

Ministry of **Economic
Development**



M a n a t ū Ō h a n g a

Non-Confidential Reassessment Report

2010 Reassessment of Anti-Dumping Duty on “Choice” Grade Canned Peaches from, Langeberg & Ashton, South Africa

Dumping and Countervailing Duties Act 1988

Ministry of Economic Development

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ABBREVIATIONS

The following abbreviations are used in this Report:

Act (the)	Dumping and Countervailing Duties Act 1988
Anti-Dumping Agreement	WTO Agreement on Implementation of Article VI of GATT 1994
Brooke Holdings	Brooke Holdings Limited
Chief Executive	Chief Executive of the Ministry of Economic Development
CIF	Cost, Insurance and Freight
FIS	Free into Store
FOB	Free on Board
GUR	Good Under Review
HW	Heinz Wattie's Limited
L&A	Langeberg and Ashton Foods (Pty) Limited
LDC	Less Developed Countries
LLDC	Least Developed Countries
Ministry (the)	Ministry of Economic Development
NIFOB	Non-Injurious Free on Board
NIP	Non-Injurious Price
NSV	Net Sales Value
NV (VFDE)	Normal Value (Value for Duty Equivalent)
NZCS	New Zealand Customs Service
POR	Period of Reassessment (1 Oct 2007 to 30 Sept 2008)
VFD	Value for Duty
WTO	World Trade Organisation
SAR	South African Rand

1. Executive Summary

Introduction

1. On 26 November 2007 the Ministry of Economic Development completed a review of the anti-dumping duties that apply against imports of canned peaches from South Africa. The 2007 Review concluded that there was a likelihood of continuation or recurrence of dumping causing material injury to the New Zealand industry if the anti-dumping duties were removed and recommended the duties for all exporters be reassessed to new levels. As a result, the Minister reassessed the rate of duty on 11 February 2008. Subsequent to that reassessment, one importer, Brooke Holdings Limited, requested that the Ministry undertake a further reassessment of the anti-dumping duties applying specifically to exports of “choice” grade canned peaches made by a particular South African exporter, Langeberg & Ashton Foods Pty Ltd.

2. This report considers the appropriate level of anti-dumping duties for Langeberg & Ashton, following the initiation of a reassessment in which the Ministry gathered information on its selling price on the South African domestic market and other relevant information, which has been used to reassess the duty rates.

Goods subject to the Anti-dumping Duty

3. The goods subject to the anti-dumping duty 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. The application for a reassessment related only to “choice” grade canned peaches exported by Langeberg & Ashton.

Reassessment Process

5. This report contains the Ministry’s final findings on the reassessment. A draft reassessment report was released to all interested parties for comment, however, none of the interested parties made submissions concerning the proposed changes to the anti-dumping duties.

Conclusion

6. This report concludes that the current anti-dumping duty rates imposed on 410gm and 3kg “choice” grade exports of canned peaches by Langeberg & Ashton in South Africa be reassessed to the proposed new rates. A comparison of the proposed rates with the current rates (when exchange rate conversions are made) shows that there is only a relatively small increase in the rate for the 410gm can size and virtually no change for the 3kg can size. The duty rate for the 825gm can size will not change. On this basis, the Ministry considers that the proposed duty rates are unlikely to have a significant impact on the amount of anti-dumping duty payable on canned peaches imported from Langeberg & Ashton in South Africa and on the effectiveness of the anti-dumping duties overall.

Recommendation

7. The report recommends that the Minister agree to the new rates of anti-dumping duties, listed in the Summary of Proposed Anti-dumping Duties in section 4.3 of this report, and signs the attached *Gazette* notice publically notifying his decision.

2. Introduction

2.1 Background

8. The current reassessment was initiated on 17 October 2008 upon receipt by the Ministry of an application submitted by Brooke Holdings Limited (Brooke Holdings) which contained evidence to justify the initiation of a reassessment of anti-dumping duties on 'choice' grade canned peaches imported from Langeberg & Ashton Foods (Pty) Ltd (L&A). The current reassessment follows a previous reassessment (referred to as the 2008 reassessment), completed by the Ministry on 11 February 2008, of the anti-dumping duty applying to all types and sizes of canned peaches imported from South Africa. The 2008 reassessment itself followed immediately after the completion of a review in 2007 (referred to as the 2007 review) into the continued need for the anti-dumping duties on canned peaches from South Africa. The anti-dumping duties were originally imposed as a result of an investigation completed in 1996 and the 2007 review was the second such review, the previous one being completed in 2003. The 2007 review was completed on 26 November 2007 and recommended that the anti-dumping duties should remain in place and that they should be reassessed to new levels.

9. Upon the initiation of the current reassessment, L&A was sent a Foreign Manufacturers Questionnaire by the Ministry. The questionnaire was designed to assist L&A in providing the Ministry with the necessary information to reassess the anti-dumping duty rates applying to 'choice' grade canned peaches exported from L&A. An Importers Questionnaire was also sent to Brooke Holdings, the company which submitted the application for the reassessment and who was the only importer sourcing from L&A during the 2007 review.

10. The Ministry's reassessment has examined whether the anti-dumping duty rates applicable to imports of 'choice' grade canned peaches exported by L&A, should be reassessed. The outcome of a reassessment can be an increase, decrease, the setting of a zero rate of duty or no change to the current duty. The investigation is limited to assessing whether the normal values established during 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. The reassessment was conducted in accordance with the Dumping and Countervailing Duties Act 1988 (Act) and having regard to the World Trade Organisation (WTO) Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the Anti-dumping Agreement). Electronic links to copies of both the Act and the Agreement are annexed to this report.

11. This Report contains the Ministry's final findings on the reassessment. A draft reassessment report was released to all interested parties for comment, however, none of the interested parties made submissions concerning the proposed changes to the anti-dumping duties. Section 4 of this report contains the proposed changes to the relevant anti-dumping duty rates.

