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# **Canned peaches from Greece non-confidential final reassessment report**

**Dumping and Countervailing Duties Act 1988**

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## Abbreviations

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The following abbreviations are used in this Report:

Act (the)	Dumping and Countervailing Duties Act 1988
Anti-Dumping Agreement (the)	WTO Agreement on Implementation of Article VI of GATT 1994
Chief Executive (the)	Chief Executive of Ministry of Business, Innovation and Employment
CIF	Cost, Insurance and Freight
EBIT	Earnings Before Interest and Tax
EUR	Euros
FOB	Free on Board
Heinz Wattie's	Heinz Wattie's Limited
Ministry (the)	Ministry of Business, Innovation and Employment
NIFOB	Non-injurious free-on-board price
NV(VFDE)	Normal value (value for duty equivalent)
NZD	New Zealand dollar
VFD	Value for Duty
WTO	World Trade Organisation

## Executive summary

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### Introduction

1. On 3 June 2015, the Ministry of Business, Innovation and Employment (the Ministry) completed a review of the anti-dumping duties which currently apply to imports of canned peaches from Greece. At the same time as the completion of the sunset review, the Ministry completed an interim reassessment of the duties to consider the appropriate form and level of the duties that should apply.

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

*Peaches (halves, slices or pieces) packed in retail size cans.*

### 2009 review and reassessment

3. Anti-dumping duties have been in place on canned peaches from Greece since 1998, and were last reviewed and reassessed in 2009.

4. The current anti-dumping duties are in the form of reference prices, applying to all Greek exporters, as set out below:

Can Size	Reference Price NIFOB amounts/kg	*Alternative Duty NV(VFDE) amounts/kg
410g	NZD ██████████	EUR 1.88
820g	NZD ██████████	EUR 1.66
3kg	NZD ██████████	EUR 1.53

\* Note: An alternative duty rate has been set as NV (VFDE) amounts. The NV (VFDE) amount shall apply instead of the NIFOB amount where the NV (VFDE) amount is less than the NIFOB amount when converted to NZD.

### 2015 review and reassessment

5. The focus of this reassessment is to determine the form and rate that the anti-dumping duties should take. That is, whether the duties should remain as reference prices, and if so, what the rates should be.

6. The Ministry did not receive any submissions on the interim reassessment report.

7. The Ministry proposed that the duties should be reassessed to a reference price applying to all sizes and all exporters of Greek canned peaches, of a NIFOB reference price at NZD ██████████ per kilogram and a NV(VFDE) at €1.68 per kilogram – this is applied on the same basis as the current duties, where the NV(VFDE) amount shall apply instead of the NIFOB amount when the NV(VFDE) is less than the NIFOB when converted to NZD.

### Date from which duty should apply

8. Reassessed rates normally take effect from the day after the date the Minister determines the reassessed rates of duty (the day after the date of signing the *Gazette* notice) and it is proposed that in this case the reassessed duty should apply from this date.

# **1. Background to reassessment**

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## **1.1 Introduction**

1. Dumping is defined in section 3(1) of the Dumping and Countervailing Duties Act 1988 (the Act) and occurs when an exporter sells goods to New Zealand at a lower price than it sells the same or similar goods for in its own country. In essence, dumping is price discrimination between an export and a domestic market. It is not illegal, but injurious dumping can be remedied by the imposition of anti-dumping duties at the border to enable fair competition in the New Zealand market.

2. Dumping does not always cause material injury to the domestic industry. Material injury occurs when dumped goods are imported in sufficient quantity to cause a decline in factors such as output or profits as a result of imports undercutting, depressing or suppressing the domestic industry's prices. Injury may also be caused in a number of other ways. Dumped imports can also threaten to cause material injury.

3. Anti-dumping duties on canned peaches from Greece were first imposed in 1998. These duties were last reviewed and reassessed in 2009. This current reassessment follows a sunset review completed in June 2015.

