Ministry of Economic Development
Manatū Ōhanga

Non-Confidential Final Report

Canned Peaches from Greece

Dumping and Countervailing Duties Act 1988

Dumping "Sunset" Review

Ministry of Economic Development

Trade Rules, Remedies and Tariffs Group
July 2009

HTML: 978-0-478-33658-0
PDF: 978-0-478-33657-3
910846

Table of Contents

Abbreviations

The following abbreviations are used in this Report:

Act (the)	Dumping and Countervailing Duties Act 1988
Anti-Dumping Agreement	WTO Agreement on Implementation of Article VI of the GATT 1994
ALMME	AL.M.M.E Growers, Greece
C & F	Cost and Freight
Chief Executive (the)	Chief Executive of Ministry of Economic Development
CIF	Cost, Insurance and Freight
COP	Cost of Production
EBIT	Earnings Before Interest and Tax
EUR	Euro
FIS	Free Into Store
FOB	Free on Board
HW	Heinz Wattie's Limited
Ministry (the)	Ministry of Economic Development
NIFOB	Non-Injurious Free-on-Board Price
NIP	Non-Injurious Price
NSV	Net Sales Value
NUPFOB	Normal Unsubsidised Price Free-on-Board
NV(VFDE)	Normal Value (Value for Duty Equivalent)
NZCS	New Zealand Customs Service
NZD	New Zealand Dollars
POR(I)	Period of Review for Injury: 1 May 2005 – 30 April 2009
POR(D)	Period of Review for Dumping : 1 December 2007 – 30 November 2008
Progressives	Progressive Enterprises Ltd
USD	United States Dollars
USITC	United States International Trade Commission
VAT	Value Added Tax

VFD	Value for Duty
WTO	World Trade Organisation

1. Executive Summary

Introduction

1. A review of the anti-dumping duties that currently apply on imports of canned peaches from Greece was initiated by the Ministry of Economic Development (the Ministry) on 14 December 2008, based on an application from Heinz Wattie's Limited (HW). HW is the only domestic producer of canned peaches in New Zealand. The anti-dumping duties under review have been in place since March 1998 and would have expired on 15 December 2008 if a review had not been initiated. HW claimed that the expiry of the duties would lead to a continuation or recurrence of dumping and material injury to the industry.

2. This report considers the likelihood of a continuation or recurrence of dumping, leading to a recurrence of material injury to the domestic industry if the anti-dumping duties are removed.

Goods Subject to the Investigation

3. The subject goods from Greece are described as:

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

Dumping

4. Based on the information gathered during the review, the Ministry has concluded that the 3kg canned peaches exported by AL.M.M.E Growers (ALMME) in Greece were dumped with a dumping margin of 116 percent. The Ministry concludes that it is likely that the 3kg cans from ALMME would continue to be dumped if the anti-dumping duties were removed, as any movement in export price resulting from the removal of the duties is likely to be a downward one.

5. Furthermore, based on the information gathered in the review, the Ministry concludes that it is likely that there would be a recurrence of dumping of canned peaches from other Greek exporters if the anti-dumping duties were removed.

Material Injury

6. The domestic industry, HW, does not claim that it is currently suffering material injury due to imports of subject goods from Greece. The Ministry has not found any evidence of injury to the domestic industry caused by dumped imports from Greece during the period 1 May 2005 to 30 April 2009 and on this basis the Ministry has concluded that HW is not currently suffering injury caused by dumped imports from Greece.

7. This review has concentrated on the likelihood of a recurrence of material injury to the domestic industry if the current anti-dumping duties were removed. In this respect the Ministry has examined information gathered during the course of the review on the past and current pricing behaviour of the market participants both in New Zealand and in Greece, statements made during the review by these

participants and the level of capacity of the Greek canned peach industry to supply New Zealand importers with significant volumes of canned peaches. On the basis of the totality of the information gathered during the review, the Ministry concludes that dumped imports from Greece would be likely to cause a recurrence of material injury to the domestic industry if the anti-dumping duties were removed.

Conclusion

8. The Ministry concludes that if the current anti-dumping duties are removed, there is a likelihood of a continuation or recurrence of dumping of canned peaches from Greece and that this would likely cause a recurrence of material injury to HW (the New Zealand industry).

2. Proceedings

9. On 9 March 1998, the Minister of Commerce first imposed anti-dumping duties on canned peaches from Greece imported into New Zealand, because an investigation had established that the goods were being dumped and by reason thereof causing material injury to the New Zealand industry.

10. A new shipper reassessment of the level of anti-dumping duty was completed in April 2000 for a Greek exporter, Venus Growers, which concluded that canned peaches exported by Venus were not dumped. This resulted in the rate of anti-dumping duty applicable to Venus Growers being set at a nil rate of anti-dumping duty. All other rates of anti-dumping duty applying to Greek exporters remained unchanged.

11. A review of the continued need for the imposition of the anti-dumping duties, pursuant to section 14(8) of the Dumping and Countervailing Duties Act 1988 (the Act), was completed on 4 July 2003 and concluded that it would be likely that both dumping and injury would recur if the anti-dumping duties were removed. Immediately following the review a reassessment was initiated. The reassessment was completed in December 2003 and new rates of anti-dumping duty were set.

12. The present review of the continued need for the anti-dumping duties was initiated by the Ministry of Economic Development on 14 December 2008, based on an application from Heinz Wattie's Limited (HW), the New Zealand producer of canned peaches.

13. In accordance with Article 11 of the World Trade Organisation (WTO) Anti-Dumping Agreement (the Anti-Dumping Agreement), the purpose of the Ministry's review is to examine whether the expiry of the duties would be likely to lead to a continuation or recurrence of dumping and injury. The purpose of this report is to provide a summary of the matters established by the review team as a basis for a determination to be made under section 14(8) of the Act as to whether the expiry of the current anti-dumping duties would be likely to lead to the continuation or recurrence of dumping and injury.

14. On 2 June 2009 an Interim Report for this review was provided to all interested parties being written advice of the essential facts and conclusions that would likely form the basis for any final determination to be made. All interested parties were given until 16 June 2009 to make submissions on the Interim Report, but no submissions were received by the Ministry.

15. This Final Report includes the conclusions reached by the Ministry. It should be noted that the report provides a summary only of the information, analysis and conclusions relevant to this investigation, and should not be accorded any status beyond that.

2.1 Reviews

16. In the absence of a review, the anti-dumping duties would have ceased to apply from 15 December 2008 because duties applying to any goods shall cease to be

payable on those goods from five years after the date of any reassessment of duty imposed following a review which established that the reassessment was necessary.[1] The existing anti-dumping duties will continue to apply pending the outcome of this review and any reassessment that may follow.

17. The Ministry has set the period of review of dumping (POR(D)) from 1 December 2007 to 30 November 2008, while the period of review for injury (POR(I)) involves the period 1 May 2005 to 30 April 2009 (HW's financial years 2005/6, 2006/7, 2007/8 and 2008/09).

18. The Ministry has also evaluated forecast information provided by the domestic industry (HW) for its 2010/11 financial year assuming that the anti-dumping duties remain in place, and also assuming that the anti-dumping duties are removed. These forecasts form the basis of the determination of the likelihood of a recurrence of injury caused by dumped goods from Greece if the anti-dumping duties are removed.

19. Interested parties to the "sunset" review were advised of the initiation of this review in writing and provided with the opportunity to provide information to assist the Ministry in reaching its conclusions and to also make written submissions to the Ministry.

2.2 Dumping and Injury for the Purposes of a Review

Ministry's Approach to Sunset Reviews

20. The Ministry carries out sunset reviews on the basis of Article 11 of the Anti-Dumping Agreement. In interpreting Article 11, the Ministry takes guidance from New Zealand legal reports, WTO Panel reports and approaches taken by other WTO member countries.

21. Article 11.3 infers a necessity to clearly demonstrate that, "…the expiry of the duty *would be likely* to lead to continuation or recurrence of dumping and injury" *[emphasis added].* Some guidance regarding the interpretation of the phrase "would be likely" has been provided by the New Zealand Court of Appeal which interpreted the phrase to mean 'a real and substantial risk…, a risk that might well eventuate" *(Commissioner of Police vs Ombudsman [1988] 1 NZLR 385).*

22. For further guidance on the level of evidence that is required to meet the "would be likely" criteria of Article 11.3, the Ministry also referred to the findings of the WTO panel report, *United States Anti-Dumping Duty on Dynamic Random Access Memory Semi Conductors (DRAMS) from Korea*,[2] and *United States – Sunset Reviews of*

[1] Dumping and Countervailing Duties Act 1988, s14(9) and s14(9A)

[2] Report of the Panel – United States – Anti-Dumping Duty on Dynamic Random Access Memory Semi Conductors (DRAMS) of One Megabit or Above from Korea – WT/DS99/R – Adopted 19 March 1999.

Anti-Dumping Measures on Oil Country Tubular Goods from Argentina,[3] to the approaches taken by the European Union, United States, Canada and Australia to sunset reviews.

23. The Ministry notes that the consideration of whether anti-dumping duties should be removed does not exist in isolation but is dependent on whether the evidence shows that the expiry of the anti-dumping duties would be likely to lead to a continuation or recurrence of dumping and injury. In determining “likelihood”, it is considered that regard should be had to the timeframe within which an event may occur. Article 11.3 of the Agreement makes no express reference to the length of time within which a continuation or recurrence of injury has to take place.

24. Mindful of the different factors involved in each case, and taking guidance from the sources referred to above, the Ministry approaches all investigations and reviews on a case-by-case basis. Based on its interpretation of the Anti-Dumping Agreement, the Ministry adopts the following general principles in considering injury and dumping in sunset reviews:

- The Ministry is required to establish whether the expiry of the anti-dumping duties would be likely to lead to a continuation or recurrence of dumping and injury.

- The test to be applied in respect of the likelihood of a continuation or recurrence of dumping and material injury is a positive one, i.e., the Ministry needs to be satisfied, based on positive evidence, that certain events are likely to occur, and that those events will cause dumping and material injury to the industry to continue or recur in the absence of anti-dumping duty.

- Interpretation of the phrase “would be likely” is guided by a court judgement referring to “a real and substantial risk…, a risk that might well eventuate”.

- In considering the likelihood of injury, the Ministry may refer for guidance to provisions in the Anti-Dumping Agreement that may be helpful in assessing that likelihood and those provisions may include, if appropriate, the factors used in Article 3.7 in assessing a threat of injury. The test to be applied, however, is not that for establishing whether there is a threat of injury.

- In considering whether removal of the duty *would be likely to lead* to a recurrence of dumping and injury, the Ministry considers what is likely to happen in the foreseeable future. The extent to which the Ministry is able to make judgements on the likelihood of events occurring in the foreseeable future will depend on the circumstances of each case and, therefore, the foreseeable future will range from the imminent to timeframes longer than imminent.

[3] Report of the Panel – United States – Sunset Reviews of Anti-Dumping Measures on Oil Country Tubular Goods from Argentina – WT/DS268/R – Circulated 16 July, 2004. Report of the Appellate Body – WT/DS268/AB/R - Adopted 17 December, 2004.

2.3 Grounds for the Review

25. HW provided positive evidence to support its claim that imports of canned peaches from Greece would continue to be dumped if the anti-dumping duties were removed and that the dumped imports would cause a recurrence of material injury through:

- a significant increase in import volumes, price undercutting, price depression and price suppression

resulting in:

- a decline in output and sales;
- a decline in market share;
- a decline in profits and return on investments;
- a decline in utilisation of production capacity; and
- adverse effects upon cash flow, inventories, employment and growth.

Reassessment of Anti-Dumping Duties

26. If this review concludes that anti-dumping duties should remain in place, the rate or amount of anti-dumping duty may be reassessed in accordance with section 14(6) of the Act.

2.4 Imported Goods

27. The goods from Greece which are subject to the anti-dumping duties are referred to as the "subject goods", and are described as:

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

28. The subject goods enter New Zealand under tariff Item 2008.70.09 and statistical key 00L. Imports of subject goods from Greece are currently subject to the normal tariff of 5 percent.

2.5 Interested Parties

New Zealand Industry

29. HW is the only producer of canned peaches in New Zealand and therefore constitutes the New Zealand industry.

Importers and Exporters

Exporters

30. The New Zealand Customs Service (NZCS) data identified ALMME as the exporter of the only shipment of subject goods during the POR(D). ALMME was sent a Manufacturers' Questionnaire to complete but failed to provide a response.

Importers

31. The NZCS data identified [redacted] as the importer of subject goods from Greece during the POR(D). [redacted] provided a full response to the Importers' Questionnaire.

2.6 Exchange Rates

32. Article 2.4.1 of the Anti-Dumping Agreement provides as follows:

> When the comparison under paragraph 4 *[of Article 2]* requires a conversion of currencies, such conversion should be made using the rate of exchange on the date of sale[8], provided that when a sale of foreign currency on forward markets is directly linked to the export sale involved, the rate of exchange in the forward sale shall be used. Fluctuations in exchange rates shall be ignored and in an investigation the authorities shall allow exporters at least 60 days to have adjusted their export prices to reflect sustained movements in exchange rates during the period of investigation.
>
> [8] Normally, the date of sale would be the date of contract, purchase order, order confirmation, or invoice, whichever establishes the material terms of sale.

33. The exchange rates used in this report are the interbank rates recorded on the OANDA currency conversion site on the internet (www.oanda.com). The dates and exchange rates used by the Ministry are stated in the relevant sections of the report.

2.7 Provision of Information

34. Article 6.4 of the Anti-Dumping Agreement provides that the authorities shall provide timely opportunities for all interested members and interested parties to see all information that is relevant to the presentation of their cases, that is not confidential and that is used by the authorities in a dumping investigation, and to prepare presentations on the basis of this information. In order to conform with this requirement, the Ministry makes available all non-confidential information to any interested party through its public file system (section 10(6)(b) of the Act).

35. In respect of the provision of information by interested parties, Article 6.8 of the Anti-Dumping Agreement provides as follows:

> In cases in which any interested party refuses access to, or otherwise does not provide, necessary information within a reasonable period or significantly impedes the investigation, preliminary and final determinations, affirmative or negative, may be made on the basis of the facts available.

36. Section 6 of the Act states that:

> (1) Where the [Chief Executive] is satisfied that sufficient information has not been furnished or is not available to enable the export price of goods to be ascertained under section 4 of this Act, or the normal value of goods to be ascertained under section 5 of this Act, the normal value or export price, as the case may be, shall be such amount as is determined by the [Chief Executive] having regard to all available information.

37. As noted above, information concerning exports of the subject goods over the POR(D) was requested but not received from the Greek exporter ALMME. In view of failure to provide information, decisions regarding this exporter have been made having regard to all available information, in accordance with section 6 of the Act and Article 6.8 of the Anti-Dumping Agreement.

3. New Zealand Industry

38. Section 3A provides the definition of “industry”:

> 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.

3.1 Like Goods

39. In order to establish the existence and the extent of the New Zealand industry for the purposes of an investigation, it is necessary to determine whether there are New Zealand producers of “like goods”. The term “like goods” is defined as being goods which are like the subject goods in all respects (identical), or in the absence of identical goods, goods which have characteristics closely resembling the subject goods.[4] The subject goods are described in Section 2.4 above.

40. HW produces, *inter alia*, a range of styles of canned peaches (currently halved and sliced), packed in various concentrations of sugar syrup, “lite” media (artificial sweetener in water) and fruit juice, and in various can sizes. HW currently produces these canned peaches under its branded lines of “Wattie’s”, “Oak”, and “Weight Watchers”.

41. In the 2003 review, the Ministry concluded that all styles of canned peaches in sugar syrup, “lite” media and fruit juice produced by HW (except for product produced under the “Weight Watchers” brand) were “like goods” to the subject goods. The “Weight Watchers” and canned peaches in “lite” media were not produced by HW at the time of the original investigation but were produced by HW at the time of the 2003 sunset review. That review also concluded that the fruit salad and two fruits products produced by HW were not like goods to the subject goods.

42. The Ministry notes that there is no information which indicates that the like goods conclusions made by the Ministry in the 2003 review need to be revisited, therefore, the Ministry concludes that HW is still producing like goods to the subject goods imported from Greece. Based on the Ministry’s conclusions concerning like goods, all sales of the “Weight Watchers” brand have been excluded from the injury analysis.

3.2 Imports of Canned Peaches

43. The subject goods are not separately identified in the Tariff of New Zealand. In compiling import volume figures, the Ministry has used the import volumes of canned peaches into New Zealand for the 2006 and 2007 April years which have been taken from the 2007 review of canned peaches South Africa. These figures also related to

[4] Dumping and Countervailing Duties Act 1988, s3(1)

retail size canned peaches (the subject goods). The import volumes of canned peaches for the 2008 April year and the six month period to October 2008 have been complied by checking the general description and tariff concession information of the imported goods from the NZCS data. The Ministry has removed products which are not retail size canned peaches from the import figures.

44. The Ministry has also removed HW's imports of canned peaches from the import figures to avoid double counting as both HW's imported and domestically produced canned peaches are recognised as New Zealand industry sales of canned peaches in the Ministry's injury analysis.

45. The table below shows the estimated import volumes of canned peaches into New Zealand from 2006 to October 2008.

Table 3.4: Imports of Canned Peaches (kg)
(Years ended April)

	2006	2007	2008	Oct-08 (6 months)
Imports from Greece *	114,882	13,403	-	-
Imports from Australia *	2,996,911	2,561,545	2,324,172	1,112,704
Other Imports *	894,770	1,232,325	1,669,514	1,310,768
Total Imports	4,006,563	3,807,273	3,993,687	2,423,472

* Excludes HW's imports

46. The figures in the table show that there have been minimal imports of the subject goods from Greece since 2006. This is not surprising in view of the fact that there are currently anti-dumping duties imposed on these goods.

3.3 New Zealand Market

47. The following table shows the New Zealand market for canned peaches from the 2006 April year to October 2008. Import figures used in this table are as per table 3.4 above, and the domestic sales figures have been provided by HW.

Table 3:5: New Zealand Market for Canned Peaches (kg)
(Years ended April)

	2006	2007	2008	Oct-08 (6 months)
Imports from Greece *	114,882	13,403	-	-
Other Imports *	3,891,681	3,793,870	3,993,687	2,423,472
Domestic Sales **	[redacted]	[redacted]	[redacted]	[redacted]
Total NZ Market	[redacted]	[redacted]	[redacted]	[redacted]

* excludes HW's imports
** includes HW's imports

48. The above table shows that the New Zealand market for canned peaches has remained reasonably static since 2006.

4. Dumping

49. Dumping occurs when an exporter sells goods to New Zealand at a price lower than they would sell the same goods in their country, as defined in Section 3(1) of the Act. In essence, dumping is price discrimination between an export and domestic market.

