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Australian Government
Anti-Dumping Commission

CUSTOMS ACT 1901 - PART XVB

TERMINATION OF INVESTIGATION TER 216

ALLEGED DUMPING OF PREPARED OR PRESERVED PEACH PRODUCTS

EXPORTED FROM SOUTH AFRICA

12 December 2013

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2 SUMMARY AND FINDINGS

2.1 Introduction

Investigation 216 is in response to an application lodged by SPC Ardmona Operations Ltd (SPCA) in relation to the allegation that dumped prepared or preserved peach products exported to Australia from South Africa caused material injury to the Australian industry producing like goods.

This Termination Report No. 216 (TER 216) sets out the facts on which the Anti-Dumping Commissioner (the Commissioner) based the decision to terminate the investigation.

2.2 Findings

As a result of the Anti-Dumping Commission's (the Commission's) investigation, the Commissioner is satisfied that goods exported from South Africa during the investigation period were dumped but the dumping margin was negligible. The Commissioner is also satisfied that the total volume of goods the subject of the application that have been or may be exported to Australia over a reasonable examination period from South Africa and that have been dumped was negligible.

Therefore, the Commissioner has decided to:

- terminate the investigation in respect of certain exporters in accordance with section 269TDA(1) of the *Customs Act 1901*¹ (the Act); and
- terminate the investigation as it relates to South Africa in accordance with section 269TDA(3) of the Act.

As a result of these findings, on 12 December 2013, the Commissioner terminated the investigation.

A notice regarding the termination was published in *The Australian* newspaper on 13 December 2013. Anti-Dumping Notice (ADN) 2013/105 also relates to the termination.

2.3 Application of law to facts

2.3.1. Authority to make decision

Division 2 of Part XVB of the Act sets out, among other matters, the procedures to be followed and the matters to be considered by the Commissioner in conducting investigations in relation to the goods covered by an application.

¹ A reference to a division, section or subsection in this report is a reference to a provision of the *Customs Act 1901*, unless otherwise specified.

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2.3.2. Application

On 17 June 2013, an application was lodged by SPCA requesting that the Minister publish a dumping duty notice in respect of prepared or preserved peach products exported to Australia from South Africa.

2.3.3. Initiation of investigation

On 10 July 2013, following consideration of the application, the Commissioner decided not to reject the application and the Commission initiated the dumping investigation. Public notification of initiation of the investigation was made in *The Australian* newspaper on 10 July 2013.

2.3.4. Statement of Essential Facts

The statement of essential facts (SEF) for the investigation (SEF 216) was published on 28 October 2013.

2.3.5. Submissions

The following submissions relevant to the decision to terminate were received in response to the verification visit reports and SEF 216:

- Trade Law Chambers on behalf of Langeberg & Ashton Foods Pty Ltd and Rhodes Food Group Pty Ltd (the exporters) dated 14 November 2013;
- SPCA response to SEF 216 dated 18 November 2013;
- Trade Law Chambers on behalf of the exporters response to SPCA's submission of 18 November 2013, dated 20 November 2013;
- SPCA response to the exporter's submission of 14 November 2013, dated 25 November 2013; and
- SPCA additional submission dated 3 December 2013.

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3 BACKGROUND

3.1 Introduction

On 17 June 2013, SPCA, lodged an application requesting that the Minister for Home Affairs publish a dumping duty notice in respect of prepared or preserved peaches (peaches) exported to Australia from South Africa. Responsibility for anti-dumping matters now rests with the Minister for Industry (the Minister).

The application alleges that peaches have been exported to Australia from South Africa at prices lower than their normal value, and that this dumping has caused material injury to the Australian industry producing peaches.

Following consideration of the application, the Anti-Dumping Commission decided not to reject the application. Public notification of initiation of the investigation was made in *The Australian* newspaper on 10 July 2013.

Anti-Dumping Notice (ADN) No. 2013/54 provides further details on this investigation and is available at www.adcommission.gov.au.