4. The current duties are a range of reference prices, split by can size, which apply to all Greek exporters and are based on export prices and normal values established in the 2009 review. The current duties were due to expire on 18 November 2014 but Heinz Wattie's, the sole New Zealand producer of canned peaches, applied for a review of the continued need for the duties prior to their expiry.

5. Heinz Wattie's claimed the removal of the duty would allow imports of canned peaches from Greece to recommence being sold to New Zealand at dumped prices causing a recurrence of material injury to the New Zealand industry.

6. A review was initiated by the Ministry of Business, Innovation and Employment (the Ministry) on 14 November 2014. The Ministry was satisfied that positive evidence justifying the need for review had been provided by Heinz Wattie's.

7. The review was completed by the Ministry on 3 June 2015 and found that if the duties were removed it was likely that there would be a resumption of dumped imports which would likely cause a recurrence of material injury to the New Zealand industry.

8. The Act allows the Minister of Commerce and Consumer Affairs to determine a new rate or amount of anti-dumping duty following the completion of a review, including any changes in the formula used to establish the anti-dumping duty. However section 14(6) of the Act first requires that a reassessment of the current form and level of the anti-dumping duties is undertaken.

9. This reassessment was initiated and an interim reassessment completed on 3 June 2015. The reassessment addresses whether it is appropriate for the form and the rate of the anti-dumping duty to be changed to reflect the new dumping and injury margins as well as any changes in the pricing and selling arrangements currently employed by importers, as found in the review.

10. The current duties will continue at their present rates until this duty reassessment is completed.

## 1.2 Imported goods

11. The goods which are the subject of the anti-dumping duty (the subject goods) are:

*Peaches (halves, slices or pieces) packed in retail size cans.*

12. The New Zealand Customs Services has stated that canned peaches enter under tariff classification and statistical key 2008.70.09.00L.

## 1.3 Interested parties

### New Zealand industry

13. Heinz Wattie's is the sole manufacturer of canned peaches in New Zealand and therefore constitutes the New Zealand industry under the Act.

### Importers and exporters

14. The Ministry has found that there were no exports of the subject goods from Greece to New Zealand over the period of review for dumping. The Ministry requested information from Greek exporters and New Zealand importers that had been involved in previous sunset reviews and reassessments and that imported goods under the same tariff item (though not subject goods). None of these companies provided information.

15. The Ministry did, however, receive submissions during the review from the European Commission, the Greek Cannery Association (EKE) and the European Association of Fruit and Vegetable Processors (Profel).

## 1.4 Export price, normal value and dumping margin

16. In the 2015 review, export prices were established on the basis of export prices of canned peaches from Greece to all export destinations, in the absence of any exports of canned peaches from Greece to New Zealand over the period of review for dumping. The normal value was based on retail prices sourced from Euromonitor. A dumping margin of 62 percent was calculated.

17. Export prices and normal values were calculated at the ex-factory level, which is the preferred point of comparison under Article 2.4 of the Anti-Dumping Agreement. In calculating the ex-factory values, the Ministry made a number of adjustments to the base normal values and export prices to ensure a fair comparison. As the total export price was lower than the total normal value, the exports were considered to be dumped.

## 2. Reassessment of anti-dumping duties

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### 2.1 Method of imposing duties

9. Anti-dumping duties are intended to remedy injury attributable to dumping, not to punish an exporter or provide a domestic industry with protection beyond the impact of the dumping. For this reason, the duty should only remedy the amount of injury attributable to dumping.

10. Considerations taken into account in deciding an appropriate form of the anti-dumping duty include the ability to ensure the dumping margin is not exceeded, the ability to maintain fairness between parties, predictability of the duties payable, and ease of administration at the border. These considerations are discussed in more detail in Box 1 below.

11. There are three main forms of anti-dumping duty:

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

12. A specific duty is a set amount of duty payable per unit imported. It is based on the monetary value of the margin of dumping or the margin of injury.

