

14 December 2008

ISBN 978-0-478-33605-7 (HTML)

ISBN 978-0-478-33604-7 (PDF)

Anne Corrigan
Manager, Trade Rules and Remedies and Tariffs

Initiation Memorandum – Review of Anti-Dumping Duties on Canned Peaches from Greece

1. This report assesses an application made by Heinz-Wattie's Ltd (HW) on 6 November 2008 for a review of anti-dumping duties that currently apply to imports of canned peaches from Greece.
2. The report recommends that you should initiate a review.

Background

3. Anti-dumping duties were first imposed on canned peaches from Greece in March 1998. A review was completed in July 2003 which found the duties continued to be necessary to prevent a recurrence of injurious dumping. The anti-dumping duties were reassessed in December 2003 following the completion of a reassessment which was initiated immediately following the review.
4. The anti-dumping duties that currently apply will expire on 15 December 2008 unless a review is initiated prior to this date. Reviews that are initiated prior to the anti-dumping duties expiry are also known as 'sunset' reviews. If a review is initiated, the duties would remain in place pending the outcome of the review.
5. The canned peaches that would be subject to any review that is initiated are described below:

Peaches (halves, slices and pieces) packed in retail sized cans

6. Canned peaches imported from Greece enter New Zealand under tariff item and statistical key 2008.70.09.00L and are subject to the standard tariff of 5 percent.

Legislation and Associated Jurisprudence

7. Section 14 of the Act deals with the imposition, application and duration of anti-dumping duties. Sections 14(9) and 14(9A) of the Act provide as follows:

- (9) Anti-dumping duty...applying to any goods shall cease to be payable on those goods from the date that is the specified period after—
- (a) The date of the final determination made under section 13 of this Act in relation to those goods; or
 - (b) The date of notice of any reassessment of duty given under subsection (6) of this section, following a review carried out under subsection (8) of this section,—

whichever is the later, unless, at that date, the goods are subject to review under subsection (8) of this section.

- (9A) In subsection (9), “specified period” means,—
- (a) In the case of goods of Singaporean origin, 3 years; and
 - (b) In the case of goods of any other origin, 5 years.

...

“SUNSET” REVIEWS

8. Reviews are provided for in section 14(8) of the Act as follows:

(8) The [Chief Executive] may, on his or her own initiative, and shall, where requested to do so by an interested party that submits positive evidence justifying the need for a review, initiate a review of the imposition of *anti-dumping* duty or countervailing duty in relation to goods and shall complete that review within 180 days of its initiation.

9. Section 14(8) requires that any interested party that requests a review submit positive evidence justifying the need for a review, and that when this is provided, the Chief Executive shall initiate a review. The Act is determinative in governing how anti-dumping duties should apply in New Zealand and accordingly how reviews are carried out. However where the Act is silent the Ministry turns to its international obligations, as set out in the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the Anti-dumping Agreement) and the associated jurisprudence, for guidance.

10. Article 11 of the Anti-dumping Agreement deals with the duration and review of anti-dumping duties and states in Paragraph 3 (in part):

...any definitive anti-dumping duty shall be terminated on a date not later than five years from its imposition (or from the date of the most recent review...if that review has covered both dumping and injury...), unless the authorities determine, in a review initiated before that date on their own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time prior to that date, that the expiry of the duty would be likely to lead to the continuation or recurrence of dumping and injury [footnote omitted.]

11. The test outlined in the Anti-Dumping Agreement is primarily whether the application for review constitutes a duly substantiated request that, without anti-dumping duties on imports of canned peaches from Greece, there would be a continuation or recurrence of dumping and material injury. The Ministry considers that the test outlined in the Anti-dumping Agreement is equivalent to the test set out in the Act, with an additional factor that the Anti-dumping Agreement states should be considered, that is, whether the application was submitted in a reasonable period of time prior to the expiry of the current duties.

