

Ministry of **Economic
Development**



M a n a t ū Ō h a n g a

Non-Confidential Report

2007 Reassessment of Anti-Dumping Duty on Canned Peaches from South Africa

Dumping and Countervailing Duties Act 1988

Ministry of Economic Development

February 2008

HTML: 978-0-478-31635-3

PDF: 978-0-478-31634-6

Table of Contents

ABBREVIATIONS	3
1. EXECUTIVE SUMMARY	4
Introduction	4
Reassessment Process	4
Conclusion	4
2. INTRODUCTION	5
2.1 2007 Review.....	5
2.2 Background	5
2.3 Disclosure of Information.....	6
2.4 Interested Parties	6
2.5 Imported Goods.....	7
3. REASSESSMENT	9
HW's Submission.....	9
Brooke Holdings Submission	10
4. ANTI-DUMPING DUTIES	12
4.1 Method of Imposing Duty	13
4.2 Anti-Dumping Duty Levels.....	15
4.3 Summary of Proposed Anti-Dumping Duties	22
4.4 Date Duties Become Effective.....	24
4.5 Future Reassessments	24
5. RECOMMENDATIONS.....	26
ANNEX 1	27

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
CPI	Consumer Price Index
Del Monte	Del Monte South Africa (Pty) Limited
Del Monte Fresh Produce	Del Monte Fresh Produce (NZ) Ltd
FIS	Free into Store
FOB	Free on Board
Fresh Partners	Fresh Partners (Pacific) Limited
GUR	Good Under Review
HW	Heinz Wattie's Limited
Langeberg & Ashton	Langeberg and Ashton Foods 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
Pac	Forum Island Members of the South Pacific Regional Trade and Economic Co-operation Agreement
POR(D)	Period of Review (Dumping)
POR(I)	Period of Review (Injury)
Supermarket Sales	Supermarket Sales NZ Limited
TPA	Trans-Pacific Strategic Economic Partnership Agreement
VFD	Value for Duty
WTO	World Trade Organisation

1. Executive Summary

INTRODUCTION

1. A review of the anti-dumping duties that currently apply against imports of canned peaches from South Africa was completed by the Ministry of Economic Development (the Ministry) on 26 November 2007 (referred to in this report as the 2007 Review). The 2007 Review concluded that there is a likelihood of continuation or recurrence of dumping causing material injury to the New Zealand industry if the current anti-dumping duties were removed.

2. This report considers the appropriate level of anti-dumping duties following the 2007 Review conclusion that there is a continued need for anti-dumping duties to remain in place.

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

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

REASSESSMENT PROCESS

4. On the same day as the completion of the review the reassessment of the anti dumping duties was initiated. A section on the proposed changes to anti-dumping duties was included in the final report for the 2007 Review, which was released to interested parties on 28 November 2007. Interested parties were given until 12 December 2007 to make submissions concerning the proposed changes to the anti-dumping duties.

5. Submissions were received from Heinz Wattie's Limited (HW) and Brooke Holdings Limited (Brooke Holdings). Due account was given to both parties' comments and have been incorporated into the analysis undertaken in this report.

CONCLUSION

6. This report concludes that the current anti-dumping duties on exports from the following South African manufacturers be reassessed to the following rates listed in the Summary of Proposed Anti-Dumping Duties section of this report

2. Introduction

2.1 2007 Review

7. A review of the anti-dumping duties that currently apply against imports of canned peaches from South Africa was initiated by the Ministry of Economic Development (the Ministry) on 31 May 2007 (referred to as the 2007 Review). The 2007 Review was completed on 26 November 2007 and concluded that if the current anti-dumping duties are removed there is a likelihood of a continuation or recurrence of dumping and that this would likely cause material injury to the New Zealand industry. The 2007 Review final report recommended that anti-dumping duties for all exporters should be reassessed to new levels.

8. This reassessment was initiated on 26 November 2007 immediately following the completion of the 2007 Review. A section indicating the proposed changes to the anti-dumping duties was included in the final report for the 2007 Review, which was released to interested parties on 28 November 2007. Interested parties were given until 12 December 2007 to make submissions upon the proposed changes to the current anti-dumping duties. Submissions were received from Heinz Wattie's Limited (HW) and Brooke Holdings Limited (Brooke Holdings).

9. 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.

2.2 Background

10. On 1 August 1996, the Minister of Commerce first imposed anti-dumping duties on canned peaches from South Africa imported into New Zealand, because an investigation had established that the goods were being dumped and by reason thereof causing material injury to the New Zealand industry.