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

14. The reference price approach imposes duty based on the difference between the transaction price and a benchmark price. The amount of the difference is the duty payable. A reference price can be based on either a domestic price (in the exporting country) or the New Zealand domestic industry's non-injurious price.

#### **Box 1: Pros and cons of the three methods of imposing anti-dumping measures**

##### ***Specific Duty***

A specific duty is a set amount payable per defined unit. A specific duty is convenient to apply, impossible to evade by incorrectly stating the value for duty, and the amount of duty payable is clear. However, problems may arise when dealing with a wide range of goods or where exchange rates fluctuate to the extent that margins of dumping will be exceeded without constant reassessments of the specific amount. A specific duty expressed as a monetary amount will operate effectively when prices and exchange rates are consistent and stable enabling the dumping remedy to remain relevant to the margin of dumping.

##### ***Ad Valorem Duty***

An *ad valorem* rate is a fixed percentage of duty usually applied to the value for duty of the defined goods. *Ad valorem* duty rates can be provided to all parties, and therefore are transparent. They are also convenient to apply and are unlikely to be substantially affected by exchange rate movements. They are appropriate where a large range of

goods exist or where new models appear.

As with other approaches, the possibility exists for collusion between exporter and importer to manipulate invoice values of goods subject to duty, particularly if imported in conjunction with similar goods. Under this approach, a particularly low, and potentially more injurious, export price would result in a lower duty, which may be insufficient to remove injurious dumping. Conversely, a particularly high, and less injurious export price, would attract a higher duty, perhaps higher than is necessary to remove injurious dumping.

### **Reference Price Duty**

A reference price is a set value per unit below which duty is payable. Reference prices are most suitable when dealing with movements in export price and exchange rates (if expressed in the currency of the normal value). They are particularly useful for dealing with situations where a lesser duty is applicable, that is, a duty set at less than the margin of dumping but at a level that would still not be injurious to the industry.

Reference price duties have the advantage of clearly signalling to exporters and importers what non-dumped or non-injurious prices are. Additionally they are collected only when goods are priced below the reference price. Therefore, duty is only collected to the extent necessary to remove injurious dumping.

Reference price duties are claimed to be more easily evaded than other forms of duty by overstating the VFD of the goods. Another drawback is that they are set at a fixed level based on a snapshot of price and cost, which obviously change over time and so may become less accurate. Significant changes which may occur over time in prices and exchange rates can be addressed by a reassessment of reference prices.

Also, reference prices are often not suited to goods where there is a wide range of individual sizes and types of goods sold at significantly different prices. Under these circumstances individual reference price mechanisms may need to be set for each type and size of imported good, which can lead to difficulties with importation and delay the free flow of goods over the border. An alternate approach to resolve the problems that an extensive list of reference prices creates is to place the reference price on an aggregated group of the goods in question. An aggregated group reference price, however, dampens the attractiveness of the transaction-based component of a reference price mechanism as it aggregates individual product types and sizes, becoming a proportionate duty similar to the duties resulting from specific or *ad valorem* methodologies.

## **2.2 2009 reassessment**

15. Anti-dumping duties have been imposed on canned peaches from Greece since 1998. A sunset review of these duties was last completed in 2009. Duties were set on a reference price basis in the form of non-injurious free-on-board (NIFOB) amounts which are capped by normal value (value for duty equivalent) (NV(VFDE)) amounts to ensure that changes in exchange rates do not result in the amount of anti-dumping duty collected exceeding the margin of dumping.



### 2.2.1 Current rate of duty

16. The current duty rates are as follows:

Can Size	Reference Price NIFOB amounts/kg	*Alternative Duty NV(VFDE) amounts/kg
410g	NZD [REDACTED]	EUR 1.88
820g	NZD [REDACTED]	EUR 1.66
3kg	NZD [REDACTED]	EUR 1.53

\* Note: An alternative duty rate has been set as NV (VFDE) amounts. The NV (VFDE) amount shall apply instead of the NIFOB amount where the NV (VFDE) amount is less than the NIFOB amount when converted to NZD.

