Canned Peaches from the European Union:

Non-Confidential

Final Report

Author Trade Remedies Group

Dumping and Countervailing Duties Act 1988

Sunset Review

ISBN 0-478-26343-0

The following abbreviations are used in this Report:

Act (the)	Dumping and Countervailing Duties Act 1988
ACS	Australian Customs Service
ANZFA	Australian New Zealand Food Authority
SCM Agreement	WTO Agreement on Subsidies and Countervailing Measures
Chief Executive	Chief Executive of the Ministry of Economic Development
CIF	Cost, Insurance and Freight
EBIT	Earnings Before Interest and Tax
EC	European Commission
EAGGF	European Agriculture Guidance and Guarantees Fund
E.K.E.	Greek Canners Association
EU	European Union
FOB	Free on Board
HW	Heinz Wattie's Ltd
LDC	Less Developed Countries
LLDC	Least Developed Countries
MG Campoy	Manuel Garcia Campoy SA
Ministry (the)	Ministry of Economic Development
NIFOB	Non-Injurious Free-on-Board
NIP	Non-Injurious Price
NSV	Net Sales Value
NZCS	New Zealand Customs Service
NUPFOB	Normal Unsubsidised Price at FOB
NV(VFDE)	Normal Value (Value for Duty Equivalent)
Pac	Forum Island Members of the South Pacific Regional Trade and Economic Cooperation Agreement
POs	Producer Organisations
POS(R)	Period of Subsidy (Review)
SC	Southern Cross
VFD	Value for Duty
WTO	World Trade Organisation
[Text deleted due to confidentiality]	Deleted due to confidentiality (used in text)
xxxx	Deleted due to confidentiality (used in tables)

1. Proceedings

1.1 Proceedings

1. 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.

2. 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 Heinz Wattie's Ltd (HW) justifying the need for the review.

3. In accordance with Article 21 of the WTO Subsidies and Countervailing Measures Agreement ("the SCM Agreement"), the purpose of the Ministry's review is to examine whether the expiry of the duty would be likely to lead to a continuation or recurrence of subsidisation and injury.

4. 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 countervailing duty would be likely to lead to the continuation or recurrence of subsidisation and injury. It should be noted that this report provides a summary only of the information, analysis and conclusions relevant to this review, and should not be accorded any status beyond that.

1.2 Reviews

5. Section 14(8) of the Act states:

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

6. Section 14(9) of the Act states:

Anti-dumping duty or countervailing duty applying to any goods shall cease to be payable on those goods from the date that is five years after--

(a) The date of the final determination made under section 13 of this Act in relation to those goods; or

(b) The date of notice of any reassessment of duty given under subsection (6) of this section, following a review carried out under subsection (8) of this section—

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

7. In terms of section 14(9)(b) of the Act, countervailing duties relating to the subject goods would, in the absence of a review, have ceased to apply as from 9 January 2003.

8. The provision of sections 14(8) and 14(9) of the Act give specific effect to Article 21 of the SCM Agreement which provides additional guidance as follows:

21.1 A countervailing duty shall remain in force only as long as and to the extent necessary to counteract subsidisation which is causing injury.

21.2 The authorities shall review the need for the continued imposition of the duty, where warranted, on their own initiative or, provided that a reasonable period of time has elapsed since the imposition of the definitive countervailing duty, upon request by any interested party which submits positive information substantiating the need for a review. Interested parties shall have the right to request the authorities to examine whether the continued imposition of the duty is necessary to offset subsidisation, whether the injury would be likely to continue or recur if the duty were removed or varied or both. If, as a result of the review under this paragraph, the authorities determine that the countervailing duty is no longer warranted, it shall be terminated immediately.

21.3 Notwithstanding the provisions of paragraphs 1 and 2, any definitive countervailing duty shall be terminated on a date no later than five years from its imposition (or from the date of the most recent review under paragraph 2 if that review has covered both subsidisation and injury, or under this paragraph), unless the authorities determine, in a review initiated before that date on their own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time prior to that date, that the expiry of the duty would be likely to lead to a continuation or recurrence of subsidisation and injury. The duty may remain in force pending the outcome of such a review.

21.4 The provisions of article 12 regarding evidence and procedure shall apply to any review carried out under this Article. Any such review shall be carried out expeditiously and shall normally be concluded within 12 months of the date of initiation of the review.

21.5 The provisions of this Article shall apply *mutatis mutandis* to undertakings accepted under Article 18.

Note: Footnotes excluded from the above Articles of the Agreement

9. On 8 January 2003, being satisfied that positive evidence justifying the need for a review had been provided, the Chief Executive initiated a review. A notice to this effect was published in the *New ZealandGazette* of 16 January 2003. The existing countervailing duties will continue to apply pending the outcome of this review and any reassessment that may follow it.

10. Interested parties to the original investigation were advised of the initiation of this review in writing and provided with the opportunity to make written submissions to the review team.