In respect of the dumping investigation:

- the investigation period for the purpose of assessing dumping is 1 July 2012 to 30 June 2013; and
- the injury analysis period for the purpose of determining whether material injury has been caused to the Australian industry is from 1 January 2009.

3.2 Statement of Essential Facts

The Commissioner must, within 110 days after the initiation of an investigation, or such longer period as the Minister allows, place on the public record a SEF setting out the essential facts on which the Commissioner proposes to base his recommendations in relation to the application.

The initiation notice advised that the SEF for the investigation would be placed on the public record by 28 October 2013.

3.3 Relevant Legislation

Subsection 269TDA(1) of the Act provides:

If:

- (a) *application is made for a dumping duty notice; and*
- (b) *in an investigation, for the purposes of the application, of an exporter to Australia of goods the subject of the application, the Commissioner is satisfied that:*

- (i) *there has been no dumping by the exporter of any of those goods; or*
- (ii) *there has been dumping by the exporter of some or all of those goods, but the dumping margin for the*

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exporter, or each such dumping margin, worked out under section 269TACB, when expressed as a percentage of the export price or weighted average of export prices used to establish that dumping margin, is less than 2%;

the Commissioner must terminate the investigation so far as it relates to the exporter.

Sub-section 269TDA(3) of the Act provides:

If:

(a) application is made for a dumping duty notice; and

(b) in an investigation for the purposes of the application the

Commissioner is satisfied that the total volume of goods the subject of the application:

(i) that have been, or may be, exported to Australia over a reasonable examination period from a particular country of export; and

(ii) that have been, or may be, dumped;

is negligible;

the Commissioner must terminate the investigation so far as it relates to that country.

The context of these legislative provisions are discussed in relation to the exporters in section 5.

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4 THE GOODS UNDER CONSIDERATION

4.1 Goods description

The goods the subject of the application (the goods) are:

Prepared or preserved peach products either whole (peeled or unpeeled) or in pieces (including halves, slices, diced), with or without added sugar or other sweetening matter or spirit, prepared or preserved in container sizes from 300 grams up to and including 1.5 kilograms.

Goods excluded from the application are:

- Individually packed prepared or preserved peach products of less than 300g which are sold for snacking purposes;
- Peaches mixed with other fruit types such as pears, apples or nectarines;
- Sizes greater than 1.5kg, which are more common in the food service channel; and
- Multiple packs of individual packs of prepared or preserved peach products, each less than 300g, which are sold together to aggregate to greater than 300g.

The application stated;

The goods under consideration (GUC) are generically called prepared or preserved peach products. SPCA understands that imported peaches are commonly packed in different containers such as cans, glass jars, pouches, plastics or Tetra packs². These are often referred to as “multi serve prepared peach” products as well. The present application covers all containers, in sizes from 300g to 1.5kg inclusive.

The imported multi serve prepared peach products can be labelled with a generic, house brand or private label for the retailer or a proprietary label. The imported prepared or preserved peach products that are the subject of the application cover all imported prepared or preserved peach products regardless of how labelled.

4.2 Tariff classification

The goods are classified to the following tariff subheading 2008.70.00 in Schedule 3 to the *Customs Tariff Act 1995* with statistical code 51.

The general rate of duty is currently 5 per cent for goods imported from South Africa.

² Tetra packs are proprietary packaging mediums produced, under copyright, by the Tetra Pak company.

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5 DUMPING INVESTIGATION

5.1 Langeberg & Ashton Foods Pty Ltd (L&AF)

5.1.1. Preliminary findings in the exporter visit report

Export Prices

Export prices for L&AF were established under s.269TAB(1)(a) of the Act being the price paid or payable by the importer, in the form of the invoice price from L&AF to the Australian importer, less any part of the price that represents a charge in respect of transport of the goods or in respect of any other matter arising after exportation.

