

**Canned Peaches  
from the European Union**

**Non-Confidential  
Final Reassessment Report**

**Dumping and Countervailing Duties Act 1988**

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## Abbreviations

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The following abbreviations are used in this Report:

Act (the)	Dumping and Countervailing Duties Act 1988
Chief Executive	Chief Executive of the Ministry of Economic Development
CIF	Cost, Insurance and Freight
Customs	New Zealand Customs Service
EBIT	Earnings Before Interest and Tax
EC	European Commission
FOB	Free on Board
HW	Heinz Wattie's Ltd
MG Campoy	Manuel Garcia Campoy SA
Ministry (the)	Ministry of Economic Development
NIP	Non-Injurious Price
NIFOB	Non-Injurious Free-On-Board Price
NSV	Net Sales Value
NUPFOB	Normal Unsubsidised Price Free-On-Board
NV(VFDE)	Normal Value (Value for Duty Equivalent)
POS(R)	Period of Subsidy (Review)
SCM Agreement	WTO Agreement on Subsidies and Countervailing Measures
Venus	Venus Growers Co-operative
VFD	Value for Duty
YE	Year Ended
WTO	World Trade Organisation



# 1. Proceedings

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## 1.1 Summary

1. The purpose of this report is to set out the considerations relating to the reassessment of countervailing duties on canned peaches from the European Union (EU).

2. Countervailing duties on canned peaches were first imposed in 1998. A review, completed in July 2003, concluded that the continued imposition of countervailing duties on canned peaches from the EU is necessary to prevent a recurrence of material injury to the New Zealand industry producing like goods.

3. The review report proposed revised levels of countervailing duties as the basis for a reassessment of the countervailing duty, which was initiated on 4 July 2003.

4. The only substantive submission on the draft reassessment (as part of the Final Review Report) was received from Heinz-Wattie's Ltd. (HW), being the New Zealand industry involved in the production and sale of like goods. HW had a number of objections to the methodology and amounts of duty proposed in the Final Review Report.

5. The following summarises the submission made by HW.

- The countervailing duty regime should not make a distinction between good standard and standard quality peaches as it would be difficult to administer, and importers/exporters would be easily able to circumvent the duties. Duty rates should be set on can size alone.
- The non-injurious price (NIP) used as the basis for the non-injurious free-on-board price (NIFOB) should be updated to reflect recent price increases by HW. The updated NIP should be based on average selling prices for the 12 months to July 2003.
- The methodology used by the review team to calculate the reasonable profit margin for the construction of the normal value in Greece was flawed, and HW proposed a new calculation for this profit margin, which increased it from 17.8 percent to 20 percent of net sales. This revised profit margin flowed through into higher NV(VFDE) amounts.
- HW stated that the review team had made use of incorrect yield rates (the quantity of raw peaches required to make 1 kilogram of canned peaches) in its calculation of the amount of subsidy in the Final Review Report. HW stated that the correct yield rate to use is the rate that HW achieves over its production of [redacted], which make up all of HW's imports of canned peaches [redacted].
- HW stated that the countervailing duty should be imposed as an *ad valorem* rate based on the reference price in Greece, for exports from Greece, and it must be imposed as a fixed duty on imports from Spain or other EU countries.

- The duty regime should be such that it will remedy the injurious effects of subsidisation effectively at three different levels of trade, depending on which level the imports are to be sold at in the New Zealand market. HW stated that imposing duty at one level of trade, and then inviting it to apply for a reassessment, misses the very reason for a review, which is to determine if duties are necessary to prevent a recurrence of subsidisation and material injury, and if so, reassess the type and rate of duty.
- HW stated that setting a countervailing duty rate for “other” suppliers based on a weighted average of the rate calculated for Venus and MG Campoy is incorrect, as the subsidy is either received in full or not at all, therefore an average figure is not useful. HW proposed that the countervailing duty be set as a specific duty (as referred to above) at the full amount of subsidy established during the review.

6. The following summarises the Ministry’s findings in response to HW’s submissions above, the details of which can be found under the appropriate headings below.

- The reassessment team has decided that duties be imposed on the basis of the can sizes only, without differentiating between the standard and the good standard styles.
- The period for calculating HW’s NIP should be the most recent 12-month period to smooth out fluctuation in prices across the three can sizes.
- The reassessment team has not changed its method of calculating the reasonable profit margin from the review report. The reassessment team found that HW had erred in its calculation of the profit margin.
- The reassessment team did not agree that it should change the yield rate it used in the calculation of the amount of subsidy to the yield rate achieved by HW across its production of [REDACTED] but noted that the difference in the yield rates does not affect the calculation of the amount of the subsidy when rounded to the nearest whole cent.
- The method for collecting countervailing duty has changed from *ad valorem* rates to reference prices.
- The reassessment team has adhered to the level of trade used in the review i.e. at the ex-store level for the importer and ex-factory level for HW.
- The *ad valorem* duty rates proposed in the Final Review Report for “other” EU exporters were not weighted averages across the individual rates proposed for Venus and MG Campoy. Rather the amount of subsidy established during the review was weighted by the VFD and quantity of exports by these two firms to New Zealand over the POS(R).

7. The submission by HW outlined above, and the Ministry’s conclusions in response to that submission, resulted in substantive changes to the draft reassessment methodology that the Ministry had adopted. Hence, an interim reassessment report was released for further comment by interested parties. The only submission received was from HW. The following summarises its submission.

- HW agreed that duties should be imposed on can size alone, and make no distinction between standard quality and good standard quality peaches.
- HW proposed an alternative method for calculating the NIP (as the basis for the NIFOB), to more accurately take account of recent price increases, and therefore provide what it claimed would be a better duty regime for the future. This alternative method raised the NIP for each of the three can sizes.
- HW disagreed with the Ministry's findings in relation to the reasonable profit margin used in the calculation of NV(VFDE) and NUPFOB amounts, and stated that this profit margin should be 20 percent, as it outlined in its response to the first draft reassessment report.
- HW disagreed with the Ministry's findings in relation to the setting of duties at one level of trade, and [REDACTED] anti-dumping duty, and considered them legally wrong. HW did not outline why it considered the conclusions reached were legally wrong. However, it did state that due to the poor growing season in Greece it is unlikely that HW or other importers will be sourcing peaches from Greece in the next calendar year. Therefore, given the time already elapsed during the reassessment, HW reserved their position for the time-being, and will address these issues if or when they become relevant in the future.

8. The following summarises the Ministry's conclusions in relation to the issues raised by HW in its submission.

- The Ministry has decided not to adjust the NIPs as proposed by HW, and has kept them at the levels proposed in the interim reassessment report.
- The Ministry accepts that the reasonable profit margin used in the calculation of NV(VFDE) and NUPFOB amounts should be 20 percent of sales revenue, resulting in increased normal values, NV(VFDE)s and NUPFOBs.

9. This report concludes that the anti-dumping duties on canned peaches should be reassessed using reference prices for two named exporters and *ad valorem* percentage residual rates for all other exporters (but with the *ad valorem* percentage rates being capped by use of reference prices), to the levels given, using the methodology outlined in the following sections.

## 1.2 Proceedings

10. On 9 January 1998, the Minister of Commerce first imposed countervailing duties on canned peaches from the European Union imported into New Zealand, because an investigation had established that the goods were being subsidised and by reason thereof causing material injury to the New Zealand industry.

11. On 8 January 2003, the Chief Executive of the Ministry of Economic Development (the Chief Executive) initiated a review of the continued need for the imposition of the countervailing duties, pursuant to section 14(8) of the Dumping and Countervailing Duties Act 1988 ("the Act"), on the basis of positive evidence submitted by HW justifying the need for the review.

12. On 4 July 2003 the Chief Executive completed the review and determined that the continued imposition of countervailing duties was necessary to prevent a recurrence of subsidisation and material injury to the New Zealand industry producing like goods.

13. Following completion of the review, the Chief Executive, initiated on 4 July 2003 a reassessment of the amount of countervailing duty pursuant to section 14(6) of the Act.

14. Section 14(6) of the Dumping and Countervailing Duties Act 1988 (the Act) states:

(6) The [Chief Executive] may initiate a reassessment of any rate or amount of anti-dumping or countervailing duty determined under subsection (4) of this section, including any elements of any formula used to establish such a rate or amount, —

(a) On the initiative of the [Chief Executive]; or

(b) Where a request for a reassessment is submitted to the [Chief Executive] by an interested party who submits evidence justifying the need for a reassessment; or

(c) Following the completion of a review carried out under subsection (8) of this section —

and the Minister may determine a new rate or amount in accordance with subsection (4) of this section, and, in that event, shall give notice of the new rate or amount.

15. Sections 14(4) and 14(5) of the Act refer to the rate or amount of duty as follows:

(4) The anti-dumping duty or countervailing duty in the case of goods to which this section applies shall be a rate or amount determined by the Minister, —

(a) In the case of dumped goods, not exceeding the difference between the export price of the goods and their normal value; and

(b) In the case of subsidised goods, not exceeding the amount of the subsidy on the goods.

(5) In exercising the discretion under subsection (4) of this section, the Minister shall have regard to the desirability of ensuring that the amount of anti-dumping or countervailing duty in respect of those goods is not greater than is necessary to prevent the material injury or a recurrence of the material injury or to remove the threat of material injury to an industry or the material retardation to the establishment of an industry, as the case may require.

16. The final report on the review included a section which set out a proposed basis for reassessing the countervailing duties, which was based on and reflected the findings of the review.