1.3 Subsidisation and Injury for the Purposes of a Review

Ministry's Approach to Sunset Reviews

11. The Ministry carries out sunset reviews on the basis of the above provisions in the Act and the SCM Agreement . In interpreting Article 21 of the SCM Agreement, the Ministry takes guidance from New Zealand legal reports, WTO Panel reports and approaches taken by other WTO member countries.

12. Article 21.3 infers a necessity to clearly demonstrate that, "...the expiry of the duty **would be likely** to lead to continuation or recurrence of subsidisation 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*).

13. For further guidance on the level of evidence that is required to meet the "would be likely" criteria of Article 21.3, 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*, and to the approaches taken by the EU, US, Canada and Australia to sunset reviews.

14. The Ministry notes that the consideration of whether duties should be removed does not exist in isolation but is dependent on whether the evidence shows that the expiry of duty would be likely to lead to a continuation or recurrence of subsidisation and injury. In determining "likelihood", it is considered that regard should be had to the timeframe within which an event may occur. Article 21.3 of the SCM Agreement makes no express reference to the length of time within which a continuation or recurrence of injury has to take place.

15. 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 SCM Agreement and the Act, the Ministry adopts the following general principles in considering injury in sunset reviews:

- The Ministry is required to establish whether the expiry of the countervailing duty would be likely to lead to a continuation or recurrence of subsidisation and injury.
- The test to be applied in respect of the likelihood of a continuation or recurrence of subsidisation 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 subsidisation and material injury to the industry to continue or recur in the absence of countervailing duties.
- 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 to provisions in the SCM Agreement that are helpful in assessing that likelihood and those provisions may include, where appropriate, the factors used in Article 15.7 in assessing a threat of injury.

16. In considering whether removal of the duty *would be likely to lead* to a recurrence of subsidisation 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.

1.4 Grounds for the Review

17. The New Zealand industry provided evidence that material injury will recur should the subject goods be imported into New Zealand without adequate countervailing duties. The industry claimed that imports of the subject goods will be subsidised and with the removal of countervailing duties, material injury to the industry will recur through:

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

resulting in:

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

Reassessment of Countervailing Duties

18. If the outcome of this review indicates that countervailing duties should continue to be applied, then the rate or amount of duty can be reassessed in accordance with section 14(6) of the Act.

1.5 Interested Parties

New Zealand Industry

Heinz Wattie's Ltd

19. Heinz Wattie's Limited (HW) submitted the application for a review. HW is the sole New Zealand producer of canned peaches. 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.

20. 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. pottled peaches from Australia and, when there is a shortfall in domestic raw peach production, canned peaches from Europe.

21. HW exports small quantities of canned peaches and other canned products to Australia and the Pacific Islands though it is predominantly a locally based operation for peaches.

Exporters and Manufacturers

22. The review has established that over the year ended 30 November 2002 two companies, Venus Growers Co-operative (Venus) in Greece, and Manuel Garcia Campoy SA (MG Campoy) **[Text deleted due to confidentiality]**) 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

23. The NZCS data shows that **[Text deleted due to confidentiality]** were the importers of the subject goods from the exporters identified above.

Foreign Governments

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

1.6 Imported Goods

25. The goods which are the subject of the countervailing duty, hereinafter referred to as "canned peaches", or "subject goods", are:

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

26. NZCS has advised that the subject goods enter under the following tariff classification and statistical key:

20.08	Fruits, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included:
	[- Nuts, ground nuts and other seeds, whether or not mixed together]
	[- Pineapples]
	[- Citrus fruit]
	[- Pears]
	[- Apricots]
	[- Cherries]

2008.70		- Peaches, including nectarines:
		[- - Cooked and preserved by freezing, not containing added sugar]
2008.70.09	00L	- - Other
		[- Strawberries]
		[- Other, including mixtures other than those of subheading no 2008.19]

27. Applicable duty rates are:

Normal	7%
Australia	Free
Canada	Free
LDC	5.5%
LLDC	Free
Pac	Free
Singapore	Free

1.7 Investigation Details

28. In this report, unless otherwise stated, years are April years and dollar values are New Zealand dollars (NZ$). In tables, column totals may differ from individual figures because of rounding.

29. The period of investigation for establishing if the subject goods have been subsidised is December 2001 to November 2002, hereinafter referred to as the period of subsidy (review) (POS(R)). The investigation of injury involves evaluation of historical data for the period (in years ended April) from 1999 to 2003 and the evaluation of data forecasting the effect of the removal of the duties.

1.8 Exchange Rates

30. In this report export transactions take place in **[Text deleted due to confidentiality]**, and any injurious effect is reflected in New Zealand dollars. The exchange rates used are the interbank rates recorded on the OANDA currency conversion site on the Internet.

1.9 Disclosure of Information

31. The Ministry of Economic Development makes available all non-confidential information to any interested party through its public file system.