11. On 19 December 1996 and 9 March 1998 reassessments of the rates of anti-dumping duties applicable to South African canned peaches were carried out.

12. In January 2002 a "sunset" review was completed which found that the anti-dumping duties were still necessary to prevent a recurrence of injurious dumping from South Africa. The duties were reassessed in June 2002.

13. As noted above, on 26 November 2007 a second "sunset" review was completed. In concluding that a removal of the anti-dumping duties would likely result in a continuation or recurrence of dumping and material injury to the New Zealand industry, the Ministry examined information gathered during the course of the review on the current and likely pricing behaviour of the South African canned peach producers and their ability to supply New Zealand importers with significant volumes of dumped product. As a result of this analysis the final report recommended that the anti-dumping duties needed to be reassessed and proposed a set of new anti-dumping duty rates.

2.3 Disclosure of Information

14. 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.

15. The Ministry has, given the timing of this reassessment, continued the public file for the 2007 Review to include all non-confidential information used in relation to the current reassessment. This was communicated to all interested parties so that they could continue to request information from the public file during the course of this reassessment.

2.4 Interested Parties

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

New Zealand Industry

17. The application for the 2007 Review was submitted by Heinz Wattie's Limited. HW is the sole manufacturer of canned peaches in New Zealand.

Manufacturers and Exporters

18. From import information provided by the New Zealand Customs Service (NZCS) the Ministry was able to identify two South African exporters that exported to New Zealand during the period of review for dumping, or POR(D) i.e. 1 May 2006 to 30 April 2007.

Langeberg and Ashton Foods Limited (Langeberg & Ashton)

19. Langeberg Foods Limited was identified as an exporter in both the original investigation and the 2002 "sunset" review. In 2005, Langeberg Foods Limited merged with another South African producer, Ashton Canning (Pty) Ltd. The company now takes the name Langeberg and Ashton Foods Limited.

Del Monte South Africa (Pty) Limited (Del Monte)

20. Del Monte South Africa (Pty) Limited is operated under the management of Del Monte Foods International Limited, Monaco. Del Monte Foods International Limited, was identified as an exporter in both the original investigation and the 2002 sunset review.

Importers

21. NZCS data identified two importers of canned peaches from South Africa during the POR(D).

Brooke Holdings Limited (Brooke Holdings)

22. 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 Langeberg & Ashton. As an agent Brooke Holdings negotiates sales on behalf of Langeberg & Ashton working on an agent's commission. As a customer Brooke Holdings purchases product and sells into the market working on a margin.

23. Brooke Holdings made a submission concerning the proposed changes to the anti-dumping duties.

Fresh Partners (Pacific) Limited (Fresh Partners)

24. For the one shipment from Del Monte over the POR(D), Del Monte Fresh Produce (NZ) Ltd (Del Monte Fresh Produce) acted for Del Monte. At this time, all export sales to New Zealand made by Del Monte were made through Del Monte Fresh Produce which was operating in New Zealand as Del Monte's agent. Del Monte Fresh Produce ceased operations in New Zealand in October 2006 and Fresh Partners (Pacific) Limited (Fresh Partners) became Del Monte's agent in New Zealand.

25. Fresh Partners is a limited liability company. The company has a formal marketing agreement with Del Monte handling its products within the territory of Australia and New Zealand. The company was able to provide the Ministry with information on Del Monte's one shipment to New Zealand which was sold to Supermarket Sales NZ Ltd (Supermarket Sales).

26. Supermarket Sales is a sales and marketing company which works with overseas and New Zealand companies to provide support for their products in New Zealand. Supermarket Sales on-sold the canned peaches in this shipment to privately-owned and operated supermarkets in New Zealand.

27. Neither Fresh Partners nor Supermarket Sales made a submission on the proposed changes to the anti-dumping duties.

2.5 Imported Goods

28. The goods which are the subject of the anti-dumping duties, hereinafter referred to as "goods under review", GUR 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)

29. The NZCS has stated that the subject goods enter under the following tariff classification:

20.08 Fruits, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included:

[- Nuts, groundnuts and other seeds, whether or not mixed together]

[- Pineapples]

[- Pears]

[- Apricots]

[- Cherries]

2008.70

-Peaches:

[-Cooked and preserved by freezing, not containing added sugar]

2008.70.09 00L

--Other

[-Strawberries]

[- Other, Including mixtures other than those of subheading No 2008.19]

30. Applicable duty rates are:

Normal (including South Africa)	7%
Australia	Free
Canada	Free
LDC	5.5%
LLDC	Free
Pac	Free
Singapore	Free
Thailand	Free
TPA	Free

3. Reassessment

31. Sub-section 14(6) of the Act provides for anti-dumping duty rates or amounts to be reassessed following the completion of a review.

