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Initiation Memorandum – Review of Countervailing Duties on Canned Peaches from the EU

Introduction

1. This report assesses an application made by Heinz Wattie's Ltd (HW) on 13 November 2008 for a review of countervailing duties that currently apply to imports of canned peaches from the European Union (EU).

2. The report recommends that you should initiate a review.

Background

3. Countervailing duties were first imposed by the Minister of Commerce on canned peaches from the EU on 9 January 1998.

4. On 16 April 2000 the Acting Minister of Commerce reassessed the rate of countervailing duty to set a separate rate of duty for a new exporter. The other rates of duty imposed in 1998 remained unchanged. A "sunset" review was completed in July 2003 which found the duties continued to be necessary to prevent a recurrence of injurious subsidisation. The duties were reassessed in December 2003 following the completion of a reassessment initiated immediately following the completion of the review.

5. The existing countervailing duties will, in terms of section 14(9) of the Dumping and Countervailing Duties Act 1988 (the Act), expire on 15 December 2008 unless a review is initiated prior to this date. Reviews that are initiated prior to a countervailing duty's expiry are referred to as "sunset" reviews. If a review is initiated the duties will remain in place pending the outcome of the review. The application by HW is therefore a request for the continuation of the countervailing duties.

6. The current duties are in the form of *ad valorem* percentages. There is a separate rate for Venus Growers Co-operative in Greece and Manuel Garcia Campoy SA in

Spain. There are also separate rates of duty for "other" Greek exporters, "other" Spanish exporters and "other" exporters from EU countries other than Greece and Spain.

7. The goods currently subject to countervailing duty and which would be subject to any review, are described as follows:

> *Peaches (halves, slices or pieces) packed in retail sized cans*

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

Legal Provisions and Associated Jurisprudence

9. Section 14 of the Act deals with the imposition, application and duration of countervailing 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–
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> (a) The date of the final determination made under section 13 of this Act in relation to those goods; or
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> (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,–
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> 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

10. 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.

11. 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 countervailing 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 Subsidies and Countervailing Measures (the SCM Agreement) and the associated jurisprudence, for guidance.

12. Article 21 of the SCM Agreement deals with the duration and review of countervailing duties and states in Paragraph 3 (in part):

> …any definitive countervailing 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 subsidization 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 subsidization and injury [footnote omitted.]

13. The test outlined in the SCM Agreement is primarily whether the application for review constitutes a duly substantiated request that, without countervailing duties on imports of canned peaches from the EU, there would be a continuation or recurrence of subsidization and material injury. The Ministry considers that the test outlined in the SCM Agreement is equivalent to the test set out in the Act, with an additional factor that the SCM 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.

14. 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…".

15. 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

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[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.

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. Furthermore, while this case related to the sunset review provisions of the WTO Anti-dumping Agreement, the provisions in the Anti-dumping Agreement are very closely aligned with those of the SCM 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 SCM Agreement. 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.

16. In the present case the application for a review was submitted by HW on 13 November 2008, which is 31 days prior to the expiry of the countervailing 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 Provided

17. 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 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 SCM Agreement.

18. 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 prejudge 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.

19. 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.

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[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.

20. 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 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]

21. Again, while this case related to the sunset review provisions of the WTO Anti-dumping Agreement, the ruling clearly indicates that the Panel considered the evidentiary standards required for the initiation of a new investigation do not apply for the initiation of sunset reviews and the applicable standard is in fact a lesser one.

22. 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 11 of the SCM 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’

23. The SCM Agreement states that an application for a sunset review must be made by or on behalf of a domestic industry.

24. 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

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[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.

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

25. "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

26. 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 countervailing duty, HW has provided an analysis of its production of canned peaches compared with the canned peaches subject to the countervailing duty 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.

27. 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 subject goods.

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

29. HW advised in its application that it is the only New Zealand producer of canned peaches, which was the situation at the time the current countervailing duties were imposed and at the time of the first sunset review. No further information has been discovered that contradicts HW's statement that it is the sole New Zealand producer of canned peaches.