4.1 Introduction

50. This section of the report explains how the Ministry established whether canned peaches were being dumped during the POR(D), and the extent of any dumping found. This section also explains how the Ministry established whether there is a likelihood of a continuation or recurrence of dumping, if the anti-dumping duties were removed.

51. The Ministry compares export prices and normal values on a transaction-to-transaction basis. This basis of comparison involves selecting an appropriate domestic transaction value (or when no suitable domestic transactions exist, constructing a domestic transaction value) for comparison with each export transaction value, seeking to find sales of the same type and size of good as that exported and as near as possible to the same point in time and making any adjustments for differences that affect price comparability. The Ministry is then able to compare the two values to establish whether or not each transaction was dumped and the extent of any dumping.

52. The Ministry prefers to use a transaction-to-transaction basis for comparing export prices and normal values, rather than a weighted average-to-weighted average method, because this method identifies the individual transactions that are dumped. The Ministry considers this provides a more accurate representation of the extent of any dumping and is particularly suited to a small economy such as New Zealand where the number of transactions may be relatively small.

53. Due to the non-cooperation of the sole Greek exporter to New Zealand, ALMME, over the POR(D), a transaction-to-transaction analysis was not possible in this review in that the Ministry was unable to select an appropriate Greek domestic sale made by this Greek exporter with which it could compare to its export price transaction. The Ministry has therefore used domestic retail sales information of canned peaches in Greece, which was supplied by HW in its Application for a Review to establish an estimated normal value. The Ministry considered this was the best information to fill this information gap and did so under the provisions of section 6 of the Act and Article 6.8 of the Anti-dumping Agreement which allows for a decision to be made having regard to all available information.

54. In this section of the report, the Ministry has analysed whether the 3kg cans exported by ALMME during the POR(D) were dumped, and if so, whether there is a likelihood of a continuation of the 3kg cans being dumped if the anti-dumping duties were removed. With respect to other Greek exporters and other sizes of retail size cans of canned peaches, the Ministry has estimated the likely export price per kilogram based on export price statistics for Greek preserved peaches to markets which do not have anti-dumping duties in place and assessed the likelihood of a

recurrence of dumping if the anti-dumping duties were removed by comparing these export prices with the estimated normal value established by the Ministry.

55. On the basis of a comparison of export prices to New Zealand and the normal values established, the Ministry concludes that dumping currently exists in relation to the 3kg canned peaches exported from ALMME and will likely continue if the anti-dumping duties are removed. The Ministry also concludes that there is likely to be a recurrence of dumping in respect of other sizes of retail size canned peaches by other Greek exporters if the current anti-dumping duties are removed. Sections 4.6 to 4.8 below describe the methods used by the Ministry's to assess whether dumping is currently taking place while section 4.9 describes the methods used by the Ministry to assess the likelihood of a continuation or recurrence of dumping if the anti-dumping duties were removed.

4.2 Findings of the Original Investigation

56. Vermion Naoussa and ALMME were the two Greek exporters involved in the original dumping investigation. The Ministry concluded that Vermion Naoussa's dumping margins ranged between nil and 20 percent, while ALMME was found not to be dumping.

4.3 Findings of the Previous Reassessments

57. A reassessment of the level of anti-dumping duty applicable to canned peaches exported by Venus Growers was completed in April 2000, which concluded that the company's exports were not dumped. A nil rate of duty was assigned to Venus Growers, but all other rates of anti-dumping duty remained unchanged.

4.4 Findings of the 2003 Review

58. The 2003 review concluded that 100 percent of the subject goods imported from Greece during the POR(D) were dumped, with dumping margins ranging from 5 percent to 45 percent. All exports of canned peaches from Greece were from Venus Growers. The Ministry concluded that all the product style and cans sizes from Venus Growers were dumped during the POR(D), therefore, it was likely that these product styles and can sizes would continue to be dumped by Venus Growers, if the anti-dumping duty was removed.

59. The Ministry also assessed the likelihood of a recurrence of dumping of other product styles and can sizes from other Greek exporters if the anti-dumping duties were removed. Based on information gathered during the review, the Ministry concluded that there was sufficient positive evidence that there was a likelihood of a recurrence of dumping if the anti-dumping duties were removed.

4.5 Purpose of Review of Dumping

60. The Ministry's "sunset" reviews are intended to determine whether the expiry of the existing anti-dumping duties after five years would be likely to lead to a continuation or recurrence of dumping and injury and therefore whether there is a

continued need for the imposition of the anti-dumping duties. Questions to be asked in relation to dumping are:

- Whether the goods under review continue to be dumped and, if so, the extent of that dumping.
- Where imports of the goods subject to anti-dumping duties continue to be dumped, the likelihood of a continuation of any such dumping should the anti-dumping duties be removed.
- Where imports of the goods subject to anti-dumping duties have ceased or are no longer dumped, the likelihood of a recurrence of dumping should the anti-dumping duties be removed.

4.6 Export Prices

Introduction

61. Export prices are the prices at which the goods are exported from Greece to New Zealand, adjusted to allow a fair comparison with the prices of goods sold in the country of export, as required by section 4 of the Act.

62. Export prices are established by deducting the costs, charges and expenses incurred by an exporter in preparing the goods for shipment to New Zealand that are additional to those generally incurred on sales for home consumption; and by making any other relevant adjustments required in order to ensure a fair comparison with normal values. An explanation of the base prices used in this review and any relevant adjustments are described below.

Export Price (ALMME)

63. The first step in establishing an export price is to identify a base export price, which is the price an importer has paid for the product. The price paid for the goods could be at a number of different levels, for example the purchase price may be at ex-factory, free-on-board (FOB), cost insurance and freight (CIF) or cost and freight (C&F) levels.

64. During the POR(D) there was one shipment of subject goods from Greece, which was made by ALMME, consisting of 3kg ‘G Standard’ (good standard) grade canned peaches. The commercial invoice for this shipment showed that the sale was invoiced in EUR at the ex-factory level in Greece, therefore there was no need to make a currency conversion in order to compare the invoice price with the normal value established (which was also priced in EUR). As the sale price is already at the ex-factory level of trade, it is not necessary to make any adjustments for overseas freight, insurance, internal freight costs and port-handling charges to ensure a fair comparison with the normal value.

65. Where relevant, adjustments are also made for other differences which affect price comparability, such as differences in credit terms, physical differences and

export packaging but in this case there is no information which indicates that such an adjustment is required.

Export Price Calculation

66. The export price for this shipment of 3kg canned peaches is EUR[redacted] per kilogram.

4.7 Normal Values

Introduction

67. A normal value is the price of a like good to the exported product which is sold on the foreign manufacturer's domestic market. Information from which a normal value is established should ideally relate to the POR(D), which in the present case covers the period of 1 December 2007 to 30 November 2008. The types of sales that can be used to determine normal values are set out in section 5 of the Act. Normal values have been established below by adjusting the base prices for any differences which affect price comparability, between the canned peaches sold on the Greek domestic market and those which are exported to New Zealand.

68. Where sufficient information has not been provided or is not available, normal values can be established under section 6 of the Act. The provisions of section 6 allow the Ministry to ascertain normal values having regard to all available information.

Base Price (ALMME)

69. As a result of no cooperation from ALMME, the sole Greek exporter of the subject goods to New Zealand during the POR(D), the Ministry has had to derive normal values on the basis of the best information available in terms of section 6 of the Act. In its Application for a Review, HW provided a [redacted] for two 425g cans of peaches purchased in Greece in September 2008. The average purchase price for the two 425g cans equates to EUR2.21 per kilogram.

Adjustments

70. Having established that the base normal value is at the retail level of trade, the next step is to deduct any costs incurred in the domestic sale between the retail level and ex-factory level, and also to make any other relevant adjustments which affect price comparability. This allows a fair comparison, as both the export price and normal value are compared at the ex-factory level by the Ministry.

Value Added Tax (VAT)

71. The base prices used to establish export price are exclusive of the 9 percent VAT as this is applicable to goods sold within Greece but not applicable to goods exported to New Zealand. The base price for the normal value is inclusive of VAT, therefore an adjustment has been made for VAT.

Retail Margin

72. In order to ensure that the normal value is compared with the export sales at a comparable level of trade, an adjustment was made to the [redacted] price to bring it back to an ex-factory price to general [redacted] chains. In its Application for a Review, HW estimated a Greek retail margin of 15 percent which was based on its knowledge of the New Zealand retail market. The Ministry does not have any information regarding retail margins in Greece but considers that HW's estimate is reasonable based on HW's knowledge of the distribution of canned peaches and the likelihood that retail margins would be similar between countries. The Ministry has made an adjustment for a [redacted] retail margin of 15 percent.

Physical Differences

73. The per kilogram price of canned peaches varies between the different can sizes, normally the per kilogram price decreases as the can size increases. As the subject goods exported during the POR(D) were 3kg cans and the normal value information relates to 425g cans, an adjustment is required to the normal value for the per kilogram price difference between the 425g and 3kg cans. In the 2003 review, the Ministry obtained and verified information from a Greek manufacturer which showed that the price per kilogram of a 3kg can was [redacted] percent lower than the 410g can. Normal value information sourced in the 2003 review related to the 410g can size rather than the 425g size, although the Ministry notes that it is common for the weight of cans to vary up to 15 grams.

74. Due to the lack of cooperation from ALLME in this review, the Ministry considers that the best available information to calculate a physical difference allowance is that sourced and verified in the 2003 review, therefore an adjustment of [redacted] percent has been made for the physical difference between the 3kg can exported to New Zealand and the 425g can sold domestically.

Other Adjustments

75. The Ministry cannot ascertain whether there is a difference in quality between the exported canned peaches and the canned peaches purchased in Greece. There is no information which indicates an adjustment is required in this respect. The Ministry does not have any further information concerning other costs between retail level and ex-factory, or any other differences affecting price comparability.

Normal Value Calculation

The normal value was calculated by deducting the adjustments referred to above from the base price. The normal value calculated for the 3kg can is EUR[redacted] per kilogram.

4.8 Comparison of Export Price and Normal Value

76. Using the export price and normal value calculated in sections 4.6 and 4.7, the Ministry has calculated an estimated dumping margin for the 3kg canned peaches exported to New Zealand during the POR(D) by ALMME.

Table 4.2: Dumping Margins (per kg)

Export Price	€
Normal Value	€
Dumping Margin (as % of Export Price)	116%

77. Based on the normal value and export price information sourced during the review the Ministry concludes that subject goods are currently being dumped into New Zealand at an estimated dumping margin of 116 percent.

4.9 Likelihood of Continuation or Recurrence of Dumping

Introduction

78. The Ministry's approach to sunset reviews is discussed in section 2.3 of this report, and the Ministry has applied the general principles set out in that section in considering the likelihood of a continuation or recurrence of dumping, as set out below.

79. Based on the information sourced during the review, the single shipment of the 3kg canned peaches exported by ALMME over the POR(D) was dumped by a margin of 116 percent. According to Article 11.3 of the Anti-Dumping Agreement, the review must also focus on the likelihood of a continuation or recurrence of dumping should the anti-dumping duties be allowed to expire.

Likelihood of Continuation of Dumping

80. Based on current prices and available evidence, the Ministry considers it is likely that the 3kg cans of canned peaches exported by ALMME will continue to be dumped if the current anti-dumping duties were removed, because any movement in export price resulting from the removal of anti-dumping duties is likely to be a downward one.

Likelihood of Recurrence of Dumping

Export Prices

81. In assessing the likelihood of a recurrence of dumping of the other retail size canned peaches exported by ALMME and other Greek exporters, if the current anti-dumping duties were removed, the Ministry has obtained export statistics for Greece for preserved peaches from the Trade Map database, which is operated by the International Trade Centre.[5] Trademap covers trade flows for 224 countries for the last 6 years including 2007. Values are recorded in US dollars and quantity units are measured in metric tonnes. In relation to preserved peaches, the database provides export information for Greece at the six digit level of the international harmonized

[5] www.trademap.org

system, with values at the FOB level. Canned peaches are included within the preserved peaches category, but there are other peach products which are included within the category, such as peach pulp and preserved peaches in bulk containers. This means that the average export prices derived from this information will not relate solely to canned peaches of the type subject to the duties. This information is nevertheless the best available.

82. The latest export information available on the Trademap database is for the 2007 calendar year. Although this period does not completely cover the POR(D) set for this review, the Ministry considers that it is sufficiently close to the POR(D) for the purpose of estimating likely export prices to New Zealand if the anti-dumping duties were removed. The Ministry also notes that the one shipment of Greek peaches imported into New Zealand during the POR(D) with which normal values have been compared, was made in December 2007 (which was the first month of the POR(D)), and not in 2008.

83. Import information relating to preserved peaches from Greece was available at a more detailed level, to eight digit domestic nomenclature, recorded at the CIF level. However the usefulness of the import information was dependent on the classification of the Greek goods at the tariff line level of the particular importing country. The Ministry notes that importing countries differentiated their classification at the tariff line on a number of aspects. Some aspects observed included the weight of the product, whether it is pulp or non-pulp, whether it contains added spirit, whether it is in an air-tight or non-airtight container, whether it contains added sugar and if so the amount of added sugar contained in the product.

84. However, the more detailed 8-digit information at the CIF level was not able to be used for the calculation of likely export prices from Greece to New Zealand. The importing countries statistics did not disclose the actual freight and insurance costs associated with the imported goods. It was not possible for the Ministry to estimate these costs from the database because the goods recorded in the Greek 2007 export statistics were not necessarily the same goods recorded in the importing country's 2007 statistics. This is most likely due to transit time for goods from Greece to their destination. For example, goods leaving Greece in November/December 2006 will be reported in 2006 Greek export statistics but these particular goods may not arrive to their destination until 2007 and will be recorded in the importing country's 2007 importing statistics. In addition, there is the possibility of differences in the recorded value of goods which may be due to exchange rate fluctuations between the date of export and the date of import. Without accurate information the Ministry was prevented from taking the detailed 8 digit CIF import figures and working the figures back to the FOB level in Greece which is a necessary step to calculate a Greek ex-factory export price.

85. The Ministry used the 2007 FOB prices from Greece to its top ten markets for preserved peaches to calculate likely export prices from Greece to New Zealand if the anti-dumping duties were removed. The ten largest markets in 2007 were Germany, United Kingdom, Italy, Russian Federation, Poland, Thailand, France, Austria, Netherlands and Hungary. The Ministry also included Greece's exports to Australia in the likely export price analysis, due to its proximity to New Zealand.

86. The table below shows the export value, quantity and unit price information to each market.

Table 4.3: Greek Exports of Preserved Peaches 2007 (January - December)

Import Market	Value	Quantity	FOB Price
	USD (000)	*(Metric Tonnes)*	*(USD/kg)*
Germany	83,260	74,781	1.11
United Kingdom	35,307	22,531	1.57
Italy	20,420	20,785	0.98
Russian Federation	18,782	17,551	1.07
Poland	16,895	20,480	0.82
Thailand	16,696	18,680	0.89
France	14,709	13,241	1.11
Austria	10,421	9,129	1.14
Netherlands	8,478	8,348	1.02
Hungary	7,252	8,526	0.85
Australia	1,561	1,644	0.95

87. The Ministry does not have any current information sourced in this review regarding costs between ex-factory and FOB from which it could calculate an estimated ex-factory export price. In its Application for a Review, HW made an adjustment of one percent of the FOB price for freight from factory to wharf in its estimate of the Greek ex-factory export price. The Ministry compared this figure to the figure sourced in the 2003 review for freight charges to port and considers HW's estimate is reasonable. On this basis, the Ministry has made an adjustment of one percent of the FOB price for the cost of freight from factory to wharf. The Ministry has not made any further adjustments for costs between ex-factory and FOB for the purpose of this exercise.

88. In order to compare the export price with the normal value, the Ministry converted the export prices from USD to EUR at the rate of USD1:EUR0.7382, which was the average rate of exchange for the 2007 calendar year listed on the Oanda website.

Normal Values

89. The Greek export statistics from which estimated export prices were calculated would likely include all three can sizes of canned peaches, and as the per kilogram value normally decreases as the volume of can increases, the Ministry has calculated an average per kilogram normal value over all three retail cans sizes (425g, 820g and 3kg) to allow a fair comparison of the export price and normal value. The per kilogram Greek ex-factory price for the 425g can size was calculated in section 4.7 above, and the Ministry has used information sourced from the 2003 review to make a physical adjustment to the 425g per kilogram price to calculate the 820g and 3kg per kilogram prices. The average price per kilogram of the three can sizes has been used as the estimated normal value for the purpose of this section (EUR1.58/kg).

90. Using the ex-factory normal value and ex-factory export prices established above, the estimated dumping margins are shown in the table below. The ex-factory export prices are based on export sales from Greece to each of the markets listed in table 4.3 above.

Table 4.4: Greek Export Prices 2007 (January - December)

Import Market	Export Price	Normal Value	Dumping Margin
	(EUR/kg)	*(EUR/kg)*	*(as % of EP)*
Germany	0.81	1.58	96%
United Kingdom	1.13	1.58	40%
Italy	0.71	1.58	123%
Russian Federation	0.77	1.58	104%
Poland	0.60	1.58	165%
Thailand	0.65	1.58	145%
France	0.80	1.58	97%
Austria	0.83	1.58	92%
Netherlands	0.73	1.58	115%
Hungary	0.62	1.58	157%
Australia	0.69	1.58	130%
Average	0.78	1.58	102%
World	0.77	1.58	106%

91. Using the export statistics for Greek preserved peaches sourced from the Trademap database, shows that the subject goods are likely being dumped into all of the markets listed in table 4.4, with estimated dumping margins ranging from 40 to 165 percent. When based on the average export price of preserved peaches to all eleven destinations listed, the dumping margin is 102 percent, and when based on the average export price to the world, the dumping margin is 106 percent.

4.10 Conclusions Relating to Dumping

92. The Ministry concludes that the 3kg cans of canned peaches exported by ALMME during the POR(D) were dumped by a margin of 116 percent. With respect to the continuation of dumping of the 3kg cans, the Ministry considers that the only movement in prices if the anti-dumping duties were removed, ceteris paribus, is likely to be a downward one. On this basis, the Ministry concludes that if the anti-dumping duty is removed, it is likely that the 3kg canned peaches from ALMME would continue to be dumped.

93. Based on the latest available export statistics for Greek preserved peaches to a number of different markets which do not have anti-dumping duties in place, the Ministry considers there is sufficient positive evidence to conclude that there is likely to be a recurrence of dumping by other Greek exporters and in respect of other sizes of retail size canned peaches if the current anti-dumping duties were removed.

94. The Ministry is of the view that in reaching its conclusions, it has had regard to all available information in accordance with section 6 of the Act and Article 6.8 of the Anti-dumping Agreement and has come to its conclusions on the basis of its analysis of that information as set out above.