## 2.3 Proposed methods of imposing anti-dumping duty

### 2.3.1 Introduction

17. The Ministry's practice is to consider the suitability of all methods of imposing anti-dumping duties in the circumstances of each dumping investigation.

18. During the review it was determined that there had been no imports of the subject goods from Greece over the period of review for dumping. The review determined, however, that there was likely to be a recurrence of dumped imports from Greece should the duty be removed. It was also determined that if the duties were removed HWL would likely experience a recurrence of material injury.

19. The amount of an anti-dumping duty levied in respect of an exporter shall not exceed its margin of dumping<sup>1</sup>. The Appellate Body noted that this is the overarching requirement in Article 9.3, i.e. that the anti-dumping duty "shall not exceed the margin of dumping as established under Article 2" (as stated in the Anti-Dumping Agreement). This requirement is an important consideration in the Ministry's decision to impose a particular form of duty and also whether the duty should consist of one aggregated rate for each exporter's entire range of imported goods or if separate rates should be established for categories or product types of imported goods.

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<sup>1</sup> US – Final Anti-Dumping Measures on Stainless Steel from Mexico (WT/D344/AB/R April 2008).

**Box 2: Ensuring anti-dumping duty is not paid in excess of the margin of dumping**

In practice, duty is collected on individual export transactions and it is up to the authorities to ensure that the total amount of anti-dumping duty paid is not greater than the margin of dumping. At a practical level this can have varying results, as shipments usually contain a mix of product types and the prices of each product type in a shipment may vary. Also exchange rates move, sometimes considerably over a comparatively short period, changing the relative costs and prices of the imported goods.

The above issues may arise regardless of the form of duty put in place and, under the Act, an importer is able to apply for a refund of anti-dumping duty if fluctuations in prices mean that the amount of anti-dumping duty paid by that importer exceeds the margin of dumping calculated over the imports within a set period of time.

The refunds process covers set periods of 6 months and an application can be made by providing export price and normal value information to support a claim that duty in excess of the dumping margin has been paid.

### 2.3.2 Proposed form of the anti-dumping duty

20. Box 1 outlines the different types of anti-dumping duty that can be imposed. The review found that there were no imports of the subject goods from Greece over the period considered for injury and therefore that the New Zealand industry had experienced no injury caused by dumped imports from Greece. The current duties could therefore be seen as effective in preventing material injury to the New Zealand by dumped imports from Greece.

21. In *US – Final Anti-Dumping Measures on Stainless Steel from Mexico* (WT/DS344/AB/R, April 2008) (at paragraph 121), the WTO Appellate Body commented that “[t]he Anti-Dumping Agreement is neutral as to the different systems for levy and collection of anti-dumping duties.” In terms of the different systems used to levy and collect anti-dumping duties, the Appellate Body also commented (in the same paragraph) that the amount of duties collected on a prospective basis [the system used in New Zealand] is subject to review, such that, while duties are only “collected” in individual export transactions “[w]here the prices are less than the prospective normal value, ... a review can be requested if the prospective normal value has been improperly determined so as to result in collection of anti-dumping duties in excess of the ceiling prescribed in Article 9.3” [Article 9.3 states that “The amount of the anti-dumping duty shall not exceed the margin of dumping as established under Article 2”].

22. The normal requirement that a single dumping margin be calculated for the product as a whole for each exporter therefore does not necessarily prevent reference prices from being established for separate models or categories which make up the product as a whole, provided that the duty collected as a result does not exceed the margin of dumping for the product as a whole for an exporter. As the Appellate Body has noted in the case referred to in the paragraph above, where this does occur an importer is entitled to request a refund. Details of the refund system in New Zealand are outlined in Box 2 above.

23. In the circumstances of this case where there is no detailed pricing information available by type or category of product, it is not possible to set separate rates of duty by product type or category regardless of the form of the duty.