Normal Value

The Commission found that sales to L&AF's parent company, Tiger Consumer Brands, were non-arms' length and these have been excluded from normal value calculations. These excluded sales account for the majority of L&AF's domestic sales volumes. The volume of remaining sales to unrelated parties made in the ordinary course of trade was a sufficient quantity for consideration. Normal values were determined under s. 269TAC(1) using L&AF's domestic selling prices to its two unrelated domestic customers. The following adjustments were made to the normal value in accordance with s.269TAC(8) of the Act:

- Credit terms – export terms to Australia were at longer credit terms than those sales to the domestic market, an upward adjustment was made to normal values for the additional cost of credit incurred in relation to export sales;
- Inland freight – a downwards adjustment was made for the actual cost of domestic inland freight and an upwards adjustment was made for export inland freight to the port;
- Export fees and charges – it was found that export sales incur certain fees and charges that are not incurred on domestic sales. An upwards adjustment to the normal value was made for handling and other charges, harbour service fees and terminal handling charges;
- Commissions – export sales incur sales commission whereas domestic sales do not. An upwards adjustment to the normal value was made accordingly;
- Physical differences – there were certain export models for which there were insufficient domestic sales in the ordinary course of trade. For these models, similar domestic models were used and appropriate adjustments made to account for the physical differences between the export and domestic models;

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- Plastic jars – the margin achieved on sales of 1kg plastic jar exports to Australia and other countries was considerably higher than on canned products. The normal value for plastic jars was based on the domestic selling price for a canned product (with adjustments for physical differences) therefore a further upwards adjustment was made based on the difference in profitability.

The dumping margin was determined by comparing the weighted average export price over the whole of the investigation period with the weighted average normal value over the whole of the investigation period.

The dumping margin for prepared or preserved peach products exported by L&AF is 1.8%.

5.2 Rhodes Food Group Pty Ltd (Rhodes)

5.2.1. Preliminary Findings in the exporter visit report

Export Prices

Export prices for Rhodes were established under s.269TAB(1)(a) of the Act being the price paid or payable by the importer less any part of the price that represents a charge in respect of transport of the goods or in respect of any other matter arising after exportation.

Normal Value

Normal values were determined under s. 269TAC(1) using Rhodes' domestic selling prices of both 825g and 410g canned peaches, standard grade, in slices and halves, in syrup. The following adjustments were made to the normal value in accordance with s.269TAC(8) of the Act:

- Credit terms – because export terms to Australia were at terms different to those sales to the domestic market, a downward adjustment was made to domestic selling prices for domestic credit terms, and an upward adjustment was made to arrive at a normal value that takes account of export credit terms;
- Inland freight – a downwards adjustment was made for the actual cost of domestic inland freight and an upwards adjustment was made for export inland freight to the port;
- Export fees and charges – it was found that export sales incur certain fees and charges that are not incurred on domestic sales. An upwards adjustment to the normal value was made for handling and other charges, harbour service fees and terminal handling charges;

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- Commissions – domestic sales incur sales commission whereas export sales do not. A downwards adjustment to the normal value was made accordingly;
- Physical differences – there were certain export models for which there were insufficient domestic sales in the ordinary course of trade. For these models, similar domestic models were used and appropriate adjustments made to account for the physical differences between the export and domestic models.

The dumping margin was determined by comparing the weighted average export price over the whole of the investigation period with the weighted average normal value over the whole of the investigation period.

The dumping margin for Rhodes is 1.2%.

5.3 All other exporters

The volume of prepared or preserved peach products exported to Australia from South Africa by all other exporters during the investigation period was 0.02% of the total volume exported. In accordance with s.269TDA(3) of the Act, the Commissioner must terminate if negligible volumes of dumping are found. In this case, even if all other exporters were exporting prepared or preserved peach products to Australia at dumped prices, the total volume is negligible.

5.4 Analysis of submissions

SPCA made three separate submissions in response to SEF 216 questioning the Commission's findings and verification techniques. SPCA highlighted four main areas of concern it thought should be reconsidered by the Commission before finalisation of the matter. They are as follows:

- Assessment of normal value;
- Exclusion of non-arms' length transactions;
- Weighted average methodology for evaluation of the dumping margin; and
- Cost methodology used by exporters.

5.4.1. Assessment of normal value

Background

As outlined in paragraphs 5.1.1 and 5.2.1 normal values were calculated in accordance with s.269TAC(1) using the exporter's domestic selling prices incorporating various adjustments as required.