5. Material Injury

5.1 Findings of the Original Investigation

95. The original investigation into dumping of canned peaches from Greece, finalised in March 1998, found that:

- The import volume of the subject goods from Greece had increased in both absolute terms and in relation to production and consumption in New Zealand.
- There was evidence of price undercutting and price depression which could be attributed to dumped imports from Greece. There was no evidence of price suppression.
- Consequent primarily upon the price effects, there was evidence of an adverse economic impact reflected in a decline in output, sales and profits; a decline in market share; likely declines in productivity and return on investments; and a build up of inventory.
- Factors other than the dumped Greek imports had contributed to the injury to the domestic industry.

96. The Ministry consequently found that dumping had caused material injury to the domestic industry.

5.2 Findings of the 2003 Review

97. The 2003 review concluded that in relation to the likelihood of a recurrence of material injury if the anti-dumping duties were removed:

- It was likely there would be a significant increase in import volumes.
- It was likely that there would be price undercutting, price depression and price suppression due to dumped imports from Greece.
- Consequent upon the likely volume and price effects, it was likely there would be an adverse effect on sales volume and revenue, a reduction in output, and a negative impact on the domestic industry’s market share, profits, productivity, utilisation of production capacity, cash flow, employment, wages and growth.
- There was not likely to be an adverse economic impact on factors affecting domestic prices or inventories.
- Factors other than dumped imports were likely to continue to cause injury to the domestic industry, and could therefore be clearly distinguished from the injurious effects likely to result from dumped imports.

98. On the basis of these findings, the Ministry concluded that there was a continued need for the anti-dumping duties to prevent a recurrence of injurious dumping.

5.3 Injury in a Review

99. The basis for considering material injury is set out in section 8(1) of the Act. The Ministry interprets section 8 to mean that injury is to be considered in the context of the impact on the industry arising from the volume of the dumped goods and their effect on prices. Section 8 also sets out a number of factors and indices which the Chief Executive shall have regard to, although noting that this is without limitation as to the matters the Chief Executive may consider. These factors and indices are considered under the relevant headings below.

100. The demonstration of a causal relationship between the dumped imports and the injury, or threat thereof, must be based on an examination of all relevant evidence and any known factors other than the dumped imports, which are injuring, or threatening to injure, the domestic industry. Any injury caused or threatened by factors other than dumping must not be attributed to the dumped imports.

101. In the present review the Ministry has evaluated the data submitted by the New Zealand industry for the period 1 May 2005 to 30 April 2009 (HW's financial years 2005/6, 2006/7, 2007/8 and 2008/09), which is the period of review for injury (POR(I)). The Ministry notes that HW's 2008/09 financial year was not complete at the time of the verification visit, therefore the 11 months of actual information was extrapolated to 12 months for the purpose of analysing trends in the data supplied.

102. However, HW is not claiming that it is currently being injured by dumped imports from Greece. This review is based on the likelihood of material injury recurring if the anti-dumping duties were removed. Therefore, the Ministry has also evaluated forecast information provided by the HW concerning the impact on its domestic operation of the removal of the anti-dumping duties.

Likelihood of Continuation of Recurrence of Injury

103. The Ministry's approach to sunset reviews is recorded in section 2.2 above. In considering the likelihood of a continuation or recurrence of injury, the Ministry has applied the general principles set out in that section of the report.

104. The Ministry carries out reviews on the basis of the above provisions in the Act and the Agreement. The Ministry interprets these provisions to mean that the likely continuation or recurrence of injury is to be considered in the context of the likely impact on the industry, arising from the likely volume of the dumped goods and their likely effect on prices.

105. In considering injury in a review, the Ministry examines whether the removal of the anti-dumping duties would be likely to lead to the continuation or recurrence of injury. If it is concluded that dumping and injury would likely continue or recur, the Ministry will undertake a reassessment of the rate or amount of the duty under s.14(6) of the Act in order to establish whether the existing rate of duty remains sufficient to remove or prevent injury, or whether a different rate of duty is necessary.

The Injury Information Submitted by HW

106. HW provided the Ministry with details of its financial performance for its sales of canned peaches on the New Zealand market over the POR(I). HW also provided its forecast 2009/10 figures if the anti-dumping duties remain in place but as noted in paragraph 109 below, HW considers that if the anti-dumping duties were removed, it is most likely to impact on its 2010/11 financial performance. Therefore HW provided its forecast financial performance in the 2010/11 financial year, if the anti-dumping duties remain in place and also if the anti-dumping duties were removed in order for the Ministry to assess the likely impact of the removal of the duties.

107. The Ministry is required to consider the injurious effects on the New Zealand industry producing like goods to the imported subject goods. Information relating to HW's total canned peach operation (domestic production plus imported sales) has, however, been included in this report and analysed in the injury assessment. Consideration of HW's financial performance relating to its total sales of canned peaches allows the Ministry to consider the injurious effects of the dumped goods because:

- the volume of domestic production depends on the size of the peach crop from HW's contracted growers and the size of the crop fluctuates significantly due to disease and weather events; and

- HW imports canned peaches to supplement its domestic production and these are priced the same and incur many of the same general, administration, marketing and selling costs as domestic production.

108. Furthermore, in a review situation, because the anti-dumping duties are currently in place, it would not be expected that the industry is suffering injury due to the dumped goods. The focus of the injury analysis is therefore on the likelihood of injury recurring if the anti-dumping duties were removed.

Injury Scenario Submitted by HW

HW's Injury Scenario

109. After the initiation of the review, HW submitted a scenario of what it considered would likely occur if the anti-dumping duties were removed. HW considered that the full effect of the removal of the anti-dumping duties would likely occur in its 2010/11 financial year due to the fact that the expected release date of the Final Report is July 2009 and if the anti-dumping duties were removed at that time, it will take a certain amount of time for the main players in the market to order and introduce canned peaches from Greece into the New Zealand market. Furthermore, HW has just completed its production season and [redacted] and it is likely that the major players in the canned peach market will have already completed their supply contracts for the 2009/10 year. On this basis the Ministry has examined forecast data provided by HW, on the impact of the removal of the duties, for its 2010/11 financial year.

110. HW's strategy, if the anti-dumping duties were removed, is to [redacted] of Greek canned peaches in order to [redacted]. Therefore, the company's forecast sales volume for 2010/11, if the anti-dumping duties remain in place or were to be removed will not change; the likely injury suffered by HW will be reflected in HW's loss of sales revenue and EBIT, if the anti-dumping duties were removed.

111. HW's forecast sales revenue, if the anti-dumping duties were removed, is based on the likely imported price of Greek peaches. HW estimated the likely FOB price of canned peaches from Greece, if the anti-dumping duties were removed, based on the average FOB prices of preserved peaches exported from Greece to New Zealand from November 2007 to January 2008. This information was obtained from Statistics New Zealand in the form of INFOS data. HW then added costs from FOB to the ex-wharf level based on its own costs of importing. These costs included freight, insurance, devanning, customs clearance, port services charges, customs duty and countervailing duty. The Ministry notes that an amount for countervailing duty is necessary as the countervailing duties are currently in place and any undercutting due to subsidisation can not be attributed to dumping. HW estimated the ex-wharf price of canned peaches from Greece was $1.81 per kilogram.

112. HW stated that it would need to sell both its Wattie's and Oak brands [redacted] to ensure [redacted]. HW noted that [redacted].

113. HW considered that the [redacted] to compete with the dumped imports would cause a significant reduction in its sales revenue and EBIT in the 2010/11 financial year. HW submitted that it would suffer price undercutting, price depression and price suppression which would impact on other injury factors in its 2010/11 financial year.

114. HW stated that the intense competition from the dumped canned peaches from Greece would cause the [redacted] and this would have flow through effects, resulting in the [redacted]. Furthermore, this would have spill-over effects on the [redacted]. While the Ministry notes HW's comments on the potential impact of the removal of the anti-dumping duties [redacted], the Ministry can only evaluate the likely impact on the industry's domestic production and sale of like goods to the subject goods. The remainder of this section of the Report analyses the extent to which HW's sales of like goods will be affected by the removal of the anti-dumping duties on canned peaches from Greece.

Ministry Comments on HW's Injury Scenario

115. In previous reviews, HW's forecast injury scenarios have been based on its Oak brand needing to [redacted] the imported price of the imports, while the Wattie's brand would be [redacted] to ensure [redacted] between the

brands remains the same. HW stated that there have been times when there has been a large price difference between the two brands which resulted in a loss of sales volume of the Wattie's brand.

116. In the 2007 review of canned peaches from South Africa, HW provided evidence which indicated that [redacted]. On this basis, the Ministry is not convinced that the [redacted] from Progressive's Account would likely lead to a [redacted] of the Wattie's brand selling price to [redacted] between the Wattie's brand price and the price of the imported Greek canned peaches in Progressive supermarkets. Furthermore, although the Wattie's brand is [redacted] in Progressive supermarkets, a [redacted] of the Wattie's brand is sold to other customers, such as Foodstuffs, [redacted].

117. The Ministry considers that further evidence would be needed to support HW's submission that it would be forced to [redacted] the Wattie's brand selling price to [redacted] as the Greek imported price, if the anti-dumping duties were removed. The Ministry has taken a conservative approach in this respect and based HW's forecast scenario on the Oak brand being [redacted] the imported Greek selling price, and the Wattie's brand being [redacted] between the two brands.

5.4 Import Volumes

118. Section 8(2)(a) of the Act provides that the Ministry shall have regard to the extent to which there has been or is likely to be a significant increase in the volume of imports of dumped goods either in absolute terms or in relation to production or consumption in New Zealand.

119. As noted in section 3.2 above, the tariff item covering the subject goods also includes peach products falling outside of the definition of the subject goods. The volume of imports of the subject goods from Greece and other countries has been calculated on the basis of the goods description in the NZCS data for each importation.

120. The following table sets out the volume of imports of dumped subject goods from May 2005 to October 2008 together with New Zealand production and consumption volumes.

Table 5.1: Import Volumes (kg)
(Years ended April)

	2006	2007	2008	Oct-08 (6 Months)
Dumped imports from Greece*	114,882	13,403	-	-
Other Imports*	3,891,681	3,793,870	3,993,687	2,423,472
Total HW Sales **	[redacted]	[redacted]	[redacted]	[redacted]

NZ Market	[redacted]	[redacted]	[redacted]	[redacted]
Change on Previous Year:				
Dumped imports from Greece*		- 101,479	- 13,403	n/a
Other Imports*		- 97,811	199,817	n/a
Total HW Sales **		[redacted]	[redacted]	n/a
NZ Market		[redacted]	[redacted]	n/a
Percentage Change:				
Dumped imports from Greece*		-88%	-100%	n/a
Other Imports*		-3%	5%	n/a
Total HW Sales **		[redacted]	[redacted]	n/a
NZ Market		[redacted]	[redacted]	n/a
Dumped Imports from Greece as % of:				
Total HW Sales **	[redacted]	[redacted]	[redacted]	[redacted]
NZ Market	[redacted]	[redacted]	[redacted]	[redacted]

*excludes HW's imports.
**includes HW's imports.
n/a = Not Applicable.

121. The above table shows that minimal volumes of canned peaches from Greece have been imported into New Zealand and these volumes have been negligible since 2006. With anti-dumping duties currently in place on Greek imports, this would be expected.

Likely Import Volumes Should Duties be Removed

122. The likelihood of a recurrence of significant volumes of dumped imports sufficient to cause material injury is related to factors such as:

- the volume of imports before and after the imposition of anti-dumping duties;
- the price advantage (in the absence of duties) which such imports may hold;
- the capacity of the Greek canned peach industry to substantially increase its exports to New Zealand;
- the ease of entry into the New Zealand market;
- the ability of importers to handle a significant increase in imports;
- the ease of distribution of the goods in New Zealand; and
- exchange rates.

Import Volumes before and after Imposition of Duties

123. Prior to the imposition of the anti-dumping duties in 1998, there were significant, but fluctuating import volumes of canned peaches from Greece. The import volumes from Greece reduced to negligible volumes following the imposition of the anti-dumping duties which indicates that the anti-dumping duties had an effect at the time

of their original imposition, suggesting (given the factors outlined in the remainder of this section) that the removal of duties would likely lead to an increase in imports from Greece.

Price Advantage held by the Imported Products

124. In its response to the Ministry's Importers Questionnaire, [redacted] stated that prices would decrease if the anti-dumping duties were removed. [redacted] considered that retail prices would decrease as cost savings from procuring peaches from Greece are passed onto consumers by retailers as they use canned peaches to drive foot traffic.

125. The price undercutting analysis in section 5.5 below indicates that HW's 3kg canned peaches selling prices are currently being undercut by 3kg Greek canned peaches. The likely export price of canned peaches from other Greek exporters and for other retail sized cans, if the duties were removed, also indicates likely undercutting of HW's selling prices, and therefore there is likely to be a continuation or recurrence of significant price undercutting. The Ministry has also concluded in section 5.5 that there is likely to be a recurrence of significant price depression and suppression, if the anti-dumping duties were removed.

126. To assess whether imported canned peaches from Greece hold a price advantage over canned peaches from other sources, the Ministry has used NZCS data to calculate the CIF prices per kilogram of canned peaches imported from the three largest sources during the POR(D); Australia $2.81, China $1.40 and South Africa $1.59. Based on information relating to Greek export prices of preserved peaches to other markets discussed in section 5.5 of this report, the Ministry estimated a likely CIF price of canned peaches from Greece of $1.84 per kilogram if the anti-dumping duties were removed, which was based on the average Greek export price to the markets assessed by the Ministry. The Ministry also notes that the likely CIF value of canned peaches from Greece is significantly lower than the CIF value of canned peaches from Australia. Although the likely CIF value of canned peaches from Greece, if the anti-dumping duties were removed is higher than the CIF values of canned peaches from China and South Africa, the Ministry notes that anti-dumping duties are currently in place on canned peaches from these sources. A significant amount of anti-dumping duty was paid on imports from these countries during the POR(D) according to the NZCS data, which would be reflected in a higher ex-wharf price for these imports .

127. The Ministry notes that the difference in the average values of the imported peaches from these countries could be influenced by a number of factors, such as the grade and size of the cans.

Conclusion

128. The comparison of the likely CIF value of canned peaches from Greece with the CIF values of canned peaches from Australia, China and South Africa indicates that if the anti-dumping duties were removed from Greek imports, there would be an incentive for importers source canned peaches from Greece. Furthermore, this

incentive is reinforced by the extent of the current and projected price undercutting by Greek imports as outlined in section 5.5 below.

Capacity of the Greek Industry

129. In its application for a review, HW provided the ‘January 2006 World Horticultural Trade and US Export Opportunities Report’ which contained information on the canned peach industry in Greece. The report stated that the Greek canned peach production from 2002 to 2006 ranged from 61,700 to 407,000 tonnes. Opening stocks ranged from 23,700 to 121,300 tonnes during the period 2001 to 2006 and the average annual export volume of canned peaches over the period was 285,800 tonnes.

130. The Ministry sourced information relating to the 2008 peach harvest in Greece from a ‘Foodnews’ article titled ‘Spanish and Greek peach harvest complete’.[6] ‘Foodnews’ sourced its information from the EKE Greek Canners Association, which stated that an estimated 250,000 tonnes of peaches was sent to the Greek canning industry, producing an estimated 15 million basic cartons of canned peaches. This is an increase from the 13.4 to13.5 million cartons in the previous year.

131. HW commented that there are no special requirements for canned peaches exported to New Zealand and any surplus inventories could be exported to New Zealand. HW stated that the entire New Zealand retail market is less than [redacted] tonnes, therefore, there is excess capacity for Greek peaches to capture the entire New Zealand market at dumped prices.

Conclusion

132. On the basis of the totality of the information gathered during the investigation on the export capacity of the Greek canned peach industry, the Ministry concludes that Greek producers have sufficient freely disposable capacity to substantially increase exports of canned peaches to New Zealand.

The ease of entry into the New Zealand market

133. HW stated that the New Zealand wholesale market for the supply of canned peaches to distributors and retailers is highly competitive. HW claimed that there are no long-term contracts in place for customers and house brand supply contracts are up for constant tender. HW has no exclusive customers and the market is always open to new sources of supply. HW also stated that the relationship between trading houses and retailers already exists with traders acting as the broker on some products already sold in supermarkets.

134. HW stated that retailers are sourcing direct from suppliers. HW submitted that retailers have the warehousing and distribution network to be able to manage the integration of their peach volumes from Greece, which HW considers is effectively the same logistically as the private label products that are already sourced offshore.

[6] http://royalfoodimport.blogspot.com/2008/09/spanish-and-greek-peach-harvest.html.

135. The Ministry has concluded in previous reviews concerning canned peaches that barriers to entry to the New Zealand market are extremely low, for reasons such as the ability of house brand customers to terminate contracts at short notice, the lack of contractual agreements between supermarkets and suppliers, the ability of house brand customers to switch suppliers with ease and the ability of brokers to source the subject goods from anywhere in the world to take advantage of market opportunities. HW stated in its response to the Ministry's further information request for the current review that the only requirement for a new importer to enter the New Zealand market is to have or create a relationship with a retailer.

Conclusion

136. The Ministry considers that there continue to be few barriers to entry for an importer of canned peaches in the New Zealand market.

The Ability of Importers to Handle a Significant Increase in Imports and the Ease with Which Goods can be Distributed.

137. HW claims that at dumped injurious prices it would be extremely attractive to all private label brands to source their product from Greece, either through importers or by sourcing directly from the exporters themselves. HW stated that the relationship between trading houses and retailers already exists with traders acting as the broker on some products already sold in supermarkets. HW stated that retailers are increasingly sourcing direct from suppliers. Retailers have their own warehousing and distribution networks to be able to manage the integration of their peach volumes from Greece and in fact some importers already source their private label products from offshore.

138. In response to the Importers Questionnaire, [redacted] stated that if the anti-dumping duties were removed, [redacted].

139. In the 2007 review of canned peaches from South Africa, the Ministry concluded that importers and retailers have the ability to import and distribute a significant increase in the volume of canned peaches.

Conclusion

140. The Ministry considers that there have been few changes in the New Zealand market regarding the ability of importers to handle a significant increase in imports of canned peaches since the 2007 review of canned peaches from South Africa was completed. This was also noted in the 2007 review of canned peaches from South Africa. The Ministry concludes that, on the totality of the information gathered, importers and retailers have the existing distribution systems in place to be able to cater for any significant increase in imports of canned peaches from Greece entering the New Zealand market, if the anti-dumping duties were removed.