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

Evidence of Subsidies

EU Sugar Export Refunds

31. HW provided an explanation of the rationale and operation of this programme in its application, supporting documentation (including European Community (EC) Council Regulations) and subsidy calculations, which are summarised below.

32. In its application, HW stated that the current EC legislation for the common organisation of the markets in the sugar sector is contained in EC Council Regulation (EC) No. 318/2006. This legislation has the effect of raising the price of sugar in the EU to allow European sugar producers to compete on price with competitors in the world market. The legislation protects local producer states through many mechanisms, including:

- Setting an annual intervention (reference) price for white and raw sugar;
- Controlling the minimum price paid to growers for raw material;
- Quota management for producer states;
- Production refunds;
- Control of import tariffs;
- Controls on imported raw material.

33. Exported canned peaches from the European Union that contain sugar in the form of syrup qualify for an export refund which is designed to compensate such exporters for the extent to which EU sugar is priced above world prices. Obtaining a refund on the sugar used in the production of the exported product allows the EU producers of the exported product to be competitive on the world market. In respect of sugar refunds applicable to exports from the EU of canned peaches in syrup, the relevant legislation is contained in Council Regulation (EC) No. 1234/2007 (Article 162(b)). The amount of the refund is the difference between world market prices and EU prices for sugar.

34. HW provided a copy of the various EU regulations that provide for such refunds and specify the amount and explain the basis on which refunds are calculated. Copies of documents relevant to applying the regulations were also provided, including an extract from the EU tariff classification for white sugar and a list of destination codes for export refunds.

35. HW stated that the amount of the export refund applicable is set out in Council Regulation (EC) No. 1554/2002 and is Euro 46.40 per 100 kilograms. HW stated that the amount of export sugar refund that the EU provides may be calculated from the added sugar content within a can of peaches in syrup. HW has calculated that a 410gm can of peaches in syrup contains added sugar of [redacted]gm. On the basis of this calculation and the relevant regulations relating to export refunds, HW has calculated the amount of subsidy (refund) per 410gm can at approximately [redacted] euros (NZ$[redacted]).

36. To confirm that the programme still exists today, the Ministry searched the official website of the EC to obtain more information on the programme. The search showed that the programme is still in existence, although once initiated, any review will need to establish the extent to which EU exporters are entitled to a refund under the scheme when exporting canned peaches in syrup, and the extent to which export prices to New Zealand are affected.

CONCLUSION

37. In the 2003 "sunset" review the Ministry examined the above programme and concluded that the EU processors of canned peaches received a direct benefit through the programme when exporting the subject goods outside the EU and therefore, that a subsidy existed in terms of section 3(1) of the Act and Article 1.1 of the SCM Agreement. The Ministry concludes that in the present case, HW has provided sufficient information that the programme continues to exist and that the EU processors of canned peaches in syrup continue to benefit directly through the programme when exporting the subject goods outside the EU.

EU PROCESSING AID

38. HW said that Council Regulation (EC) No. 2201/96 continues to be the current primary EC Regulation for the EU common organisation of the markets in processed fruit and vegetable products, as for the original investigation and the 2003 review. HW provided a copy of Council Regulation (EC) No. 679/2007 which shows the continuation of a fixed amount of aid of Euro 47.70 per metric tonne that grower organisations or individual growers obtained during the 2007/8 marketing year.

39. On the basis that one tonne of fresh peaches produces approximately [redacted] of processed canned peaches, HW has calculated the processing aid to be [redacted] euros (NZ$[redacted]) per 420gm can.

40. HW stated that this processing aid continues to cause European canned peaches to be subsidised in terms of the definition of "specific subsidy", as provided in section 3 of the Act.

CONCLUSION

41. In the 2003 sunset review the Ministry examined the above programme and concluded that the processors of canned peaches received an indirect benefit through price reductions for the raw peaches used in the manufacture of the subject goods processed and exported to New Zealand and that therefore a subsidy existed. The Ministry concludes that in the present case, HW has provided sufficient information that the Aid programme continues to exist and that the processors of canned peaches continue to benefit indirectly through the programme when exporting the subject goods to New Zealand.