2.2 Disclosure of Information

12. The Ministry makes available all non-confidential information to any interested party or any other member of the public through its public file system, in accordance with the requirements of section 10 of the Act and Article 6 of the Anti-dumping Agreement.

13. The initiation of the current reassessment was notified in the New Zealand *Gazette* and interested parties were directly advised of the initiation.

2.3 Interested Parties

14. The interested parties involved in the reassessment are listed below.

New Zealand Industry

15. Heinz Wattie's Limited is an interested party because it is the sole manufacturer of canned peaches in New Zealand.

Manufacturers and Exporters

16. The application for reassessment of the anti-dumping duties was requested in respect of exports by L&A, only. L&A is also a manufacturer of the subject goods. The company was sent a Foreign Manufacturers Questionnaire to complete by the Ministry and it provided a partial response to the questionnaire.

New Zealand Importers

17. Brooke Holdings submitted the application for a reassessment of the anti-dumping duties. Brooke Holdings is a small company primarily involved in the importation and distribution of bulk food ingredients to manufacturers. Brooke Holdings acts both as an agent and customer of L&A. As an agent Brooke Holdings negotiates sales on behalf of L&A working on an agent's commission. As a customer Brooke Holdings purchases product and sells into the market working on a margin.

18. At the time of the 2007 review and the 2008 reassessment, Brooke Holdings was importing and then on-selling L&A's 3kg (A10) "sub-standard" canned peaches to the Food Service sector. As a result of this importing arrangement, the Ministry assigned Brooke Holdings an individual duty rate based on an ex-importers store level of trade. In the current reassessment, Brooke Holdings supplied a response to the Ministry's Importers Questionnaire stating that it is now importing 410gm and 820gm "choice" grade canned peaches from L&A and then on-selling [REDACTED] (through Brooke Holdings SI Ltd). The company also stated that it did not import [REDACTED] canned peaches in 2009.

2.4 Imported Goods

19. The goods which are the subject to this reassessment, hereinafter referred to as "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. The application for a reassessment related only to "choice" grade canned peaches exported by L&A.

21. The subject goods enter New Zealand under tariff item 2008.70.09 and statistical key 00L. Imports of subject goods are currently subject to the normal tariff of 5 percent.

3. Reassessment

22. Sub-section 14(6) of the Act provides for anti-dumping duty rates or amounts to be reassessed 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.

23. As noted above, the current reassessment was initiated on 17 October 2008 upon receipt by the Ministry of an application submitted by Brooke Holdings which contained evidence to justify the initiation of a reassessment of anti-dumping duties on 'choice' grade canned peaches exported by L&A. Brooke Holdings applied for the current reassessment on the basis that it considered the latest pricing information provided by L&A demonstrated that no dumping was occurring for particular sizes of 'choice' grade canned peaches and that the duty rates which the Ministry had calculated as a result of the 2008 reassessment in respect of L&A, were based on pricing information which was not indicative of the company's actual prices.

24. Given the scheme and purpose of the Act and the Anti-dumping Agreement, namely that anti-dumping duties should not exceed the established dumping margins, the Ministry considered that a reassessment investigation should be initiated to determine whether the level of the current anti-dumping duties needed to be reassessed. On this basis, the reassessment addresses whether it is appropriate for the anti-dumping duties to remain at the current level, or if the rates should change.

25. Upon the initiation of the current reassessment, L&A was provided with a Foreign Manufacturers Questionnaire to complete. The company was asked to provide information on its export sales to New Zealand and to other destinations, its costs of production for canned peaches and costs involved in exporting the goods. Most importantly, the company was asked to provide information on its latest domestic selling prices for its 'choice' grade canned peaches sold to a number of customers in similar quantities and under similar terms of trade to the company's exports to its New Zealand customers.

26. L&A provided a partial response to the Ministry's questionnaire. While the company provided a number of export invoices to New Zealand as well as other foreign destinations, the company provided very little by way of information on its domestic sales of "choice" grade canned peaches. While it provided some domestic sales quantity and revenue figures and a price list for a particular brand of domestically-sold canned peaches, it did not provide any sales invoices showing selling prices to a range of customers, terms of trade to these customers and the costs it incurs between ex-factory and the FOB level of trade from which the Ministry could recalculate the company's anti-dumping duty rates.

27. The Ministry consequently decided there was no accurate or reliable information on South African domestic market prices contained in L&A's questionnaire response. Therefore, the Ministry resorted to using the 'facts available' provisions of the New Zealand legislation and the WTO Anti-dumping Agreement. Section 6 of the Act allows the Ministry to ascertain normal values and export prices 'having regard to all available information' while Article 6.8 and Annex II of the Anti-dumping Agreement

allow the authorities to make preliminary and final determinations on the basis of the facts available in cases in which any interested party “refuses access to, or otherwise does not provide necessary information within a reasonable period, or significantly impedes the investigation”.

28. In the absence of accurate or reliable information supplied by L&A, the Ministry considered that the information provided by Brooke Holdings in its application for a reassessment was the best information available to calculate normal values for the 410gm “choice” grade canned peaches sold by L&A, in terms of section 6 of the Act and Article 6.8 of the Anti-dumping Agreement. This information was used as the basis for initiating the current reassessment and in calculating the reassessed anti-dumping duty amounts for the 410gm can size, in section 4 below. This information was also used by the Ministry in concluding in the initiation report for this reassessment that L&A’s prices for its 400gm and 410gm canned peaches were likely to be dumped into New Zealand (on the basis of export prices to Japan where there are currently no anti-dumping duties imposed on South African imports) if the current anti-dumping duties were removed.