12. The World Trade Organisation Dispute Settlement Panel (Panel) *United States – Sunset Review Of Anti-Dumping Duties On Corrosion-Resistant Carbon Steel Flat Products From Japan*¹ discussed the practice of the United States administration in relation to what is considered a reasonable period of time prior to the expiry of duties. It stated at paragraph 7.20 in regard to the initiation of reviews:

Section 751(c)(1) of the US Statute requires that five years after the date of publication of an antidumping duty order, the administering authority and the Commission shall conduct a review to determine whether revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping and of material injury. Section 751(c)(2) provides: "Not later than 30 days before the fifth anniversary of the date described in paragraph (1), the administering authority shall publish in the Federal Register a notice of initiation of a review under this subsection...". Similarly, Section 351.218(a) of the Regulations provides that "...no later than once every five years, the Secretary must determine whether dumping ... would be likely to continue or recur...", while section 351.218(c)(1) states that "...No later than 30 days before the fifth anniversary date of an order or suspension of an investigation...the Secretary will publish a notice of initiation of a sunset review...".

13. While the United States uses a self-initiation process for instigating sunset reviews, the Ministry considers that the timeframes it has established as being a reasonable period of time prior to the expiry of the duty would also apply to an application for a review submitted to the investigating authority. The practice of the United States in this regard does not bind the Ministry, but is illustrative of other authorities interpretation of what constitutes a reasonable period of time prior to the expiry of duties, namely 30 days.

14. In the present case the application for a review was submitted by HW on 6 November 2008, which is 38 days prior to the expiry of the anti-dumping duties that it seeks to have considered in the review. I am satisfied that HW's submission of a request for a sunset review was done within a reasonable period of time prior to the expiry of the duties.

Consideration of Evidence Presented

15. The Ministry interprets the requirement of section 14(8) of the Act for a review to be initiated when an interested party "...submits positive evidence justifying the need

¹ World Trade Organisation Dispute Settlement Panel United States – Sunset Review of Anti-Dumping Duties on Corrosion-Resistant Carbon Steel Flat Products from Japan WT/DS244/R 14 August 2003.

for a review...” as being a requirement for positive evidence of a lesser standard than that required under section 10(2) of the Act in respect of new investigations. This interpretation is supported by the international jurisprudence relating to the Anti-dumping Agreement.

16. In *United States – Countervailing Duties On Certain Corrosion-Resistant Carbon Steel Flat Products From Germany*², which dealt with a sunset review of countervailing duties, the Panel stated at paragraph 8.42:

...it is clear that, in the absence of an affirmative determination by an investigating authority, [duties] may not be maintained beyond a five-year period. It is also clear that any such determination must be correctly reasoned and based on positive evidence...The initiation of a review is merely the beginning of a process leading to a determination as to whether or not subsidisation and injury are likely to continue or recur. The standards for the initiation of a review – whether on the initiative of an investigating authority or upon request by the domestic industry – in no way prejudice the standards applied by an investigating authority in reaching the substantive determination to be made in that review. In sum, it seems to us that the European Communities' argument is based upon an incorrect equation of the standards for the initiation of a review with those for the substantive determination to be made in a review.

17. The above excerpt illustrates that the standards an investigating authority, such as the Ministry, must apply in assessing whether a sunset review should be initiated are lesser standards than those which must be applied in making a substantive determination in any review undertaken. While this case related to the sunset review provisions of the WTO Agreement on Subsidies and Countervailing Measures the provisions of this Agreement are very closely aligned with those of the Anti-Dumping Agreement and it is reasonable to assume that the same findings would have been made had the case related to the equivalent provisions of the Anti-Dumping Agreement.

18. The issue of the requisite standard of evidence required to initiate a sunset review was also discussed in the Panel *United States – Sunset Review Of Anti-Dumping Duties On Corrosion-Resistant Carbon Steel Flat Products From Japan*³ at paragraph 7.27:

We also note that the text of Article 11.3 does not contain any cross-reference to the evidentiary rules relating to initiation of investigations contained in Article 5.6 of the *Anti-dumping Agreement*. Therefore, Article 11.3 itself does not explicitly provide that the evidentiary standard of Article 5.6 (or any other evidentiary standard) is applicable to sunset reviews. Although paragraphs 4 and 5 of Article 11 contain several cross-references to other articles in the *Anti-dumping Agreement*, no such cross-reference has been made in the text of Article 11 to Article 5.6. These cross-references (as

² World Trade Organisation Dispute Settlement Panel *United States – Countervailing Duties On Certain Corrosion-Resistant Carbon Steel Flat Products From Germany* WT/DS213/R 3 July 2002.