The Commission attempted to compare exports to Australia with domestic sales based on the following features:

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- peach cut (eg slices, halves);
- packing medium (eg syrup, clear juice);
- package size (eg 410g, 825g);
- packaging type (eg standard can, easy opening can, plastic jar).

Where there were insufficient volumes of arms' length sales in the ordinary course of trade of products with matching features, the Commission used the next closest match and made adjustments to selling prices for differences in physical specifications.

SPCA claims

SPCA's main concern was the Commission's assessment of the quality of peach products exported to Australia and the selection of comparable products for assessing the normal value.

SPCA requested the Commission review the product specifications of the products exported to Australia. SPCA questioned the grade of the product supplied by the exporters based on SPCA's knowledge of the products it had previously supplied to certain Australian importers of peaches. SPCA also submitted that the Commission should examine the difference between standard and choice grade peaches within the South African market to establish the true nature of the product exported to Australia.

In addition to specification issues, SPCA noted the difference in margins obtained from sales of private label products and branded products, and submitted that the particular channel products are sold through in the South African market would also affect margin levels which should be taken into consideration when establishing the normal value. SPCA described the sales used by the Commission to establish normal values as sales of cheap private label brands sold in discount stores.

SPCA suggested that the Commission established two categories of goods being own brand and private label products to use in its calculations. By doing this, the Commission has essentially broken the goods into 'high priced' and 'low priced' product categories, and in doing so have not appropriately assessed comparable products. SPCA noted that the brand on the product does not affect the cost of production and that to exclude 'high priced' goods is inconsistent with the Act.

SPCA further submitted that the Commission should have categorised all domestic sales into types categorised by container size, ignoring cut size and medium differences as the costs are similar. It should then use the single figure for each type compared with the comparable export value to establish an aggregate dumping margin.

Exporter claims/response

Trade Law Chambers responded to the claims made by SPCA regarding standard versus choice grade peaches and provided evidence of the

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legislative standards and inspections required to ensure that when a product is exported it is of the quality claimed. Trade Law Chambers provided evidence of the specifications it must adhere to when providing peach products to its Australia customers and confirmed the peach grade required by those customers matched the grade supplied. They stressed that the domestically sold choice grade product was not comparable with the standard grade products sold in Australia as claimed by SPCA.

Trade Law Chambers refuted claims by SPCA that the domestic supermarket chains were discount chains, and advised that those domestic customers supplied were of the same type as supermarket chains supplied in Australia.

In addition to its submission, Trade Law Chambers provided evidence of:

- current specification documents for Australian importer's product requirements;
- specifications for domestic standard and choice grade peach products;
- copies of the relevant South African export control regulations;
- copies of South African canned fruit regulations; and
- the Perishable Products Export Control Board (PPECB) Canned fruit requirements.

The Commission's assessment

Product comparisons – standard vs choice grade peaches

The Commission examined the different specification sheets provided by both SPCA and the exporters, together with the different specification sheets provided by the importers for certain products.

The Commission is satisfied that the products exported to Australia that include standard grade peaches have been correctly compared to like goods sold on the South African domestic market. The products containing standard grade peaches sold to the Australian market are like goods to products containing standard grade peaches sold in the South Africa domestic market. As noted in the individual exporter visit reports and outlined at paragraphs 5.1.1 and 5.2.1, adjustments have been made to account for any physical differences between the products to enable a fair comparison and the Commission is satisfied that no further adjustments or comparisons need to be made.

Where a choice product has been specified as exported to Australia, a comparable choice product sold on the domestic market has been used for comparison when establishing the normal value.

The Commission requested a copy of any Australian peach grade standards from SPCA for comparison and was advised that there are no particular existing standards and that as the only Australian manufacturer, SPCA determines its own grading system. This response corresponds with the claims made by the exporters that there are no defined standards to use as

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comparison in the Australian market. This is in contrast to the strict guidelines and legislative requirements which govern fruit grading in South Africa.