### **1.3 Subject Goods**

17. The goods which are the subject of the countervailing duties, hereinafter referred to as “canned peaches” or “subject goods”, are:

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



## 1.4 Interested Parties

### New Zealand Industry

#### *Heinz Wattie's Ltd*

18. HW is the sole New Zealand producer of canned peaches and submitted the application for the review that preceded this reassessment. HW produces canned peaches under the brand names Wattie's, Oak and Weight Watchers, and also produces various supermarket housebrands. HW is 100 percent owned by H J Heinz Company (New Zealand) Limited which is owned by New Zealand Investment Corporation, which has 20 ordinary shares and H J Heinz Credit Company, a United States company with 80 ordinary shares and 100,000 redeemable preference shares. HW shares its legal and IT functions with its Australian counterparts.

19. HW produces processed and canned fruit, including peaches, apples, pears, apricots, and nectarines as well as vegetables under its fruit and vegetables division. HW also has a recipe division which produces canned meals, soups, tomato paste, tomato puree, pasta sauce, simmer sauces, canned desserts, canned casseroles and tomato sauces in plastic bottles. HW's canning plant is based in Hastings. HW imports various products, including some peach products from overseas e.g. potted peaches from Australia and, when there is a shortfall in domestic raw peach production, canned peaches from Greece.

20. HW exports small quantities of canned peaches and other canned products to Australia and the Pacific Islands, though it predominantly sells on the New Zealand domestic market.

### Exporters and Manufacturers

21. The review examined whether imports of the subject goods were subsidised over the year ended November 2002 (the period of subsidy (review) or POS(R)). The review established that over the POS(R) [REDACTED] Venus in Greece, and MG Campoy [REDACTED] in Spain, exported the subject goods to New Zealand. Venus and MG Campoy are also the producers of the subject goods they exported to New Zealand.

### Importers

22. The review established that [REDACTED] were the importers of the subject goods from the exporters identified above.

### Foreign Governments

23. The European Union and the Governments of Greece and Spain are also interested parties.

## 2. Reassessment of Countervailing Duties

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### 2.1 Existing Levels of Duty

24. Countervailing duty in the original investigation in 1998 was imposed as an *ad valorem* percentage of the FOB value for the exporters specifically investigated. For the exporters that were not specifically investigated, a residual weighted average *ad valorem* rate was calculated, which was based on the information provided by exporters that were specifically investigated.

### 2.2 Method of Imposing Duty

25. Countervailing duties can be applied in a number of ways and can be imposed as a rate or amount, including any rate or amount established by a formula. The basic approaches are:

- a specific amount per unit of product;
- an *ad valorem* rate; and
- a reference price approach

26. The main objective of a countervailing duty is to remove the injurious impact of subsidisation. In deciding on the form of duty, some of the matters considered are ease of administration, ability to ensure the amount of subsidy is not exceeded, fairness between parties, and predictability of the amount of duty likely to be incurred. The objective of the countervailing duty is to remove injury attributable to subsidisation, and is not to punish the exporter or to provide protection to an industry beyond the impact of the subsidisation.

27. Section 14(4) of the Act provides that the Minister must not impose a duty that exceeds the amount of subsidy for the subsidised goods. The Solicitor-General has advised that the references to "export price" and "normal value" in this section are to be read as references to the export prices and normal values established in the investigation or to the values at the time the goods subject to the duty are imported.<sup>1</sup> Given this, the Ministry's approach is to adopt a form of duty that minimises the possibility of exceeding the amount of subsidy on shipments subsequent to the imposition of the duty by the Minister. The Ministry applies the same practice in a reassessment.

28. A specific duty, based on the monetary value of the amount of subsidy, has the advantages of being convenient to apply and impossible to evade by incorrectly stating the value for duty (VFD). A specific rate clearly indicates to the importer the amount of duty payable. However, difficulties can arise where there is a wide range of goods involved, where exchange rates fluctuate to the extent that the amount of subsidy will be exceeded without constant reassessments of the specific amount. A

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<sup>1</sup> Plasterboard from Thailand, Reassessment, September 1999.

specific duty expressed as a monetary amount is best suited to a situation when prices and exchange rates are consistent and stable.

29. An *ad valorem* duty, based on the amount of subsidy expressed as a percentage of the VFD is convenient to apply and is not so affected by exchange rate movements. However, collusion between exporters and importers can lead to the manipulation of the invoice value of the goods concerned. An *ad valorem* rate is often appropriate where there is a large range of goods or where product variations appear. 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.

30. Under the reference price approach, the duty payable is the difference between the transaction price and a reference price. The reference price could be based on the undumped and unsubsidised price of the goods adjusted to the FOB level, or the non-injurious price (NIP), by means of Non-Injurious Free on Board (NIFOB) amounts. A reference price duty 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 value for duty of the goods. Nevertheless, a reference price does have the advantage that it clearly signals to the exporter and importer what level of price is non-subsidised or non-injurious, and provided it is carefully described, the problem of evasion can be dealt with.

#### ***HW Submission on Fixing of Production Aid Duty Rate***

31. HW noted that in the Final Review Report the *ad valorem* rate of countervailing duty had been calculated on the average price of exports from Venus during the POS(R). HW submitted that this would result in the under payment of duty for some imports. HW stated that imports with a VFD below the average VFD for exports by Venus would pay less duty while the same subsidy would still be received by the exporter as the subsidy is paid on a per kilogram basis. HW further stated that this is more of a concern with regards to exports from Spain or other EU countries as without any reference price applying, as there would be for Greek exports, there would be no constraint on the exporter lowering the export price to minimise any countervailing duty.

32. HW submitted that in order to collect the correct countervailing duty, the *ad valorem* rate must be based on the reference price for Greece, and be levied as a fixed duty on imports from Spain and other EU countries.

#### ***Ministry's Consideration of the Issue***

33. The reassessment team agrees with HW that setting *ad valorem* rates of countervailing duty does have negative aspects such as that outlined by HW (it would also increase the amounts of duty should imports have a higher VFD than the average VFD achieved by Venus). At the time of the draft reassessment, the proposed countervailing duty rates were a proposal that was considered the most accurate at the time.

34. The reassessment team considers it highly unlikely that exporters from Spain and other EU countries would lower their export price simply to reduce the incidence of countervailing duty, because this implies lower profit margins on export sales. This strategy would also increase the chances of having anti-dumping action taken against exports from these countries, and therefore reduces even further the possibility of Spanish and EU exporters lowering their export price.

35. The reassessment team also notes that a fixed or specific rate of duty per kilogram, may not be the best method of collecting duty in some circumstances. For example, if goods are exported to New Zealand at prices that are in excess of HW's NIP, they still incur a fixed amount of duty, even though they are causing no injury to the New Zealand industry, and therefore should not incur countervailing duty. The same applies for an *ad valorem* rate of duty. An *ad valorem* rate of duty is even less desirable, as the higher the VFD of the exports, therefore the less injurious to the New Zealand industry, the more duty is collected when the rate is expressed as a percentage of the VFD.

36. The reassessment team considers that a reference price methodology is the best way of collecting countervailing duty in the current case, as it avoids the problem of over-collecting duty. The details of how reference prices to collect countervailing duty would operate when imposed in conjunction with reference prices for the collection of anti-dumping duty on canned peaches from Greece, is explained in section 2.4 below.

## 2.3 Aid to Growers

37. The review team calculated the amount of aid to the growers based on the yield rate information provided by Venus. Venus stated that 3 kgs of canned peaches would require [REDACTED] of raw peaches. Based on this amount, the review team calculated that 1kg of canned peaches requires [REDACTED] of raw peaches. The review team calculated the amount of aid as [REDACTED] per kg of canned peaches using the average NZD/Euro exchange rate over the POS(R). On the basis of Venus' total exports to New Zealand over the POS(R), the review team calculated the amount of subsidy for Venus as a percentage of VFD at [REDACTED] percent.

### HW's Submission

38. HW, in its response to the Final Review Report, stated that the review team in calculating the amount of subsidy conferred by the aid scheme to the growers, has based its calculations using the wrong yield rates. HW stated that the yield rate used by the review team is based on [REDACTED]. HW further stated that over [REDACTED] percent of the canned peaches produced [REDACTED] are peaches [REDACTED] whereas all exports to New Zealand are [REDACTED].

39. HW said that the yield factor from [REDACTED] percent, which is [REDACTED] than the [REDACTED] percent yield it achieves producing mainly [REDACTED]. HW submitted that the Ministry must use a yield factor appropriate for the [REDACTED] being exported to New Zealand.

40. HW calculated a subsidy of ██████████ per kg of canned peaches, using the HW yield rate of ██████████ percent, which equates to a subsidy rate of ██████ percent as a percentage of VFD during the POS(R).

### **Ministry's Consideration of the Issues**

41. The reassessment team notes that the goods description covers halves, slices and pieces and therefore the yield rate should to the extent possible reflect the yield rates achieved for all three styles. In addition to the yield rate information used in the Final Report on the review, Venus also provided the review team with information on yield rates based on ██████████ ██████████ ██████████ for 410g, 820g and 3kg cans. However, this information was based on the actual ██████████ ██████████, minus the seed and skin, (the drained weight) used in a particular can.

42. The reassessment team is of the view that the yield rate information provided by Venus in relation to ██████████ canned peaches should be disregarded in the calculation of the subsidy rates, as the aid to growers is granted on the quantity of raw peaches supplied for processing rather than the drained weight of peaches in a can. The information provided by Venus therefore does not allow for the calculation of the quantity of raw peaches required to produce a kilogram of canned peaches, bearing in mind that the contents of a can of peaches consists of both peaches and the liquid media within which they are packed, both of which make up the net weight of the contents.