24. HWL has noted that it prefers the setting of anti-dumping duties on a reference price basis, as it considers that an *ad valorem* rate does not necessarily stop goods coming in cheaply. When duties are set on an *ad valorem* basis, there is an incentive for exporters to keep their prices low in order to pay less duty at the border.

25. The Ministry considers that reference prices are the most appropriate basis on which to set duties in this case. The Ministry does not have the information available on which to set a specific duty. An *ad valorem* duty is the most suitable form of duty in some cases. It can, however, collect duty which is insufficient to remedy injurious dumping where the import price is particularly low and over collect duty where the import price is particularly high. A reference price is more appropriate, as it will only collect duty if the goods are priced below the reference price.

26. The current duties are differentiated by can size; however, in this review the Ministry does not have the information available on which to set separate rates. The Ministry has found in previous reviews of duties on canned peaches (e.g. the 2013/14 review and reassessment of the anti-dumping duties on canned peaches from South Africa) that can size on a per kilogram basis has less influence on different selling prices per kilogram than other factors do, such as the grade of product. There is sufficient information in this case on which to set a single reference price that will apply to all types and sizes of canned peaches imported from Greece. The normal value that has been calculated is representative of different can sizes, although it is more heavily weighted towards 800 – 820g size cans. It is possible that any duty set on the basis of the information available may therefore over- or under-collect duty if smaller or larger can sizes are imported, however, the Ministry considers the risk is small. As noted above, a refund process is available if an importer considers they have paid duties in excess of the margin of dumping.

27. The current rates consist of both a normal value (value for duty equivalent) and a non-injurious FOB price (the application of the appropriate rate depends on exchange rate movements between the NZD and the Euro). The Ministry considers that duties should continue to be set on this basis, to account for any exchange rate volatility.

## **2.4 Calculation of proposed anti-dumping duties**

### **2.4.1 Introduction**

28. Section 14(5) of the Act requires that the Minister has 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.

29. To determine whether a lesser duty should apply, the Ministry uses a comparison of the NV(VFDE) amount (that is, the normal value with the addition of relevant costs to FOB level) with the NIFOB (the New Zealand industry's average ex-factory price less the average costs incurred in importing the goods between FOB and the relevant level of trade). If the NIFOB is less than the NV(VFDE) this normally indicates a lesser duty should apply.

### **2.4.2 Calculation of NV(VFDE) amount**

30. A NV(VFDE) amount represents the non-dumped price of imports at the FOB level, that is, the level at which the goods are loaded onto the vessel ready to be exported. A NV(VFDE) starts with the weighted average normal value at the ex-factory level. Any costs incurred to export the goods to the point of being loaded onto the vessel in the exporting country (the free on board level) are then added. Such costs would normally include inland freight, handling, Customs' clearance costs and any

agent's fees that would be taken into account in the New Zealand Customs' value for duty (VFD). The resulting value is the NV(VFDE) amount.

31. The Ministry calculated a NV(VFDE) amount on this basis, starting with the ex-factory normal value established in the review. The normal value was adjusted to the FOB level by adding the adjustments used to calculate the ex-factory export price in the review. These adjustments cover inland freight and port handling and clearance costs.

32. Table 2.1 shows the calculation of the NV(VFDE) amount.

**Table 2.1: NV(VFDE)**

	NZD/kg	EUR/kg
Ex-factory normal value		
Inland freight		
Port handling and clearance		
NV(VFDE)		1.683
Average EUR/NZD exchange rate (1 EUR = 1.6112 NZD)*		
NV(VFDE)	2.72	

\*Average exchange rate over the POR(D), that is, the year ended 30 September 2014.

## 2.4.3 Calculation of NIFOB amount

### 2.4.3.1 Calculation of a non-injurious price (NIP)

33. In order to calculate a NIFOB amount it is necessary to first establish a non-injurious price (NIP) for the New Zealand industry, that is, the price at which a domestic producer can sell its goods in the domestic market in the absence of dumped goods. There are a number of methods that can be used to calculate a NIP including:

- the use of current prices (adjusted by price depression incurred during the POR(I), if necessary);
- the current cost of production, plus industry profit taken at a time when the industry was unaffected by dumped imports;
- the use of pre-injury prices scaled up by a relevant index; or
- determining the lowest price non-dumped product in the market.