32. The 2007 Review involved re-calculating normal values, export prices and the corresponding dumping margins. This resulted in amounts that were different from those upon which the current anti-dumping duty rates were calculated. Therefore, 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 level of the current anti-dumping duties need to be reassessed. This reassessment addresses whether it is appropriate for the anti-dumping duties to remain at the current level, or if the rates should change.

33. The 2007 Review report stated that a final reassessment report would be completed as soon as practicable after submissions closed. The report also noted that the process was dependent upon the nature of the submissions received and that it may be necessary to lengthen the reassessment process in order to include new information in the Ministry's analysis. If submissions resulted in significant changes to the proposals, the Ministry would consider issuing another report to allow parties to defend their interests before final recommendations were placed before the Minister. The Ministry considered that an additional report was not required.

HW'S SUBMISSION

34. In its submission on the reassessed anti-dumping duty amounts HW stated that it had concerns about the way the reassessments for the 820gm and 3kg can sizes were calculated. HW stated that it was specifically concerned that the reassessed duty amounts for the 820gm and 3kg cans were based on normal value amounts determined in the 2007 Review which it considers are inaccurate due to the Ministry's use of outdated information obtained in the 1996 investigation to calculate these normal values.

35. In its submission, HW said that in the absence of reliable price data for the 820gm and 3kg can sizes sourced in South Africa, the normal value for these can sizes should have been calculated using the most recent and relevant data possible, including information relating to HW's own domestic selling prices. This is because many factors that influence domestic selling prices of the different sizes of canned peaches in South Africa may have changed significantly since 1996 which has likely resulted in the Ministry using outdated South African pricing information for their calculation of the normal values.

Ministry's Response

36. Because the Ministry was not supplied with any information on South African domestic prices of 820gm and 3kg sized cans in the 2007 Review, it calculated normal values for these can sizes based on the per kilogram price of a 410gm can size (for which pricing information was available). However, it was determined in the investigation that the per kilogram price of canned peaches varies with the size of the can, the per kilogram price decreasing as the can size increases, therefore a

physical difference adjustment was made to the per kilogram prices for the 820gm and 3kg can sizes. To derive what the Ministry considered would be an accurate normal value for the 820gm and 3kg sized cans in the 2007 Review, a physical difference adjustment was calculated by applying the per kilogram price ratio between the 410gm and a 820gm can and the per kilogram price ratio between the 410gm and a 3kg can. These price ratios were applied to the per kilogram normal value the Ministry did have for the 410gm can to derive a per kilogram normal value for the 820gm and the 3kg can sizes. While HW is correct in that both of these price ratios were derived using South African pricing information sourced from the original investigation, rather than current South African prices for these can sizes or pricing information sourced from HW, this was considered the best available information the Ministry had on South African prices for each of the three can sizes. For instance, the Ministry was reluctant to use price ratio information relating to HW's domestic sales because there is no evidence to show that the price ratios on a per kilogram basis between the different can sizes sold in South Africa are the same or similar to the price ratios between the same can sizes sold in New Zealand.

37. The Ministry used the price ratio information sourced from the original investigation conducted in 1996 because of the lack of pricing information provided in the 2007 Review by the South African exporters. Neither of the two South African producers of the GUR identified as exporting to New Zealand during the POR cooperated with the Ministry in the review, 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 (the 'facts available' provisions) of the Anti-dumping Agreement allow the authorities to make preliminary and final determinations 'on 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'.

38. In the absence of actual information supplied by the South African exporters themselves, the Ministry considered the substituted information was the best information available to calculate normal values for the 820gm and 3kg can sizes, in terms of section 6 of the Act and Article 6.8 of the Anti-dumping Agreement. These normal values were in turn used as the basis for calculating the reassessed anti-dumping duty amounts for these can sizes and the Ministry is satisfied that the reassessed duty amounts using this information are an adequate reflection of the pricing and cost changes that have taken place since the duties were last reassessed in 2002.

