry considers that L&A's ex-factory prices to [text deleted due to confidentiality] do not need to be decreased further to account for other adjustments.

Comparison between L&A's export prices to Japan and its domestic sales to [text deleted due to confidentiality]

26. The Ministry is satisfied that the evidence provided by Brooke Holdings in its Application for a Reassessment constitutes “evidence justifying the need for a reassessment” under section 14(6) of the Act. A comparison between L&A's export prices to Japan and its domestic prices to [text deleted due to confidentiality] using the information Brooke Holdings provided shows that there is no likelihood of dumping for the 3kg (A10) size canned peaches if exports recommenced to New Zealand at the same price as the goods are currently being exported to Japan. However, a comparison of the prices for the No.1m (410gm) size can indicates that these goods are likely to be dumped.

L&A sales to [text deleted due to confidentiality]

27. On 5 June 2008, the Ministry emailed Brooke Holdings stating that it was aware that Ashton Canning Company and [text deleted due to confidentiality] had merged in 2007 which resulted in L&A. The Ministry stated that it was concerned that L&A's sales to [text deleted due to confidentiality] may not be representative of its domestic sales transactions and asked why this transaction in particular was provided in the company's Application for a Reassessment (the Ministry had requested a copies of invoices regarding sales to a similar customer, in terms of sale volume and level of trade, to that of the export customer). In an email dated 12 June 2008, Brooke Holdings replied that L&A had later informed it that the company also sells a small volume of Juice packs (peach halves and slices) under the brand name

“**[text deleted due to confidentiality]**” to other companies including a company called **[text deleted due to confidentiality]**.

28. In its email of 12 June 2008, Brooke Holdings supplied an invoice showing L&A’s domestic prices to **[text deleted due to confidentiality]** (dated 24 Jan 08). Sales details of the No.1m (400gm) can only, are recorded on this invoice. Brooke Holdings stated that **[text deleted due to confidentiality]** is a very small business compared to **[text deleted due to confidentiality]** and that the total sales order for the year represents **xxxx** cartons (**xxxx** kgs) of 24/No.1m canned peaches, compared to **xxxx** cartons sold to **[text deleted due to confidentiality]**.

Terms of trade

29. It is uncertain to what extent the **[text deleted due to confidentiality]** domestic prices provided in Brooke Holdings’ email of 12 June 2008 are inclusive of a cost of credit (for payment terms), discounts or rebates, and inland freight, insurance, storage and handling costs. Any such costs when deducted from the invoiced selling price would result in a lower ex-factory price.

30. Once the reassessment is initiated, L&A will be requested to provide more details on its terms of trade for its sales to **[text deleted due to confidentiality]** in order to calculate a more accurate normal value.

Comparison between L&A’s export prices to Japan and its domestic sales to **[text deleted due to confidentiality]**

31. The Ministry is satisfied that the evidence provided by Brooke Holdings in its Application for a Reassessment constitutes “evidence justifying the need for a reassessment” under section 14(6) of the Act. A comparison between L&A’s export prices to Japan and its domestic prices to **[text deleted due to confidentiality]** using the information Brooke Holdings provided shows that there is a likelihood of dumping for the No.1m (410gm) size canned peaches if exports recommenced to New Zealand at the same price as the goods are currently being exported to Japan. However, a comparison of the ex-factory domestic prices calculated above with those established in the 2007 review shows that the above prices are lower than the normal values calculated in the review.

Other information provided by Brooke Holdings in its application for a reassessment

L&A’s Domestic Sales Volume

32. Brooke Holdings provided L&A’s domestic sales volume of the goods under review for 2007 in its Application for a Reassessment although no figure was provided for sales of 3kg cans of halves or slices.

33. The Ministry notes that the figure provided for sales of ‘choice’ 410gm (24/No.1m) cans is significantly lower than the figure mentioned by Brooke Holdings in its email of 12 June 2008. The company gave no explanation for the difference in the two sets of volume figures.

L&A's Cost of Production for Domestic Sales

34. Brooke Holdings provided a table which it claimed included L&A's domestic costs of production, including selling and administration expenses and profit margins for the goods under review. However, the Ministry notes that no costs of production are provided in the table but that it contained L&A's average selling prices, transport cost, other selling/administration expenses and ex-factory prices.