³ World Trade Organisation Dispute Settlement Panel *United States – Sunset Review of Anti-Dumping Duties on Corrosion-Resistant Carbon Steel Flat Products from Japan* WT/DS244/R 14 August 2003.

well as other cross-references in the *Anti-dumping Agreement*, such as, for example, in Article 12.3) indicate that, when the drafters intended to make a particular provision also applicable in a different context, they did so explicitly. Therefore, their failure to include a cross-reference in the text of Article 11.3, or, for that matter, in any other paragraph of Article 11, to Article 5.6 (or *vice versa*) demonstrates that they did not intend to make the evidentiary standards of Article 5.6 applicable to sunset reviews. The Appellate Body, in *US – Carbon Steel*, drew the same conclusion from the non-existence of a cross-reference in Article 21.3 of the *Agreement on Subsidies and Countervailing Measures* (the "*SCM Agreement*") to Article 11.6 of that Agreement, which contains the evidentiary standard for the self-initiation of countervailing duty investigations. [footnote omitted]

19. This clearly indicates that the Panel considered the evidentiary standards required for the initiation of a new investigation (as outlined in Paragraph 6 of Article 5 of the Anti-dumping Agreement) do not apply for the initiation of sunset reviews and the applicable standard is in fact a lesser one.

20. The Ministry considers, therefore, that while an application for the initiation of a sunset review may cover the information on the factors outlined in Paragraph 2 of Article 5 of the Anti-dumping Agreement it is not necessary that all of these matters are addressed or addressed in full for an application to constitute "positive evidence justifying the need for a review".

New Zealand Industry Standing and 'Like Goods'

21. The Anti-dumping Agreement states that an application for a sunset review must be made by or on behalf of a domestic industry.

22. Section 3A of the Act defines "industry" as follows:

For the purposes of this Act, the term "industry", in relation to any goods, means

- (a) The New Zealand producers of like goods; or
- (b) Such New Zealand producers of like goods whose collective output constitutes a major proportion of the New Zealand production of like goods.

23. "Like goods" are defined in section 3 of the Act as follows:

Like goods, in relation to any goods, means–

- (a) Other goods that are like those goods in all respects; or
- (b) In the absence of goods referred to in paragraph (a) of this definition, goods which have characteristics closely resembling those goods

24. HW has advised that it produces a range of styles of canned peaches (halves, slices and dices) packed in various media (such as syrup, fruit juice and lite) and in various can sizes. In considering whether it produces goods that are "like" those subject to the anti-dumping duties, HW has provided an analysis of its production of

canned peaches compared with the canned peaches subject to the anti-dumping duties under the headings of physical characteristics, function and usage, pricing, marketing issues and “other” (which covered tariff classification), being the factors normally examined by the Ministry when considering like goods issues.

25. Based on this analysis HW has submitted that the canned peaches it manufactures have the same or similar physical characteristics, method of manufacture, function, usage, pricing, marketing, and tariff classification and are therefore like goods to the goods subject to the anti-dumping duties.

26. The original investigation and the first review found that HW produced goods that were like those under investigation and subject to the anti-dumping duty respectively. The information provided by HW indicates that this situation has not changed.

27. HW advised in its application that it is the sole New Zealand producer of canned peaches, which was the situation at the time the current anti-dumping duties were imposed and at the time of the first sunset review. The Ministry is not aware of any other New Zealand producers of canned peaches.

28. I consider the information provided as above constitutes positive evidence that there is still in place an “industry” in terms of section 3A of the Act, which consists solely of HW, and that the request for the initiation of a review therefore constitutes an application made by the New Zealand domestic industry.