BROOKE HOLDINGS SUBMISSION

39. Using the reassessed anti-dumping duty amounts released in the 2007 Review report Brooke Holdings calculated likely importers into-store prices for future importations of 410gm and 820gm 'choice' grade canned peaches from South Africa. The company submitted that at these prices South African peaches would be unsaleable and therefore the new anti-dumping duty amounts would in effect obstruct imports.

40. In response to Brooke Holdings' claims, the Ministry provided Brooke Holdings with further details of the make-up of the reassessed anti-dumping duty amounts for these particular 'choice' grade can sizes. The Ministry explained that the new reassessed duty amounts were principally made up of the normal value amounts established in the 2007 review. The normal values themselves had increased by approximately 40 percent from the 2002 review which is likely to be as a result of a similar increase in the consumer price index (CPI) in South Africa over the same period. Therefore, the reassessed anti-dumping duty amounts simply reflect principally the increased domestic prices for canned peaches in South Africa since the duties were last reassessed in 2002. Brooke Holdings later confirmed that the reassessed anti-dumping duty amounts were what it thought they would be.

41. After the release of the Interim Report for the 2007 Review, Brooke Holdings raised the prospect of a "suspension" of the anti dumping duties. The company stated that by suspending the anti-dumping duties (rather than removing or continuing to impose them) the Ministry could determine what the consequence of unrestricted access by South African canned peach into the New Zealand market would be. If the New Zealand market appeared to be in danger of becoming awash with cheap, dumped, injurious canned peaches from South Africa, then the anti-dumping measures could be reactivated immediately.

42. The Ministry concluded in the 2007 Review final report that injury to HW is likely to recur if the anti-dumping duties on South African canned peaches are lifted. Having made this conclusion there is no reasonable basis to entertain the idea of suspending the anti-dumping duties. Article 15 of the Anti-dumping Agreement provides that "Possibilities of constructive remedies provided for by this Agreement shall be explored before applying anti-dumping duties where they would affect the essential interest of developing country Member". The Ministry considers that the "constructive remedies" referred to in Article 15 of the Anti-dumping Agreement are price undertakings and a lesser duty, which are both referred to in the Act and the Anti-dumping Agreement. This was reinforced by the Panel in the WTO dispute settlement case *European Communities - Cotton-Type Bed Linen from India* (see section 4.1 below).

4. Anti-dumping Duties

43. 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.

Table 4.1: Current Anti-Dumping Duties

Brooke Holdings Limited from Langeberg		
<i>Can Size</i>	<i>Choice</i>	<i>Sub-standard</i>
410gm	██████*	██████*
825gm	██████*	5.55**
3KG	██████*	5.52**
Alternative Duty+		
410gm	8.63**	6.75**
825gm	7.09**	5.55**
3 KG	7.01**	5.52**
Importers other than Brooke Holdings Ltd from Langeberg		
410gm	8.63**	6.75**
825gm	7.09**	5.55**
3 KG	7.01**	5.52**
All Importers including Brooke Holdings from Other Suppliers		
410gm	8.63**	6.75**
825gm	7.09**	5.55**
3 KG	7.01**	5.52**

* NIFOB amount in NZ dollars.

** NV(VFDE) amount in South African Rand (ZAR)

+ Alternative Duty applies where the calculated NIFOB amount exceeds this NV(VFDE) amount due to the exchange rate conversion and only applies to Brooke Holdings imports from Langeberg.

4.1 Method of Imposing Duty

44. 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.

45. 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

46. 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.

47. 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.

48. 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.

49. 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

50. 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.

51. 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.

52. 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.

53. 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

54. 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.

55. 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.

56. 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 and avoids over-collecting duty.

57. A reference price method is therefore considered the best method of assessing and collecting anti-dumping duties in the circumstances presented in this case.

Developing Country Considerations

58. For the purposes of dumping investigations and reviews and the imposition of anti-dumping duties, South Africa is considered to be a developing country and therefore Article 15 of the Anti-dumping Agreement applies. Article 15 requires that special regard must be given by developed country members to the special situation of developing country members when considering the application of anti-dumping measures. The possibility of constructive remedies is to be explored before applying anti-dumping duties where they would affect the essential interests of a developing country member.

59. The WTO Dispute Settlement Panel in *European Communities - Cotton-Type Bed Linen from India* was of the view that “the imposition of a “lesser duty” or a price undertaking would constitute “constructive remedies” within the meaning of the Article 15...”¹ Price undertakings offered in relation to an initial investigation are covered in section 15 of the Act but do not explicitly extend to reassessments of current anti-dumping duties in place. In addition, no offers of price undertakings were received from either of the South African exporters.