43. The information available on yield rates is therefore that used in the Final Report on the review based on all production by Venus (the majority of which is in ██████████) and the information provided by HW relating to ██████████ peaches. Given that the goods description covers halves, slices and pieces, the reassessment team considers that the yield rate provided by Venus that was used in the Final Report on the review is the best information available and this yield rate has therefore been used, i.e., ██████████ kgs of raw peaches is required to produce one kilogram of canned peaches consisting of peaches plus liquid media.

44. Although the reassessment team has concluded that the yield rate used in the Final Report on the review is the best information available, it has nevertheless calculated the amount of subsidy using the ██████████ peach yield rate provided by HW, to gauge the extent to which the difference in the two yield rates impacts on the amount of subsidy. When the amount of subsidy is rounded to two decimal places (as is required for monetary amounts), the subsidy in both cases is the same, i.e., ██████████ per kilogram.

45. The reassessment team concludes that the amount of subsidy should be ██████████ per kg, which is ██████ percent of the VFD of ██████████ exports to New Zealand over the POS(R).

## 2.4 Amount of Countervailing Duty

### Introduction

46. The Ministry is carrying out a concurrent reassessment of the anti-dumping duty on canned peaches from Greece. This reassessment also follows the completion of a review that found that there was a continued need for the duty.

47. The reassessment team notes that it is required to set duties that remedy only the injury caused by the factor that the remedy is in place for. That is, the reassessment team is required not to remedy any injurious effects arising from dumping through a countervailing duty, and vice versa. Or in other words, any anti-dumping duty must only remedy injury caused by dumping, and any countervailing duty must only remedy injury caused by subsidisation of imports.

48. In the review the Ministry carried out an overall price undercutting comparison at the ex-store level on a per kilogram basis, where it compared the overall average HW's NIP with the average price of canned peaches exported from Greece and Spain to non-EU countries. The review team chose the exported price to non-EU countries (excluding Australia, Argentina and NZ which have remedial duties in place against Greek canned peaches), as prices to these countries are unaffected by dumping and/or countervailing duties. These prices are therefore considered indicative of likely export prices in the absence of duties. The average export prices to non-EU countries were built up to estimated ex-store prices in New Zealand by adding the costs incurred between FOB and ex-store in New Zealand.

49. The following table shows the comparisons of estimated importer's ex-store prices (based on prices to non-EU countries) with HW's NIP.

**Table 2.1: Comparison of Importer's Ex-Store Price and HW's NIP (2002) (NZ\$)**

	<u>Greece to Non-EU</u>	<u>Spain to Non-EU</u>
<i>HW NIP</i>	██████████	██████████
- Importer's Ex-store Price	██████████	██████████
- Total Subsidy	██████████	██████████
- Weighted Avg. Margin of Dumping	██████████	██████████
<i>Unsubsidised and/or Undumped Ex-store Price</i>	██████████	██████████
Price Undercutting	██████████	██████████

50. The above table shows that when the subsidy and the dumping amounts are added back to the estimated importer's ex-store price, the Greek and Spanish prices undercut HW's NIP by ██████████ and ██████████ respectively.

51. The existence of price undercutting indicates that the anti-dumping and countervailing duties could be imposed concurrently without the possibility of countervailing duty remedying the injury suffered by dumping and vice versa.

52. In calculating reference prices, the review team proposes to calculate individual rates for 410g, 820g and A10 can sizes for the exporters specifically investigated. The review team also proposes a separate residual rate be calculated for all other possible exporters of canned peaches from the EU.

53. Section 14(5) of 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. In the situation of a review and reassessment where the presence of existing anti-dumping and countervailing duties are likely to have affected the export prices, an analysis of the need for a lesser duty based on the level of price undercutting related to the margin of dumping, is not useful. To establish whether a lesser duty should apply, the review team has therefore approached the issue by firstly calculating a NIFOB and secondly calculating an undumped and unsubsidised price at the FOB level (hereinafter referred to as the normal unsubsidised price at FOB or NUPFOB) to check that the NIFOB has not exceeded the NUPFOB. If the NIFOB is less than the NUPFOB, then the NIFOB amount (which is a form of lesser duty) will apply. If the NIFOB is greater than the NUPFOB then the NUPFOB will apply, i.e., duty will be imposed at the full amount of subsidy.

## **EC Submission**

54. The EC in its submission on the proposed reassessment stated that it still held the view that countervailing duties should be removed altogether. It also urged the reassessment team to contact the co-operating exporters to get their opinions on the proposed duties. The EC also asked whether exporters were able to offer price undertakings during the reassessment process.

## ***Ministry's Consideration of the Issues***

55. The reassessment team notes that the question of whether the duties should be revoked was determined by the review and is not normally considered in a reassessment, a reassessment normally being restricted to establishing the appropriate rate or amount of duty. Section 14(7) of the Act allows the Minister by notice to terminate in whole or in part any countervailing duty. However, the submission by the EC did not introduce any new evidence that was not considered in the review and the reassessment team consequently does not consider that any part of the duty should be terminated under section 14(7) of the Act. The reassessment team also notes that co-operating exporters are contacted as a matter of procedure in all reassessments, and this case was no exception. Finally, the reassessment team notes that in terms of the Act, price undertakings are not permitted in reviews, only in new investigations, therefore, it is not possible for exporters to offer price undertakings in this case.

## Government of Spain Submission

56. The Government of Spain submitted that it supports the reduction in countervailing duty rates, but did not see why a higher rate should be imposed on Spanish firms than on those in other countries. The Government of Spain proposed that the reduction in countervailing duty rates should be effected in identical fashion, that is, the same across the board for all firms accessing the New Zealand market, and at the lowest possible levels. The Government of Spain was of the opinion that such a regime would avoid what it termed wanton and harmful discrimination.

### ***Ministry's Consideration of the Issues***

57. The reassessment team notes that the reason for the higher rate of duty proposed for MG Campoy was purely due to the process involved in calculating the duty rates i.e. the figure reached was the result of a standard calculation that was applied to all firms, and the figure for MG Campoy worked out higher due to it having a [REDACTED]. The reassessment team further notes that other exporters in Spain (i.e. all firms but MG Campoy) had the same rates proposed for their exports into New Zealand as all "other" exporters in the EU. Therefore the reassessment team is of the view that the regime proposed in the Final Review Report (and in this report) does not involve discriminatory duties.

## Rates for Good Standard and Standard Product

58. In calculating reference prices, the Ministry proposed in the Final Review Report reference prices for good standard and standard quality, 410g, 820g, and 3kg can sizes (that is, not to distinguish between the media in which the peaches are canned). HW in its response to the Final Review Report submitted that the duties should be imposed based on the three can sizes but not be split between the standard and good standard styles. HW submissions on this issue are dealt with in the following paragraphs.

### HW's Submission

59. HW, in its response to the Final Review Report stated, in summary, that it is inappropriate to differentiate between good standard and standard canned peaches for the following reasons:

- material injury to HW will not be fully prevented
- it will be impossible for Customs to administer

60. HW stated that it aims to [REDACTED], however [REDACTED] are stored as britestack, which are later labelled and dispatched [REDACTED], as required to meet sales patterns. As a result, all HW's brands have to compete with the imported product, which are not differentiated between good standard and standard.

61. HW argued that setting a lower reference price for standard than for good standard will only ensure that all imports are designated as standard. HW also



argued that there is no statutory requirement for the imported product or accompanying documentation to display or contain any evidence that identifies it as either standard or good standard.

62. HW submitted that the difference between standard and good standard is not a term used by the New Zealand industry which more commonly uses the United States Department of Agriculture specification of “fancy”, “choice”, “standard” and “sub-standard”, or may use the Camden Fruit Standard which has Camden “A”, “B” or “C” as its grades.

63. HW stated that it would be impossible for Customs to identify visually or by documentation whether the imports are standard or good standard when there is no standardised grading system used globally and there is no statutory requirement to show any grading. HW also stated that the end result would be that importers would import only the standard grade or declare all imports as standard. HW submitted that this would result in lower reference prices being applied, when these imports would compete with and injure all HW’s products.

64. HW submitted that the only logical method is to set a reference price for each can size irrespective of any “pseudo grading”.

#### Ministry’s Consideration of the Issues

65. ██████████ of canned peaches from Greece over the POS(R). All of its peaches were imported from ██████████, which were labelled either ██████████. The invoices from ██████████ to ██████████ describe the canned peaches in a similar way. The description on the invoice also includes the word ██████████ being the ██████████ brand and ██████████, being the ██████████ brand. The Ministry does not know how subject goods would be described if importers other than ██████████ imported them.

66. In the South African canned peaches case, the Ministry reassessed the duties based on sub-standard and choice brands of canned peaches found to be imported over the POD(R) from South Africa. The separation into two styles was justified in that case as there were significant price differences between the two styles of canned peaches imported from South Africa. For example, the difference in the ex-factory export price in the South African case of A10 (3kg) sub-standard and choice canned peaches in syrup was ██████████ percent. In the current case the difference in the ex-factory export price between A10 standard and good standard canned peaches is ██████████ percent. The Ministry considers that the price difference in the current case is not sufficient on its own to outweigh other arguments against a split between standard and good standard styles.