29. The normal value information which was provided by Brooke Holdings in its application for a reassessment was L&A’s invoiced selling prices to two South African domestic customers. Brooke Holdings provided commercial invoices showing sales of 400gm, 410gm, and 3kg “choice” grade canned peaches. However, these domestic invoices contained no prices for L&A’s sales of 825gm canned peaches and only limited information was provided on the company’s terms of trade and the costs between ex-factory and the FOB level (such as inland freight, shipping charges and handling/packing expenses) which would enable the Ministry to establish Normal Value (Value for Duty) Equivalent amounts for L&A.

30. In its application for a reassessment, Brooke Holdings provided a commercial invoice to L&A’s major domestic customer, [REDACTED], showing sales of 410gm and 3kg “choice” grade [REDACTED] brand canned peaches (halves and slices). [REDACTED] is a South African distributor of grocery food items. The invoice was dated 31 January 2008. On receipt of this pricing information, the Ministry emailed Brooke Holdings stating that it was aware that Ashton Canning Company and [REDACTED] had merged in 2007 which resulted in the formation of L&A. The Ministry stated that it was concerned that L&A’s sales to [REDACTED] (which still trades as a separate entity) 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 customers).

31. Brooke Holdings informed the Ministry that [REDACTED] is L&A’s largest domestic customer but that L&A also sells a small volume of “choice” grade packs in juice (peach halves and slices) under the brand name [REDACTED] to other companies including a company called [REDACTED]. Brooke Holdings supplied an invoice (dated 24 January 2008) showing L&A’s domestic prices to [REDACTED] for No.1m (400gm) canned peaches.

32. In view of the fact that Ashton Canning Company and [REDACTED] merged in 2007 which resulted in L&A, the Ministry has concerns that the pricing between L&A and [REDACTED] may not be at arm's length. Section 5 of the Act states:

Subject to this section, for the purposes of this Act, the normal value of any good imported or intended to be imported into New Zealand shall be the price paid for like goods sold in the *ordinary course of trade* for home consumption in the country of export in sales that are *arm's length transactions* by the exporter or, if like goods are not so sold by the exporter, by other sellers of like goods.

33. Furthermore, the Ministry notes that sales from L&A to [REDACTED] are of a considerable volume and are unlikely to be representative of sales to a similar customer, in terms of volume and other terms of trade to that of the company's export customers in New Zealand. On the other hand, the Ministry considers that L&A's sales volume to [REDACTED] is much more likely to be representative of the sales volume to L&A's overseas customers including those customers in New Zealand. L&A noted in an email addressed to Brooke Holdings that [REDACTED] is a very small business compared to [REDACTED] and that the total sales order for the year represents [REDACTED] cartons ([REDACTED] kgs) of 24/No.1m (410gm) canned peaches, compared to [REDACTED] cartons ([REDACTED] kgs) sold to [REDACTED].

34. The Ministry examined import statistics showing the volume of processed peaches imported from L&A into New Zealand over the one-year POR (1 Oct 2007 to 30 Sept 2008) and noted that less than [REDACTED] kilograms had been imported (approximately [REDACTED] kilograms by one customer and [REDACTED] kilograms by another customer) and that these importations included not only 410gm can sizes but can sizes ranging from 410gm to 3kg). On this basis, L&A's sales volume of canned peaches to either of these importers is likely to more representative of the sales volume L&A makes on the South African domestic market to [REDACTED] rather than the sales volume it makes to [REDACTED].

35. For the reasons outlined above, the Ministry has used L&A's selling prices of the 400gm can size to [REDACTED] rather than to [REDACTED] as the basis for reassessing the "choice" grade anti-dumping duty rates applicable to L&A, either through Brooke Holdings Ltd or through other importers. The Ministry notes that these domestic sales were made in January 2008, which was during the POR and therefore more recent than the normal values established in the 2008 reassessment. Most importantly, however, the prices are L&A's actual domestic selling prices at the ex-factory level and therefore provide an adequate reflection of L&A's normal values. This is in contrast to the normal value information used in the 2008 reassessment which was based on supermarket selling prices in South Africa, with estimated deductions for a retail margin, physical differences, VAT, discounts and allowances, inland freight, and handling costs to bring the supermarket selling prices back to the ex-factory level. However, as noted above, the Ministry was not provided with L&A's invoiced selling prices, for the 825gm and 3kg "choice" grade can sizes, to [REDACTED] or any other domestic customer, other than [REDACTED]. Therefore, for the purpose of establishing normal values for these two can sizes, the Ministry used the normal values determined in the 2008 reassessment because it considered these normal values were the most reliable indication of L&A arms' length prices to domestic customers of a similar size to its export volumes to New Zealand. Details of the Ministry's calculations of the reassessed anti-dumping duty rates for L&A using this pricing information are outlined in Section 4 below.

4. Anti-dumping Duties

36. Section 14 of the Act relates to the imposition of anti-dumping duties. The rates of anti-dumping duty that currently apply to imports of canned peaches from South Africa appear below in Table 4.1. The current anti-dumping duties are imposed through NIFOB (Non-Injurious Free on Board) and normal value (value for duty equivalent) (NV(VFDE)) amounts. The first two columns show the rates applicable for importations from L&A. These columns are split into 'choice' and 'sub-standard' duty rates. Only the 'choice' grade L&A rates are applicable to the current reassessment.