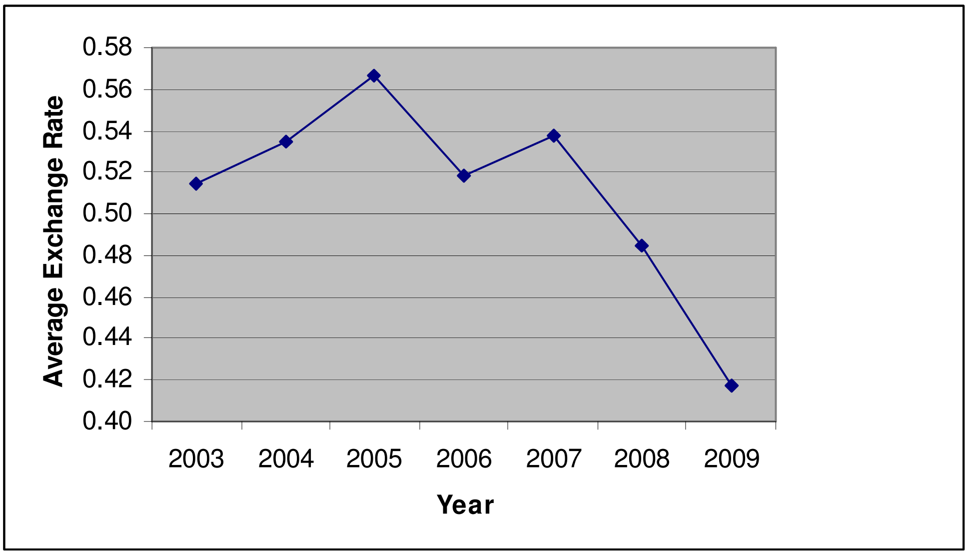
Exchange Rates

141. A further consideration in respect of the assessment of the likelihood of an increase in import volumes of canned peaches from Greece, in the absence of anti-dumping duties, is the appreciation/depreciation of the NZD with respect to the EUR. The Ministry notes that the single shipment of canned peaches from Greece during the POR(D) was invoiced in EUR, and NZCS data shows that the majority of shipments of canned peaches from Greece since 2003 were valued in EUR.

142. The Ministry has analysed the change in the NZD:EUR exchange rate from 2003 (the time of the last review) to April 2009, and the graph below shows the change in value of the NZD with respect to the EUR over this period.

Movements in the NZD:EUR Exchange Rate

January 2003 – April 2009



The information shows that there has been a significant depreciation of the NZD with respect to the EUR since 2003 which suggests less favourable conditions for New Zealand importers when sourcing goods from abroad and paying in EUR than was the case in 2003. While the Ministry acknowledges that it is impossible to predict future exchange rate trends with any certainty, it does consider that the extent to which any appreciation or depreciation of the NZD against the EUR would provide New Zealand importers with an incentive to source from Greece would also depend on whether the Greek exporters have increased or decreased their prices to New Zealand customers, in EUR, over the same period. *Conclusion*

143. There has been a significant depreciation of the NZD with respect to the EUR since 2003, which suggests less favourable conditions for New Zealand importers when purchasing canned peaches in EUR than was the case in 2003. Despite the significant depreciation of the NZD to EUR, the Ministry's likely price undercutting analysis in section 5.5 indicates that there would still be significant undercutting if the anti-dumping duties were removed.

Conclusion on Import Volumes

144. The Ministry concludes that since the 2003 review, imports of canned peaches from Greece have continued to have a negligible presence in the New Zealand market, both in absolute terms, and relative to production and consumption in New Zealand. This suggests that the anti-dumping duties have significantly reduced the volume of imports.

145. In respect of the likely import volumes from Greece, if the anti-dumping duties were removed, the Ministry concludes that:

- A comparison of the likely CIF value of canned peaches from Greece with the current CIF values of canned peaches from the main exporting countries to New Zealand indicates that there is an incentive for importers to source canned peaches from Greece. Furthermore, the extent of the current and projected price undercutting provides a clear incentive to import canned peaches from Greece.

- There are no significant barriers to entry into the New Zealand canned peaches market.

- Existing import and distribution systems could cope with a significant increase in import volumes.

- Greek producers continue to have the capacity to significantly increase exports of canned peaches to New Zealand.

- The significant depreciation of the NZD with respect to the EUR since the 2003 review provides less of an incentive for importers to import from Greece, than was the case in 2003.

146. The Ministry notes that HW's strategy would be to compete [redacted] in order to [redacted] in the 2010/11 financial year if the anti-dumping duties were removed. Although HW forecast significant price and economic effects in its 2010/11 financial year if the anti-dumping duties were removed, HW considered that its strategy to compete [redacted] would likely prevent a significant increase in imports from Greece in the 2010/11 financial year. HW submitted that it would [redacted], and eventually there would be a significant increase in import volumes from Greece which would likely begin in 2011/12 financial year.

147. The Ministry concludes that on the totality of the information sourced during the review, it is likely that there would eventually be a significant increase in import volumes from Greece, if the anti-dumping duties were removed.

5.5 Price Effects

Price Undercutting

148. Section 8(2)(b) of the Act provides that the Chief Executive shall have regard to the extent to which the prices of the dumped or subsidised goods represent significant price undercutting in relation to prices in New Zealand (at the relevant level of trade) for like goods of New Zealand producers.

149. In considering price undercutting, the Ministry will normally seek to compare prices at the point of first competition in New Zealand, i.e., the first point of sale in the New Zealand market. This will normally be the ex-factory price for goods produced in New Zealand and the importer's ex-wharf or ex-store price for imports. This approach ensures that differences in distribution costs and margins do not confuse the impact of dumping. The comparable selling prices therefore include relevant selling and administration costs, but cost elements relating to the distribution of goods are excluded.

150. The purpose of the price undercutting comparison is to establish whether or not there is price undercutting attributable to dumping. It should be noted that the determination that price undercutting exists is not by itself a determination of the extent of injury, i.e., the margin of price undercutting is not a measure of the extent of economic impact on the industry. This impact is to be measured in terms of the factors and indices set out in s.8(2)(d) of the Act.

151. In the original investigation, the Ministry concluded that canned peaches from Greece were undercutting the New Zealand industry's selling prices. In the 2003 review, there was no information from which the Ministry could assess whether actual price undercutting was occurring. The Ministry concluded in the 2003 review that in the absence of the anti-dumping duties, it was likely that dumped canned peaches from Greece would undercut the New Zealand industry's selling prices.

Level of Trade

152. HW competes with overseas suppliers directly and with New Zealand importers (who may be supermarket chains or independent importers), to supply canned peaches in the New Zealand market destined for either the retail sector or the food service sector. The Ministry considers that the level of trade at which HW's ex-factory prices are compared with its competitors' prices in the New Zealand market will depend on the type of purchasing and selling arrangement its competitors have and to what sector the imported goods are being sold into.

153. In the original dumping investigation, the Ministry determined that the level of trade was HW's ex-factory selling price against the importers' ex-store selling price. In the 2003 review, the Ministry considered that the appropriate level of trade was HW's ex-factory price versus both the importers' ex-wharf and ex-store prices. The Ministry considered that both levels of trade for the importer should be assessed as canned peaches from Greece could be imported by supermarkets directly (ex-wharf level) or by distributors which then on sell the goods (ex-store level).

154. In its Application for a Review, HW considered that the relevant level of trade for the undercutting exercise is at the ex-wharf level because supermarkets would likely import directly, if the anti-dumping duties were removed.

155. As canned peaches from Greece could be imported by supermarkets or distributors, the Ministry considers that the undercutting analysis should be assessed by comparing both the importers' ex-wharf and ex-store selling prices against HW's ex-factory selling prices (net of trade spend).

Relevant Prices

156. In order to assess current undercutting, the Ministry has used information relating to the single shipment of canned peaches imported from Greece during the POR(D) to calculate an importers' ex-wharf and ex-store prices.

157. The Ministry notes that there is no evidence that the Greek exporter has increased the export price of the canned peaches up to the reference price to avoid the payment of anti-dumping duty. A significant amount of anti-dumping duty and countervailing duty was paid on this shipment, which suggests that there was no intention from the exporter to price up to the reference price. The Ministry considers that the export price for this shipment of canned peaches provides an accurate indication of current export prices from Greece, and also likely export prices from Greece if the anti-dumping duties were removed.

Importers Ex-Wharf Price

158. In its response to the Importers' Questionnaire, [redacted] provided the Ministry with information relating to its single importation of 3kg canned peaches during the POR(D). This shipment was invoiced at the manufacturer's ex-factory level, and the Ministry has added the actual costs incurred by the importer from ex-factory in Greece to the ex-wharf level in New Zealand. These costs include international freight, insurance, devanning, customs clearance and port services charges, anti-dumping duty and countervailing duty. The shipment entered New Zealand under a tariff concession, and therefore no customs duty was paid. As tariff concessions on canned peaches are only available for a limited period of time, the Ministry considers that customs duty would normally be incurred on imports of canned peaches from Greece, and therefore the Ministry has included customs duty of 5 percent in the calculation of the ex-wharf price.

159. From this information the Ministry established an ex-wharf price of $[redacted] per kilogram for the 3kg can. The Ministry has compared this ex-wharf price to HW's ex-factory price in table 5.2 below.

Importers Ex-Store Price

160. To calculate the ex-store price, the Ministry added to the estimated ex-wharf price calculated in paragraph 159, the costs normally incurred by importers from the wharf to the importers' ex-store level. In its response to the Importers Questionnaire, [redacted] provided its freight costs from the wharf to its warehouse, which equated to $[redacted] per kilogram. The Ministry notes that this amount is similar to the cost of

freight from wharf to warehouse which was sourced from an importer in the 2003 review. The Ministry considers that this amount for freight from wharf to warehouse is reasonable and has been included in the calculation of the ex-store price.

161. The Ministry has no current information on other costs between the wharf and ex-store level, and has therefore used information sourced during the 2003 review to fill the information gap. The other adjustments made in the 2003 review, and which have been used to calculate the ex-store price in this review, include a reasonable importers' margin of [redacted] percent and storage costs of $[redacted] per kilogram.

162. From this information the Ministry established an ex-store price of $[redacted] per kilogram for the 3kg can. The Ministry has compared this ex-store price to HW's ex-factory price in table 5.3 below.

HW's Ex-Factory Price

163. As discussed in paragraph 64, the imported peaches were of a good standard quality, which is comparable with the [redacted] Wattie's brand produced by HW. The Ministry has separately calculated the average Net Sales Value (NSV) for the Oak and Wattie's 3kg cans and to ensure a fair comparison of prices, the Ministry has calculated HW's NSV over the same period as the POR(D), which is the period in which the single shipment of canned peaches from Greece was imported into New Zealand.

164. The NSV represents HW's list selling price net of all trade spend. Trade spend represents the various forms of promotional expenditure undertaken by HW as part of selling its products, [redacted]. The Ministry considers that HW's NSV, which is exclusive of trade spend, remains an appropriate price on which to calculate the ex-factory price. As HW [redacted] basis, the Ministry has also made adjustments to the NSV for [redacted].

165. From this information the Ministry established a per kilogram ex-factory price for the Wattie's and Oak 3kg cans of $[redacted] and $[redacted] respectively.

Price Undercutting Comparison

166. The tables below show the level of undercutting when HW's ex-factory prices for the Wattie's and Oak 3kg cans are compared to the estimated importers' ex-wharf and ex-store selling prices.

Table 5.2: Price Undercutting – Ex-Wharf Level

	HW's Ex-Factory Price	Importers' Ex-Wharf Price	% Price Undercutting
Wattie's 3kg	[redacted]	[redacted]	[redacted]
Oak 3kg	[redacted]	[redacted]	[redacted]

Table 5.3: Price Undercutting – Ex-Store Level

	HW's	Importers'	% Price
	Ex-Factory Price	**Ex-Store Price**	**Undercutting**
Wattie's 3kg	[redacted]	[redacted]	[redacted]
Oak 3kg	[redacted]	[redacted]	[redacted]

167. Table 5.2 shows that the ex-wharf selling price of the 3kg canned peaches from Greece is undercutting both the Wattie's and Oak ex-factory prices by [redacted] percent and [redacted] percent respectively.

168. Table 5.3 shows that the ex-store selling price of the 3kg canned peaches from Greece is undercutting the 3kg Wattie's ex-factory selling price by [redacted] percent, but is not undercutting the 3kg Oak ex-factory selling price.

169. The Ministry considers that caution is required in drawing conclusions from this price comparison exercise. Only one particular can size and type has been compared as it was the only can size and type imported from Greece during the POR(D). Due regard should also be given to the fact that Wattie's is [redacted] and as noted in paragraph 163 above is more comparable with the imported product than is the Oak brand. Market research has found [redacted].

Conclusion on Current Undercutting

170. Based on the price undercutting analysis above, the Ministry concludes that the Wattie's 3kg ex-factory price is currently being undercut at both the ex-wharf and ex-store levels of trade. The Ministry concludes that the 3kg Oak ex-factory price is currently being undercut at the ex-wharf level of trade, but is not being undercut at the ex-store level of trade.

Price Undercutting if the Anti-Dumping Duties were Removed

171. The Ministry has assessed the likelihood of undercutting if the anti-dumping duties were removed with two separate approaches. The first approach uses information relating to the single shipment during the POR(D) to assess whether there would likely be a continuation of undercutting if the anti-dumping duties were removed. The second approach uses information relating to export prices of preserved peaches from Greece to other markets to assess whether there would likely be undercutting if the anti-dumping duties were removed.

172. As discussed in paragraph 155, the relevant levels of trade for the purpose of undercutting are the ex-wharf and ex-store levels of trade for the importer, and the ex-factory level of trade for HW.

Likely Undercutting Based on Export Prices to New Zealand

173. The Ministry considers that if selling prices of canned peaches from Greece are currently undercutting HW's selling prices, the removal of the anti-dumping duties

would likely result in increased margins of undercutting. The Ministry has used the information concerning the single shipment of 3kg canned peaches from Greece to New Zealand during the POR(D) to assess whether undercutting is likely to continue if the anti-dumping duties were removed. As noted in paragraph 157, the significant amount of anti-dumping duty on this shipment indicates that the export price was not likely to have been influenced by the reference prices. The Ministry therefore considers the export price of this shipment is indicative of likely export prices from Greece if the anti-dumping duties were removed.

174. For the purpose of this exercise, the Ministry has removed the anti-dumping duty paid from the ex-wharf and ex-store selling prices calculated in paragraphs 158 to 162, to establish the importers' selling prices if the anti-dumping duties had not been in place.

175. The importers' selling prices have been compared with the average ex-factory prices of the Wattie's and Oak brand 3kg cans over the POR(D), as described in paragraphs 163, 164 and 165.

176. The tables below show the level of undercutting when HW's ex-factory prices for the Wattie's and Oak 3kg cans are compared to the estimated importers' ex-wharf and ex-store selling prices if the anti-dumping duties were removed.

Table 5.4: Likely Price Undercutting – Ex-Wharf Level

	HW's	**Importers'**	**% Price**
	Ex-Factory Price	**Ex-Wharf Price**	**Undercutting**
Wattie's 3kg	[redacted]	[redacted]	[redacted]
Oak 3kg	[redacted]	[redacted]	[redacted]

Table 5.5: Likely Price Undercutting – Ex-Store Level

	HW's	**Importers'**	**% Price**
	Ex-Factory Price	**Ex-Store Price**	**Undercutting**
Wattie's 3kg	[redacted]	[redacted]	[redacted]
Oak 3kg	[redacted]	[redacted]	[redacted]

177. Table 5.4 shows that the likely ex-wharf selling price of the 3kg canned peaches from Greece is undercutting both the Wattie's and Oak ex-factory prices by [redacted] percent and [redacted] percent respectively.

178. Table 5.5 shows that the likely ex-store selling price of the 3kg canned peaches from Greece is undercutting both the Wattie's and Oak ex-factory prices by [redacted] percent and [redacted] percent respectively.

179. On the basis of the information relating to the single shipment during the POR(D), the Ministry considers that it is likely that there would likely be a continuation of undercutting of HW's ex-factory prices if the antidumping duties were removed.

Likely Undercutting Based on Greek Export Prices to Other Markets

180. The Ministry considers that Greek export prices to countries that don't have anti-dumping duties in place is a reasonable basis to estimate the likely export price to New Zealand in the absence of the anti-dumping duties. The Ministry used the 2007 FOB prices from Greece to its top ten markets for preserved peaches to calculate likely export prices from Greece to New Zealand if the anti-dumping duties were removed. The ten largest markets in 2007 were Germany, United Kingdom, Italy, Russian Federation, Poland, Thailand, France, Austria, Netherlands and Hungary. The Ministry also included Greece's exports to Australia in its analysis, due to its proximity to New Zealand. These countries were also used to calculate estimated export prices to New Zealand in the absence of the anti-dumping duties in section 4.9 above.

181. As noted in paragraph 81, canned peaches are included within the preserved peaches category along with other peach products, such as peach pulp and preserved peaches in bulk containers. This means that the average export prices derived from this information will not relate solely to canned peaches of the type subject to the duties, however, this information is nevertheless the best available and is considered indicative of the likely export prices to New Zealand, in the absence of duties.

182. The Trademap database recorded the 2007 FOB prices of preserved peaches from Greece in USD. The Ministry considers that the significant depreciation of the NZD with respect to the EUR since 2007 is an important consideration when assessing the likely undercutting if the anti-dumping duties were removed. Therefore, the Ministry has converted the 2007 FOB prices in USD to EUR using the average exchange rate for the 2007 calendar year, which was the period relating to the export prices. As the likely undercutting analysis is a forward looking exercise, the Ministry converted the FOB prices from EUR to NZD using the average exchange rate for the year ended March 2009 of 1EUR:NZD2.21.[7]

183. To derive estimated ex-wharf prices, the Ministry added to the FOB prices, the freight and insurance amounts incurred on the shipment to New Zealand during the POR(D) to derive the CIF price. The Ministry then added the additional costs incurred between CIF price and ex-wharf discussed in paragraph 158, with the exception of anti-dumping duty. Imports of canned peaches from Greece are subject to countervailing duty, which is capped at EUR [redacted] per kilogram. The Ministry has applied the countervailing duty in the calculation of the ex-wharf price. The estimated ex-wharf prices are shown in table 5.6 below.

184. To derive estimated importers' ex-store prices, the Ministry added the costs and margins identified in paragraph 160 and 161, to the ex-wharf prices established above. The estimated importers' ex-store prices are shown in table 5.7 below.