67. The Ministry concurs with HW that splitting the countervailing duties between standard and good standard would encourage exporters to circumvent the higher duties by describing all canned peaches as standard. Also, as the cans are not required to be labelled as such, it would be difficult for Customs to differentiate between the two styles of canned peaches in order to calculate the appropriate countervailing duties.

68. If the countervailing duties are to be imposed on a per size basis (410g, 820g and A10), the Ministry is of the view that a simple average price of the two styles be calculated. A weighted average price would not be appropriate in this case, as it would bias the price towards the particular grade that happened to be sold in higher volumes over the POS(R) to one customer, rather than providing a fair average price.

69. Based on HW's submission and its own consideration of the issues, the Ministry concludes that the countervailing duties should be imposed on the basis of the can sizes only, with no split between the grade and styles imported into New Zealand.

### **Calculation of NIFOBs**

70. NIFOBs are calculated by deducting from the industry's NIP those costs and importer's margin arising after FOB up to the level of trade at which the imported product first competes with the New Zealand industry's product.

### **Calculation of NIP**

#### ***HW Original Submission***

71. HW submitted that the review team accepted in the Final Review Report that a review is a forward-looking exercise, but only based the NIP on prices achieved in the 12-month period to May 2003. HW stated that while this is clearly more correct than using prices over the POS(R), it is still historical and does not reflect the situation going forward. HW also stated that there have been further price increases during the period to July 2003, and to use prices to May 2003 also inaccurately reflects the situation going forward, as these price increases are already in place.

72. HW submitted that the only way to reflect the true situation is to use average prices for the [REDACTED] months to July 2003, as this most closely represents the situation going forward, being the most recent period since its prices were last increased. HW also noted that these prices are now firmly in place. HW provided the actual average prices achieved for the [REDACTED] months to July 2003, which are [REDACTED] for each can size and overall, as opposed to the prices for the 12 months to May 2003, which [REDACTED] are [REDACTED] than the prices achieved over the POS(R).

#### ***Ministry's Original Consideration of the Issues***

73. The reassessment team agrees that a review is a forward-looking exercise, and therefore duties should be imposed which will best remedy dumping in the future. Hence, the reassessment team agrees that the NIP should be based on the most current pricing information available. However, the reassessment team considers that pricing information for a full 12-month period would be more appropriate as this would smooth out any price fluctuations. The evidence on monthly prices provided by HW across all its brands shows a price fluctuation of about [REDACTED] over the period from December 2001 to November 2002. To base the NIP on only a [REDACTED] month period would fail to include any price fluctuations from the other [REDACTED] months of the year.

74. The reassessment team also notes that HW has, in the past, [REDACTED] (refer paragraph 194 of Final Review Report). However, the reassessment team is also of the opinion that the previous [REDACTED] is only an indication of possible future outcomes, and has not been given any weight beyond that.

75. Hence, the reassessment team has based the NIP on the [REDACTED] prices achieved by HW over the 12-month period to July 2003.

76. The following table shows HW's [REDACTED] for the YE July 2003.

**Table 2.2: HW's NIP (NZ\$)**

Can Size	NIP/kg
410g	[REDACTED]
820g	[REDACTED]
3kg	[REDACTED]

### ***HW Submission on Interim Reassessment Report***

77. HW agreed with the reassessment team that duties should be imposed that will best remedy injury caused by dumping in the future, and that a 12 month period should be used so as to take seasonality into account. However, HW disagreed with the 12 month period used in the calculation of the NIP, and proposed an alternative method for calculating this NIP.

78. HW stated that the recent price increases have been effective [REDACTED], and are now permanently in place. HW carried out a comparison of prices during this period to the same period a year ago which showed prices have increased by [REDACTED] percent for 410g cans, [REDACTED] percent for 820g cans, and [REDACTED] percent for A10 cans. HW then applied these price increases to the prices achieved in the [REDACTED] to provide the forward looking prices for the period [REDACTED] with any seasonal fluctuations accounted for. HW stated that by combining the actual [REDACTED] prices and the adjusted [REDACTED] prices, an accurate forward looking price is achieved. These adjusted NIP's are presented in the table below, and compared to the NIP's calculated by the reassessment team in the Interim Report.

**Table 2.3: HW NIP (NZ\$ per kg)**

	410	820	A10
NIP based on 12 Months to July 2003	██████████	██████████	██████████
Adjusted NIP	██████████	██████████	██████████

79. The table shows that the adjusted HW NIP's are greater than the original NIP's for each can size.

**Ministry's Consideration of the Issues**

80. The reassessment team notes HW's concern that the anti-dumping duty should be aimed towards preventing injury in the future by taking greater account of the recent price increases. However, the reassessment team considers that this is adequately achieved by basing the NIP on the average prices achieved over the 12 month period to July 2003, and there is no need to apply HW's method (i.e. the price increases have already been properly taken account of by using this 12 month period, and applying HW's methodology gives the price increases too much weight).

81. The reassessment team further notes that even though HW has stated that these price increases are now firmly in place, there is no absolute guarantee that these prices will be retained into the future, and therefore the reassessment team has taken a conservative approach to this issue, by relying on prices actually achieved, and not using adjusted prices that could have been achieved had the price increases been implemented earlier.

82. The reassessment team concludes that the methodology it followed in the interim reassessment report, of basing the NIP on a 12 month period (August 2002 – July 2003) that incorporates the recent price increases, to be the most accurate method, and the NIP has accordingly been established on this basis

83. The reassessment team notes that HW can apply for a further reassessment if it considers that, after a full 12 month period has elapsed since its ██████████ price increases, it has cause to believe that a further reassessment is necessary and provides evidence justifying the need for a reassessment. This reassessment would only be carried out on the basis that circumstances have changed such that the duty is no longer fully effective.

**Level of Trade**

84. The prices of dumped imports and domestic production are compared at the point of first competition in New Zealand. The levels of trade will normally be the ex-factory price for goods produced in New Zealand and the importer's ex-store price for imports. This approach ensures that differences in distribution costs do not confuse the impact of dumping. This approach therefore compares importer's prices, including relevant selling and administration costs, which involve similar cost elements to those in the New Zealand manufacturer's selling price, but not including cost elements relating to the distribution of goods.

85. In the review, HW agreed that ex-factory was the appropriate level of trade for its sales of canned peaches. HW submitted in the review that the level of trade for imported product would change from ex-importer's store to [REDACTED] if the duties were removed, because HW considered that [REDACTED] would [REDACTED]. The review team agreed that this was the appropriate level of trade for [REDACTED]. It also noted that imports were still likely through separate importers, where ex-store was the appropriate level of trade.

#### **HW Submission on Level of Trade**

86. HW said that it agrees with the conclusion in the Final Review Report, that there are two levels of trade that could be relevant in this situation. The first is comparing the ex-factory price of HW's sales, to the ex-importer's store price for imports by retailers through an independent importer. The second is comparing the ex-factory selling price of HW's sales to the [REDACTED] price for goods that are [REDACTED].

87. HW submitted that there are two subsets within the first scenario. HW considers that an importer importing a branded product that it markets and sells to retailers would have costs similar to those identified by the review team for an importer investigated during the POS(R), i.e. an independent importer who imports the goods in their own right and on-sells to retailers. However, HW also stated that the current scenario applying to imports from Australia, where an [REDACTED], will become more common in future. HW considers that the costs for this type of [REDACTED] than for an importer who handles the goods, and therefore they will [REDACTED]. HW further noted that [REDACTED] are currently in this type of arrangement with [REDACTED], and from its own experience estimates that the [REDACTED] would be making [REDACTED].

88. HW noted that the review team, in the Final Review Report, set six *ad valorem* duty rates that would apply regardless of whether the goods are imported by an importer, [REDACTED], that is, no allowance has been made for the correct level of trade. HW submitted that when there threatens to be imports at various levels of trade, setting a remedy that does not take account of this is remiss, and will only ensure the remedy is ineffective.

89. HW also referred to the review team's suggestion in the Final Review Report that if imports begin at a different level of trade to that on which the proposed duties were based (the ex-store level) it could apply for a reassessment. HW said this missed the very reason for a review. HW submitted that the purpose of the review is to determine whether injury would recur if the duties were to be removed, and if so, reassess the current rate and type of duty so as to determine what duties are required in future to ensure that material injury does not recur. HW is of the opinion that to not do this and make it rely on a future reassessment leaves it vulnerable to injury.

90. HW submitted that separate duties should be set to cover the three different levels of trade it has referred to above. HW made its own calculations of new NIFOB's at each of the three levels of trade, which resulted in amounts [REDACTED] than those calculated by the review team across the board. These calculations were based on the NIP for the [REDACTED] months to July 2003 (which as outlined above, the reassessment team considers not representative), and deducted the same costs as those deducted by the reassessment team in the proposed reassessment.

### **Ministry's Consideration of the Issues**

91. The reassessment team accepts that there is more than one possible level of trade at which the subject goods could first compete with HW's product i.e., through a handling importer, [REDACTED]. The reassessment team notes however that this argument was considered in the Final Review Report, and it still holds the opinion that as no imports from Greece have been observed [REDACTED], to impose duty based on this premise, would be purely speculative. The reassessment team also notes that HW took the line of argument during the review that [REDACTED] if duties were removed, and as the duties have been retained, this situation may well not arise.