Table 4.1: Current Rates of Anti-Dumping Duty

(Rand/kg, unless otherwise stated)								
Product type and size	Langeberg & Ashton <i>through Brooke Holdings</i>		Langeberg & Ashton <i>through other importers</i>		Del Monte		Other Suppliers	
	Choice	Sub-std	Choice	Sub-std	Choice	Sub-std	Choice	Sub-std
410gm	NZ\$ 8.65	8.65	12.07	8.65	NZ\$ 8.75	8.75	12.21	8.75
825gm	9.91	7.11	9.91	7.11	10.02	7.19	10.02	7.19
3kg	NZ\$ 7.01	7.01	9.78	7.01	9.89	7.09	9.89	7.09
Alternative Duty*:								
410gm	12.07	-	-	-	12.21	-	-	-
825gm	-	-	-	-	-	-	-	-
3kg	9.78	-	-	-	-	-	-	-

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

4.1 Method of Imposing Duty

37. The objective of the anti-dumping duties is to remove injury attributable to dumping, and is not to punish the exporter or to provide protection to an industry beyond the impact of the dumping. Section 14(4) of the Act prevents the Minister from imposing a duty that exceeds the margin of dumping. When deciding on the form of the anti-dumping duties there are numerous relevant considerations that are taken into account. Factors such as the ease of administration, the ability to ensure the dumping margin is not exceeded, the ability to maintain fairness between parties, and the predictability of the duty payable are all important aspects of an anti-dumping duty.

38. Anti-dumping duties can be applied in a number of different ways. The three basic approaches are:

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

Specific Duty

39. A specific duty is a set amount of duty payable per unit of product imported. This specific amount of duty is based on the monetary value of a margin of dumping. The approach is convenient to apply, impossible to evade by incorrectly stating the value for duty and it clearly indicates to the importer the amount of duty payable on the product.

40. Some problems with a specific duty approach may occur if there are a wide range of goods involved, exchange rates may fluctuate to the extent that the margin of dumping will be exceeded without constant reassessments of the specific amount, or where an exporter manipulates prices so that the duty is either greater than the margin of dumping or less than the margin of dumping previously established.

41. A specific duty, expressed as a monetary amount, can only operate effectively when two conditions are present. The first is that prices and exchange rates are consistent and stable. The second is that the transaction-to-transaction comparison does not result in a range of different dumping margins.

42. A specific duty approach can be used as a formula, being the difference between equivalent prices to the normal value and the export price of a particular shipment, with the values for the normal value and export price being fixed. When those elements of the formula are expressed in terms of the currency of each transaction, the problem of exchange rate movements can be dealt with. However, a formula approach does not deal with the problem of changes in export prices for reasons other than exchange rate movements or movements in normal values such as a price change.

Ad Valorem Rate Duty

43. An *ad valorem* duty is a duty based on the margin of dumping and is expressed as a percentage of the dutiable value. An *ad valorem* duty is convenient to apply and is not substantially affected by exchange rate movements. *Ad valorem* rates are often appropriate where there are a large range of goods or where new models appear, provided that the transaction-to-transaction comparison does not result in a range of different dumping margins.

44. As with the other approaches, there is the possibility of collusion between an exporter and importer concerning the manipulation of the invoice value of the goods.

45. Under this approach, a particularly low export price (and therefore a potentially more injurious export price) would result in a lower amount of duty, which may not be

sufficient to remove injurious dumping. Conversely, a particularly high export price (and therefore likely to be less injurious), would attract a higher amount of duty, which may be higher than is necessary to remove injurious dumping.

46. An *ad valorem* rate gives an indication of the impact of the duty, but is not as clear an indication as the other forms of duty.

Reference Price Duty

47. Under the reference price approach, duty is payable only if the transaction price is less than the reference price. The amount of the difference between the transaction price and the reference price is the duty payable.

48. A reference price can be based on either a normal value or a non-injurious price. A NV(VFDE) amount represents the un-dumped value of the goods at the FOB level. A non-injurious price (a price at which imports would not cause injury to the New Zealand industry), is normally calculated at the Free on Board (FOB) level. A full discussion of the methodology is set out in the following section.

49. One of main problems with reference prices is that the information they are based on represents a snapshot of prices and costs at a particular point in time. If these prices or costs change, the reference prices may no longer be accurate although significant changes in prices or costs can be addressed by way of a reassessment of the reference prices.

50. A reference price duty has advantages in that it is best able to deal with movements in the export price and exchange rates (if expressed in the currency of the normal value), and is particularly appropriate for dealing with situations where a lesser duty is applicable. However, it has been argued that it is more easily evaded than the other forms of duty, by overstating the VFD of the goods. Nevertheless, a reference price does have the advantage of clearly signalling to exporters and importers what price is un-dumped or non-injurious and the problem of evasion can be dealt with. In addition, a reference price duty only collects duty when the goods are priced below the non-injurious or un-dumped reference price. It therefore collects duty only to the extent necessary to remove injurious dumping.

51. A reference price method is therefore considered the best method of assessing and collecting anti-dumping duties in the circumstances presented in this case (see below).

4.2 Anti-Dumping Duty Levels

Consideration of Lesser Duty

52. Section 14(5) of the Act requires that the Minister have regard to the desirability of ensuring the amount of duty is not greater than is necessary to prevent material injury to the New Zealand industry. To establish whether a lesser duty should apply to canned peaches from South Africa, the Ministry has firstly calculated a NIFOB amount based on HW's Non-Injurious Price (NIP) and secondly calculated a NV(VFDE) amount to check whether the NIFOB exceeds the margin of dumping. The calculation of HW's NIP is discussed below. If the NIFOB is less than the

NV(VFDE), then the NIFOB amount, which is a form of lesser duty, will apply. If the NIFOB is greater than the NV(VFDE) then the NV(VFDE) will apply, i.e., duty will be imposed at the full margin of dumping.

53. The anti-dumping duties that currently apply are reference prices, where anti-dumping duty is payable only if the export price is below the reference price. The amount payable is equal to the difference between the export price and the reference price. For the reassessment of the duties, the Ministry has again used reference prices to set the anti-dumping duty rates, for the reasons explained in Section 4.1 above. Below is an explanation of how the Ministry has calculated up-to-date NIFOB and NV(VFDE) amounts for the purpose of establishing reference prices. In order to determine whether a duty at less than the margin of dumping should apply, the Ministry has compared the NIFOB amounts with the NV(VFDE) amounts calculated for each can size.