60. The Ministry considers that, given the above, its consideration of a lesser duty (as discussed below) fulfils its obligation under Article 15 of the Agreement to give special regard to constructive remedies.

4.2 Anti-Dumping Duty Levels

Consideration of Lesser Duty

61. 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) 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.

Calculation of NIFOBs

62. 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 and ex-importers store for Brooke Holdings and ex-wharf for Fresh Partners/Supermarket Sales.

¹ WT/DS141/R, para 6.229.

63. The purpose of a NIFOB value is to ensure that the price of 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 and Fresh Partners/Supermarket Sales, the Ministry has established the costs after FOB from NZCS data (overseas insurance and freight costs) and from the importers themselves.

Calculation of NIP

64. The review has found no evidence of injury to HW attributable to South African imports subject to anti-dumping duties. As a result of an investigation into dumped imports of preserved peaches from China in 2006, provisional measures were applied to such imports (including canned peaches) in July 2006 and final anti-dumping duties imposed in August 2006. The review team considers that HW's net selling prices achieved over the first six months of the company's 2006/7 financial year are likely to have been affected by dumped imports from China and that the last six months of this financial year is likely to provide a better indication of a non-suppressed or non-injurious price. Therefore, the Ministry has used HW's Net Selling Values (NSVs) for the last six months of its 2006/7 financial year to calculate NIPs for the three sizes of canned peaches produced by the company.

65. 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

66. 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.

67. 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.

Langeberg & Ashton

68. A specific NIFOB was calculated at the ex-importers store level which takes into account import costs incurred by Brooke Holdings when sourcing from Langeberg & Ashton. The costs between FOB and ex-store were taken from information sourced from NZCS (freight and insurance) and that provided by Brooke Holdings, relating to its imports of the subject goods over the POR(D). A reasonable profit margin was calculated also using Brooke Holdings’ cost build up information.

69. These adjustments have been made to the NIP to derive the NIFOB and are shown in the table below.

Table 4.3: NIFOB (NZD/Kg)

NIFOB - Langeberg & Ashton			
	410gm	825gm	3KG
HW NIP/Kg	██████████	██████████	██████████
<u>Less:</u> costs and margins after			
FOB to Ex-store			
Freight (NZD/Kg)	██████████	██████████	██████████
Insurance (NZD/Kg)	██████████	██████████	██████████
BAF (bunker surcharge)	██████████	██████████	██████████
wharfage/port clearance/handling	██████████	██████████	██████████
transport/devanning	██████████	██████████	██████████
Bank charges	██████████	██████████	██████████
Customs Duty (7%)	██████████	██████████	██████████
Customs/MAF	██████████	██████████	██████████
Storage & admin. costs	██████████	██████████	██████████
Reasonable profit margin	██████████	██████████	██████████
Total adjustments	██████████	██████████	██████████
NIFOB (NZD/kg)	██████████	██████████	██████████

Del Monte SA (Pty) Ltd

70. A specific NIFOB was calculated at the ex-wharf level which takes into account import costs incurred by importers when sourcing from Del Monte. Costs between FOB and ex-wharf were taken from information sourced from NZCS (freight and insurance) and from Brooke Holdings (wharfage, port clearance and handling) and related to importations of the subject goods over the POR(D)

71. These adjustments have been made to the NIP to derive the NIFOB and are shown in the table below.

Table 4.4: NIFOB (NZD/Kg)

NIFOB - Del Monte SA (Pty) Ltd			
	410gm	825gm	3KG
HW NIP/Kg	██████████	██████████	██████████
<u>Less:</u> costs and margins after FOB to Ex-wharf			
Freight (NZD/Kg)	██████████	██████████	██████████
Insurance (NZD/Kg)	██████████	██████████	██████████
wharfage/port clearance/handling	██████████	██████████	██████████
Customs Duty (7%)	██████████	██████████	██████████
Total adjustments	██████████	██████████	██████████
NIFOB (NZD/kg)	██████████	██████████	██████████

Calculation of NV(VFDE)s

72. 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. In this case, the costs incurred between the level at which normal values were established and FOB were inland freight, shipping, handling and packaging, agent's commission and cost of credit. Section 4 of the final report for the 2007 Review outlines the ex-factory normal values and the costs incurred by each of the two exporters between this level and the FOB level. The NV(VFDE) therefore represents an un-dumped price at the FOB level. The NV(VFDE) per kilogram amounts in NZ dollars have been calculated by converting the NV(VFDE) in rand per kilogram using the average rand/NZD exchange rate for the last six months of the domestic industry's 2006/7 financial year (1 Nov 06 - 30 April 07), which according to the www.oanda.com website was 1 rand = NZD0.2004.