STRUCTURAL FUNDS PROGRAMMES

42. In the 2003 review, the Ministry also examined the provision of aid through the structural funds programmes, particularly those under EC regulation 1257/1999. This regulation relates to the European Agriculture Guidance and Guarantees Fund (EAGGF) that establishes a framework for community support for sustainable rural development by providing investment aid. The main purpose of the EAGGF is to increase competitiveness of the agricultural sector. There are a number of programmes under Regulation 1257/99 that can qualify for assistance, including environmental improvement programmes, providing support for new farmers and providing support in the areas of processing and marketing agricultural products by increasing hygiene levels and decreasing pollution levels.

43. HW did not provide information on the structural funds programme in its current application for a review. However, the Ministry in the 2003 review found that there was no evidence to suggest that assistance under the structural funds scheme had influenced the price of canned peaches exported to New Zealand at that time. If a review is initiated in the present case, the Ministry will again examine if assistance under the structural funds scheme has influenced the price of canned peaches exported to New Zealand.

AMOUNT OF SUBSIDY

44. HW has noted that the majority of subsidised peaches that the EU exports are from Greece and that exports of subsidised peaches to New Zealand were mostly from Greece prior to the introduction of countervailing duties. HW said that for this reason it has calculated the amount of the subsidy on the ex-factory export price for canned peaches from Greece.

45. HW has calculated the average per kilogram FOB export price from Greece 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 countervailing duties. 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.

46. 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). 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. 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 the table below.

47. 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 cans sizes of 4.1 kilograms or more.

48. The information on the other shipment of subject goods showed that it was [redacted] 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 export price calculated by HW in its application and therefore, (to a small degree) the extent to which any subsidy calculated is represented as a percentage of the export price. The Ministry also notes that this shipment of subject goods was required to pay a significant amount of anti-dumping and countervailing duty indicating that the goods were unlikely to be priced by the Greek exporter at a

higher than usual value in order to legitimately avoid the payment of anti-dumping and countervailing duties.

49. HW has converted the amounts of subsidy per 420gm can shown above to amounts per kilogram and then calculated the total of these amounts as a percentage of the estimated ex-factory price per kilogram from Greece (calculated as explained above). The results of these calculations are shown in the table below:

Subsidisation Amount Calculated for EU Canned Peaches	
Ex-factory export price from Greece (euros/kg)	0.69
Sugar export refund (euros/kg)	[redacted]
Peach processing aid (euros/kg)	[redacted]
Amount of subsidy as a percentage of ex-factory export price from Greece	15%

Evaluation of Evidence of Subsidy

50. The original investigation and the 2003 "sunset" review identified two subsidy programmes against which countervailing duties were imposed, namely sugar export refunds and EU aid for peach processors and subsequently peach growers. In its present application for a review, HW has provided documented evidence that these two subsidy programmes have continued, and that these programmes continue to constitute a "subsidy" and a "specific subsidy" in terms of section 3(1) of the Act and Article 1.1 of the SCM Agreement, and therefore that EU canned peaches continue to be "subsidised goods" in terms of the Act and the SCM Agreement.

51. HW has also provided reasonable evidence to show that the amount of the subsidy provided under these programmes continues to be more than *de minimis* in terms of Section 11(2) of the Act and Article 11.9 of the SCM Agreement.

52. It is noted, however, that the calculation of the amount of the sugar export refund has not taken account of the proportion of canned peaches that are packed in media not containing added sugar, such as water and fruit juice. Any review will need to take this into account in calculating the amount of any sugar export refund subsidy in the value of the mix of canned peach product likely to be exported to New Zealand should duties be removed.

53. It is considered that sufficient evidence of a continuation of subsidisation has been provided to justify the initiation of a review.