Calculation of NIFOBs

54. The New Zealand industry's NIPs are the basis on which a NIFOB amount is calculated. NIFOBs are calculated by deducting from the industry's NIP, those costs that arise after FOB up to the level of trade at which the imported product first competes with the New Zealand industry's product. The level of trade at which the goods first compete on the New Zealand market was determined to be ex-factory for HW, ex-importers store for Brooke Holdings and ex-wharf for [REDACTED] who are currently importing from L&A.

55. The purpose of a NIFOB value is to ensure that the price of an imported product, when considered at the FOB level, is such that when it is sold at the relevant level of trade, the sale price equates to the NIP. In calculating the NIFOB amounts at the ex-store level of trade for Brooke Holdings, the Ministry has established the costs after FOB from NZCS data (overseas insurance and freight costs) and from Brooke Holdings.

Calculation of NIP

56. A recently completed review of the anti-dumping duties on canned peaches imported from Greece found no evidence of injury to HW attributable to Greek imports. Because there are also anti-dumping duties currently applying to imports of canned peaches from South Africa and China, the Ministry considers that HW's current net selling prices are unlikely to be affected by dumped imports and therefore provide a good indication of a non-suppressed or non-injurious price. The Ministry has used HW's Net Selling Values (NSVs) taken from the one-year dumping review period (1 December 2007 – 30 November 2008) for the Greece Dumping review to calculate NIPs for the three sizes of canned peaches produced by the company. However, because the shipments from L&A examined by the Ministry for the purpose of the current reassessment were imported into New Zealand at the beginning of 2008, the Ministry has used HW's NSVs for the first six months only, of the dumping review period (1 December 2007 – 31 May 2008), as its NIPs.

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

Table 4.2: HW's NIPs (NZ\$)

Can Size	Weighted Avg. NIP/kg
410gm	
820gm	
3Kg	

NIFOB Amounts

58. The Ministry considered whether NIFOB amounts should be established in NZ dollars or South African rand. If a NIFOB was to be established in South African rand, the level of the NIFOB when converted to NZ dollars would vary every time there was a movement in the New Zealand dollar to South African rand exchange rate. The effect of a variable NIFOB, when converted into NZ dollars, would be to change the consequent ex-store price (assuming the same profit margin is taken). For example, if the NZ dollar depreciated against the South African rand, then the NIFOB in NZ dollars would increase and result in an ex-store price higher than the NIP, and the dumping margin could also be exceeded. The reverse would result if the NZ dollar appreciated against the South African rand.

59. If a NIFOB is set in NZ dollars and the transaction price is below the NIFOB amount, then the anti-dumping duties collected will be such that the ex-store price (assuming the allowable profit margin is taken) or the ex-wharf price will always equate to the NIP, provided there are no significant changes in the costs between FOB and ex-store from those used to establish the NIFOB amount. With the exception of sea freight, all significant costs between FOB and ex-store are incurred in NZ dollars and are not directly affected by exchange rate movements. However, if these costs do change significantly, this can be addressed by way of reassessment. Therefore, in setting the NIFOB amounts, the Ministry established these amounts in NZ dollars, rather than in South African rand.

Imports via Brooke Holdings

60. As a result of the 2007 review (and for the purpose of the 2008 reassessment), the Ministry established a specific NIFOB at the *ex-importers store* level which took into account import costs incurred by Brooke Holdings between FOB and the *ex-importers store* level of trade, when sourcing from L&A. A reasonable profit margin for Brooke Holdings was calculated also using Brooke Holdings' cost build up information. The NIFOB was calculated at the *ex-importers store* level because this was the level of trade at which Brooke Holdings' imports first compete with canned peaches produced by HW. At the time of the 2007 review and the 2008 reassessment Brooke Holdings was selling canned peaches to the food service sector. It was determined by the Ministry at the time that it was at this level that the buyers in the food service sector made their purchasing decision to either purchase from the domestic industry (HW) or from Brooke Holdings.

61. In the current reassessment, Brooke Holdings stated that it is now importing from L&A and selling [REDACTED] to [REDACTED], through [REDACTED] in Wellington, Auckland and Christchurch.

sells goods at the retail level,

62. For the situation in which Brooke Holdings purchases from L&A and sells to the food service sector the Ministry has calculated NIFOBs based on the NIPs in table 4.2 using updated and recent information provided by Brooke Holdings. Table 4.3 below shows the calculation of these NIFOBs.

Table 4.3: NIFOB (NZD/Kg)

NIFOB - Langeberg & Ashton to Brooke Holdings			
	410gm	820gm	3kg
HW NIP/Kg			
<u>Less: costs and margins after</u>			
FOB to Ex-store:			
Freight (NZD/Kg)			
Insurance (NZD/Kg)			
BAF (bunker surcharge)			
Port & customs clearance			
Cartage/devanning			
Bank charges			
Customs Duty (5%of FOB)			
Storage & admin. costs			
Reasonable profit margin			
Total adjustments			
NIFOB (NZD/kg)			

Imports by other New Zealand importers

63. For the situation in which Brooke Holdings acts as an agent for (or in fact any other importer), the Ministry considers that a separate NIFOB should be calculated to reflect this situation. is a and the Ministry considers that a NIFOB should be calculated at the *ex-wharf* level because it is at this level of price competition that will make its purchasing decision because the choice it faces is whether to purchase from the New Zealand industry (HW) or to import from abroad (in the present case from L&A, South Africa) even though done through its agent, Brooke Holdings.

64. An analysis of the NZCS import statistics shows that since the 2008 reassessment was completed in February 2008 importers other than Brooke Holdings and have been importing from L&A.