Categorisation of products

The Commission disagrees with SPCA's claims that the Commission categorised products by brand label, dividing goods into 'high price' and 'low price'. As outlined above, categories of peaches were based on peach cut, packing medium, packing size and packing type.

The Commission does not agree with SPCA's submission that all product differences other than container size should have been ignored as these features affect the price.

5.4.2. Exclusion of non-arms' length transactions

Background

L&AF was a wholly owned subsidiary. The Commission found that sales to the parent company were non-arms' length, and so in accordance with s.269TAC(1) these transactions were excluded from the normal value calculations. When calculating the dumping margin for L&AF, only sales through the non-related distributors were used by the Commission to calculate normal values

SPCA claims

SPCA contend that the sales through the parent company were of a comparable product to that sold to the Australian market and to exclude those does not provide a true reflection of the domestic price which should be used in the dumping margin calculation.

SPCA submitted that all domestic sales transactions and all peach products should have been examined in the calculation of the dumping margin. SPCA submitted that to exclude a proportion of the domestic sales would result in an understated normal value. SPCA submitted that the Commission has made an error by matching goods instead of using all the peach products sold on the domestic market and excluding non-arms' length sales.

SPCA suggested, particularly with regards to Rhodes, that a constructed normal value should have been used given the circumstances.

Exporter claim/response

With regards to the claim that only a small subset of customers was used by the investigation team to determine the normal value for L&AF, Trade Law Chambers submitted that the volume of those domestic customers selected provided a comparable volume of sales to the volume of export sales by L&AF to Australia.

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The Commission's assessment

The Commission is satisfied that the correct approach has been adopted to exclude non-arms' length transactions from the calculation of the normal value. Section 269TAC(1) states that the normal value of goods is determined using the price paid for like goods sold in the ordinary course of trade and that are arms' length transactions. If the goods are not sold in the ordinary course of trade or are not arms' length they do not meet this definition and are therefore excluded.

The Commission considers that because sufficient quantities of comparable domestic sales were made in arms' length transactions in the ordinary course of trade, it was obliged to establish normal values using these sales (adjusted as appropriate for fair comparison).

5.4.3. Weighted average methodology for evaluation of dumping margin

Background

In accordance with s.269TACB(2)(a) the Commission has calculated the relevant dumping margins comparing the weighted average of export prices over the whole investigation period with the weighted average of corresponding normal values over the whole of that period.

SPCA's claims

SPCA submitted that this methodology does not take into account variations at the product level and therefore if there are products that are being dumped, these will be offset by those not being dumped. According to SPCA, the use of this method distorts the dumping margin results.

SPCA submitted that the assessment should be conducted on the transaction to transaction level (or group of transactions) as was used in a New Zealand inquiry into peaches imported from South Africa dated July 2013.

Exporter's claims/response

Trade Law Chambers supported the Commission's approach of using the weighted average methodology and outlined reasons why the transaction to transaction method would be inappropriate particularly noting that the inclusion of numerous products in the product description, make the use of the transaction to transaction method unfeasible.

Trade Law Chambers also opposed the consideration of the New Zealand case as an influence on the potential results and noted that particular decision was currently being reviewed by the WTO Rules Committee.

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The Commission's assessment

The use of the transaction to transaction method is not a common practice and is not deemed suitable in cases where there is a mixed product category with high volumes of transactions. To use the suggested method would still require some form of averaging across the selected groups of transactions as suggested by SPCA. The Commission does not consider it appropriate to adopt the transaction to transaction methodology in this case.

In SPCA's submission dated 3 December 2013, it suggested an approach of calculating the dumping margin using all domestic sales categorised into size categories. The Commission does not agree with the use of this particular categorisation given the differences in peach grades used and liquid medium price variances.

5.4.4. Cost methodology

Background

In the course of its investigation, the Commission visited exporters and verified the cost data provided in the exporter questionnaire responses. The Commission examined data records and corresponding source documents to confirm the accuracy of the information provided and the type of costs recorded by each company for the cost of production of peach products sold both domestically and overseas.