92. The reassessment team also considers there would be significant difficulties in administering at the border a three tier system like that proposed by HW. It would require Customs to determine at the point of importation what level of trade the goods would subsequently be sold at in the New Zealand market, and would entail practical difficulties similar to those identified by HW above in relation to setting separate duties for standard and good standard product. The reassessment team considers that a three tier system would only practically operate where duties at a particular level of trade were in place against named exporters and importers. This could only happen if actual imports occurred at a level of trade different to that involving a handling importer, and such duties would need to be set by way of a reassessment.

93. The reassessment team concludes that the methodology and calculations used in the proposed reassessment in the Final Review Report should be adhered to in the reassessment i.e., that NIFOBs should be calculated at the ex-store level of trade involving costs incurred by a handling importer.

### **NIFOB Amounts**

94. The purpose of the NIFOB is to ensure that the price of imported product, when considered at the FOB level is such that when the canned peaches are sold at the ex-store level, the sale price equates to the NIP.

95. If a NIFOB was to be established in euros, the level of the NIFOB when converted to NZ dollars would vary every time there was a movement in the New Zealand dollar to euro exchange rate. The effect of a variable NIFOB, when converted into NZ dollars, would be to change the consequent ex-store price (assuming the same profit margin is taken). For example, if the NZ dollar depreciated against the euro, then the NIFOB in NZ dollars would increase and result

in an ex-store price higher than the NIP. The reverse would result if the NZ dollar appreciated against the euro.

96. If a NIFOB is set in NZ dollars and the transaction price is below the NIFOB amount, then the countervailing duty collected will be such that the ex-store price (assuming the allowable profit margin is taken) will always equate to the NIP, provided there are no significant changes in the costs between FOB and ex-store from those used to establish the NIFOB amount. With the exception of sea freight, all significant costs between FOB and ex-store are incurred in NZ dollars and are not directly affected by exchange rate movements. However, if these costs do change significantly, this can be addressed by way of reassessment. A NIFOB fixed in NZ dollars will also ensure that the duty is administratively simple to operate.

97. The review team calculated the NIFOB by deducting the costs after FOB to ex-store from the NIP. The costs deducted include sea freight, insurance, port services charges and documentation, inland transport, storage, import duty and reasonable profit margin. [REDACTED] was used for this calculation. The following tables show the calculation of NIFOB amounts for all Greek and Spanish exporters, and all "other" EU exporters. The review team calculated a weighted average NIFOB for all other suppliers out of the EU based on the information provided by [REDACTED].

**Table 2.4: NIFOB – All Greek Exporters (\$NZ/kg)**

	<u>410g</u>	<u>820g</u>	<u>3kg</u>
HW NIP	[REDACTED]	[REDACTED]	[REDACTED]
<u>Less Costs and Margins</u>			
- Ocean Freight	[REDACTED]	[REDACTED]	[REDACTED]
- Insurance	[REDACTED]	[REDACTED]	[REDACTED]
- Port Services & Documentation Charges	[REDACTED]	[REDACTED]	[REDACTED]
- Inland transport/cartage to store	[REDACTED]	[REDACTED]	[REDACTED]
- Storage	[REDACTED]	[REDACTED]	[REDACTED]
- Duty(7%)	[REDACTED]	[REDACTED]	[REDACTED]
- Reasonable Importer's Margin	[REDACTED]	[REDACTED]	[REDACTED]
NIFOB Ex-store (NZD/kg)	[REDACTED]	[REDACTED]	[REDACTED]



**Table 2.5: NIFOB – All Spanish Exporters (\$NZ/kg)**

	<u>410g</u>	<u>820g</u>	<u>3000g</u>
HW NIP			
<u>Less Costs and Margins</u>			
- Ocean Freight			
- Insurance			
- Port Service & Documentation Charges			
- Inland transport/cartage to store			
- Devanning Fees			
- Customs Duty(7%)			
- Other Import Costs			
- Reasonable Importer’s Margin			
NIFOB Ex-store (NZD/kg)			

**Table 2.6: Weighted Average NIFOB – Other EU Countries (\$NZ/kg)**

	<u>410g</u>	<u>820g</u>	<u>3000g</u>
HW NIP			
<u>Less Costs and Margins</u>			
- Ocean Freight			
- Insurance			
- Port Service & Documentation Charges			
- Inland transport/cartage to store			
- Devanning Fees			
- Storage			
- Customs Duty(7%)			



- Other Import Costs			
- Reasonable Importer's Margin			
Weighted Average Ex-store NIFOB (NZD/kg)			

## Calculation of NUPFOB Amounts

### *Original Submission by HW*

98. HW stated in response to the Final Review Report that the methodology used to establish a reasonable profit margin to construct normal values was flawed. HW suggested an alternative method, which gave a reasonable profit margin of 20 percent, as opposed to the 17.8 percent margin that the review team calculated in the Final Review Report.

99. The review team calculated the reasonable profit margin in the Final Review Report by making use of figures contained in a report by the National Bank of Greece relating to firms listed on the Athens Stock Exchange. The report provided in aggregate for all of the non-financial companies listed on the Athens stock exchange, the gross profit margin and operating profit (as a percentage of sales) for 2001, which were respectively 27.3 and 15.1 percent. This operating profit percentage is 44.7 percent less than the gross margin percentage. An operating profit margin percentage for the food and beverage sector was therefore estimated by reducing the gross profit percentage for this sector (32.2 percent) by 44.7 percent, which is equal to 17.8 percent. A reasonable profit margin was therefore calculated at 17.8 percent of the selling price.

100. HW was of the opinion that the review team had presented no evidence that food companies listed on the Athens Stock Exchange have a proportionally higher cost structure than other companies, and therefore it should be assumed that food companies are more profitable than the average of all companies. HW then presented an alternative calculation of the reasonable profit margin that should be used in the calculation of the NV(VFDE) amounts. This calculation is presented below.

**Table 2.7: HW Reasonable Profit Margin Calculation**

<u>Gross Margin</u>	
Food Companies	32.2%
Less All Company's Athens Stock Exchange	27.3%
Food Company Additional Margin	4.9%

Net Profit

All Athens Stock Exchange	15.1%
Plus Food Company Additional Margin	4.9%
Revised Net Profit Margin	20.0%

101. HW further submitted that this new profit margin should be applied to the ex-factory costs used to construct the NV(VFDE) amounts to give new NV(VFDE) amounts. HW, through a series of adjustments and additions of costs used in the original calculation, constructed new NV(VFDE) amounts which were [REDACTED] than those calculated by the review team. These adjustments involved, *inter alia*, the introduction of costs representing “traditional marketing costs”, which HW considers are required to build and maintain a local brand. HW also considers that these marketing costs ensure that the normal value is at the same level of trade as its imports. HW neglected to make an adjustment for customs brokerage and document fees.

**Ministry’s Original Consideration of the Issues**

102. The reassessment team considers that HW’s calculation of the reasonable profit margin is fundamentally flawed, in that it adds a difference in percentage gross margins (which is not actually the proportionate difference, just the difference between two percentage amounts), to the percentage net profit margin to reach an overall net profit margin for food companies. The reassessment team considers that differences in percentages cannot be added to other percentages to establish new percentages, because they are measured from different bases. The reassessment team also considers it invalid to begin with percentages as the base of a calculation and insert numbers to satisfy these percentages.

103. The reassessment team considers that the correct calculation should establish proportionately how much greater the gross margin for food companies is than for all companies (which is 17.95 percent), and scale up the net margin for all companies by this percentage. Scaling 15.1 percent up by 1.1795 shows that the reasonable profit margin should be 17.8 percent, which is as calculated for the Final Review Report.

104. The reassessment team concludes that the reasonable net profit margin should be 17.8 percent of sales revenue.

105. HW’s calculation of the normal value included an amount for “traditional marketing costs” which are costs it considers necessary to build and maintain a local brand. The reassessment team notes that predominantly, [REDACTED] does not sell in its local market, and advised that if it did, it would most likely do so through a distributor, and therefore selling and administration expenses would be the same as those incurred on export sales to New Zealand. Selling and administration costs have therefore been set at the same amount as those incurred on export sales to New Zealand.

106. The reassessment team notes that normal values must be compared to export prices at the same level of trade (or an adjustment must be made if normal values cannot be established at the same level of trade). The reassessment team considers that in the review normal values were correctly constructed such that they were at the same level of trade as the export sales to New Zealand. As noted above, the reassessment team considers that selling and administration expenses incurred on domestic sales would be similar to those incurred on export sales to New Zealand, if those sales were made through a distributor. Sales through a distributor on the domestic market are equivalent to the level of trade at which export sales are made to [REDACTED]. With the addition of a reasonable profit, the reassessment team consequently considers that the constructed normal values represent the prices at which sales would be made on the domestic market if such sales were made at the same level of trade as the export sales to New Zealand.

107. The reassessment team also considers that customs brokerage/document fees should be included in the calculation of the NV(VFDE) as they are actual costs incurred by Venus to get their product to the wharf in Greece when they export canned peaches to New Zealand.

108. The reassessment team considers that the recent prices would result in an accurate calculation of the NIFOB, which would be compared to the NUPFOB in order to decide whether a lesser duty should apply. The review team considers that the normal value information should be updated to the same period as that of the NIP information i.e. year ended July 2003. The normal value information currently is based on cost information for year ended November 2002.

109. Based on the above analysis the reassessment team concludes that the exact methodology and calculations used to calculate the proposed NV(VFDE) amounts in the Final Review Report should be adhered to in the reassessment.