Langeberg & Ashton

73. The following table shows the NV(VFDE) amounts for Langeberg & Ashton, calculated for each can size and type under review.

Table 4.5: Normal Value (Value for Duty Equivalent)

	NV(VFDE) - Langeberg & Ashton					
	Rand/Kg					
	410g		825g		3Kg	
	Choice	Sub-standard	Choice	Sub-standard	Choice	Sub-standard
Normal Values (Rand/Kg)						
Plus costs from ex-factory to FOB level						
Inland Freight						
Shipping Charges						
Handling/ Packing						
Commission (0.5%)						
Cost of Credit (0.5%)						
Total costs (Rand/Kg)						
NV(VFDE)(Rand/Kg)	12.07	8.65	9.91	7.11	9.78	7.01
NV(VFDE)(NZD/Kg)	2.42	1.73	1.99	1.42	1.96	1.41

Del Monte SA (Pty) Ltd

74. The following table shows the NV(VFDE) amounts for Del Monte, calculated for each can size and type under review.

Table 4.6: Normal Value (Value for Duty Equivalent)

	NV(VFDE) - Del Monte SA (Pty) Ltd					
	Rand/Kg					
	410g		825g		3Kg	
	Choice	Sub-standard	Choice	Sub-standard	Choice	Sub-standard
Normal Values (Rand/KG)						

<u>Plus</u> costs from ex-factory to FOB level						
Inland Freight						
Shipping Charges						
Handling/ Packing						
Commission (0.5%)						
Cost of Credit (0.5%)						
Total costs (Rand/Kg)						
NV(VFDE)(Rand/Kg)	12.21	8.75	10.02	7.19	9.89	7.09
NV(VFDE)(NZD/Kg)	2.45	1.75	2.01	1.44	1.98	1.42

Comparison of NIFOB and NV(VFDE) Amounts

75. The review team compared the NIFOB amounts calculated for the 410g, 825g and 3Kg canned peaches to the NV(VFDE) amounts calculated for the choice and sub-standard grade canned peaches of the same size.

Langeberg & Ashton Sales to Brooke Holdings

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

Table 4.7: Proposed Reference Prices (Level of Duty)

Comparison - Langeberg & Ashton to Brooke Holdings

	NZD/Kg		NIFOB or NV(VFDE)
	NIFOB	NV(VFDE)	
410gm Choice		2.42	NIFOB
410gm Sub-standard		1.73	NV(VFDE)
825gm Choice		1.99	NV(VFDE)
825gm Sub-standard		1.42	NV(VFDE)
3kg Choice		1.96	NIFOB
3kg Sub-standard		1.41	NV(VFDE)







Del Monte SA (Pty) Ltd

77. The following table shows the proposed levels of duty for exports from Del Monte to all importers, calculated on the basis set out above.

Table 4.8: Proposed Reference Prices (Level of Duty)

Comparison - Del Monte SA (Pty) Ltd

NZD/Kg

	NIFOB	NV(VFDE)	NIFOB or NV(VFDE)
410gm Choice		2.45	NIFOB
410gm Sub-standard		1.75	NV(VFDE)
825gm Choice		2.01	NV(VFDE)
825gm Sub-standard		1.44	NV(VFDE)
3kg Choice		1.98	NV(VFDE)
3kg Sub-standard		1.42	NV(VFDE)

Effect of Exchange Rates on Anti-Dumping Duties

78. The Ministry considers that where anti-dumping duty is imposed at a full margin of dumping, and is therefore based on the normal value (i.e. a NV(VFDE)), it is appropriate that the duty should be established in South African Rand as that is the currency in which the normal value is set.

79. As in the 2002 review, the Ministry also recognises the problem of exchange rate movements concerning the lesser duty rule. In some instances exchange rate movements can result in NIFOB amounts that were identified as being the lesser duty, later become higher than the corresponding NV(VFDE) amount, which would be contrary to the requirement of the New Zealand Act and the WTO Anti-dumping Agreement, that anti-dumping duties do not exceed the margin of dumping.