---

[7] www.oanda.com

HW's Ex-Factory Selling Price

185. As mentioned above, because the likely price undercutting is a forward looking exercise, the Ministry has used HW's selling prices for its 2008/09 financial year to date (up to the end of March 2009) to calculate its ex-factory selling prices. [redacted] sales figures have been excluded in the calculation because HW has not renewed this contract. As the export prices contained in the Trademap data are likely to include all can sizes and grades of canned peaches, to ensure a fair comparison the Ministry calculated an average NSV of all can sizes from its Oak and Wattie's brands. Also, because HW [redacted] basis, the Ministry has also made adjustments to the NSV for [redacted]

186. HW's average ex-factory price of all can sizes from its Oak and Wattie's brands is compared to the estimated importers ex-wharf and ex-store selling prices, in the tables below:

Table 5.6: Price Undercutting if the Duties were Removed
Ex-Wharf Level

	Importers'	HW's	% Price
	Ex-Wharf Price	**Ex-Factory Price**	**Undercutting**
Germany	2.23	[redacted]	[redacted]
United Kingdom	3.00	[redacted]	No undercutting
Italy	2.00	[redacted]	[redacted]
Russian Federation	2.16	[redacted]	[redacted]
Poland	1.71	[redacted]	[redacted]
Thailand	1.84	[redacted]	[redacted]
France	2.23	[redacted]	[redacted]
Austria	2.28	[redacted]	[redacted]
Netherlands	2.06	[redacted]	[redacted]
Hungary	1.76	[redacted]	[redacted]
Australia	1.94	[redacted]	[redacted]

Table 5.7: Price Undercutting if the Duties were Removed
Ex-Store Level

	Importers'	HW's	% Price
	Ex-Store Price	**Ex-Factory Price**	**Undercutting**
Germany	2.50	[redacted]	[redacted]
United Kingdom	3.35	[redacted]	No undercutting
Italy	2.25	[redacted]	[redacted]
Russian Federation	2.41	[redacted]	[redacted]
Poland	1.92	[redacted]	[redacted]
Thailand	2.06	[redacted]	[redacted]
France	2.49	[redacted]	[redacted]
Austria	2.55	[redacted]	[redacted]
Netherlands	2.31	[redacted]	[redacted]

Hungary	1.97	[redacted]	[redacted]
Australia	2.18	[redacted]	[redacted]

187. The information in table 5.6 above indicates that there would be likely price undercutting at the *ex-wharf level*, ranging from [redacted] to [redacted] percent, if the anti-dumping duties were removed and exports to New Zealand were made at prices similar to those to other export markets. The analysis shows that on the basis of Greek export prices to one of the 11 markets, there would be no undercutting if exports to New Zealand were made at prices similar to those to this particular market.

188. The information in table 5.7 above indicates that there would be likely price undercutting at the *importers' ex-store level*, ranging from [redacted] to [redacted] percent if the anti-dumping duties were removed and exports to New Zealand were made at prices similar to those to other export markets. The analysis shows that on the basis of Greek export prices to one of the 11 markets, there would be no undercutting if the exports to New Zealand were made at prices similar to those to this particular market.

Conclusion on Price Undercutting

189. The Ministry concludes that HW's Wattie's 3kg canned peaches are currently being undercut by the imported 3kg Greek canned peaches at both the ex-wharf and ex-store levels of trade. HW's Oak 3kg canned peaches are currently being undercut at the ex-wharf level, but are not being undercut at the ex-store level of trade.

190. On the basis of the shipment of 3kg canned peaches to New Zealand during the POR(D), the Ministry concludes that it is likely that these imports would undercut both the Wattie's and Oak brands at both the ex-wharf and ex-store levels of trade if the anti-dumping duties were removed. On the basis of Greek export prices to other markets, the Ministry concludes that it is likely that prices of canned peaches from Greece would undercut the prices of the New Zealand industry if the anti-dumping duties were removed and exports to New Zealand were made at prices similar to those of other export markets.

Price Depression

191. Section 8(2)(c) of the Act provides that the Chief Executive shall have regard to the extent to which the effect of the dumped goods is or is likely significantly to depress prices for like goods of New Zealand producers.

192. Price depression occurs when prices are lower than those in a market unaffected by dumping, usually in a previous period and refers to reductions in prices that have been made by domestic producers in order to deal with competition from prices of dumped goods.

193. In case of a review, the assumption made is that the existence of a remedy has had the effect of removing injury due to dumping. On this basis, a period covered by anti-dumping duties meets the general requirement of being a market unaffected by dumping.

194. In the original investigation, the Ministry concluded that there was evidence of price depression caused by dumped imports from Greece. In the 2003 review, the Ministry concluded that there had not been any price depression over the POR(I), but that it would be likely that the domestic industry's prices would be depressed if the anti-dumping duties were removed.

195. In the present review, HW has provided sales revenue and volume figures of canned peaches for its financial years 2005/06 to 2008/09. From these figures the Ministry calculated an average per kilogram selling price (exclusive of trade spend) for HW's total range of canned peaches.

196. The table below shows HW's average selling price (NSV) per kilogram for its canned peaches over the POR(I).

Table 5.8: Average Selling Price

	2005/06	2006/07	2007/08	2008/09
Avg. Price (NSV) per kg	[redacted]	[redacted]	[redacted]	[redacted]
As a % of 2005/06		[redacted]	[redacted]	[redacted]

197. The figures in the above table show that HW's average per kilogram selling price has increased each year during the POR(I).

Conclusion on Price Depression over the POR(I)

198. There has been an increase in HW's average selling price each year during the POR(I). The Ministry therefore concludes that there is no evidence that HW's prices have been depressed.

Price Depression if the Anti-Dumping Duties were Removed

199. HW contends that the New Zealand wholesale market for the supply of canned peaches to distributors and retailers is highly competitive. All supermarkets stock brands of canned peaches other than those supplied by HW, there are no long-term supply contracts in place and house brand supply contracts are up for constant tender.

200. HW provided a forecast of its average selling prices for the 2010/11 financial year, if the anti-dumping duties were removed (see "Injury Scenario" in section 5.3 above). As stated in section 5.3, the Ministry considers that there is not enough evidence to support HW's submission that it would need to [redacted] the imported Greek price. Therefore the Ministry has forecast HW's average selling price on the basis that [redacted] between the two brands remains the same.

201. For the purpose of calculating the forecast average selling price if the anti-dumping duties were removed, the forecast Oak brand selling price [redacted] the estimated importers' ex-wharf price as described in paragraph 111. The [redacted] the Oak and the Wattie's brand for the 2008/09 financial year

was [redacted] to derive the forecast Wattie's selling price. The forecast sales volume of each brand were multiplied by their respective forecast selling prices to calculate the total net revenue, which was then divided by the total forecast sales volume to derive the weighted average forecast selling price of $[redacted].

202. On the basis of the comments above, the following table shows HW's forecast average selling price (NSV) for 2010/11, if the anti-dumping duties remain in place and if the anti-dumping duties were removed.

Table 5.9: Forecast Average Selling Price

	Duties Remain	**Duties Removed**
	2010/11	**2010/11**
Avg. Price (NSV) per kg	[redacted]	[redacted]
Percentage Change		[redacted]

203. The above table shows the projected average selling price in the 2010/11 financial year will be depressed by [redacted] percent if the anti-dumping duties were removed. HW considers that the significant price depression would be [redacted].

Conclusion on Likely Price Depression

204. The Ministry considers that on the basis of the information gathered in the review, HW's average selling prices would likely be depressed if the anti-dumping duties were removed.

Price Suppression

205. Section 8(2)(c) of the Act also provides that the Chief Executive shall have regard to the extent to which the effect of the dumped goods is or is likely significantly to prevent price increases for those goods that otherwise would have been likely to have occurred.

206. Price suppression occurs when price increases for the domestic product that would have otherwise occurred, are prevented due to the dumped imports. Such price increases could be in response to increases in costs, or changes in supply or demand of a product.

207. The Ministry generally bases its assessment of price suppression on positive evidence, in particular the extent to which cost increases have not been recovered in prices. Cost increases not able to be recovered by price increases will be reflected by an increased ratio of costs to sales revenue. Where cost savings have been made, the lack of any price increase will not normally be regarded as price suppression. While the inability to recover cost increases in prices is the main indicator of price suppression, any other factors which are regarded as positive evidence of price suppression will be considered by the Ministry.

208. The original investigation found that there was no evidence of price suppression. The 2003 review concluded that there was evidence of price suppression over the POR(I), but that the price suppression was not attributable to dumped imports from Greece. The Ministry also concluded in the 2003 review that the domestic industry's prices would likely be suppressed if the anti-dumping duties were removed.

209. The following table shows HW's total costs (cost of goods sold plus selling, general and administration expenses) relative to sales revenue during the POR(I).

Table 5.10: Price Suppression

	2005/06	2006/07	2007/08	2008/09
Avg. Price (NSV) per kg	[redacted]	[redacted]	[redacted]	[redacted]
Total Cost per kg	[redacted]	[redacted]	[redacted]	[redacted]
Total Cost as % of NSV	[redacted]	[redacted]	[redacted]	[redacted]

210. The table shows that total cost as a percentage of NSV did not change from 2005/06 to 2006/07, but increased in 2007/08 and 2008/09.

Conclusion on Price Suppression over the POR(I)

211. There has been an increase in the total cost as a percentage of NSV from 2006/07 to 2008/09, which has resulted in HW experiencing some price suppression over that period. However, as the anti-dumping duties are currently in place in respect of imports from Greece and import volumes from Greece have been negligible over the same period, the Ministry considers any price suppression being experienced by HW is not attributable to dumped imports from Greece.

Price Suppression if the Anti-Dumping Duties were Removed

212. HW has submitted that the [redacted] would make it impossible to recover the costs of producing canned peaches if the anti-dumping duties were removed. As stated in section 5.3, the Ministry considers that there is not enough evidence which supports HW's submission that it would need to [redacted] the imported Greek price. Therefore the Ministry has forecast HW's average selling price on the basis that [redacted] between the two brands remains the same. The calculation of the forecast average selling price is described in paragraph 201.

213. On the basis of the comments above, the following table shows the forecast average selling price (NSV) per kilogram and total cost per kilogram for the 2010/11 financial year, if the anti-dumping duties remain in place and if the anti-dumping duties were removed.

Table 5.11: Forecast Price Suppression

	Duties Remain	Duties Removed
	2010/11	**2010/11**
Avg. Price (NSV) per kg	[redacted]	[redacted]
Total Cost per kg	[redacted]	[redacted]
Total Cost as % of NSV	[redacted]	[redacted]

214. The table shows a projected [redacted] percentage point increase in total cost per kilogram (relative to NSV) if the anti-dumping duties were removed. HW considers that this significant price suppression would be [redacted].

Conclusion on Likely Price Suppression

215. The Ministry considers that on the basis of the information gathered in the review, HW's average selling prices are likely to be suppressed by dumped imports from Greece, if the anti-dumping duties were removed.

Conclusion on Price Effects

216. The Ministry concludes there is evidence of current price undercutting at both the ex-wharf and ex-store levels of trade. The Ministry concludes that there is evidence of price suppression during the POR(I), but that the price suppression is unlikely to be attributable to dumped imports from Greece. The Ministry has not found any evidence of price depression over the POR(I).

217. The Ministry considers that the removal of the anti-dumping duties would lead to a decrease in the cost to import which would exert downward pressure on domestic prices in the New Zealand market. The Ministry also concludes that there would likely be a significant increase in imports of canned peaches from Greece at prices which would continue to undercut HW's selling prices leading to further price depression and price suppression.

5.6 Economic Impact

218. Section 8(2)(d) of the Act provides that the Chief Executive shall have regard to the economic impact of the dumped or subsidised goods on the industry, including—

i. Actual and potential decline in output, sales, market share, profits, productivity, return on investments, and utilisation of production capacity; and

ii. Factors affecting domestic prices; and

iii. The magnitude of the margin of dumping; and

iv. Actual and potential effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investments.

Output

219. Dumped imports can affect a domestic industry's production volume through increased supply of goods to the market and through price competition.

220. The original investigation found there was evidence of a decline in HW's output. The 2003 review found evidence that HW had suffered a decline in output over the POR(I), but that this was not likely to be attributable to dumped imports from Greece. The Ministry further concluded that it was likely that HW would suffer a negative impact on its output if the anti-dumping duties were removed.

221. HW's domestic output fluctuates with the availability of raw peaches. The Ministry notes the fact that not all peaches that are sourced from its growers are destined to be processed into canned peaches. While HW processes the entire raw peach crop available each year from its contracted New Zealand peach growers, the company dedicates [redacted] peaches sourced from these growers to fulfilling its fruit salad production requirements.

222. HW has stated that it [redacted] based upon expected demand at the start of each season, but this is not always sufficient to guard against fluctuations in the crop if there has been a bad growing season due to weather or disease. In these circumstances, HW imports canned peaches to maintain continuity of supply to its markets and protect its brand when New Zealand production is unavailable.

223. [redacted]. HW's previous strategy was to plan its future requirements to ensure [redacted]

Conclusion

224. HW processes the entire raw peach crop available each year from its contract growers, and consequently, its output is unlikely to be affected by the presence of Greek imports in the market. The Ministry considers that output is not a useful indicator of injury caused by the dumped goods.

Output if Duties were Removed

225. HW has forecast that the resumption of dumped imports from Greece would cause significant price effects in its 2010/11 financial year, if the anti-dumping duties were removed. This would be a direct result of HW having to [redacted]. However, HW has claimed the severe nature of the price competition would make it [redacted] to continue to [redacted] and eventually there would be a reappearance of the dumped imports from Greece in significant volumes. HW claims this would [redacted].

Conclusion

226. The Ministry concluded in sections 5.4 and 5.5 above that the New Zealand industry is likely to suffer significant price effects, if the anti-dumping duties were removed, which would eventually lead to a significant increase in import volumes of dumped goods from Greece. The Ministry concludes that as a result of the volume and price effects, there would likely be a consequential adverse impact on domestic production volume.

Sales Volume and Value

227. Movements in sales revenue reflect changes in volume and prices of goods sold. Dumped imports can affect both of these factors through increased supply of goods to the market and through price competition.

228. The original investigation found there was a decline in HW's sales volume and sales revenue. The 2003 review found evidence of a decline in sales volume and sales revenue over the POR(I), but that this was not likely to be attributable to dumped imports from Greece. The Ministry further concluded that due to the likely price and volume effects if the anti-dumping duties were removed, there would also likely be a significant impact on sales volume and revenue.

229. The following table shows HW's sales volume and sales revenue from 2005/06 to 2008/09. The figures in the table include HW's sales of imported and domestically produced canned peaches.

Table 5.12: Sales of Canned Peaches

	2005/06	2006/07	2007/08	2008/09
Sales (000 kg)	[redacted]	[redacted]	[redacted]	[redacted]
Change from previous year		[redacted]	[redacted]	[redacted]
As % of 2005/06		[redacted]	[redacted]	[redacted]
Net Revenue	[redacted]	[redacted]	[redacted]	[redacted]
Change from previous year		[redacted]	[redacted]	[redacted]
As % of 2005/06		[redacted]	[redacted]	[redacted]

230. The figures show that sales volume and sales revenue decreased from 2005/06 to 2008/09 by [redacted] percent and [redacted] percent respectively.

Conclusion

231. The Ministry concludes that HW has suffered a loss of sales volume and sales revenue over the POR(I). As anti-dumping duties are currently in place, and import volumes from Greece have been minimal over the POR(I), the decrease in sales volume and sales revenue is unlikely to be attributable to dumped imports from Greece.

Sales Volume and Revenue if Duties were Removed

232. If the anti-dumping duties were removed, HW's strategy is to [redacted], and therefore to incur no loss of sales volume in its 2010/11 financial year. However, HW forecasts a significant reduction of its sales revenue over the same period due to [redacted]. The calculation of the forecast net revenue for the 2010/11 financial year if the duties were removed is described in paragraph 201.

233. The table below shows the forecast sales volume and sales revenue for the 2010/11 financial year, if the anti-dumping duties remain in place and if the duties were removed.

Table 5.13: Canned Peaches Sales Forecast

	Duties Remain	Duties Removed
	2010/11	**2010/11**
Sales (000 kg)	[redacted]	[redacted]
Change (000 kg)		-
% Change		-
Net Revenue	[redacted]	[redacted]
Change		[redacted]
% Change		[redacted]

234. The table shows that there would be a [redacted] percent reduction in sales revenue, if the anti-dumping duties were removed, from what HW has forecast it would achieve if the anti-dumping duties remained in place.

Conclusion

235. The Ministry concluded in sections 5.4 and 5.5 above that the New Zealand industry is likely to suffer significant price effects, if the anti-dumping duties were removed, which would eventually lead to a significant increase in dumped imports from Greece. The Ministry concludes that these volume and price effects would likely materially impact on HW's sales revenue in the short-term and eventually impact on its sales volume as HW's domestic sales [redacted] begin to lose out to an increase in market share of the cheaper imported Greek peaches.

Market Share

236. The analysis of market share must take account of changes in the size of the market as a whole. A decline in the share of the market held by the domestic industry in a situation where the market as a whole is growing does not necessarily indicate that injury is being caused or is threatened to the domestic industry, particularly if the domestic industry's sales are also growing.

237. The original investigation found that there was evidence of a small decline in HW's market share over the investigation period. The 2003 review found that HW had lost a [redacted] amount of its market share over the POR(I), but that this

decrease was not attributable to dumped imports from Greece. The Ministry further concluded that it was likely HW would suffer a loss of market share, if the anti-dumping duties were removed.

238. The table below shows market share and changes in market share from May 2005 to October 2008.

Table 5.14: Market for Canned Peaches

(Years ended April)

	2006	2007	2008	Oct-08 (6 Months)
Dumped imports from Greece*	114,882	13,403	-	-
Other Imports*	3,891,681	3,807,273	3,993,687	2,423,472
Total HW Sales **	[redacted]	[redacted]	[redacted]	[redacted]
NZ Market	[redacted]	[redacted]	[redacted]	[redacted]
<u>Change on Previous Year:</u>				
Dumped imports from Greece*		- 101,479	- 13,403	n/a
Other Imports*		- 84,408	186,414	n/a
Total HW Sales **		[redacted]	[redacted]	n/a
NZ Market		[redacted]	[redacted]	n/a
<u>Percentage Share Held by:</u>				
Dumped imports from Greece*	[redacted]	[redacted]	0%	0%
Other Imports*	[redacted]	[redacted]	[redacted]	[redacted]
Total HW Sales **	[redacted]	[redacted]	[redacted]	[redacted]

* excludes HW's Imports
** includes HW's Imports
n/a = Not Applicable

239. The figures in the above table show that HW's market share has fluctuated slightly over the last three full financial years. For the first six months of its 2008/09 financial year, HW's market share decreased to [redacted] percent, although the Ministry notes that this decrease was recorded for only half of HW's latest financial year. The market share held by dumped imports from Greece has remained negligible over the period analysed.