Continuation or Recurrence of Dumping

EXPORT PRICE

29. HW has noted that imports of canned peaches from Greece are no longer regularly sold in New Zealand, therefore it has not been able to obtain actual export prices. HW estimated an export price based on INFOS data obtained from Statistics New Zealand for the year ended August 2008. This price is based on the average New Zealand value for duty (VFD) per kilogram for the year ended August 2008 for imports under the tariff item and statistical key that covers the canned peaches subject to the anti-dumping duties.

30. New Zealand Customs Service (NZCS) import data obtained by the Ministry identifies two importations of peaches from Greece under the tariff item and statistical key 2008.70.09.00L for the year ended August 2008. For one of the shipments, the data showed that the imported preserved peaches were not subject goods as they entered New Zealand under a concession which applies to preserved peaches in 188 kilograms barrels and can sizes of 4.1 kilograms or more.

31. The information on the other shipment of subject goods showed that it was [REDACTED] and has a lower Free-On-Board (FOB) price per kilogram than the average FOB price used by HW in its application. This has the effect of understating the dumping margin calculated by HW in its application. The Ministry also notes that this shipment of subject goods was required to pay a significant amount of anti-dumping duty indicating that the goods entered New Zealand at dumped prices.

32. HW calculated that the average FOB price per kilogram for the imports over the period was 1.39 New Zealand dollars (NZD). HW converted the 1.39 NZD to Euros (EUR) using the average Customs exchange rate for the period August 2007 to September 2008 of 1 NZD:0.50 EUR.

33. To calculate the ex-factory price in Greece, HW made a deduction for internal freight from the factory to the port of one percent of the FOB price (0.01 EUR). HW noted that it “does not have evidence of this deduction but has included a small amount as an estimate”. In the 2003 reassessment report, inland freight and terminal handling charges (THC) in Greece were estimated to be [REDACTED] EUR per kilogram. The Ministry considers that HW’s adjustment of one percent of the FOB price is a reasonable estimate for inland freight when compared to the information used in the 2003 reassessment.

34. No evidence of other costs between FOB and ex-factory was provided in the application for review. The estimated ex-factory export price is shown in paragraph 40 below.

NORMAL VALUE

35. HW provided a [REDACTED] for two 425g cans of peaches which were purchased in Greece, at a total cost of 1.88 EUR. Based on this purchase price, HW calculated an average price per kilogram.

36. HW made two adjustments to the purchase price to estimate an ex-factory normal value. HW deducted 9 percent for value added tax (VAT) and a 15 percent retail margin, based on its “knowledge of the distribution of preserved peaches in New Zealand”. Because retail margins in Greece were not sourced during the 2003 Review, the Ministry was unable to compare HW’s estimated margin with actual margins in Greece at that time. However, the Ministry considers that that HW’s knowledge of retail margins in New Zealand is a reasonable basis to calculate likely retail margins in Greece, and therefore a 15 percent margin is reasonable for the purposes of the application for a review. From this information HW was able to calculate an estimated ex-factory normal value for 425g canned peaches in Greece.

37. Additionally, HW provided a report from Datamonitor on the market for canned fruit in Greece. Datamonitor is described on its web site as “the world’s leading provider of online data, analytic and forecasting platforms for key vertical sectors”. The report gives a summary of the market for canned fruit by value and volume for 2001 to 2006. HW calculated an average per kilogram price for canned peaches for 2006 based on the Datamonitor report, which is significantly less than the average retail price calculated from the [REDACTED] purchases. HW has noted however that the Datamonitor price would include wholesale sales to channels other than retail bringing the weighted average value down. The Ministry also notes that the 2006 average sales value of canned peaches calculated from the Datamonitor information is for a period two years prior to the date the [REDACTED] purchases were made. If the 2006 Datamonitor value is increased by the annual average percentage increase in the per kilogram sales value for canned peaches from 2001 – 2006 (showing a likely price trend), the resulting value is significantly closer to the average [REDACTED] price calculated by HW.