### ***HW Submission on Interim Reassessment Report***

110. HW stated that it had not erred in its calculation of the reasonable profit margin. HW said that its calculation was based on the assumption that costs below gross profit (i.e. administration, general selling and financial expenses) are the same proportionally for food companies as for all other companies, which it considered reasonable given the lack of information to the contrary. HW provided the following table to demonstrate how the 20 percent margin was calculated.

**Table 2.8: Reasonable Profit Margin**

<b>As a share of Sales Revenue:</b>	All Companies	Food Companies	Variance
Gross Profit Margin	27.3%	32.2%	-4.9%
Costs Below GP	12.2%	12.2%	0.0%
Net Profit	15.1%	20.0%	-4.9%

**Ministry’s Consideration of the Issues**

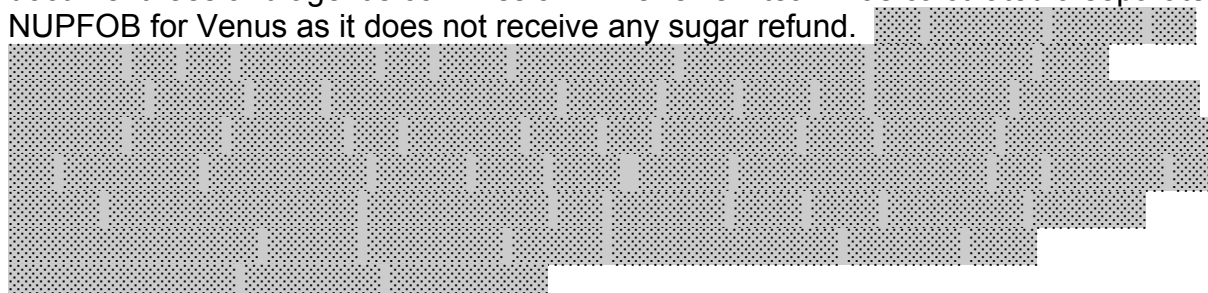
111. The reassessment team notes that there are two methods that can be used to calculate the reasonable profit margin in this instance (that used by HW in its latest submission (giving a 20 percent margin), and that used by the reassessment team in the interim reassessment report (giving a 17.8 percent margin), both of which could be considered correct.

112. However, the reassessment team agrees that given the lack of evidence in favour of selling and administration costs being higher for food companies than for all other companies, it is reasonable to assume that they are approximately equal.

113. Therefore, the reassessment team concludes that the reasonable profit margin should be set at 20 percent of sales revenue.

**Ministry’s Calculation**

114. A NUPFOB is calculated by adjusting the unsubsidised normal value to the FOB level. In this case, the costs incurred between the level at which normal values were established (ex-factory) and FOB included inland freight, customs brokerage and document fees and agent’s commission. The review team has calculated a separate NUPFOB for Venus as it does not receive any sugar refund.



115. The calculation of the NIFOB amounts above are based on an average NIP for the year ended July 2003. The reassessment team notes that the use of this NIP is correct only if it can be compared to NUPFOB amounts that relate to approximately the same period. As the reassessment team only has normal value information to November 2002, it updated the normal value by the percentage increase in the Greek Producer Price Index (PPI) over the period November to July 2003. The review team calculated the change in the PPI from November 2002 to July 2003 of 1.7 percent. The normal values from the year ending November 2002 were increased by this percentage increase in the PPI.

116. The following table shows the NUPFOB calculated for each can size using the updated normal value information for MG Campoy and other EU exporters.

**Table 2.9: NUPFOB-MG Campoy and Other EU Exporters (NZD/kg)**

	410	820	A10
Ex-Factory Cost per kg (euros)	[REDACTED]	[REDACTED]	[REDACTED]
Plus reasonable profit margin (20%)	[REDACTED]	[REDACTED]	[REDACTED]
Ex-Factory Normal Value	[REDACTED]	[REDACTED]	[REDACTED]

<u>Plus Costs from Ex-Factory to FOB</u>			
Agent's Commission (■)	■	■	■
Inland Freight and THC	■	■	■
Customs Brokerage/Document Fees	■	■	■
NV(VFDE) (euro/kg)	■	■	■
<u>Plus</u> PPI Adjustment (1.7%)	■	■	■
Adjusted NV(VFDE) (euro/kg)	■	■	■
Adjusted NV(VFDE) (NZD/kg)	■	■	■
<u>Plus</u> Subsidy (Grower's Aid/Sugar Refund)	■	■	■
NUPFOB	■	■	■

117. The following table shows the NUPFOB calculated for Venus, which includes only the producers aid portion of the subsidy.

**Table 2.10: NUPFOB – Venus (NZD/kg)**

	410	820	A10
Ex-Factory Cost per kg (euros)	■	■	■
<u>Plus</u> reasonable profit margin (20%)	■	■	■
Ex-Factory Normal Value	■	■	■
<u>Plus Costs from Ex-Factory to FOB</u>			
Agent's Commission (■)	■	■	■
Inland Freight and THC	■	■	■
Customs Brokerage/Document Fees	■	■	■
NV(VFDE) (euro/kg)	■	■	■
<u>Plus</u> PPI Adjustment (1.7%)	■	■	■
Adjusted NV(VFDE) (euro/kg)	■	■	■
Adjusted NV(VFDE) (NZD/kg)	■	■	■
<u>Plus</u> Subsidy (Grower's Aid)	■	■	■
NUPFOB	■	■	■

118. The NUPFOB per kilogram amounts in NZ dollars for comparison with the NIFOB amounts were calculated by converting the NUPFOB amount in euros per kilogram using the average NZ\$/€ exchange rate for the POS(R), which according to the [www.oanda.com](http://www.oanda.com) website was NZ\$1.00=€0.48882.

## Calculation of Relevant Reference Prices

119. The use of reference prices is simple for exports from Spain and all other EU countries (apart from Greece), because there is no anti-dumping duty to consider. However, the use of reference prices to calculate countervailing duty on exports from Greece is complicated by the fact that these exports are subject to both anti-dumping and countervailing duties.

120. A major consideration for the reassessment team in calculating duties on this basis is to ensure anti-dumping duty does not remedy injury from subsidisation and vice versa. The reassessment team is of the opinion that the proposed method outlined above will ensure that the amount of subsidy is countervailed accurately, and then any remaining material injury caused by dumping will be remedied by the proposed anti-dumping duty.

121. Another consideration is to ensure that the duties are not levied at such a rate that they over or under compensate HW for the injury it is likely to suffer in the foreseeable future as required by section 14(5) of the Act and that they only remove injury that is attributable to dumping or subsidy. The reassessment team is of the view that by imposing lesser duty rates where appropriate, and through the use of reference prices, this problem has been addressed.

122. The reassessment team is of the opinion that dumping issues need to be addressed in this report. An interested party basing any calculation of countervailing duty payable on a line of imports on the methodology outlined above may reach a final countervailing duty payable that differs from the amount of countervailing duty payable based on the methodology outlined in the reassessment of anti-dumping duties on canned peaches from Greece (where countervailing duty is determined by subtracting the VFD from the reference price, but capping the duty at either [REDACTED]). The reassessment team considers that the amount of subsidy inherent in the price of exports to New Zealand from Greece will be constant regardless of the VFD of the exports, and therefore should have countervailing duty imposed to off-set it before any anti-dumping duties are calculated. The reassessment team notes that export prices to New Zealand, without the effect of the subsidy would be higher, and therefore the liability for anti-dumping duty would be less on any given line of imports. The reassessment team notes that anti-dumping duty is only proposed for exports from Greece.

123. In the reassessment of anti-dumping duties on canned peaches from Greece, the reassessment team compared the NIFOB to the NV(VFDE) amounts calculated for exports by Venus across three can sizes. Where the NV(VFDE) was lower than the NIFOB, a reference price was proposed at the full margin of dumping as an NV(VFDE) amount in euros.

124. To calculate the reference prices in this case the reassessment team has used the NV(VFDE) figures as a base for the NUPFOB, which is the normal unsubsidised FOB price. The NUPFOB equals the NV(VFDE) plus the amount of subsidy per kilogram calculated during the review (producer's aid is [REDACTED], and sugar export refund is [REDACTED]).

125. The reassessment team considers that as the subsidy is paid in euros the amount of subsidy to be countervailed in any export transaction, should be set in euros (the rates for producer's aid and sugar refunds are [REDACTED] euros), then converted into New Zealand dollars at the time of importation. The implication of this is that the amount of subsidy in New Zealand dollars will not always equal [REDACTED] (this report only makes use of these figures because they were what resulted from the average NZD/euro exchange rate over the POS(R)). For Customs purposes the base subsidy amount from which the amount of countervailing duty payable will be calculated, will be equal to [REDACTED] euros or [REDACTED] euros converted into New Zealand dollars at the time of importation.

### Duty for Venus

126. Venus has used imported sugar for all its production of canned peaches over the POS(R). As the reassessment team is satisfied that Venus is unlikely to use EU sugar in its future production, it proposes an exemption for Venus from any countervailing duties relating to export sugar refunds.

127. The reassessment team therefore proposes countervailing duty for Venus only in relation to the producer's aid. This NUPFOB has then been compared to the NIFOB identified for each exporter, and where the NIFOB is less than the NUPFOB, a reference price is proposed at the NIFOB level in NZD. Where the NUPFOB is less than the NIFOB, it is proposed that duty be imposed as a reference price at the full amount of subsidy. Details of the comparison of the NIFOB with the NUPFOB and the relevant rate of duty that should apply are shown in the table below.