80. Therefore, the review team proposes that an *alternative duty* rate be set at the NV(VFDE) rate due to exchange rate fluctuations. In other words, the NIFOB amounts (in NZD) identified as the lesser duty should be applied except where the NV(VFDE) amount in NZ dollars (calculated at the exchange rate at the date of importation) is lower than the NIFOB. In this situation the NV(VFDE) rate should be applied instead of the NIFOB rate.

Residual Rate of Duty

81. In the 2002 review, the review team did not have any cost information from any of the importers apart from Brooke Holdings on which to calculate separate NIFOB amounts for importers other than Brooke Holdings with which it could base a residual rate on the lesser duty rule. It was considered unlikely that other importers have the same cost and margin structure as Brooke Holdings, therefore a residual rate in the form of a NV(VFDE) amount (in South African Rand) was calculated at the full margin of dumping for all other suppliers of canned peaches from South Africa other than Langeberg) and for importers from Langeberg other than Brooke Holdings. This was to take into account fluctuations in the importer's costs and margin, where a NIFOB amount might exceed a NV(VFDE) amount and was also to prevent any occurrence of injury to HW as well.

82. In the present review, NIFOB amounts (for the three can sizes) were calculated at the ex-store level for Langeberg and Ashton on the basis of Brooke Holdings' cost

and margin structure. There was another exporter other than Langeberg and Ashton in this review that exported to another importer other than Brooke Holdings. Separate NIFOB amounts were calculated for this exporter (Del Monte) for each type and size of can at the ex-wharf level.

83. Reference prices for 'other Importers' supplied by Langeberg and Ashton have been set at NV(VFDE) amounts. As the costs between FOB and ex-store are specific to a particular importer, without the necessary information there is no basis on which to calculate NIFOB amounts for other importers from Langeberg and Ashton. The Ministry has calculated a residual rate for 'other suppliers' based on the highest of the NV(VFDE) amounts calculated for the two exporters from South Africa. The rates for 'other suppliers' are listed in Table 4.9 below.

4.3 Summary of Proposed Anti-Dumping Duties

84. Table 4.9 summarises the proposed anti-dumping duties for exports from South Africa, calculated on the basis set out above.

Table 4.9: Rates of Anti-Dumping Duty

<i>(Rand/kg, unless otherwise stated)</i>								
<i>Product type and size</i>	<i>Langeberg & Ashton through Brooke Holdings</i>		<i>Langeberg & Ashton through other importers</i>		<i>Del Monte</i>		<i>Other Suppliers</i>	
	Choice	Sub-std	Choice	Sub-std	Choice	Sub-std	Choice	Sub-std
410gm	NZ\$ 12.07	8.65	12.07	8.65	NZ\$ 12.21	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\$ 9.78	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.

85. A comparison of the NIFOB amounts listed in the table above with those established in the 2002 reassessment shows that the NIFOB amounts established for shipments from Langeberg & Ashton through Brooke Holdings are now higher than those established in the 2002 reassessment by 100 percent and 100 percent for the 410gm 'choice' and 3kg 'choice' grade canned peaches, respectively. All the NV(VFDE) amounts (expressed in Rand) established in the present reassessment are also higher than the NV(VFDE) amounts established for the equivalent 'choice' and 'sub-standard' can sizes in the 2002 reassessment. The NV(VFDE) amounts for the 'choice' grade canned peaches have increased by approximately 40 percent while the NV(VFDE) amounts for the 'sub-standard' grade canned peaches have

increased by approximately 28 percent from the NV(VFDE) amounts established in the 2002 reassessment. These increases reflect principally the increase in the normal values (which were based on domestic prices) for the same can size and types since the 2002 reassessment. The normal value increases themselves reflect the increase in the South African CPI over the same period which was 38 percent.

86. However, in gauging the extent to which the duty rates have changed since they were last reassessed in 2002, it is not a simple matter of comparing the reference prices (expressed in rand) set out in the table above with those established in the 2002 reassessment. For instance, a new schedule of rates has been added for a particular South African exporter (Del Monte) which was not exporting to New Zealand at the time the 2002 rates were reassessed. Furthermore, there has been a significant depreciation of the rand against the NZ dollar since 2002, so that when the new reference prices (in Rand) are converted to NZ dollars to calculate the amount of duty payable, it is likely that the increase in the reference prices will be less apparent.