38. While the information contained in the Datamonitor report has been used as a check on the reasonableness and accuracy of the normal value information discussed in paragraph 35 above, because it relates to 2006 (a period 2 years outside the POR(D)), the Ministry considers that it has limited value in this respect.

39. The Ministry considers that the normal value information provided by HW and the adjustments made are reasonable. The estimated ex-factory normal values are shown in paragraph 40 below.

COMPARISON OF EXPORT PRICE AND NORMAL VALUE (DUMPING MARGIN)

40. The following table compares the estimated normal value and export price, and the resulting dumping margin.

Ex-Factory Price (EUR/kg)		Dumping Margin
Normal Value	Export Price	(% of Export Price)
1.71	0.69	148%

Conclusion on Dumping

41. HW has provided information on an estimated export price and a normal value and has provided other information as a check of the reasonableness of that information. The information indicates that canned peaches from Greece continue to be dumped by significant margins and I consider this information constitutes positive evidence of a continuation or recurrence of dumping should the anti-dumping duties be removed that is sufficient to justify the initiation of a review.

Continuation or Recurrence of Material Injury

42. HW commented that many of the importers and exporters previously involved in exporting dumped canned peaches from Greece to New Zealand remain active and submitted that if anti-dumping duties are removed, “ ... it is almost without question that these parties would be able to use the unfair advantage of dumped prices to resume substantial imports of canned peaches into New Zealand”.

43. HW identified the importer involved in the original investigation and the exporters which have been considered in previous applications regarding anti-dumping duties on canned peaches from Greece. HW also identified other companies which import canned peaches from sources other than Greece.

44. HW has provided details of the value and quantity of preserved peach imports into New Zealand by country for the year ended August 2008, which shows that a small quantity of preserved peaches was imported from Greece over the period. HW has observed that anti-dumping or countervailing duties are currently in place for imports from China, Greece, South Africa and the European Union and that imports from the majority of other countries are at a significantly higher prices and do not cause injury to the New Zealand industry.

45. HW stated that Greece is a much larger producer of canned peaches than itself. HW provided a January 2006 World Horticultural Trade and US Export Opportunities report which stated that the Greek canned peach industry's opening stock over the period 2001 to 2006, ranged from 41,000 to 123,000 tonnes following a normal growing season. HW stated that the entire New Zealand retail peach market is less than [REDACTED] tonnes, which indicates that there is excess capacity for Greek peaches to capture the entire NZ retail market at dumped prices.

46. The Ministry notes HW's claim regarding the Greek canned peach industry's high volumes of opening stock and how this indicates there is excess capacity for Greek exporters to capture the NZ market. However, the Ministry considers that, in the canned peach industry, the volume of finished inventory held at a certain time of the year is not necessarily indicative of excess capacity. This is because canned peach production is a seasonal operation and large volumes of finished product are held in stock at the end of the production season, to be spread over an entire year. However, in view of the fact that Greece is one of the largest producers of canned peaches in the world and in 2006 was the largest exporter of canned peaches, the Ministry considers these factors are a good indication that Greek exporters have the capacity to supply New Zealand importers with significant volumes of canned peaches.

UNDERCUTTING

47. In its application for review, HW carried out an undercutting analysis at the retail level of trade. The Ministry notes that an undercutting analysis normally compares the domestic product with the imported product at the level of trade where the goods first compete in the New Zealand market. In the 2003 review, the Ministry identified HW's level as ex-factory, and commented that the imported peaches from Greece could compete with HW products at both the ex-wharf level or at the importer's ex-store level. The Ministry considers that for the purpose of the initiation of a review, HW's undercutting analysis at the retail level of trade is reasonable, but notes that the level of trade for the review investigation may differ from the level used for the initiation of the review.

48. HW provided average retail selling prices of its Watties and Oak brands from an AC Nielsen Retail Market Data report. The average retail selling prices used by HW in its undercutting analysis relate to the most recent completed quarter (July - September 2008), and are on a per kilogram basis.