██ has imported a significant number of shipments of canned peaches from L&A, South Africa. ██████████ is importing from South Africa independently rather than using Brooke Holdings as its New Zealand agent. Like ██████████ is a ██████████ and the Ministry considers that the NIFOB calculated at the *ex-wharf* level should be applicable to this importer also, because it is at this level that ██████████ will make its purchasing decision between sourcing from the New Zealand industry (HW) or to import from abroad (in the present case from L&A, South Africa).

65. Based on the above, a specific NIFOB has been calculated at the ex-wharf level which takes into account import costs incurred by importers other than Brooke Holdings (such as ██████████ and ██████████) when sourcing from L&A. Recent costs between FOB and ex-wharf were sourced from NZCS import data (freight and insurance costs) while wharfage, port clearance and handling costs were calculated from information supplied by Brooke Holdings.

66. These adjustments have been made to the NIPs to derive the NIFOBs and are shown in the table below.

Table 4.4: NIFOB (NZD/Kg)

NIFOB - Langeberg & Ashton through other importers			
	410gm	820gm	3kg
HW NIP/Kg	████████	████████	████████
<u>Less:</u> costs and margins after			
FOB to Ex-wharf:			
Freight (NZD/Kg)	████████	████████	████████
Insurance (NZD/Kg)	████████	████████	████████
Port & customs clearance	████████	████████	████████
Customs Duty (5%)	████████	████████	████████
Total adjustments	████████	████████	████████
NIFOB (NZD/kg)	████████	████████	████████

Calculation of NV(VFDE)s

67. NV(VFDE) amounts are calculated by adjusting the normal value to the FOB level, i.e. adding to normal values the costs incurred by exporters between the level at which a fair comparison is made (normally ex-factory) and FOB. The NV(VFDE), therefore, represents an un-dumped price at the FOB level. In the present case, the costs incurred between the level at which normal values were established and FOB are inland freight, shipping, handling and packaging, agent’s commission and cost of credit.

68. Section 3 of this report outlines the normal value information used by the Ministry in the reassessment. As mentioned in that section, the Ministry chose L&A's domestic selling prices to [REDACTED] as the normal values. However, the Ministry was provided with pricing information for the 400gm can only, therefore, the normal values for the 825gm and 3kg can sizes are the normal values determined in the 2008 reassessment.

69. For the purpose of calculating NV(VFDE)s, the Ministry added those costs incurred between the ex-factory level in South Africa and the FOB level. Because L&A did not provide the Ministry with updated costs in the current reassessment, the Ministry used the same costs as it used in the 2008 reassessment. The Ministry considered these were indicative of the current costs and expenses South African exporters, including L&A, would incur when exporting the goods to New Zealand and therefore they are still applicable for the current reassessment.

70. For the purpose of comparing the per kilogram NV(VFDE) amounts with the per kilogram NIFOB amounts, the NV(VFDE) amounts were converted to NZ dollars using the average rand SAR/NZD exchange rate for the same period over which the NIFOBs were calculated (1 December 2007 - 31 May 2008). According to the www.oanda.com website the average SAR:NZD exchange rate over this period was 1 rand = NZD0.17212.

71. The following table shows the NV(VFDE) amounts for L&A, calculated for each "choice" grade can size.

Table 4.5: Normal Value (Value for Duty Equivalent)

NV(VFDE) - Langeberg & Ashton			
Rand/Kg			
	410g	825g	3Kg
Normal Values (Rand/KG)	[REDACTED]	[REDACTED]	[REDACTED]
Plus costs from ex-factory to FOB level:			
Inland Freight	[REDACTED]	[REDACTED]	[REDACTED]
Shipping Charges	[REDACTED]	[REDACTED]	[REDACTED]
Handling/ Packing	[REDACTED]	[REDACTED]	[REDACTED]
Commission (%)	[REDACTED]	[REDACTED]	[REDACTED]
Cost of Credit (%)	[REDACTED]	[REDACTED]	[REDACTED]
Total costs (Rand/Kg)	[REDACTED]	[REDACTED]	[REDACTED]
NV(VFDE)(Rand/Kg)	10.36	9.91	9.78
NV(VFDE)(NZD/Kg)	1.78	1.71	1.68

Comparison of NIFOB and NV(VFDE) Amounts

72. The Ministry compared the NIFOB amounts calculated above for the 410gm, 825g and 3Kg can sizes to the NV(VFDE) amounts calculated for the same can sizes. This exercise was done for the purpose of enabling the anti-dumping duty to be set at either the lesser of the injury margin (NIFOB) or the dumping margin NV(VFDE) amounts.

Langeberg & Ashton sales to Brooke Holdings

73. The following table shows the proposed levels of duty for exports from L&A to Brooke Holdings, calculated on the basis set out above.

Table 4.6: Proposed Reference Prices (Level of Duty)

Comparison - Langeberg & Ashton to Brooke Holdings			
NZD/kg			
	NIFOB	NV(VFDE)	NIFOB or NV(VFDE)
410gm		1.78	NV(VFDE)
825gm		1.71	NV(VFDE)
3kg		1.68	NV(VFDE)

Langeberg & Ashton sales to other New Zealand importers

74. The following table shows the proposed levels of duty for exports from L&A to importers other than Brooke Holdings, calculated on the basis set out above.

Table 4.7: Proposed Reference Prices (Level of Duty)

Comparison - Langeberg & Ashton to other importers			
NZD/Kg			
	NIFOB	NV(VFDE)	NIFOB or NV(VFDE)
410gm		1.78	NV(VFDE)
825gm		1.71	NV(VFDE)
3kg		1.68	NV(VFDE)

75. As can be seen from the tables above, for each can size the NV(VFDE) calculated is less than the NIFOB, indicating that the duty should be set at the full margin of dumping at the NV(VFDE) amounts.