SPCA's claims

SPCA expressed concerns that the product cost methodology used by the exporters and accepted by the Commission leads to inaccurate costing at the product level. SPCA is particularly concerned about the by-product costing included in the establishment of the cost of the goods as described in the exporter visit report for Rhodes and the production labour, overheads and plastic jar costs for L&AF.

The Commission's assessment

The exporters provided all documentation requested by the Commission during the course of its investigation. Where a particular piece of evidence was not available or varied to the information being verified, the Commission assessed the impact of a possible variance on the outcome of the calculations.

The Commission reviewed L&AF's actual cost of plastic jars versus the cost included in its BOM for the product exported to Australia in plastic jars. While there is a variance between the actual and standard costs, the Commission has verified that the effect of this variance would not be to understate the specification adjustment required to domestic sales of canned product to allow a fair comparison with the goods exported to Australia in plastic jars. If anything, the discrepancy between actual cost and the BOM produced a

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higher adjusted normal value and a higher dumping margin than if the actual cost had been used.

The same case applies to overhead and production labour costs. While the visit team was not satisfied that it could match fixed overhead production and production labour costs closely to the amount recorded in the BOM, it has ensured that the discrepancy would not cause an understatement of normal values because of its impact on the specification adjustment methodology used. As noted in the report, the Commission considered that L&AF's cost information was a complete, relevant and accurate reflection of its actual costs to make and sell peaches.

The Commission confirmed that L&AF's by-products are valued according to cost, whilst Rhodes valued by-products in accordance with the market value of the by-product based on an amount per tonne it would have to pay if it purchased puree, as outlined in the exporter visit report. The Commission is satisfied that both these methodologies are in accordance with accepted accounting standards and therefore no further adjustment needs to be made.

The Commission has reviewed the exporter's costing methodology and is satisfied that costs have been properly recorded and verified.

5.5 Other Submissions

Trade Law Chambers on behalf of the exporters - response to SEF 216 – dated 14 November 2013

L&AF agreed with the Commission's findings that the investigation should be terminated as both exporters' dumping margins have been found to be negligible. L&AF further commented that it did not appear that the alleged dumped imports are causing harm to the Australian industry; other factors within the Australian market should be considered when considering injury to the applicant, including SPCA's own actions and ability/willingness to supply supermarket private label products.

SPCA response to Trade Law Chambers' submission dated 14 November 2013

SPCA disagreed with the statements made by Trade Law Chambers. SPCA submitted that:

- SPCA tendered for various private label contracts but was unsuccessful due to price undercutting from South African suppliers;
- the domestic supply of raw peaches was not a constraint on SPCA's ability to meet the Australian domestic demand for peach products. The supply of raw peaches into the Australian market exceeded demand during the investigation period; and

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- loss of market share, price suppression and price depression has caused injury in the form of loss of profitability and capacity underutilisation.

5.6 Conclusion

The Commission is satisfied that the dumping margins have been calculated in accordance with all relevant policies and accepted practices and that the appropriate categorisation of products and comparisons has been applied.

Under s.269TDA(1) of the Act, if the Commissioner is satisfied that there has been no dumping, or negligible dumping, by the exporter, the Commissioner must terminate the investigation so far as it relates to that exporter. The final dumping margin established for each of the participating exporters is less than 2%.

Under s.269TDA(3) of the Act, if the Commission is satisfied that the total volume of goods that have been, or may have been dumped, exported to Australia is negligible, the Commissioner must terminate the investigation so far as it relates to that country. The volume of exports by all other exporters is less than 3%.

Therefore, the Commissioner must terminate the dumping investigation so far as it relates to prepared or preserved peach products exported by all exporters from South Africa.

Refer to **Confidential Attachment 1** for L&AF's dumping calculation spreadsheet.

Refer to **Confidential Attachment 2** for Rhodes' dumping calculation spreadsheet.

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6 ATTACHMENTS	
Confidential Attachment 1	Langeberg & Ashton Foods Pty Ltd – dumping calculation
Confidential Attachment 2	Rhodes Food Group – dumping calculation