35. In any dumping investigation, review or reassessment, the Ministry requires cost of production information to establish if the goods are being sold in the ordinary course of trade on the domestic market of the country of origin and not at below cost. If the goods are being sold at below cost, the Ministry may consider that establishing the foreign manufacturer's normal value on the basis of its domestic market selling prices is not applicable, and will instead construct a normal value using costs of production plus reasonable amount for selling, general and administration expenses and for profit.

36. Because no cost of production information was provided in respect of L&A's domestic sales, it is difficult for the Ministry to conclude that the goods are being sold in the ordinary course of trade and therefore that the company's domestic prices should be used to determine the normal value. Once the reassessment is initiated, L&A will be requested to provide information on its domestic costs of production in order to ensure that the company's canned peaches are being sold in the ordinary course of trade.

Summary and Conclusions

37. The Ministry is satisfied that Brooke Holdings is an "interested party" pursuant to Article 6.11 of the AD Agreement and therefore has standing to request a reassessment under section 14(6)(b) of the Act. Brooke Holdings' Application for a Reassessment and the information it provided on L&A's domestic prices are dated well within the six-month period the Ministry normally considers is a "reasonable period of time" since the duty was first imposed or last reassessed. Furthermore, the Application contained no evidence that a significant change in circumstances had occurred to have the Ministry consider initiating a reassessment within the six-month timeframe from when the duty rates were last reassessed in 12 February 2008.

38. The Ministry examined whether or not the information provided in Brooke Holdings' Application for a Reassessment is "evidence justifying the need for a reassessment" under Section 14(6) of the Act. In this respect, Brooke Holdings provided the Ministry with export price information to both New Zealand and Japan. With anti-dumping duties already in place for exports to New Zealand the Ministry considers export prices from South Africa to export destinations other than New Zealand are indicative of likely export prices to New Zealand if the anti-dumping duties were removed. Although the information Brooke Holdings provided on L&A's export prices to Japan is incomplete because no information has been provided on freight costs from South Africa to Japan which would enable the Ministry could calculate ex-factory export prices to Japan, the information which was used by the Ministry shows that (when compared with the normal value information provided in the Application for a Reassessment) there is likely to be dumping in respect of the 410gm (24/No.1m) size cans but no dumping in respect of the 3kg (A10) sized cans.

39. In any event, a reassessment looks solely at the rate or amount of anti-dumping duty, the outcome of which could be an increase, decrease, the setting of a zero rate of duty or no change to the current duty. Therefore, much of the focus of any reassessment should be on establishing accurate and reliable normal values. This is because the Ministry usually establishes anti-dumping duty rates on the basis of reference prices which in the present case are in the form of either NV(VFDE) or NIFOB amounts for 'choice' or 'sub-standard' 410gm, 825gm and 3kg cans. The NV(VFDE) amounts are based on normal values which are adjusted to the FOB level by adding to the normal values the costs incurred by the exporter between the level at which a fair comparison is made (normally ex-factory) and FOB. In the present case, NV(VFDE) amounts were established for L&A based on information sourced during the 2007 review, much of which was provided by the New Zealand industry in its Application for a Review as a result of the non-cooperation of the South African producers.

40. On the basis of the above, the Ministry considers that the evidence provided by Brooke Holdings on L&A's export prices and normal values is sufficient to justify the initiation of a reassessment of anti-dumping duties on South African 'choice' grade canned peaches exported from L&A in terms of sub-section 14(6) of the Act. There is evidence that, in the absence of anti-dumping duties, 'choice' grade canned peaches would be exported to New Zealand at non-dumped prices. While the evidence suggests that this would not be the case for all can sizes, this must be balanced by the fact that the export prices have been calculated on the basis of estimated freight costs from South Africa to Japan which may have resulted in an unreasonably low ex-factory export price. Furthermore, the normal value information provided in the Application for a Reassessment appears to suggest that the normal values calculated in the 2007 Review are higher than the actual domestic selling prices in South Africa.

Recommendation

41. The evidence provided by Brooke Holdings is sufficient to justify the initiation of a reassessment of anti-dumping duties on South African 'choice' grade canned peaches exported from L&A in terms of sub-section 14(6) of the Act. It is recommended that:

- i. in accordance with section 14(6) of the Act, and acting under your delegated authority, you formally initiate a reassessment of the anti-dumping duty on South African canned peaches exported by L&A and imported into New Zealand; and
- ii. you sign the attached Gazette notice of the initiation of a reassessment.

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Agreed/Not Agreed

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Acting under delegated authority from the Chief Executive of the Ministry of
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