4.3 Summary of Proposed Anti-Dumping Duties

76. Table 4.8 summarises the proposed reassessed anti-dumping duties for “choice” grade exports from L&A, South Africa, calculated on the basis set out above.

Table 4.8: Proposed Rates of Anti-Dumping Duty

“Choice” Grade Canned Peaches Imported from L&A (Rand/kg)				
Product type and size	Langeberg & Ashton through Brooke Holdings		Langeberg & Ashton through other importers	
	410gm	10.36		10.36
825gm	9.91		9.91	
3kg	9.78		9.78	

77. The table below incorporates the proposed reassessed anti-dumping duty rates from the table above (relating specifically to “choice” grade importations from L&A) with the current anti-dumping duty rates established from the 2008 reassessment (and in respect of all other importations of the goods subject to the duties). The purpose of this table is to show the proposed reassessed rates in the context of the current rates for imports of all subject goods (“choice” and “sub-standard” grade) and for all South African suppliers.

**Table 4.9: Proposed Rates of Anti-Dumping Duty
(Choice & Substandard grades and from all South African exporters)**

(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 has been set at the NV(VFDE) rate. The NV(VFDE) rate should be applied instead of the NIFOB rate where the NIFOB duty amount calculated exceeds the NV(VFDE) amount due to exchange rate fluctuations.

Comparison of the Current Duty Rates with the Proposed Rates

78. The table below lists the current and the proposed NV(VFDE) amounts determined in the reassessment. Two of the current rates are NIFOB amounts which are set in NZ dollars. There is, however, a “cap” on these NIFOB amounts set at the NV(VFDE) amounts to ensure that exchange rate changes do not result in duty being collected in excess of the margin of dumping. The NV(VFDE) amounts are expressed in South African rand (SAR), being the currency in which the normal values were established.

Table 4.10: Current and Proposed Rates of Anti-Dumping Duty

“Choice” Grade Canned Peaches Imported from Langeberg & Ashton, South Africa (amounts per kilogram)		
Product type and size	Current Rate	Proposed Rate
410gm	NZ\$ [REDACTED]	SAR 10.36
825gm	SAR 9.91	SAR 9.91
3kg	NZ\$ [REDACTED]	SAR 9.78
Alternative Duty*		
410gm	SAR 12.07	
3kg	SAR 9.78	

* The alternative duty applies if the NIFOB amount exceeds the NV (VFDE) amount calculated in NZ dollars due to exchange rate fluctuations.

79. The proposed rates are now all based on NV(VFD)E amounts (there are no NIFOB amounts). Under the previous duty schedule for L&A, NIFOB amounts were set for imports of “choice” grade 410gm and 3kg cans, indicating that for these two can sizes the amount of dumping was greater than the margin of injury. Because, the Ministry applies the “lesser-duty” rule, reference prices were set for these two can sizes, only to the extent needed to remedy the injury. In this reassessment the normal value for the 410gm size is lower than that used in the 2008 reassessment and the normal value for the 3kg size is the same as that used in the 2008 reassessment. The reason why there are now no NIFOB reference prices for these two can sizes is mainly due to the large (14 percent) devaluation of the South African rand (SAR) against the New Zealand dollar (NZD), rather than the change in the NV(VFDE) amounts themselves, since the previous reassessment (the effect of exchange rate changes is explained in more detail below).

Impact of Reassessing the Duties

80. To assess the likely impact (or effectiveness) of the proposed reassessed rates, one means is to compare the proposed NV(VFDE) rates with the current NIFOB rates (converted from NZD to SAR using a recent exchange rate). This will provide a clearer indication of the extent to which the proposed rates differ from the current rates. The following table includes a comparison of the current NIFOB amounts, converted into SAR at the current exchange rate of NZD1=SAR5.31 (SAR1=NZD0.1880), with the proposed rates.

Table 4.11: Current and Proposed Rates of Anti-Dumping Duty (South African Rand Per Kg)

"Choice" Grade Canned Peaches Imported from Langeberg & Ashton, South Africa		
Product type and size	Current Rate	Proposed Rate
410gm	SAR 10.19	SAR 10.36
825gm	SAR 9.91	SAR 9.91
3kg	SAR 9.77	SAR 9.78

81. A comparison of the proposed rates with the current rates when converted to SAR shows that there is only a relatively small increase in the rate for 410gm cans and no change (or virtually no change) for the other two sizes. The extent to which the proposed rates of duty represent a change from the current rates is partially dependant on the exchange rate between the NZ dollar and the South African rand. As noted above, the extent of the change in the rates also reflects the proposal to levy all of the rates at the full margin of dumping, a calculation which is itself affected by exchange rate movements between the NZ dollar and the South African rand.

82. In the 2008 reassessment, the NV(VFDE) amounts (in SAR) were converted into NZD in order to compare with the NIFOB amounts (set in NZD) for the purpose of setting the duty at the lesser of the two reference prices, at a SAR:NZD exchange rate of 0.2004. Using this exchange rate meant that for the 410gm and 3kg can sizes imported from L&A, the resulting NV(VFDE) amounts (in NZD) were higher than the domestic industry's NIFOB amounts which meant that the duty rates for these two sizes were set at the NIFOB amounts (the lesser of the two). In the current reassessment, the NV(VFDE) amounts (in SAR) were converted into NZD at the more recent exchange rate of 0.172, resulting in the NV(VFDE) amounts being lower than the NIFOB amounts for all three can sizes. The result of this calculation is that for all three can sizes, the NV(VFDE) amount is now less than the NIFOB amount indicating that the duty rate should be set at the full margin of dumping at the NV(VFDE) amounts.