49. Using the information contained in the INFOS import data, HW calculated an average FOB price per kilogram of 0.69 EUR, for the purpose of calculating a likely injurious price of Greek canned peaches sold in New Zealand. From the average FOB price HW then made a deduction of [REDACTED] EUR per kg from the FOB price for a sugar export refund, which the company stated the Greek producers are entitled to under a EU scheme designed to compensate exporters for the high price of domestic sugar.

50. The Ministry considers that if the export shipments used by HW in its calculation were entitled to a sugar export refund, it is likely that this refund would already be reflected in the price charged by the Greek exporters and paid by the New Zealand importers so that there would be no need to deduct an amount for this refund from

the average FOB price. In any event, the Ministry considers that HW’s estimated sugar refund amount would not significantly affect its calculation of an estimated injurious price and has accepted HW’s methodology for the purpose of the review application.

51. The resulting value was then converted from EUR to NZD by HW, using the average exchange rate described in paragraph 32 above. To calculate the likely retail selling price (injurious price) of the Greek peaches, HW added the cost of shipping, import duty, port services charges and land transport, which are all based on HW’s equivalent costs of importing. HW then added an importer’s/retailer’s margin of 10 percent, which is based on HW’s understanding of the market, and also added GST of 12.5 percent.

52. The estimated retail selling price of Greek peaches has been compared to the average retail selling prices of the Watties and Oak brands on per kilogram basis in the table below.

Brand	Current Selling Price (\$NZ)	Estimated Greek Selling Price (\$NZ)	Undercutting
	(per kg)	(per kg)	(as % of HW selling price)
Watties	[REDACTED]	1.80	[REDACTED]%
Oak	[REDACTED]	1.80	[REDACTED]%

53. The figures show that there is likely to be significant price undercutting of both the Watties and Oak brands. The Ministry notes that the undercutting of the Watties brand is [REDACTED] percent more than the Oak brand, [REDACTED].

PRICE DEPRESSION

54. HW noted that the Watties brand is its [REDACTED]

[REDACTED]. HW commented that unsustainable price differences have previously occurred when dumped or subsidised imports have entered the New Zealand market, which resulted in a loss of volume and market share for Watties products, and prices for this [REDACTED] were forced down.

55. HW considers that it would need to [REDACTED] if dumped imports from Greece were permitted to re-enter the market. This would mean that the [REDACTED]

[REDACTED]. This would result in the depression of the selling prices for both brands.

PRICE SUPPRESSION

56. HW submits that the significant price undercutting which would result from Greek imports returning to the New Zealand market would lead to suppression of HW's selling prices. HW submits that it would not be able to offset the price undercutting by means of cost savings and price increases elsewhere, and in fact its cost base would increase due to the loss of market share taken by the dumped Greek peaches causing processing costs per tonne to increase.

LOSS OF SALES REVENUE

57. HW has provided a forecast loss of the sales revenue if dumped imports from Greece returned to the New Zealand market. The forecast is based on the sales volumes of its Oak and Watties brands for the year ended October 2008, which the Ministry notes includes both HW's imported and domestically produced canned peaches. The forecast assumes that the Oak brand would [REDACTED], and therefore HW would need to [REDACTED]. HW has calculated that it would need to reduce the selling prices of [REDACTED] brands by \$ [REDACTED] per kilogram, which would result in a loss of sales revenue amounting to \$ [REDACTED].

58. As noted in paragraph 47 above, the undercutting analysis used in this forecast is at the retail level, which is not the first point of competition in the New Zealand market usually preferred by the Ministry. An undercutting analysis at the retail level may confuse the impact of dumping, as it includes differences in distribution costs and margins.

59. The Ministry sourced financial information provided by HW in the review of anti-dumping duties on canned peaches from South Africa to assess the extent of the estimated loss of sales revenue in the context of HW's total sales revenue from canned peaches. HW's net sales revenue for canned peaches was \$ [REDACTED] in the year ended April 2007. The forecast loss of revenue of \$ [REDACTED] when compared with its actual 2007 revenue figure would represent a material impact on HW's sales revenue earned from canned peaches.