Likely Impact of Removal of Duties on Market Share

240. HW has stated that in the 2010/11 financial year, if the anti-dumping duties were removed, HW would [redacted] with the dumped Greek canned peaches [redacted]. HW stated that the forecast price effects caused by the resumption of dumped imports from Greece would eventually lead to a significant increase in import volumes of the Greek imports which in turn would [redacted]

Conclusion

241. The Ministry is of the opinion that the impact of the dumped goods on market share will depend on how HW responds to the Greek imports e.g. the more HW discounts its prices, the less will be the impact on market share, with the main impact being on HW's revenue and profits.

242. Based on HW's strategy to [redacted], if the anti-dumping duties were removed, it is unlikely that HW would lose market share to dumped imports from Greece in its 2010/11 financial year. However, on the basis that HW would suffer significant price and volume effects which would lead to a consequential impact on its production volume and sales of canned peaches, the Ministry concludes that the domestic industry's market share would eventually decrease if the anti-dumping duties were removed. The significance of the market share decrease would depend on factors such as HW's strategy, the impact of the dumped imports on the market share of imports from other countries and growth of the total market.

Profits

243. Changes in profit reflect changes in prices, sales volumes or costs. Dumped imports can impact on any or all of these.

244. The original investigation found that HW's profit had suffered a significant decline over the investigation period, but not all of the decline in profits could be attributed to the dumped imports from Greece. The 2003 review found that there was evidence of a significant decline in profits over the POR(I), but that this decline was not attributable to dumped imports from Greece. The Ministry further concluded that given the likely import volumes and the economic impact on sales and output if the anti-dumping duties were removed, it was likely there would also be a significant adverse impact on profits.

245. The table below shows HW's earnings before interest and tax (EBIT) from 2005/06 to 2008/09.

Table 5.15: Earnings Before Interest and Tax

	2005/06	2006/07	2007/08	2008/09
EBIT	[redacted]	[redacted]	[redacted]	[redacted]
Change from previous year		[redacted]	[redacted]	[redacted]
EBIT as % of Net Revenue	[redacted]	[redacted]	[redacted]	[redacted]
EBIT as % of 2005/06		[redacted]	[redacted]	[redacted]
EBIT per kg	[redacted]	[redacted]	[redacted]	[redacted]
Change from previous year		[redacted]	[redacted]	[redacted]
EBIT per kg as % of 2005/06		[redacted]	[redacted]	[redacted]

246. The above figures show that EBIT in total, per kilogram and relative to net revenue decreased [redacted] from 2005/06 to 2008/09.

Conclusion

247. HW has suffered a [redacted] reduction of EBIT during the POR(I). As anti-dumping duties are currently in place, and import volumes from Greece have been minimal during the POR(I), it is unlikely that any decline in profits is attributable to dumped imports from Greece.

Movement in Profits if Anti-Dumping Duties are Removed

248. HW has forecast that the dumped Greek imports would enter the New Zealand market in the 2010/11 financial year, and that HW would [redacted]. HW has forecast a significant loss of sales revenue in the 2010/11 financial year, if the anti-dumping duties were removed, which would impact directly on its profit.

249. The following table shows HW's forecast EBIT for 2010/11, if the anti-dumping duties remain in place and if the anti-dumping duties were removed. The forecasts have been prepared on the basis of the scenarios explained in section 5.3 of this report, but adjusted on the basis set out in paragraph 201.

Table 5.16: Forecast EBIT

	Duties Remain	Duties Removed
	2010/11	**2010/11**
EBIT	[redacted]	[redacted]
Change		[redacted]
EBIT as % of Net Revenue	[redacted]	[redacted]
EBIT per kg	[redacted]	[redacted]
Change		[redacted]
EBIT as % of Net Revenue per kg	[redacted]	[redacted]

250. The figures in the table quantify the scenarios referred to above and show a forecast [redacted] of [redacted] in HW's 2010/11 financial year, if the anti-dumping duties were removed. This can be compared with HW's forecast EBIT of $[redacted] for the 2010/11 financial year, if the anti-dumping duties remain in place. HW considers that such a reduction in profits [redacted].

251. The Ministry notes that HW forecast a [redacted] increase in EBIT compared with its 2008/09 financial year if the anti-dumping duties remain in place. HW based its forecast on its budget figures for the 2009/10 financial year. This is based on HW's current cost of goods sold, selling, general and administration costs, and forecast pricing strategy (including a [redacted] percent price increase for expected growth of the canned peaches market using the 2009/10 financial year as a base). For the 2010/11 financial year, HW expects to increase its selling prices by a further [redacted] percent.

Conclusion

252. The Ministry concluded in sections 5.4 and 5.5 above that there is likely to be significant price effects if the anti-dumping duties were removed, which would likely eventually lead to a significant increase in import volumes of Greek canned peaches and further price effects suffered by the domestic industry. Based on this analysis, the Ministry concludes that it is likely HW would also suffer a material loss of profit, if the anti-dumping duties were removed, affecting not only the company's domestic operation but also its total canned peach sales operation.

Utilisation of Production Capacity

253. The utilisation of production capacity reflects changes in the level of production, although in some cases it will arise from an increase or decrease in production capacity. In either case, a decline in the utilisation of production capacity will lead to an increase in the unit cost of production, and a consequent loss of profit.

254. The original investigation found that there was no evidence of an adverse impact on the utilisation of production capacity during the period of investigation. In the 2003 review, the Ministry concluded that there was no evidence of an adverse impact on the utilisation of production capacity attributable to canned peaches from Greece during the POR(I). The Ministry further concluded that there would likely be an adverse impact on the utilisation of production capacity if the anti-dumping duties were removed.

255. HW stated that its potential production capacity for peaches is restricted by crop availability. Currently HW receives and processes every peach its contracted growers wish to supply. According to the company, with the varieties of peaches available, the peach season could theoretically run from the beginning of February to the end of March (a total of 59 days). At [redacted] metric tonnes per day processing capacity, this gives a theoretical production capacity of [redacted] metric tonnes, but this includes crop tonnes for both peaches and peaches that are processed into fruit salad. HW currently budgets for a total peach crop of between [redacted] tonnes each year, [redacted]. This leaves approximately [redacted] tonnes available for [redacted].

256. HW has recently taken a more [redacted]. The strategy now ensures sourcing [redacted]

257. In summary, the total production capacity of canned peaches is limited by the quantity of raw peaches available for like goods production each year, competition for the parts of the canning line which are common to other seasonal fruit and vegetables and also by the storage life of the raw fruit. The Ministry considers that HW's production capacity utilisation rate is not a good indication of injury.

Likely impact of the Removal of Duties

258. HW has forecast that if the anti-dumping duties were removed from the Greek imports, HW would [redacted]. Therefore, HW's utilisation of production capacity would not be affected by dumped imports from Greece in the 2010/11 financial year. However, due to the severe price effects and economic impact suffered in the 2010/11 financial year, HW claims it would [redacted].

Conclusion

259. Due to the multitude of canned products manufactured by HW and the limitations mentioned above regarding the availability of the raw peaches and the storage life of the raw fruit, the Ministry considers that it is difficult to predict the impact on the utilisation of production capacity for canned peaches if the anti-dumping duties were removed.

260. The Ministry concluded in sections 5.4 and 5.5 above that there is likely to be significant price and volume effects if the anti-dumping duties were removed, which would be likely to eventually cause significant adverse effects on the company's domestic production and sales volume. On this basis, the Ministry concludes that HW's utilisation of production capacity would also be adversely affected.

Productivity

261. Productivity is the relationship between the output of goods and the input of resources used to produce them. Changes in productivity are affected by output levels and by the level of capacity utilisation.

262. The original investigation found evidence of an adverse impact on productivity during the period of investigation. In the 2003 review, the Ministry concluded that there was no evidence of an adverse impact on productivity attributable to canned peaches from Greece during the POR(I). The Ministry further concluded that there may be an adverse impact on productivity if the anti-dumping duties were removed, but that this could be mitigated to some extent by a [redacted] in staff numbers.

263. The table below shows the annual production volume of canned peaches per employee engaged in production and total hours engaged in production from 2005/06 to 2007/08.

Table 5.17: Productivity per Employee and Labour hours

	2005/06	**2006/07**	**2007/08**
Domestic Production (000 kg)	[redacted]	[redacted]	[redacted]
Seasonal Staff	[redacted]	[redacted]	[redacted]
Permanent Staff	[redacted]	[redacted]	[redacted]
Total Staff	[redacted]	[redacted]	[redacted]
Total Hours	[redacted]	[redacted]	[redacted]

Production Volume per Employee	[redacted]	[redacted]	[redacted]
Production Volume per Hours Worked	[redacted]	[redacted]	[redacted]

264. In relation to production volume per employee, there has been a [redacted] reduction in productivity over the period, which HW advised is due to the fluctuating peach crop volumes, which influences both the production volumes and the hours and staff numbers allocated to peaches for any given year.

265. The figures in the table above show that production volume per hour worked decreased [redacted] percent in 2007, and then increased [redacted] percent in 2008. The Ministry notes the figures are likely to be affected by the varying production volumes in each year, and therefore the information does not provide a satisfactory basis from which to draw any trends.

Likely Impact of Removal of Duties on Productivity

266. In respect of the likely impact on HW's productivity if the anti-dumping duties were removed, the company considers that [redacted].

Conclusion

267. The Ministry concludes that HW has suffered a [redacted] reduction in productivity from 2005/06 to 2007/08, but this is unlikely to be attributable to dumped imports from Greece.

268. The Ministry concluded in sections 5.4 and 5.5 above, that there is likely to be significant price and volume effects, if the anti-dumping duties were removed, which would be likely to cause significant adverse effects on the company's domestic production and sales volume. On this basis the information suggests, that HW would also likely suffer a decline in productivity, assuming that there is no corresponding reduction in employees.

Return on Investments

269. A decline in return on investments will result from a decline in returns with or without a relative increase in the investment factor being used. Movements in the return on investments affect the ability of the industry to retain and attract investment.

270. In the original investigation the Ministry concluded that the decline in profitability during the period of investigation indicated that there was also likely to be a corresponding decline in the rate of return on investments. In the 2003 review, the Ministry was unable to determine any trends regarding the return on investment during the POR(I). However, the Ministry concluded that due to the likely impact on profits if the anti-dumping duties were removed, there would also likely be a corresponding adverse impact on return on investments.

271. [redacted] HW's seasonal production plant is not specific to canned peaches. [redacted]

[redacted]. This fact made it difficult for the company to provide information on returns on investment specific to its canned peach operation. In any event, because anti-dumping duties are already in place and there have been negligible import volumes from Greece over the POR(I), it is unlikely the company has suffered a decrease in its return of investment for canned peach production due to dumped imports from Greece.

Likely Impact of Removal of Duties on Return on Investment

272. In respect of the likely impact on HW's return on investment should the anti-dumping duties be removed, HW stated that its returns would diminish due to it [redacted]. HW considers that this would lead to reduced margins on its Wattie's and Oak brands due to [redacted].

273. In paragraph 252, the Ministry concluded that there is likely to be a significant reduction of HW's profit if the anti-dumping duties were removed, which would result in a decrease in HW's return on investment assuming that HW's investment factor remains the same.

Conclusion

274. The Ministry has no information on which to base a conclusion relating to return on investments specific to canned peach production, either in terms of the performance of the New Zealand industry over the review period or in terms of the likely effect of the removal of the anti-dumping duties.

275. The Ministry has already concluded above that HW would likely suffer adverse economic effects in the form of a loss of profits and sales revenue if the anti-dumping duties were removed. The Ministry considers that it is also likely that there would be a corresponding decrease in HW's return on investment, assuming that HW's investment factor remains the same.

Magnitude of the Margin of Dumping

276. The magnitude of the margin of dumping can be a useful indicator of the extent to which injury can be attributed to dumping, particularly when it is compared with the level of price undercutting.

277. In the original investigation, it was found that the margin of dumping was substantially lower than the margin of undercutting, but that the margin of dumping still constituted a significant proportion of this element of injury. In the 2003 review, it was found that the likely dumping margins would contribute significantly to a recurrence of undercutting margins if the anti-dumping duties were removed.

278. In the present review the Ministry estimated the dumping margin of the single shipment of canned peaches during the POR(D) was 116 percent and notes that this particular shipment paid a substantial amount of anti-dumping duty. The Ministry also estimated likely dumping margins of other Greek exporters and other retail size

cans to range from 40 percent to 165 percent, if the anti-dumping duties were removed.

Conclusion

279. While the Ministry has concluded that dumping is likely to continue or recur, given the uncertainties involved in quantifying the extent of the likely dumping margins, if the anti-dumping duties were removed, the Ministry considers that it is unable to draw any useful conclusions relating to the likely magnitude of the margin of dumping, if the anti-dumping duties were removed.

Factors Affecting Domestic Prices

280. There were no comments made in the original investigation regarding factors affecting domestic prices. In the 2003 review, the Ministry concluded that the growth of house brands were likely to have exerted downward pressure on prices, and that this situation was likely to continue regardless of whether the duties were removed.

281. HW stated that raw material costs have increased significantly since the last review was completed in 2003. For instance, tinplate costs have increased due to high steel consumption in developing countries. HW stated that up until anti-dumping duties were imposed on preserved peaches from China in 2006, dumped imports from this source made it [redacted] for HW to pass on these cost increases in its selling prices.

282. HW commented that Progressive has become more [redacted] in the market, illustrated by their recent switch to stocking the Australian "Select" and "Homebrand" canned peaches and has also [redacted]

Other Adverse Effects

Cash Flow

283. No information regarding cash flow was provided in the original investigation. In the 2003 review, the Ministry concluded that there was insufficient information to analyse trends in cash flow during the POR(I). The Ministry further concluded that the likely impact on sales and profits if the anti-dumping duties were removed would also likely lead to an adverse effect on cash flow.

284. Cash flow is managed at a corporate level in HW and at H. J. Heinz. Given the seasonal nature of the peach business with an uneven distribution of expenditure and revenue relating to the production and sale of peaches, the company considers that it would not add value to the Ministry's analysis of injury for HW to provide a cash flow analysis relating to peaches. The Ministry agrees with this, and therefore cash flow has not been assessed with respect to current injury, or likely injury if the anti-dumping duties were removed.

Inventories

285. Production over a relatively short period, once a year, means that inventory is at its peak soon after production.

286. In previous investigations and reviews concerning canned peaches, the Ministry found that there had been no adverse effect on HW's inventory levels as the company's policy was to manage its inventory levels to account for fluctuations in peach levels. Furthermore, in the current review it is unlikely that the industry will be experiencing any injury due to imports from Greece, as anti-dumping duties are already in place.

287. In respect of the likely impact on HW's inventory should the anti-dumping duties be removed, HW's strategy is to [redacted] in the 2010/11 financial year in order to [redacted]. Therefore, there would not likely be any adverse impact on HW's sales volume and inventories from dumped imports from Greece in the 2010/11 financial year. HW stated that it would [redacted] due to the severe price effects and other economic impacts caused by the dumped imports, which would have the effect of reducing inventories levels.

Conclusion

288. The Ministry concludes that it is unlikely that the industry is experiencing any injury in respect to its inventory levels due to dumped imports from Greece over the POR(I). The Ministry concludes that HW's inventory levels would be adversely affected if the anti-dumping duties were removed as the company would eventually suffer failing production and sales volumes due to the competition from the lower prices and increased import volumes of the Greek canned peaches.

Employment and Wages

Employment

289. In the original investigation, there was no evidence of an adverse impact on employment and wages during the period of investigation. In the 2003 review, the Ministry concluded that there was no evidence of an adverse impact on employment during the POR(I). The Ministry further concluded that there was likely to be an adverse impact on employment and wages through the reduced volumes of production and sales if the anti-dumping duties were removed.

290. The table below shows the number of full-time seasonal and permanent employees that are engaged in the domestic production of canned peaches from 2005/06 to 2007/08.

Table 5.18: Total Employee Numbers

	2005/06	2006/07	2007/08
Seasonal Staff	[redacted]	[redacted]	[redacted]
Permanent Staff	[redacted]	[redacted]	[redacted]

Total Staff	[redacted]	[redacted]	[redacted]
Change from previous year		[redacted]	[redacted]
As % of 2005/06		[redacted]	[redacted]

291. The number of employees engaged in the production of like goods has declined from [redacted] full time equivalents in the 2005/06 financial year to [redacted] in the 2007/08 financial year. HW stated that the number of staff required is dependant on the volume of raw peaches that HW is able to source for the production of canned peaches. The low number of staff in the 2007/08 financial year was attributed to the poor peach crop, which resulting in a reduced volume of output and number of hours worked.

Conclusion

292. As anti-dumping duties are already in place on canned peaches from Greece, and import volumes from Greece have been negligible over the POR(I), it is unlikely HW is experiencing any injury due to imports from Greece. The Ministry concludes that there is no evidence that dumped imports from Greece have had an adverse effect on employee numbers.

Wages

293. The following table shows average hourly wage rates for staff engaged directly in the production of canned peaches from 2005/06 to 2008/09.

Table 5.19: Average Wage Rates

	2005/06	2006/07	2007/08	2008/09
Seasonal Labour Rates	[redacted]	[redacted]	[redacted]	[redacted]
Change from previous year		[redacted]	[redacted]	[redacted]
As % of 2005/06		[redacted]	[redacted]	[redacted]

294. The average production wage rate relating to canned peaches increased slightly from 2005/06 to 2008/09. As anti-dumping duties are already in place on canned peaches from Greece, and import volumes from Greece have been negligible over the POR(I), it is unlikely the industry is experiencing any injury due to dumped imports from Greece.

Conclusion on Employment and Wages

295. Given that HW has always processed the entire peach crop available from its contracted growers each year, the Ministry considers that any adverse effects on employment and wages directly relating to the production of canned peaches is unlikely to be attributable to dumped imports from Greece.

296. In respect of the likely impact on employment and wages, the Ministry has already concluded that HW would likely suffer significant volume and price effects which would impact on its domestic production and sales of canned peaches, if the anti-dumping duties were removed. The Ministry considers that the impact on HW's

domestic production of canned peaches would consequently have an adverse effect on the number of employees and wages paid to factory staff.

Growth

297. In the original investigation, there was no evidence of an adverse impact on HW's growth in the market during the period of investigation. In the 2003 review, the Ministry concluded that there was no evidence of an adverse impact on HW's growth during the POR(I). The Ministry further concluded that there was likely to be an adverse impact on HW's growth and ability to grow the market if the anti-dumping duties were removed due to the likely volume and price effects.

298. HW stated that sales for HW's brands of canned peaches have been relatively flat since the 2003 review and that there had been [redacted].

299. The Ministry notes that HW's sales volumes, sales revenue and EBIT have decreased from 2005/06 to 2008/09, and there is also evidence of price suppression over the same period. These factors suggest that the company has been limited in its ability to grow its canned peach business.