83. When the NV(VFDE) “cap” that applies to the current NIFOB amounts for the 410gm and 3kg sizes is compared to the proposed rates, the proposed rate for the 410gm size represents a decline of 14 percent while for the 3kg size the proposed rate is the same as the current rate. Therefore, had the rand depreciated against the NZ dollar since the 2008 reassessment to an even greater extent than was actually the case, such that the “cap” had to be applied, the proposed rate for the 410gm size would have represented a decline of 14 percent compared to the proposed rate. The lack of change between the current “capped” rate and the proposed rate for the 3kg size, and between the actual current and proposed rates for the 825gm size, is because L&A failed to provide any reliable information on normal values for those sizes, meaning that the normal values established in the 2008 reassessment had to be used in this reassessment. On the other hand the normal value for the 410gm can size is based on an invoiced selling price from L&A to a domestic customer, therefore, it is more indicative of the ex-factory selling price.

84. While the proposed rate for the 410gm size, at current exchange rates, represents only a relatively small change in the effective rate of the duty, the proposed rate is based on an actual L&A selling price on the South African domestic market. By contrast, the current rate for this size was based on retail selling prices adjusted back to the ex-factory level by deducting estimated amounts for retail and wholesale margins. The new proposed rate is therefore based on more reliable information and represents more accurately the level of the duty that should apply.

85. However, in gauging the likely impact of the proposed reassessed anti-dumping duty rates, it is not entirely a matter of comparing the new duty rates with those established in the 2008 reassessment. Another factor which must be considered is the extent to which there has been a depreciation of the NZD against the US and Australian dollars (the currencies which the goods are invoiced) since the rates were last reassessed because this will affect the prices (in NZD) at which the importers can land the South African canned peaches into New Zealand. Because the duties are set in the form of reference prices, any increase in the landed cost of the canned peaches will in turn affect the amount of duty payable.

86. The depreciation of the NZD against the USD and even larger depreciation of the NZD against the Australian dollar (the currencies in which the goods are invoiced) since February 2008 (the date the current reassessed duties came into force) has meant that importers have been landing South African canned peaches into New Zealand at higher prices. Therefore, it is likely that the higher value of the South African imports in NZ dollars terms, will have some impact on the amount of anti-dumping duty payable on canned peaches imported from L&A in South Africa, however it should not lessen the effectiveness of the anti-dumping duties overall. To illustrate this, an analysis of recent import statistics shows that one particular importer, [REDACTED], is importing the goods into New Zealand [REDACTED] [REDACTED] indicating that the cost of importing the goods is such that it is landing the goods into New Zealand at above the reference prices set in the 2008 reassessment.

Other Can Sizes

87. The Ministry is of the view that because the duty amounts are set on a per kilogram basis, if canned peaches falling within the description of the goods subject to anti-dumping duties are imported in can sizes other than those for which a separate rate has been established, the duties should continue to be based on the reference price for the can size closest to the particular size of can being imported.

4.4 Dates the Duties Become Effective

88. Under section 17(c) of the Act, reassessed anti-dumping duties can apply from either the day after the Minister determines new rates of anti-dumping duty or a specified day thereafter. There is no basis in this case for the new rate to apply on a specified day other than the day after the date of the Minister's determination.

4.5 Refunds of Anti-Dumping Duty

89. Section 14(10) of the Act allows for refunds of anti-dumping duty, where the reassessed amount is lower than the measure that is currently in force, for the period since the initiation of the reassessment. According to NZCS data, there have been a number of imports of canned peaches from South Africa since the reassessment was initiated on 17 October 2008. Although the reassessed rates are either slightly higher or have remained virtually the same for the three can sizes, (as seen in table 4.11 above), exchange rate movements since the reassessment was initiated may mean that some importations could have been subject to a duty at a higher rate than the proposed new duty rate, at the time of their importation. Therefore, it is possible that some duty refunds may be sought from importers, however, in view of the relatively small difference in the duty rates before and after being reassessed, it is unlikely that any amounts refunded will be significant.

4.6 Opportunity for Comment

90. Interested parties were given the opportunity to comment on the Ministry's findings in an interim reassessment report, however, none of the interested parties made a submission concerning the proposed changes to the anti-dumping duties.

5. Conclusion

91. The Ministry concludes that the current anti-dumping duty rates imposed on “choice” grade exports of canned peaches from Langeberg & Ashton Foods Pty Ltd in South Africa, be reassessed to the proposed new rates listed in the Summary of Proposed Anti-dumping Duties section of this report. A comparison of the proposed rates with the current rates (when exchange rate conversions are made) shows that there is only a relatively small increase in the rate for the 410gm can size and virtually no change for the 3kg can size. The duty rate for the 825gm can size will not change. On this basis, the Ministry considers that the proposed rates of duty are consequently unlikely to have any significant impact on the amount of duty payable on canned peaches imported from L&A in South Africa and on the effectiveness of the anti-dumping duties overall.

6. Recommendation

92. It is recommended that the Minister:

- a. **Agree** to the new rates of anti-dumping duty in respect of “choice” grade exports of canned peaches by Langeberg & Ashton Foods Pty Ltd in South Africa, as set out in Table 4.8 of this report;
- b. **Agree** that the new rates of anti-dumping duty should apply from the day after the date the Minister determines the new rates, in accordance with section 17(c) of the Act;
- c. **Agree** that any anti-dumping duties paid since the initiation of this reassessment on 17 October 2008 that are in excess of the duties which would have been applicable if the proposed duties were in place, should be refunded to the extent of such excess;
- d. **Sign** the attached *Gazette* notice publicly notifying the above decisions.

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Investigating Team
Trade Rules, Remedies and Tariffs Group
Ministry of Economic Development

Annex 1

93. A full copy of the WTO Agreement on Implementation of Article VI of the GATT 1994 can be found at:

http://www.wto.org/english/docs_e/legal_e/19-adp.pdf

94. A full copy of the Dumping and Countervailing Duties Act 1988 can be found at:

<http://www.legislation.govt.nz/act/public/1988/0158/latest/whole.html#DLM138364>