PROFITS

60. HW has said that the loss of sales revenue referred to above, would impact directly on its profit and that in addition it would need to [REDACTED] to protect its market share. HW has submitted that such a loss of sales revenue and profits would result in [REDACTED]. HW states that this would result in [REDACTED].

61. HW has also stated this loss of profits is understated as [REDACTED]. Furthermore, HW states that it is foreseeable that [REDACTED] especially when consideration is given to the very low estimated Greek selling prices. According to HW, this loss in [REDACTED] would result in further market share losses for HW branded peaches.

62. Information has not been provided by HW on profits arising from the company's production and sales of canned peaches. However, if its forecast loss of revenue translated directly into a loss of profits, which would be the case if prices were depressed such as to keep sales volumes at the same level, it would have a significant impact on HW with respect to its profits.

LOSS OF MARKET SHARE

63. HW has not quantified the estimated loss of sales volume if the duties are removed, but HW has submitted that in all previous investigations the entry of dumped canned peaches at or even above the calculated injurious price has resulted in a loss of market share. As discussed above, HW considers that significant losses of revenue [REDACTED]. As this would result in [REDACTED], this would also lead to a loss in market share for HW.

OTHER ECONOMIC EFFECTS

64. HW has submitted that the economic impacts set out above will have significant adverse flow-on effects on its return on investments, utilization of production capacity, cash flow, inventories, employment and growth. In particular HW has submitted that the removal of duties would leave it with a stockpile of unsold inventory, which would in turn result in an increase in inventory costs and a reduced need to produce canned peaches in the following season.

Causal Link

65. HW has noted that the original investigation established a causal link between dumped imports and material injury to the New Zealand industry and that the first sunset review found that there would likely be a recurrence of material injury if the duties were removed. HW submits that with the availability of Greek canned peaches for export, this causal link remains in place.

Conclusion on Injury

66. HW has provided reasonable evidence of the likely import price into New Zealand of canned peaches from Greece in the absence of anti-dumping duties. The information shows that the estimated selling price for the Greek peaches would significantly undercut HW's selling prices. In order to retain market share, HW would

be forced to reduce its selling prices causing price depression and suppression. HW has also made reasonable assumptions about the flow-on effects of the price undercutting and provided estimates quantifying these flow-on effects. I consider this information constitutes positive evidence of a recurrence of material injury should anti-dumping duties be removed to justify the initiation of a review.

67. It is noted, however, that the forecast loss of revenue and impact on profits is based on the assumption that sales volumes would be maintained through price depression. HW has also submitted that the removal of the anti-dumping duties would cause a build up of inventory through lost sales volume and [REDACTED]. HW provided evidence to show that there is ample production and export capacity in Greece for the Greek canned peach producers to capture the entire New Zealand market if the opportunity arose. The information showed that Greece is the largest exporter of canned peaches in the world. However, any review will need to obtain more detailed historical and forecast financial data as a basis for determining whether the removal of the anti-dumping duties would be likely to lead to a recurrence of material injury and consider the consistency of the forecasts on the impact of the removal of the anti-dumping duties between the different economic factors.

Conclusion

68. In order for a review to be initiated the Act requires only a request by an interested party that submits positive evidence justifying the need for a review. The Anti-dumping Agreement requires that a duly substantiated request must be made by or on behalf of the domestic industry within a reasonable period of time prior to the expiry of the anti-dumping duties that the expiry would be likely to lead to a continuation or recurrence of dumping and injury.

69. I am satisfied that an application has been made by the domestic industry within a reasonable period prior to the expiry of the duties that contains positive evidence sufficient to justify the initiation of a review.

Recommendation

70. It is recommended, in accordance with section 14(8) of the Act and acting under delegated authority that you:

- (a) formally initiate a review of the imposition of anti-dumping duty on canned peaches from Greece; and
- (b) sign the attached notice of the initiation of the review for publication in the Gazette.

Mike Andrews
Senior Analyst
Trade Rules, Remedies & Tariffs Group
Competition, Trade & Investment Branch.

Agreed/Not Agreed

Anne Corrigan
Manager
Trade Rules, Remedies and Tariffs Group
Competition, Trade and Investment