300. HW stated that it would [redacted] with dumped imports from Greece [redacted] in the 2010/11 financial year, if the anti-dumping duties were removed. HW considered, however, that the severe price effects would cause its sales value and volume to go into a severe negative growth, which would result in a loss of market share and profit and [redacted]. After this point, HW stated that [redacted].

Conclusion

301. The Ministry considers any detrimental effects on growth will be reflected in other injury indicators such as sales, profit and return on investment. While there is no evidence of an adverse impact on HW's current growth due to dumped imports from Greece, the Ministry has already concluded in this report that HW's sales revenue, profit and return on investment would likely be adversely affected, if the anti-dumping duties were removed. Therefore, the Ministry concludes that there would likely be a subsequent adverse impact on the company's growth if the anti-dumping duties were removed.

Ability to Raise Capital and Investments

302. In the original investigation, there was no evidence of an adverse impact on HW's ability to raise capital and investments during the period of investigation. In the 2003 review, the Ministry concluded that there was no evidence of an adverse impact on HW's ability to raise capital and investments during the POR(I). The Ministry further concluded that there was likely to be an adverse impact on HW's

ability to raise capital and investments if the anti-dumping duties were removed due to the likely adverse impacts on profit and return on investments.

303. Since the 2003 review, HW stated that it has invested over [redacted] in capital on the seasonal business, the majority of which is directly attributable to peaches. HW specifically noted [redacted] spent in its 2004 fiscal year on the [redacted]. Further improvements were made [redacted] in its fiscal year 2006 with [redacted] being invested. HW stated that more recent capital additions on equipment used for peaches has been on [redacted].

304. Regarding the likely impact on HW's ability to raise capital and investment if the anti-dumping duties were removed, HW stated that [redacted] which has to compete with dumped products.

Conclusion

305. The Ministry notes that not all the capital expenditure made by HW since the 2003 review is directly attributable to peaches, and of the amount that is attributable to its peach processing facility, not all the peaches that are processed through this facility are processed into canned peaches. Some of these peaches are also processed into fruit salad.

306. In any event, the Ministry notes the extent of HW's recent capital expenditure on its peach processing facilities and that as result of not having to compete with dumped imports from a number of foreign sources, the domestic market conditions are now favourable for HW investing in new processing facilities in order enable it to more effectively meet its domestic customer requirements with domestic output rather than having to source imports from abroad.

307. In conclusion, the information provided by HW on the extent of any adverse impact on its canned peaches operation resulting from the removal of the anti-dumping duties is inconclusive in respect of the extent to which this would adversely impact on its ability to raise investments in respect of its total operation. However, the Ministry considers it unlikely that [redacted] if it has to compete with injurious dumped products from Greece.

5.7 Other Causes of Injury

308. Sections 8(2)(e) and (f) of the Act provide that the Chief Executive shall have regard to factors other than the dumped goods which have injured, or are injuring, the industry, including -

i. The volume and prices of goods that are not sold at dumped prices; and

ii. Contraction in demand or changes in the patterns of consumption; and

iii. Restrictive trade practices of, and competition between, overseas and New Zealand producers; and

iv. Developments in technology; and

v. Export performance and productivity of the New Zealand producers; and

vi. The nature and extent of importations of dumped or subsidised goods by New Zealand producers of like goods, including the value, quantity, frequency and purpose of any such importations.

Non-Dumped Imports

309. Total imports from countries other than Greece have increased from 2006 to 2008 (years ended April), as shown in table 5.1 of section 5.4 of this report. Imports from Australia remain the main source of canned peaches imported into New Zealand, although import volumes from Australia have decreased from 2006 to 2008 as shown in table 3.4 in section 3.2 of this report.

310. [redacted].

Conclusion

311. Imports of Chinese canned peaches have been entering the New Zealand market since the 2003 review in increasingly significant volumes. However, as a result of the imposition of anti-dumping duties on Chinese imports of preserved peaches in 2006, it is unlikely that any injury suffered by HW since the imposition of these duties could be attributed to imports of canned peaches from this source. An examination of the import statistics shows that the vast majority of imports are still entering New Zealand from Australia. In the 2003 review it was determined that Australian imports were unlikely to have any greater impact on HW than they had in the past, should the duties be removed. In the present review the Ministry notes that the market share of imports from Australia has decreased since the 2003 review. This indicates to the Ministry that imports of non-dumped goods from Australia are unlikely to have been a source of any injury suffered by the industry since 2003 any more than they were prior to the 2003 review. The Ministry concludes that this is unlikely to change should the present duties on imports from Greece be removed.

Supermarket Purchasing Power

312. The Ministry has concluded in previous investigations and reviews that supermarkets in New Zealand have the ability to directly influence pricing levels and levels of supplier-funded promotion and support, and that this was likely to continue if the anti-dumping duties were removed and that any adverse impact from that influence could not be attributed to dumping.

313. In the present review, HW stated that Progressive has become more [redacted] illustrated by their switch to stocking “Select” and “Homebrand” canned peaches. HW stated the Progressive has also [redacted]

[redacted]. This has resulted in [redacted]

Conclusion

314. In the present review, the Ministry considers that the market conditions have not changed to any significant extent from those assessed by the Ministry in previous investigations and reviews, in that supermarkets in New Zealand still have a significant ability to influence prices and the level of supplier promotion. The Ministry considers that this is likely to continue whether the anti-dumping duties remain in place or are removed, and any adverse impact from that influence can not be attributed to dumping.

House Brands

315. In previous reviews and investigations, HW stated that there was a growth in house brands in directly competing with branded lines, which was placing additional pressure on the more traditional branded lines. HW also stated that the growth of supermarket house brands and the [redacted] to supply these products have increased price competition in New Zealand. HW also submitted that house brands were positioned [redacted] but that some house brands were being marketed more towards the premium end of the market and had begun competing with HW branded products making it highly price competitive.

316. In the present review, HW advised the Ministry that it no longer supplies the "[redacted] brand of canned peaches, although the Ministry notes that [redacted]. The Ministry also notes, however, that [redacted].

Conclusion

317. In the present review, the Ministry considers that the market conditions have not changed to any significant extent in that house brands are still applying pressure to HW's brands. The Ministry considers that this is likely to continue whether the anti-dumping duties on Greek canned peaches remain in place or are removed.

Imports by the Industry

318. HW stated in the original investigation that it had imported canned peaches from Greece in response to shortages of raw peaches. HW has continued to import quantities of peaches from a variety of sources, including [redacted], since the original investigation.

319. In previous reviews and investigations, the Ministry considered HW's strategy of importing canned peaches to maintain its market presence due to an insufficient

peach crop and accepted this as a valid commercial strategy. The Ministry has also concluded in previous reviews and investigations that HW's imports are not a cause of injury to itself as the imports do not displace domestic production because HW processes the entire available domestic peach crop each year. Furthermore, HW prices and sells imported canned peaches in exactly the same way as its domestically produced canned peaches.

Conclusion

320. In the present review, the Ministry considers that the conditions which require HW to import canned peaches from overseas are still present. The injury analysis for HW has again been conducted not only in respect of its domestic production but also on the company's total sales of canned peaches to ensure that fluctuations in available peach crop do not affect the injury analysis. The Ministry concludes that HW's imports are unlikely to be a cause of injury to itself.

The Availability of Raw Peaches for Like Goods Production

321. The cost per unit of domestic production is dependent to a significant degree on the total volume produced. This is due to the allocation of factory overheads to domestic production. The total volume of domestic production is dependent on the availability of raw peaches for like goods production, which is further limited by the allocation of raw peaches to fruit salad products.

322. For the above reasons, it is likely that the limited availability of raw peaches for like goods production and the consequent low domestic production volumes for a particular year may mean that sales of like goods in that year are less profitable than they would be if production volumes were greater.

323. HW stated in the 2006 investigation of preserved peaches from China and the 2007 review of canned peaches from South Africa that [redacted]. In the present review, HW stated that [redacted]

Conclusion

324. HW's decision to [redacted]. While this represents a change in HW's intended strategy from previous investigations and reviews, the Ministry notes that the company has often [redacted], in any event. Therefore, its new strategy would not represent a significant change in its past practice. The Ministry

does consider, however, that HW's change of strategy may affect any injury analysis conducted in future reviews or investigations.

325. In any event, in the present review, the Ministry concludes that the availability of the peach crop continues to be a cause of injury to HW, although it is noted that HW continues to put in place strategies to counter any unforeseen shortages in the yearly peach crop, which often necessitates the importation of canned peaches from abroad.

Conclusion on Other Causes of Injury

326. The Ministry concludes that there continue to be a number of factors which are likely to have been a cause of injury to HW over the POR(I). The Ministry also concludes that these factors will continue to affect HW in the same way whether the anti-dumping duties remain in place or are removed, and can therefore be clearly distinguished from the injurious effects likely to arise from dumped imports if the anti-dumping duties are removed.

5.8 Conclusions Relating to Injury

327. From information made available during the review, the Ministry has reached the following conclusions in relation to material injury suffered by the New Zealand industry over the POR(I):

Volume and Price Effects

- In absolute terms, the volumes of dumped imports have remained negligible in relation to both New Zealand production and consumption.
- The prices of the domestically produced canned peaches are being undercut by imports of 3kg Greek canned peaches.
- There is evidence of price suppression but this is unlikely to be attributable to dumped imports from Greece.
- There is no evidence of price depression

Economic Impact

- Any change in the industry's output is related to fluctuations in the peach harvest and cannot be attributed to dumped imports from Greece.
- The industry's sales volumes and revenue have decreased but is unlikely to be attributed to dumped imports from Greece.
- The market share held by the domestic industry has slightly decreased from 2005/06 to 2007/08, but this is not attributable to dumped imports from Greece.
- Industry profit levels have decreased, but this is unlikely to be attributable to dumped imports from Greece.

- No positive evidence has been provided that shows any injurious effects due to dumped imports from Greece on productivity, return on investments, utilisation of production capacity, factors affecting domestic prices, cash flow, inventories, employment, wages, growth and ability to raise capital and investments.

- The extent to which the magnitude of the margin of dumping is likely to have caused any price undercutting is inconclusive.

- Factors other than dumped goods are likely to have been a cause of injury to the industry, however, these factors will continue to affect HW in the same way regardless of whether or not anti-dumping duties apply.

328. The Ministry concludes that there is no current material injury that is attributable to dumped imports from Greece.

Likelihood of Injury if Anti-Dumping Duties were Removed

329. In relation to the likelihood of a recurrence of material injury if the anti-dumping duties were removed, the Ministry concludes that:

- It is likely that there would be price undercutting, price depression and suppression due to dumped imports from Greece.

- It is likely that there would be an eventual significant increase in import volumes.

- Consequent upon the likely price and volume effects, it is likely there would be an adverse effect on domestic sales volume and revenue.

- As a result of the likely price and volume effects, there is likely to be a negative impact on the industry's market share.

- Based on the findings of the likely volume and price effects and consequent impact on sales volume and revenue, it is likely that the industry will suffer a loss in profits.

- There is likely to be an adverse effect on the industry's productivity, utilisation of production capacity, employment and wages, inventories, return on investments, growth and its ability to raise capital and investments.

- There is insufficient evidence available to come to a conclusion on the likely impact on the industry's cash flow and the extent to which the magnitude of the margin of dumping is likely to contribute to injury and on any factors affecting domestic prices.

- Factors other than dumped imports are likely to continue in the same way to be a cause of injury to the industry and can therefore be clearly distinguished from the injurious effects likely to result from dumped imports from Greece.

330. On the basis of these considerations, the Ministry concludes that if anti-dumping duties were removed, material injury to the New Zealand industry due to dumped imports of Greek canned peaches is likely to recur.

6. Conclusions

331. On the basis of the information available, it is concluded that the continued imposition of anti-dumping duties is necessary to prevent the recurrence of dumping and material injury to the New Zealand industry producing like goods

7. Recommendations

332. It is recommended on the basis of the information obtained during the course of the review that:

1. The Chief Executive of the Ministry determine pursuant to section 14(8) of the Act that, in relation to the importation or intended importation of canned peaches of the type under review from Greece into New Zealand, if anti-dumping duties were to be removed:

   (a) there is a likelihood of a continuation or recurrence of dumping; and

   (b) by reason thereof material injury to an industry is also likely to recur.

2. The Chief Executive of the Ministry initiate a reassessment of the anti-dumping duty rates pursuant to section 14(6)(c) of the Act.

3. The Chief Executive of the Ministry sign the attached *Gazette* notice publicly notifying the completion of this review and initiation of a reassessment of the anti-dumping duty rates that currently apply to imports of canned peaches from Greece.

……………………………………..

……………………………………..

Review Team
Trade Rules, Remedies and Tariffs Group
Ministry of Economic Development

Recommendation Accepted/ Not Accepted

…………………………………………………

Robin Hill
Chief Advisor, Trade Rules, Remedies and Tariffs Group (*Acting under delegated authority from the Chief Executive of the Ministry of Economic Development)*
Ministry of Economic Development.

8. Reassessment of Anti-Dumping Duties

8.1 Introduction

333. Section 14 of the Act sets out the requirements relating to the imposition of anti-dumping duties. If a "sunset" review concludes that there is the need for a continuation of the anti-dumping duties, the Chief Executive may initiate a reassessment of the anti-dumping duties. The reassessment of anti-dumping duty following the completion of a review is provided for by section 14(6) of the Act.

334. This section of the report provides the basis for a recommendation to the Chief Executive to initiate a reassessment of the current anti-dumping duties immediately following the completion of this review. This section of the report also forms an Interim Report for that reassessment and provides interested parties with the opportunity to comment on the proposed duties. Interested parties have until close of business 17 July 2009 to make submissions.

8.2 Method of Imposing Duties

335. The objective of an anti-dumping duty is to remove injury attributable to dumping, and is not to punish the exporter or to provide protection to an industry beyond the impact of the dumping. The Act prevents the Minister from imposing a duty that exceeds the margin of dumping.[8] Furthermore, the Act requires that the Minister have regard to the desirability of ensuring the amount of duty is not greater than is necessary to prevent material injury to the New Zealand industry.[9] This requirement is known as the "lesser duty rule".

336. There are numerous considerations that are taken into account when deciding on the form of the anti-dumping duty. Factors such as the ability to ensure the dumping margin is not exceeded, the ability to maintain fairness between parties, the predictability of the duty payable and the ease of administration, are all important aspects of an anti-dumping duty.

337. Anti-dumping duties can be applied in a number of different ways. The three basic approaches are:

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

---

[8] Dumping and Countervailing Duties Act 1988, s14(4).

[9] Dumping and Countervailing Duties Act 1988, s14(5).

A Specific Duty

338. A specific duty is a set amount of duty payable per unit of product imported. This specific amount of duty is based on the monetary value of a margin of dumping. The approach is convenient to apply, impossible to evade by incorrectly stating the value for duty, and it clearly indicates to the importer the amount of duty payable on the product.

339. Some problems with a specific duty approach may occur if there are a wide range of goods involved, exchange rates may fluctuate to the extent that the margin of dumping will be exceeded without constant reassessments of the specific amount, or where an exporter manipulates prices so that the duty is either greater than the margin of dumping or less than the margin of dumping previously established.

340. A specific duty, expressed as a monetary amount, can only operate effectively when two conditions are present. The first is that prices and exchange rates are consistent and stable. The second is that the transaction-to-transaction comparison does not result in a range of different dumping margins.

341. A specific duty approach can be implemented as a formula, being the difference between equivalent prices to the normal value and the export price of a particular shipment, with the values for the normal value and export price being fixed. When those elements of the formula are expressed in terms of the currency of each transaction, the problem of exchange rate movements can be dealt with. However, a formula approach does not deal with the problem of changes in export prices for reasons other than exchange rate movements or movements in normal values such as a price change.

Ad Valorem Rate Duty

342. An *ad valorem* duty is a duty based on the margin of dumping or the margin of injury (if the margin of injury is less that the margin of dumping), and is expressed as a percentage of the value for duty (VFD). An *ad valorem* duty is convenient to apply and is unlikely to be substantially affected by exchange rate movements. *Ad valorem* rates are often appropriate where there are a large range of goods or where new models appear, provided that the transaction-to-transaction comparison does not result in a range of different dumping margins. As with the other approaches, there is the possibility of collusion between an exporter and importer concerning the manipulation of the invoice value of the goods.

343. Under this approach, a particularly low export price (and therefore a potentially more injurious export price) would result in a lower amount of duty, which may not be sufficient to remove injurious dumping. Conversely, a particularly high export price (and therefore likely to be less injurious), would attract a higher amount of duty, which may be higher than is necessary to remove injurious dumping.

344. An *ad valorem* rate gives an indication of the impact of the duty, but is not as clear an indication as the other forms of duty.

Reference Price Duty

345. Under the reference price approach, the duty payable is the difference between the transaction price and a reference price. A reference price can be based on either a normal value or the domestic industry's non-injurious price (NIP). A Normal Value (Value for Duty Equivalent) or NV(VFDE) amount represents the un-dumped value of the goods at the free-on-board (FOB) level. A non-injurious free-on-board (NIFOB) price is the price at which the imports would not cause injury to the New Zealand industry, calculated at the FOB level. The Ministry prefers to set the NV(VFDE) and NIFOB amounts in the currency in which the like goods are sold in their respective markets. In this reassessment, NV(VFDE) amounts are set in EUR, and NIFOB amounts are set using NZD, as these are the currencies which like goods are traded in their respective markets.

346. A reference price has advantages in that it is best able to deal with movements in the export price and exchange rates (if expressed in the currency of the normal value), and is particularly appropriate for dealing with situations where a lesser duty is applicable. However, it has been argued that it is more easily evaded than the other forms of duty by overstating the VFD of the goods. Nevertheless, a reference price does have the advantage of clearly signalling to exporters and importers what price is un-dumped or non-injurious. In addition, a reference price duty only collects duty when the goods are priced below the non-injurious or un-dumped reference price, therefore duty is collected only to the extent necessary to remove injurious dumping.

347. One of main problems with reference prices is that the information they are based on represents a snapshot of prices and costs at a particular point in time. If these prices or costs change, the reference prices may no longer be accurate although significant changes in prices or costs can be addressed by way of a reassessment of the reference prices.

8.3 Background

348. On 9 March 1998, the Minister of Commerce first imposed anti-dumping duties on canned peaches from Greece imported into New Zealand. The Ministry concluded in the original investigation that Vermion Naoussa's dumping margins ranged between nil and 20 percent, while ALMME was found not to be dumping. The anti-dumping duties were imposed in the form of reference prices and *ad valorem* rates of duty.

349. A subsidy investigation was completed on 9 January 1998, which concluded that canned peaches from the EU were being subsidised, and therefore countervailing duties were imposed. The countervailing duties were imposed in the form of an *ad valorem* rate.