34. The Ministry normally considers the domestic industry's current ex-factory selling price to be its NIP when an anti-dumping duty is already in place. In other words, the Ministry normally considers that the anti-dumping duties have acted to prevent any injurious dumping occurring and that the industry's prices are at levels achieved in the absence of dumping.

35. In the review, there had been no significant imports of canned peaches from Greece over the period considered for injury, and the industry did not claim it had been injured by any such imports. The Ministry therefore considers that HWL's ex-factory NIP can be based on its average ex-factory selling price.

36. The Ministry has therefore established the NIP on the basis of HWL's latest financial year, which is the 2014 calendar year. The NIP is NZD \$ [REDACTED] per kilogram and represents HWL's ex-factory net sales value per kilogram, excluding freight, over this period.

#### 2.4.3.2 NIFOB calculation

37. A NIFOB is calculated by deducting from the New Zealand industry's NIP the costs for an importer arising between the FOB level of trade and the level of trade at which the domestic industry's products first compete with the importer's products. The Ministry determined in the review that the relevant level of trade for the imported product is ex-wharf (versus the New Zealand industry's ex-factory price). The NIFOB calculation has therefore been made on the basis of costs between FOB and ex-wharf.

38. In the absence of any imports of the subject goods from Greece, the Ministry has used estimated costs of freight, insurance and clearance provided by HWL, which were calculated from actual costs incurred by HWL on its imports of canned tomatoes from Italy.

39. The following table shows the calculation of the NIFOB on the basis outlined above.

**Table 2.2: NIFOB (NZD/kg)**

Non-injurious price (NIP)	[REDACTED]
Freight, insurance, clearance	[REDACTED]
NIFOB	[REDACTED]

#### 2.4.4 Comparison of NV(VFDE) and NIFOB amounts

40. As noted above, whether a lesser duty should apply is determined by comparing the NV(VFDE) amount with the NIFOB amount. A lesser duty applies if the NIFOB is lower than the NV(VFDE). The NIFOB amount calculated in table 6.2 is lower than the NV(VFDE) amount calculated in table 6.1, indicating that the duty should be imposed at the margin of injury, instead of the full margin of dumping.

41. As stated in paragraph 27, the Ministry considers that the duties should continue to be set on both a NV(VFDE) and NIFOB basis. The NV(VFDE) amount will effectively cap the NIFOB amount. The NV(VFDE) amount will be set in EUR and will be payable if, it is less than the NIFOB amount when it is converted to NZD.

### 2.5 Proposed reassessed rate of duty

42. On the basis of the information outlined above, the Ministry proposes that the duty be set on a single reference price basis, with both a NV(VFDE) and NIFOB in place, for all imports of canned peaches from Greece. The NV(VFDE) will be payable instead of the NIFOB if it is less than the NIFOB when converted to NZD.

43. No exporters or manufacturers provided any information in the review and consequently the Ministry has used best available information, which is not exporter specific, and nor is it product specific (i.e. by size, cut or medium).

44. The proposed NIFOB reference price is NZ [REDACTED] per kilogram and the NV(VFDE) is €1.68 per kilogram.

## **2.6 Refunds of anti-dumping duty**

45. Section 14(10) of the Act provides that if a reassessment results in a lower duty being imposed, the Minister may require the NZCS to refund, with effect from the date of initiation of the review, the difference between the duty paid and the lower duty. However, if the reverse situation applies, the shortfall is not required to be paid.

46. The Ministry notes that there were some imports of the subject goods in February 2015. It appears that the dumping duty paid on these imports is less per kilogram than the proposed new rate of duty, so any refunds are not likely.