**Table 2.11: Venus Reference Price Amounts (NZD/kg)**

	410	820	A10
NIFOB	[REDACTED]	[REDACTED]	[REDACTED]
NUPFOB	[REDACTED]	[REDACTED]	[REDACTED]
Countervailing Duty	Lesser	Full	Lesser
Reference Price	[REDACTED]	[REDACTED]	[REDACTED]

128. The total duty (anti-dumping plus countervailing duty) is calculated by deducting the VFD from the reference price (NIFOB for lesser duty, NUPFOB for full amount). The amount of subsidy is a fixed amount and therefore does not vary according to the export price of the goods. In the case of Venus, the amount of subsidy is [REDACTED] and this amount represents the countervailing duty payable (unless the total duty payable is less than [REDACTED] in which case such a lesser amount will all be countervailing duty). The amount of anti-dumping duty payable is obtained by deducting [REDACTED] from the total duty payable.

129. The reassessment team notes that even though in some cases the countervailing duty has been imposed at the "full amount", all this means in practice is that the NUPFOB is the appropriate reference price from which to make comparisons and not the NIFOB. It does not mean that countervailing duty will always be imposed at the full amount ([REDACTED] or [REDACTED]), because the amount of duty depends on the export price, just as in a purely dumping case.

### Duty for Other Greek Exporters

130. In order to protect confidential information, it is not possible to use the same reference price methodology for other Greek exporters as was used for Venus. In this situation, the reassessment team considers that the best methodology is to impose a residual rate as an *ad valorem* percentage. To ensure that an *ad valorem* percentage rate does not impose duty at a rate that is greater than the amount of subsidy the reassessment team considers that the duty should be capped at the duty payable using an appropriate reference price.

131. The rate of duty for other exporters has been calculated on the basis that they will receive both the aid to growers and the sugar export refund. During the review that preceded this reassessment the amount of subsidy was calculated as a percentage of the value for duty of exports by Venus, on a per kilogram basis. Although Venus did not receive the sugar export refund, during the review an amount was calculated of what Venus would have received had it used sugar from within the EU. The amount of subsidy expressed as a percentage of the value for duty was 11 percent and it is therefore proposed that the rate of duty for other exporters from Greece be set as an *ad valorem* percentage at this amount.

132. The reassessment team is of the opinion that the reference prices for other Greek exporters should be calculated using the same methodology as above for Venus, and make use of the same NV(VFDE), but include in the NUPFOB both subsidies, as opposed to just the producer’s aid portion for Venus. The cap, however, should be set at the maximum rate, i.e., consideration of a lesser duty is not necessary for the purposes of establishing a cap on the *ad valorem* percentage.

133. The reference prices which will be used to establish the cap on the duty for other Greek exporters are shown in the table below.

**Table 2.12: Reference Prices for Calculation of Cap on Duty for “Other” Greek Exporters (NZD/kg)**

	410	820	A10
Reference Price	[REDACTED]	[REDACTED]	[REDACTED]

134. The reassessment team notes that the countervailing duty imposed will be equal to the reference price less the VFD, which cannot exceed [REDACTED].

### Duty for MG Campoy

135. The methodology for calculating duty is different in this case because imports from Spain are not subject to anti-dumping action. Given this, the approach proposed is still to compare the NUPFOB to the NIFOB to determine whether a lesser duty should apply. Whichever is the lowest of the NIFOB and the NUPFOB will become the reference price from which duty is calculated. If the NIFOB is lowest, this will be a form of lesser duty. The reassessment team has established a rate that incorporates both aid to growers and the export sugar refund subsidy.

136. The reference price established will become a ceiling price from which duty is calculated. The amount of countervailing duty will be equal to the reference price minus the VFD of the exports, but capped at the amount of subsidy established



during the review of [REDACTED]. Expressed mathematically, this is: Reference Price – VFD ≤ [REDACTED].

137. The following table shows the reference prices calculated for MG Campoy.

**Table 2.13: Reference Prices for MG Campoy (NZD/kg)**

	410	820	A10
NIFOB	[REDACTED]	[REDACTED]	[REDACTED]
NUPFOB	[REDACTED]	[REDACTED]	[REDACTED]
NV(VFDE)	[REDACTED]	[REDACTED]	[REDACTED]
Countervailing Duty	Lesser	Full	Lesser
<b>Reference Price</b>	[REDACTED]	[REDACTED]	[REDACTED]

138. The actual method for calculating the duty cap would therefore be:

- For 410g cans: [REDACTED] – VFD ≤ [REDACTED]
- For 820g cans: [REDACTED] – VFD ≤ [REDACTED]
- For A10 cans: [REDACTED] – VFD ≤ [REDACTED]

139. The reassessment team notes that [REDACTED] is the maximum amount that can be levied, because in terms of section 14(4) of the Act duty cannot exceed the amount of subsidy on the goods. If a firm exporting the subject goods to New Zealand pays countervailing duty of [REDACTED], but is still causing injury to the New Zealand industry, the injury cannot be attributed to subsidisation of imports.

### Duty for Other Spanish Exporters

140. In order to protect confidential information, it is not possible to use the same reference price methodology for other Spanish exporters as was used for MG Campoy. As noted above, the reassessment team considers that the best methodology is to impose a residual rate as an *ad valorem* percentage. To ensure that an *ad valorem* percentage rate does not impose duty at a rate that is greater than the amount of subsidy the reassessment team considers that the duty should be capped at the duty payable using an appropriate reference price.

141. The rate of duty for other exporters has been calculated on the basis that they will receive both the aid to growers and the sugar export refund. During the review that preceded this reassessment the amount of subsidy was calculated as a percentage of the value for duty of exports by MG Campoy, on a per kilogram basis. The amount of subsidy expressed as a percentage of the value for duty was 12 percent and it is therefore proposed that the rate of duty for other exporters from Spain be set as an *ad valorem* percentage at this amount.

142. The reference prices to be used to establish a cap on the duty for “other” Spanish exporters are the reference prices calculated for MG Campoy at the full amount of subsidy and are shown in the table below.

**Table 2.14: Reference Prices for Calculation of Cap on Duty for “Other” Spanish Exporters (NZD/kg)**

	410	820	A10
Reference Price			

**Duty for “Other” EU Countries**

143. In order to protect confidential information, it is not possible to use the same reference price methodology for exporters from countries other than Greece and Spain. As noted variously above, the reassessment team considers that the best methodology is to impose a residual rate as an *ad valorem* percentage. To ensure that an *ad valorem* percentage rate does not impose duty at a rate that is greater than the amount of subsidy the reassessment team considers that the duty should be capped at the duty payable using an appropriate reference price.

144. To calculate a rate of duty, the amount of subsidy per kilogram has been calculated as a percentage of the weighted average value for duty per kilogram of the exports by Venus and MG Campoy over the period investigated for dumping in the review. This percentage is 11 percent and it is therefore proposed that the rate of duty for exporters from EU countries other Greece and Spain be set as an *ad valorem* percentage at this amount.

145. The reassessment team proposes that the reference prices be calculated on the same basis as that for other exporters from Spain because there is no dumping to take account of. The reassessment team has used an amount of subsidy that incorporates both the aid to growers and the export sugar refund subsidies and has calculated the reference prices at the full amount of the subsidy.

146. The reference prices are given in the table below.

**Table 2.15: Reference Prices for Calculation of Cap on Duty for “Other” EU Exporters (NZD/kg)**

	410	820	A10
Reference Price			

147. The actual method for calculating the duty cap would therefore be:

- For 410g cans:  $\text{Reference Price} - \text{VFD} \leq \text{Reference Price}$
- For 820g cans:  $\text{Reference Price} - \text{VFD} \leq \text{Reference Price}$
- For A10 cans:  $\text{Reference Price} - \text{VFD} \leq \text{Reference Price}$

148. The process to calculate the amount of duty cap is exactly the same as that used for imports from Spain.

149. To illustrate how the proposed reference prices will operate, some examples of how the total duty would be calculated, and then allocated between anti-dumping

duty and countervailing duty are given below. The figures in the examples relate only to the application of reference prices (not *ad valorem* percentage rates) are purely illustrative, and bear no resemblance to actual numbers calculated for this reassessment. (It should be noted that the difference between the NV(VFDE) and the NUPFOB is the constant amount of subsidy per kilogram, and therefore the amount of countervailing duty imposed on any imports cannot exceed this amount). It is assumed in the following table that the amount of subsidy (in euros) when converted to New Zealand dollars at the NZD/Euro exchange rate on the date of importation is equal to NZ\$1.00.

**Table 2.16: Examples of Duty Rates (\$ per kg)**

	<b>410</b>	<b>820</b>	<b>A10</b>
NIFOB	5.5	5.6	2.5
NUPFOB	6	3	2.4
NV(VFDE)	5	2	1.4
Countervailing Duty	Lesser	Full	Full
Reference Price	5.5	3	2.4
If VFD equalled 1.00			
- Total Duty	4.5	2	1.4
- CV Duty	1	1	1
- AD Duty	3.5	1	0.4
If VFD equalled 2.60			
- Total Duty	2.9	0.4	0
- CV Duty	1	0.4	0
- AD Duty	1.9	0	0
If VFD equalled 5.00			
- Total Duty	0.5	0	0
- CV Duty	0.5	0	0
- AD Duty	0	0	0

### ***HW Submission on Rate of Countervailing Duty***

150. HW submitted that the review team had calculated a countervailing duty rate for “other” suppliers based on a weighted average of that calculated for Venus and MG Campoy. HW is of the opinion that this method is flawed as exporters either receive

one or both of the subsidies but not a proportion of one or the other as is implied by using a weighted average.