350. A new shipper reassessment of the level of anti-dumping duty was completed in April 2000 for Venus Growers. The reassessment concluded that canned peaches exported by Venus were not dumped, and therefore a nil rate of anti-dumping duty was set for Venus Growers. All other rates of anti-dumping duty applying to Greek exporters remained unchanged.

351. A sunset review of the anti-dumping duties was completed on 4 July 2003, which found that canned peaches exported by Venus Growers were dumped by margins of 5 to 45 percent. The Ministry concluded that there was a continued need for the anti-dumping duties to prevent a likely continuation and recurrence of dumping, which would likely cause material injury to the New Zealand industry.

352. A sunset review of the countervailing duties was also completed on 4 July 2003, which concluded that the countervailing duties should remain in place to prevent a recurrence of material injury to the New Zealand industry caused by subsidised canned peaches from the EU.

353. A reassessment of the anti-dumping and countervailing duties was completed on 15 December 2003. With respect to canned peaches from Greece, the Ministry established reference prices and *ad valorem* rates of duty to address both the dumping and subsidy effects. The rates of duty have not been changed since this reassessment.

354. The current rates of anti-dumping and countervailing duty applicable to canned peaches from Greece are shown in the table below.

Table 8.1: Current Duty Rates on Canned Peaches from Greece (Per kg)

	410g	**820g**	**3kg**
Venus Growers Co-operative total duty is ***the lesser of:***			
-NIFOB rate	NZD	no rate	NZD
-NUFOB rate	€	€	€
Venus Growers Countervailing Duty Cap	€	€	€
Other exporters total duty is ***the lesser of:***			
-*Ad valorem* rate	34%	34%	34%
-NUPFOB	€	€	€
The other exporters *ad valorem* duty is comprised of:			
-Anti-dumping duty *ad valorem* rate	23%	23%	23%
-Countervailing duty *ad valorem* rate	11%	11%	11%
A Countervailing Duty Cap also applies	€	€	€

* NUPFOB amount is a Normal Unsubsidised Price Free-on-Board

8.4 Rates of Anti-dumping Duty

Specific Duty

355. The Ministry has considered whether a specific duty should be applied. The Ministry considers that there is not sufficient current information on which to establish a specific duty. There are a range of sizes and quality of goods imported and potentially many suppliers with different cost structures and dumping margins. There

is also no information available which shows that prices are stable, and as identified in paragraph 0 of this report, exchange rates are not stable at the present time. This method of imposing anti-dumping duties is therefore not considered to be appropriate in this instance.

Ad Valorem Duty

356. An alternative method of setting anti-dumping duties is to apply an *ad valorem* duty. An *ad valorem* duty can be set at the margin of dumping or at the margin of injury. In accordance with the lesser duty rule, the lower of the two margins would be used as the *ad valorem* duty rate. Lower priced goods would attract a lower amount of duty and higher priced goods attract a higher amount of duty, which would not necessarily address the amount of injury caused in respect of each size and type of canned peaches under review.

357. Based on a range of information sourced during this review, the Ministry concluded that there would likely be a continuation and recurrence of dumping if the duties were removed. As discussed in section 4.6 and 4.7, the export price information sourced in the present review related to the 3kg can size, and the normal value information related to the 425g can size. The Ministry considers that there is not a sufficient amount of normal value and export price information sourced in this review to enable a reliable and accurate *ad valorem* rate of duty to be established.

Reference Prices

358. The Ministry's normal practice regarding reference prices is to calculate both NIFOB and NV(VFDE) amounts, and in accordance with the lesser duty rule, the NIFOB amount is applied where it is lower than the NV(VFDE) amount. The following section discusses this approach to setting reference prices.

NIFOB Reference Prices

Calculation of Non-Injurious Prices (NIPs)

359. A NIP is an unsuppressed selling price at which a domestic producer can sell its products in its domestic market and is the basis on which a NIFOB reference price is calculated. An unsuppressed selling price is one that is achievable in the absence of competition from dumped product in the New Zealand market.

360. Although the current review found evidence of some injury to HW during the POR(I), the Ministry concluded that the injury suffered over this period is not likely to be attributable to dumped imports from Greece given that anti-dumping duties are currently in place and import volumes from Greece were negligible during the period. Furthermore, the Ministry also notes that anti-dumping duties are currently in place on canned peaches from South Africa and preserved peaches from China. The Ministry considers that HW's current net selling prices are not suppressed by dumped imports, and are therefore an appropriate basis to calculate HW's NIPs.

361. As stated in paragraph 155 of this report, the relevant level of trade for the New Zealand industry is at the ex-factory level. The Ministry considers that establishing reference prices is a forward looking exercise, and therefore the Ministry has based

its calculations on HW's net selling prices for its latest financial year 2008/09. HW advised the Ministry that its contract to supply the [redacted] brand has expired and will no longer be supplied by HW. The Ministry has therefore excluded sales information relating to this brand from the calculation.

362. The Ministry calculated the weighted average selling price for the three retail can sizes. As noted in paragraph 164, HW's net selling prices include [redacted]. These amounts have therefore been deducted to derive HW's ex-factory selling prices.

363. The following table shows HW's NIPs calculated using the method described above.

Table 8.2: HW's NIPs
(NZD/per kg)

Can Size	NIPs
410g	[redacted]
820g	[redacted]
3kg	[redacted]

Calculation of NIFOB Amounts

364. The purpose of a NIFOB amount is to ensure that the price of imported product, when considered at the FOB level, is such that when the canned peaches from Greece are sold at the relevant level of trade in the New Zealand domestic market, the sale price is not lower than the NIP.

365. As stated in paragraph 153, the Ministry considers that there are two possible levels of trade for importers of canned peaches from Greece, which is that the goods can be imported by supermarkets directly (the ex-wharf level) or by distributors which then on-sell the goods (the ex-store level). The Ministry has calculated NIFOB amounts based on both levels of trade for comparison purposes.

NIFOB – Ex-Wharf Level

366. NIFOB amounts are calculated by taking the industry's NIP and deducting costs incurred by importers between the FOB level and the importers' relevant level of trade. Amounts for ocean freight, insurance, customs duty, devanning, customs clearance and port services charges were deducted from the NIP to calculate the NIFOB amount for importers' competing at the ex-wharf level of trade. These amounts were sourced in relation to the single shipment of canned peaches imported from Greece during the POR(D).

367. The NIFOB amounts based on the importers' ex-wharf level of trade are shown in table 8.3 below.

NIFOB – Ex-Store Level

368. The Ministry does not have any current information relating to importers' costs from the ex-wharf level to the ex-store level from which it can calculate the NIFOB at

the importers' ex-store level of trade, and therefore the best available information has been used to fill the information gap.

369. To calculate the NIFOB amounts based on the importers' ex-store level of trade, the Ministry needed to deduct the additional costs of importing the goods from the ex-wharf level (as established above) to the ex-store level, which include the cost of freight to the importers' warehouse, storage costs, and an importers' margin. The Ministry established a cost for freight to warehouse of [redacted] per kilogram which was estimated by HW in its Application for a Review, and which the Ministry notes is similar to the cost of freight from wharf to warehouse sourced from an importer in the 2003 review. Storage costs ([redacted] per kilogram) and an importers' margin ([redacted]%) were also provided by an importer in the 2003 review, and these costs were used by the Ministry in its calculations to establish a NIFOB at the ex-store level. The storage cost per kilogram is a negligible amount and up-dating to a current cost would make no material difference to the calculation of the NIFOB.

370. The following table shows the NIFOB amounts established at the importers' ex-wharf and ex-store levels of trade.

Table 8.3: NIFOB – Ex-Wharf and Ex-Store Levels (NZD/kg)

	NIFOB Amount	
Can Size	Ex-Wharf Level	Ex-Store Level
410g	[redacted]	[redacted]
820g	[redacted]	[redacted]
3kg	[redacted]	[redacted]

371. The Ministry notes that the NIFOB amounts based on the importers' ex-wharf level of trade are higher than the corresponding amounts at the ex-store level. This is to be expected as more costs need to be deducted from the industry's NIPs in the calculation of the NIFOB amounts for each can size at the ex-store level compared to the ex-wharf level.

Conclusion on NIFOB amounts

372. The Ministry considers that the ex-wharf level of trade is the most appropriate level of trade to base the NIFOB calculations. As importers can compete with HW at both the ex-wharf and ex-store levels of trade, if the NIFOB was based on the ex-store level of trade, and supermarkets imported canned peaches from Greece (rather than distributors), the NIFOB would not be set at a level which would remedy any injury suffered by the industry from the dumped imports.

373. Although the proposed NIFOB amounts are established at the importers' ex-wharf level of trade, importers and exporters are able to request a reassessment of the anti-dumping duty rate if they considered the duty rates did not reflect the level of trade at which their imports were competing with the domestic industry's sales in the New Zealand market.[10] In the case of an importer competing at the ex-store level of

[10] Dumping and Countervailing Duties Act 1988, s14(6).

trade, the NIFOB amount could be reassessed for that particular importer or exporter provided that sufficient evidence was supplied to the Ministry on which it could establish new anti-dumping duty rates.

374. For the reasons above, the Ministry considers that the ex-wharf level of trade is the appropriate level of trade to establish the proposed NIFOB amounts.

NV(VFDE) Reference Prices

375. NV(VFDE) amounts are calculated by adding to the Greek normal values established in the review, all costs incurred by the exporter up to the FOB level. The NV(VFDE) amounts therefore represent an un-dumped price at the FOB level.

376. The Ministry has considered two separate approaches to calculate NV(VFDE) amounts. The first approach updates the 2003 normal value and cost information by a relevant price index to derive updated NV(VFDE) amounts. The second approach involves combining the normal value information obtained in the current review, with the cost information obtained in the 2003 review to establish NV(VFDE) amounts.

NV(VFDE) - Updated 2003 Information

377. In the 2003 review, the Ministry established the ex-factory cost of production for the three retail can sizes based on information provided by a Greek manufacturer/exporter and then added a reasonable profit margin of 20 percent to estimate the ex-factory normal values. Costs incurred by the exporter from the ex-factory to the FOB level were added to the ex-factory normal value to derive the NV(VFDE) amounts. These costs included agent's commission, inland freight, terminal handling charges, customs brokerage and document fees.

378. To update these 2003 normal value and cost amounts to the present date, the Ministry obtained statistical information concerning the Greek Producer Price Index (PPI) for the calendar years 2003 to 2008. This statistical information is contained in the April 2009 edition of "*International Monetary Fund: International Financial Statistics*" which states that the PPI is designed to monitor the change in prices of items at the first important commercial transaction. In principle, the PPI should include service industries, but in practice it is limited to the domestic agricultural and industrial sectors. Of particular note is that the industrial sector prices should be at the ex-factory level.

379. The PPI increased by 31 percent from 2003 to 2008. In order to establish updated NV(VFDE) amounts, the Ministry has updated the normal values and costs established in the 2003 review by the 31 percent increase of the PPI from 2003 to 2008.

380. The NV(VFDE) amounts established using the above method are contained in table 8.4 below.

NV(VFDE) - 2008 Normal Value Information

381. As discussed in section 4.7, HW provided normal value information in its Application for a Review, relating to the 425g can size. This normal value

information was at the retail level of trade, from which HW deducted estimated costs and margins between the ex-factory and retail level of trade to establish the ex-factory price, for the 425g can. The Ministry used information obtained in the 2003 review to establish the price differential per kilogram between the can sizes, and applied the price differential percentages to the current normal value information for the 425g can to establish the ex-factory normal values for the 820g and 3kg can sizes.

382. The Ministry does not have any current information regarding the costs from ex-factory to the FOB level, and therefore has used the costs from the 2003 review as identified in paragraph 377, and updated these costs by the 31 percent increase in the Greek PPI, from 2003 to 2008. These costs were added to the ex-factory normal values established in paragraph 381 to derive NV(VFDE) amounts for each of the three can sizes.

383. The following table shows the NV(VFDE) amounts calculated using both methods described above.

Table 8.4: NV(VFDE) Amounts
(EUR/kg)

Can Size	Using Updated 2003 Information	Based on 2008 Normal Value Information
410g	[redacted]	1.88
820g	[redacted]	1.66
3kg	[redacted]	1.53

384. The Ministry notes that the estimated NV(VFDE) amounts based on the normal value information sourced in the present review are substantially higher than the NV(VFDE) amounts based on the normal value and cost information sourced from the 2003 review and updated by the PPI. This is mainly due to the large difference in the normal values established in 2003 and those established in the present review. On average, the estimated normal values in this review are 84 percent higher than the estimated normal values established in the 2003 review. The Ministry notes that the 2003 normal values updated by the 31 percent increase in the PPI still remained significantly lower than the 2008 normal values established in this review.

Conclusion on NV(VFDE)Amounts

385. The Ministry notes that the normal value and cost information sourced in the 2003 review related only to one Greek manufacturer's cost of production for the three retail can sizes. Also, the 20 percent reasonable profit margin was an estimate based on the profit margin of food companies in Greece, and therefore does not specifically relate to Greek manufacturers of canned peaches.

386. Although the normal value information obtained in the current review was based on prices at the retail level in Greece and relates to one retail size can only, the information is more recent than the the information obtained in the 2003 review. On this basis, the Ministry considers that the normal value information obtained in the

current review is the best available information to establish the proposed NV(VFDE) amounts.

Comparison of NIFOB and NV(VFDE) Amounts

387. The Ministry has compared the NIFOB and NV(VFDE) amounts calculated above, and in accordance with the lesser duty rule, where a NIFOB amount is less than the NV(VFDE) amount, the NIFOB amount has been set as the reference price. Where the NIFOB amount is not lower than the NV(VFDE) amount, the duty has been imposed at the full margin of dumping i.e. the NV(VFDE) amount.

388. For the purpose of identifying the lesser duty, the Ministry has converted the NV(VFDE) amounts, which are normally set in EUR, to NZD to allow a comparison with the NIFOB amounts which are set in NZD. The Ministry used the exchange rate of EUR1:NZD2.20 as at 4 June 2009 for the purpose of converting the NV(VFDE) amounts.[11]

389. The following table shows the comparison of NIFOB and NV(VFDE) amounts.

Table 8.5: Reference Price Comparison (NZD/kg)

	Reference Price		
Can Size	NIFOB	NV(VFDE)	Lower Amount
410g		4.13	NIFOB
820g		3.64	NIFOB
3kg		3.36	NIFOB

390. The NIFOB amounts are significantly lower than the corresponding NV(VFDE) amounts for all three can sizes, therefore the proposed reference prices are set at the margin of injury.

Effect of Exchange Rates on Anti-Dumping Duties

391. As noted in paragraph 345, the Ministry sets reference prices in the currency in which the like goods are sold in their respective home markets. For example, NV(VFDE) amounts are set EUR as this is the currency in which the like goods are traded on the domestic market in Greece. NIFOB amounts are set in NZD as this is the currency in which like goods produced by the domestic industry are sold in the New Zealand market.

392. The Ministry recognises the problem of fluctuations of exchange rates when reference prices have been set according to the lesser duty rule i.e. set at a NIFOB amount. Exchange rate movements can result in the NIFOB amount, which was identified as being the lesser duty, later becoming higher than the corresponding NV(VFDE) amount, which would be contrary to the requirement that anti-dumping duties do not exceed the margin of dumping. For this reason, the Ministry has

[11] www.oanda.com

capped the proposed NIFOB amounts in table 8.6 below by the corresponding NV(VFDE) amounts to ensure that the amount of anti-dumping duty collected does not exceed the margin of dumping.

Residual Rate of Duty

393. The 2003 reassessment imposed a residual rate of duty which applied to all Greek exporters other than Venus Growers. For the current reassessment, the proposed reference prices apply to all Greek exporters, and therefore a residual rate of duty is not necessary.

8.5 Proposed Levels of Anti-dumping Duty

394. The following table shows the proposed levels of anti-dumping duties for canned peaches from Greece, calculated on the basis set out above.

Table 8.6: Proposed Reference Price Levels Per Kilogram

Can Size	Reference Price	* Alternative Duty
410g	NZD [redacted]	EUR 1.88
820g	NZD [redacted]	EUR 1.66
3kg	NZD [redacted]	EUR 1.53

*Note: An alternative reference price has been set as the NV(VFDE). This reference price will apply where the NV(VFDE) amount is lower than the NIFOB amount due to exchange rate movements.

395. It should be noted that the current rates of duty that apply to canned peaches from Greece address both the dumping and subsidy effects (see table 8.1 above). In conducting this dumping review the Ministry has been simultaneously conducting a subsidy review of the current countervailing duties that apply to imports of canned peaches from the EU (including Greece). If the Ministry makes a determination in the Final Report of the review of the countervailing duties on canned peaches from the EU that the canned peaches from the EU continue to be subsidised, or are likely to be subsidised if the countervailing duties were removed, the current countervailing duty rates may need to be revised. If this is the case, then the proposed rates of anti-dumping duty will also need to reflect the fact that there are also countervailing duties in place.

396. The Ministry notes that the proposed NIFOB amounts are on average 25 percent higher than the NIFOB amounts calculated in the 2003 reassessment. The NIFOB amounts calculated in the 2003 reassessment were based on the importers' ex-store level of trade, whereas the proposed NIFOB amounts in this reassessment report are based on the importers' ex-wharf level of trade. As noted in paragraph 371, more costs are deducted from the industry's NIPs when calculating the NIFOB amounts at the importers' ex-store level compared to the importers' ex-wharf level of trade. The Ministry also notes that HW's NIP's have increased since the last 2003 reassessment, which also has had the effect of increasing the NIFOB amounts.

Other Can Sizes

397. Regarding canned peaches imported in can sizes for which specific rates have not been established in the table 8.6 above, the applicable rate of duty shall be the reference price for the closest can size stated in table 8.6. The Ministry also notes that a 3kg retail can size can include cans with a nominal net weight up to 3.06kg. Such cans are considered to be subject goods and are therefore subject to anti-dumping duty. Can sizes with a nominal net weight in excess of 3.06kg are not subject to the anti-dumping duties.

8.6 Opportunity for Comment

398. Interested parties have until close of business 17 July 2009 to make submissions upon this Interim Reassessment Report. All submissions must be accompanied by a non-confidential version.

399. A Final Reassessment Report will be completed as soon as practicable after receiving submissions on the Interim Reassessment Report. However, depending on the nature of the submissions received and the content thereof it may be necessary to lengthen the reassessment process in order to include new information in the Ministry's analysis. If submissions result in significant changes to the proposals contained in this Interim Reassessment Report, the Ministry will consider issuing another interim report to allow parties to defend their interests before final recommendations are made to the Minister of Commerce.

Appendix One

400. A full copy of the WTO Agreement on Implementation of Article VI of the GATT 1994 can be found at:

http://www.wto.org/english/docs_e/legal_e/19-adp.pdf

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

http://www.legislation.govt.nz/act/public/1988/0158/latest/whole.html#DLM138364