87. To gauge the extent to which the reference prices (in NZ dollars) have changed since they were reassessed in 2002, the Ministry compared the proposed NV(VFDE) amounts, expressed in NZ dollars (see table 4.5 above), with the current NV(VFDE) amounts established in the 2002 reassessment, expressed in NZ dollars using the South African rand:NZ dollar exchange rate at that time. The proposed NV(VFDE) amounts, when expressed in NZ dollars, have decreased by approximately three percent for the 'choice' canned peaches and by approximately 11 percent for the 'sub-standard' canned peaches as a result of the depreciation of the rand against the NZ dollar since the 2002 reassessment.

88. However, the significant depreciation of the US dollar (the currency in which the goods are invoiced in) against the NZ dollar since 2002 has allowed importers to land their goods into New Zealand at lower prices. Therefore, it is likely that even though the proposed NV(VFDE) amounts, when expressed in NZ dollars, have decreased by between 3 and 11 percent since 2002, the import value of the South African goods in NZ dollars will still be lower than the new proposed reference prices.

89. The extent to which the landed value of the South African canned peaches is likely to be lower than the new proposed reference prices will also depend on the extent to which the South African exporters are likely to change their pricing behaviour to take into account the reassessed reference prices. After the imposition of anti-dumping duties, exporters will often price their goods up to the reference prices in order to allow the importers to legitimately avoid the payment of anti-dumping duties.

90. An approach to gauging the impact of exchange rate changes on the effective level of the proposed new rates of duty in comparison with current duty rates, is to assume that the US dollar export price of the goods from South Africa has not

changed since 2002 and to then compare the duty that would be payable applying the current and proposed new levels of duty. A comparison on this basis shows that there would be an increase in the amount of duty payable in NZ dollars in real terms, primarily because of the significant decline in the export price of the goods when expressed in NZ dollars.

91. Taking into account the impact of changes in the NZ dollar:South African rand exchange rate (the rand has depreciated by approximately 60 percent) and the NZ dollar:US dollar exchange rate (the US dollar has depreciated by approximately 67 percent) since the 2002 reassessment, the Ministry considers that the proposed new levels of duty will at least maintain the effective level of remedy.

Other Can Sizes

92. 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 be based on the reference price for the can size closest to the particular size of can being imported.

4.4 Date Duties Become Effective

93. 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 after the day the Minister determines new rates of anti-dumping duty. 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.

Refunds of Anti-Dumping Duty

94. 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 preceding review. The 2007 Review was initiated on 31 May 2007.

95. In NZ dollar terms some of the proposed rates of duty shown in Table 4.9 are lower than the rates established in the 2002 reassessment for the equivalent can types and sizes and it is therefore possible that the duty payable under the proposed rates would be lower than the amount payable under the existing rates.

96. It is therefore recommended that (if the above rates of duty are determined) the Minister also direct Customs to, upon application by an importer, refund any anti-dumping duty paid in the period from 31 May 2007 to the date of her decision, if the anti-dumping duty paid was greater than the amount of the new anti-dumping duty.

4.5 Future Reassessments

97. Under section 14(6) of the Act, the Ministry may initiate a reassessment of any rate or amount of anti-dumping duty where a request for a reassessment is

submitted by an interested party who submits evidence justifying the need for a reassessment.

98. Normally, the Ministry would not undertake a reassessment within six months of new duty rates being set, as prices can still be adjusting to the new rates of anti-dumping duties during this time. However, if an application for a review or reassessment was presented that illustrated a significant change in circumstances had occurred, the Ministry would consider this application within the six month timeframe. Sufficient evidence would be required that an importer's or exporter's behaviour in the market had changed such that it was likely to cause material injury to the New Zealand industry, for a reassessment to be initiated.

5. Recommendations

99. The Ministry concludes that the current rates of anti-dumping duties need to be reassessed.

100. It is recommended that the Minister:

- a. Agrees to the reassessed rates of anti-dumping duty as set out in the Summary of Proposed Anti-Dumping Duties section (see table 4.9) of this Reassessment Report.
- b. Agree that the new rates of anti-dumping duty should apply from the day after you determine new rates, in accordance with section 17(c)(i) of the Act.
- c. Approve the refund of any anti-dumping duty paid in excess of the reassessed rates of anti-dumping duty in the period from 31 May 2007 to the day after the new rates are determined.
- d. Sign the attached *Gazette* notice publicly notifying the above decisions.

.....

.....

Investigating Team
Trade Rules and Remedies Group
Ministry of Economic Development

Annex 1

101. 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

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

http://www.legislation.govt.nz/browse_vw.asp?content-set=pal_statutes