Continuation or Recurrence of Material Injury

54. HW commented that many of the importers and exporters previously involved in exporting subsidised canned peaches from the EU to New Zealand remain active and submitted that if countervailing duties are removed, " … it is almost without

question that these parties would be able to use their unfair advantage to resume substantial imports of canned peaches into New Zealand".

55. HW identified the importers involved in the original investigation and the exporters which have been considered in previous applications regarding countervailing duties on canned peaches from the EU. HW also identified other companies which import canned peaches from sources other than the EU.

56. 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 significant quantity of preserved peaches was imported from the EU over the period, mainly from Greece and Spain. 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.

57. HW stated that Greece and other EU countries are much larger producers 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 and other EU peaches to capture the entire NZ retail market at subsidised prices.

58. 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

59. In its application for review, HW carried out an undercutting analysis at the retail level of trade. It used the price of canned peaches from Greece in its analysis because of the fact that Greece is the largest producer and exporter of canned peaches from the EU. 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 and other EU countries 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.

60. 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 recently completed quarter (July - September 2008), and are on a per kilogram basis.

61. 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 EU 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 and other EU producers are entitled to under a EU scheme designed to compensate exporters for the high price of domestic sugar.

62. 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.

63. The resulting value was then converted from EUR to NZD by HW, using the average Customs exchange rate for the period August 2007 to September 2008 of 1 NZD:0.50 EUR. To calculate the likely retail selling price (injurious price) of the EU 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.

64. The estimated retail selling price of EU 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 ($NZ)	Estimated EU Selling Price ($NZ)	Undercutting
	(per kg)	(per kg)	(as % of HW selling price)
Watties	[redacted]	1.80	[redacted]%
Oak	[redacted]	1.80	[redacted]%

65. 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

66. HW noted that the Watties brand is its [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.

67. HW considers that it would need to [redacted] if subsidised imports from the EU were permitted to re-enter the market. This would mean that [redacted]. This would result in the depression of the selling prices for both brands.

PRICE SUPPRESSION

68. HW submits that the significant price undercutting which would result from EU 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 subsidised EU peaches causing processing costs per tonne to increase.

LOSS OF SALES REVENUE

69. HW has provided a forecast loss of the sales revenue if subsidised imports from the EU 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 [redacted], and therefore HW would need [redacted]. HW has calculated that it would need to reduce the selling prices of Oak and Watties brands by $[redacted] per kilogram, which would result in a loss of sales revenue amounting to $[redacted].

70. As noted in paragraph 59 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.

71. 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 $ in the year ended April 2007. The forecast loss of revenue of $ when compared with its actual 2007 revenue figure would represent a material impact on HW's sales revenue earned from canned peaches.

PROFITS

72. 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 to protect its market share. HW has submitted that such a loss of sales revenue and profits would result in . HW states that this would result in .

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

74. 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

75. 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 and/or subsidised 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 . As this would result in , this would also lead to a loss in market share for HW.

OTHER ECONOMIC EFFECTS

76. 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

77. HW has noted that the original investigation established a causal link between subsidised imports and material injury to the New Zealand industry. HW submits that with the availability of EU canned peaches for export, this causal link remains.

Conclusion on Injury

78. HW has provided reasonable evidence of the likely import price into New Zealand of canned peaches from the EU in the absence of countervailing 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 countervailing duties be removed to justify the initiation of a review.

79. 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 countervailing 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 the EU for the EU 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 countervailing 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 countervailing duties between the different economic factors.

Conclusion

80. 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 SCM 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 countervailing duties that the expiry would be likely to lead to a continuation or recurrence of subsidisation and injury.

81. 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

82. It is recommended on the basis of the conclusion reached, and in accordance with section 14(8) of the Act, and acting under your delegated authority:

(a) that you formally initiate a review of the imposition of countervailing duty on canned peaches from the EU; and

(b) that you sign the attached notice of the initiation of the review for publication in the *New Zealand Gazette*.

Mike Andrews
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Trade Rules, Remedies and Tariffs Group
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Agreed/Not Agreed

Anne Corrigan
Manager
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