151. HW is of the opinion that the rate set for “other” exporters is to cover all those exporters that have not participated in the review, and it must be assumed that they would receive the full amount of subsidy on any exports they make to New Zealand in the future. HW stated that any exporter who does not receive either or both of the subsidies could apply for a reassessment.

152. HW stated that if an *ad valorem* duty is to be imposed, the only correct way to do it is to set it at the maximum possible rate, that being the rate set for MG Campoy (as outlined above, HW believes that the only correct way to impose duty is to set a fixed specific duty). This would mean that only the aid to growers of [REDACTED] would apply to Venus, and both the aid to growers and export sugar refund (which totals [REDACTED]) would apply to MG Campoy and all “other” exporters.

### **Ministry’s Consideration of the Issues**

153. The reassessment team notes that the duty calculated for “other” exporters in the Final Review Report was not a weighted average across the two individual duty rates proposed for Venus and MG Campoy. Rather, the total amount of subsidy ([REDACTED]) was weighted by the total quantity and VFD of the subject goods exported by both Venus and MG Campoy over the POD(R). The calculation used is presented below (where Q = quantity exported over the POD(R)):

$$\text{Ad valorem duty rate} = ([REDACTED] \times (Q_{\text{VENUS}} + Q_{\text{MG CAMPOY}})) / (VFD_{\text{VENUS}} + VFD_{\text{MG CAMPOY}}).$$

154. The reassessment team is of the opinion that this method was the most accurate because the final duty proposed would have been for all imports to New Zealand from the EU. To impose a duty for the entire EU based purely on figures relating to one company in Spain is not desirable, given that figures relating to Greek producers (Venus) were available to the reassessment team, and they provide for a more representative figure. Therefore, the reassessment team concludes that the methodology outlined in the Final Review Report was correct.

155. The same methodology has been applied to calculate the *ad valorem* percentage rates of duty rate for exporters from countries other than Greece and Spain.

## **2.5 Proposed Reference Prices**

156. The Ministry considers that the NUPFOB amounts should be expressed in the currency of the country of origin, since normal values and costs to FOB would normally be established in the country of origin and representation of NUPFOB in the currency of the country of origin ensures that exchange rate movements do not result in collection of anti-dumping duty above the margin of dumping, and countervailing duty above the amount of subsidy.

157. The reassessment team also proposes that where a lesser duty in the form of a NIFOB reference price applies, and the New Zealand dollar appreciates (which increases the NIFOB when expressed in euros) against the euro to a level that causes the NIFOB to be higher than the NUPFOB, then the NUPFOB reference price

would apply. In other words, when a lesser duty rate currently applies for a certain can size, and the euro/NZD exchange rate becomes such that the NUPFOB (when expressed in New Zealand dollars at the euro/NZD exchange rate on the date of importation) is lower than the NIFOB, the NUPFOB reference price will take effect.

158. The purpose of this proposal is to ensure that the duty regime is effective in not over-compensating for the injury suffered by HW, even when taking into account exchange rate movements. The overall proposed reference prices are given in the table below.

**Table 2.17: Proposed Reference Prices in NZ\$ or Euros (per kg) and Ad Valorem Percentage Rates**

	410	820	A10
<b>GREECE</b>			
-Venus	██████**	██████*	██████**
-Other exporters <i>ad valorem</i> percentage rate	11%	11%	11%
-Other exporters reference price cap	██████*	██████*	██████*
<b>SPAIN</b>			
-MG Campoy	██████**	██████*	██████**
-Other exporters <i>ad valorem</i> percentage rate	12%	12%	12%
-Other exporters reference price cap	██████*	██████*	██████*
<b>OTHER EU COUNTRIES</b>			
-Ad valorem percent rate	11%	11%	11%
-Reference price price cap	██████*	██████*	██████*
<b>Alternative Duty***</b>			
<b>GREECE</b>			
-Venus	██████*		██████*
<b>SPAIN</b>			
-MG Campoy	██████*		██████*

\*Full Margin/NUPFOB rates in euros.

\*\* Lesser duty rates in NZ\$

\*\*\*Note: The alternative duty rate (NUPFOB) takes effect when exchange rates are such that the NUPFOB is lower than the NIFOB, and only where the proposed reference price is at the NIFOB level originally.

159. For ease of comparison of the proposed duty rates, the following table shows all of the rates in NZ dollars, the euro amounts in the table above being converted into NZ dollars at the average exchange rate over the POS(R).

**Table 2.18: Proposed Reference Prices in NZ\$ (per kg)**

	410	820	A10
<b>GREECE</b>			
-Venus			
-Other exporters <i>ad valorem</i> percentage rate	11%	11%	11%
-Other exporters reference price cap			
<b>SPAIN</b>			
-MG Campoy			
-Other exporters <i>ad valorem</i> percentage rate	12%	12%	12%
- Other exporters reference price cap			
<b>OTHER EU COUNTRIES</b>			
- <i>Ad valorem</i> percentage rate	11%	11%	11%
-Reference price caps			
Alternative Duty:			
<b>GREECE</b>			
-Venus			
<b>SPAIN</b>			
-MG Campoy			

160. The reassessment team notes that the above reference prices are the overall prices from which both countervailing and anti-dumping duties (or the cap on those duties) will be calculated. The total duty is calculated first by deducting the VFD from the reference price given above. The countervailing duty is then calculated by subtracting the VFD from the reference price, with the duty not exceeding for exports by Venus, and for exports by MG Campoy. In the case of exports by Venus from Greece the difference between the total duty payable and the countervailing duty will be levied as anti-dumping duty.

161. The reassessment team notes that as the amount of anti-dumping duty payable on exports by Venus from Greece is just the result of deducting the countervailing duty from the total duty payable, the comparison of the NV(VFDE) amount to the NIFOB becomes redundant, in relation to the setting of reference prices (it is still useful when addressing the issue of whether a lesser duty should apply), because there is no need to set reference prices to determine duties. The dumping reference price will always be lower than the subsidy reference price, and therefore the subsidy reference price will always apply as the base for calculating total duty and countervailing duty payable (or the cap on such duties) in any event.

162. The reassessment team also notes that the NZ dollar amount of subsidy referred to in this report (██████████ /kg in the case of Venus and ██████████ /kg in the case of all other exporters) is the subsidy amount converted from euros at the average exchange rate used in the review. In applying the duty rates the total amount of duty to be allocated to countervailing duty will be based on the amount of subsidy in euros converted to NZ dollars at the time the goods are imported.

163. The proposed method of imposing duty has changed since the original investigation. Countervailing duties in the original investigation were imposed as *ad valorem* percentages of the VFD, and the companies exporting in the original investigation were different to the ones that exported over the POS(R). However, it is possible to compare the residual rates of duty. The current residual rates of duty are 13 percent for Spain, and 21 percent for Greece and all other EU countries, compared with 12 percent for Spain and 11 percent for Greece and all other EU countries proposed in this reassessment.

164. It is also proposed that should canned peaches falling within the description of the goods subject to countervailing duty be imported in can sizes other than those for which a separate rate has been established, duty should be imposed using the same reference price or *ad valorem* percentage as that applicable to the nearest can size for which an individual rate has been established. For example, a 225g can of peaches exported by MG Campoy is closest in size to a 410g can. The reference price for a 225g can would therefore be that applicable to 410g cans exported by MG Campoy, which is ██████████. The appropriate countervailing duty would then be calculated by ██████████ – VFD ≤ ██████████.

## Refunds of Countervailing Duties

165. The Act allows for refund of duties under certain conditions. Section 14(10) of the Act states as follows:

Without limiting the ability of the Minister to require refunds in other circumstances, where a reassessment under subsection (6) of this section results in a lower duty being imposed on any goods, the Minister may require the [Customs] to refund, with effect from the date of initiation of the reassessment (or, in the case of a reassessment carried out under paragraph (c) of that subsection, from the date of initiation of the review referred to in that paragraph), the difference between the duty paid and the lower duty.

166. This reassessment was initiated following the completion of a review. Any countervailing duties paid since the review was initiated on 8 January 2003, which exceed the proposed amount, may be refunded if the Minister so directs.

## 2.6 Impact of Countervailing Duties

167. Any countervailing duties imposed will impact only on canned peaches imported from the EU that are subsidised. Countervailing duties are set at a level that is no greater than is necessary to remedy the injury that may be suffered by the New Zealand industry.

168. Imports of canned peaches from countries other than the EU will not be affected. Imports from countries other than the EU are also present in the New

Zealand market in significant quantities and will also continue to provide competition for canned peaches manufactured in New Zealand.



### **3. Conclusions**

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169. On the basis of the information available, it is concluded that the rate of countervailing duty on canned peaches from the EU should be reassessed to the levels shown in table 2.16 above, being a combination of duties at the full amount of subsidisation and lesser duty rates (except where exchange rate changes cause the NIFOB to exceed the NUPFOB).

# 4. Recommendations

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170. It is recommended that the Minister should:

- a. reassess, the countervailing duties on canned peaches from the EU on the basis outlined in this report;
- b. agree, that any countervailing duties paid since the initiation on 8 January 2003 of the review which preceded this reassessment that are in excess of the duties which would have been applicable if the proposed duties were in place, should be refunded to the extent of such excess; and
- c. sign the attached *Gazette* notice, and give notice of the reassessment to interested parties in accordance with sections 9 and 14 of the Act.

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Reassessment Team  
Trade Remedies Group