32. Article 12.6 of the SCM Agreement provides as follows:

The investigating authorities may carry out investigations in the territory of other Members as required, provided that they have notified in good time the Member in question and unless that Member objects to the investigation. Further, the investigating authorities may carry out investigations on the premises of a firm and may examine the records of a firm if (a) the firm so agrees and (b) the Member in question is notified and does not object. The procedures set forth in Annex VI shall apply to investigations on the premises of a firm. Subject to the requirement to protect confidential information, the authorities shall make the results of any such investigations available, or shall provide disclosure thereof pursuant to paragraph 8, to the firms to which they pertain and may make such results available to the applicants.

33. The review team carried out verification visits to Venus (in Greece), relevant offices of the Greek and Spanish Governments, and to the offices of the European Commission (EC) in Belgium. MG Campoy did not agree to a verification visit and was not visited.

1.10 Interim Report

34. Section 10(1) of the Act provides as follows:

Subject to subsection (2) of this section, within 150 days after the initiation of an investigation under section 10 of this Act, the [Chief Executive] shall give to the parties to the investigation referred to in section 9(b) of this Act written advice of the essential facts and conclusions that will likely form the basis for any final determination to be made under section 13 of this Act.

35. While section 10(1) does not apply to reviews, the Ministry attempts as far as possible to follow investigation procedure in reviews. Written advice of the essential facts and conclusions in the form of an Interim Report was released to all known interested parties on 11 June 2003. Comments received from the Governments of Greece and Spain, the EC, and Venus were taken into account in preparing this Final Report.

2. New Zealand Industry

36. Section 3a of the Act provides the definition of "industry":

3A. Meaning 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.

37. "Like goods" is defined in section 3 of the Act:

"Like goods", in relation to any goods, means-

(a) Other goods that are like those goods in all respects; or

(b) In the absence of goods referred to in paragraph (a) of this definition, goods which have characteristics closely resembling those goods:

2.1 Like Goods

38. In order to establish that a New Zealand industry still exists, and the extent of the New Zealand industry, for the purposes of a review into injury, and having identified the subject goods, it is necessary to determine whether there are still New Zealand producers of goods which are like those goods in all respects, and if not, whether there are New Zealand producers of other goods which have characteristics closely resembling the subject goods.

39. HW produces, *inter alia*, a range of styles of canned peaches (halved, sliced, diced), packed in various concentrations of sugar syrup, "lite" media (artificial sweetener in water) and fruit juice, and in various can sizes. In addition to its branded lines of "Wattie's", "Oak", and "Weight Watchers", HW also produces house brands for supermarkets and for suppliers to the food service sector.

40. In the original investigation, the Ministry reached the conclusion that the canned peaches produced by HW in syrup and juice, while not alike in all respects because of differences in can sizes, varieties of peaches used, the use of juice and variations in concentrations of sugar syrup, had characteristics closely resembling the imported canned peaches and were therefore like goods to the subject goods. HW stated in its application that there has been no material change to the like goods produced by it in New Zealand or to the subject goods produced in Europe since the original investigation.

41. In the review of anti-dumping duty on canned peaches from South Africa, completed in January 2002, 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. That review also concluded that the fruit salad and two fruits products produced by HW were not like goods to the subject goods.

42. HW said it accepts the conclusions reached during the South African review. The review team has seen no other evidence that would lead it to change the conclusions reached during the South African review.

43. Injury and the likelihood of a recurrence of injury has therefore been assessed on the basis of HW's production of canned peaches in sugar syrup, "lite" media and fruit juice (except for its production of product under the Weight Watchers brand) in retail size cans (i.e. cans up to size A10).

2.2 Imports of Canned Peaches

44. The subject goods are not separately identified in the Tariff of New Zealand. Information from this review, from the concurrent review of the anti-dumping duties on canned peaches from Greece, and from the review of the anti-dumping duty on canned peaches from South Africa (completed in January 2002) shows that there are significant differences in the proportions of the subject goods imported from different countries. In order to more accurately estimate the volume of imports of the subject goods from various sources, different proportions have been applied to various countries, as set out below.

45. An analysis of NZCS data over the POS(R) revealed that **[Text deleted due to confidentiality]** percent of total imports from Greece during this period were subject goods. A similar calculation for imports from Spain showed that **[Text deleted due to confidentiality]** percent of Spanish imports during the POS(R) were subject goods. These two proportions were applied to the total imports from Greece and Spain, and then **[Text deleted due to confidentiality]** for each of the years concerned. The review team notes that this is consistent with the Ministry's concurrent review of the anti-dumping duties on canned peaches from Greece.

46. From these two calculations, a combined proportion for the subject goods, of **[Text deleted due to confidentiality]** percent of total imports was found. This proportion was then applied to total imports from EU countries other than Greece and Spain to estimate the volume of subject goods entering New Zealand from these countries.

47. In calculating the total import volumes of the subject goods from South Africa, the review team relied on the South African canned peaches review case. It was calculated in that case that **[Text deleted due to confidentiality]** percent of the total goods imported from South Africa were subject goods. This proportion was then applied to NZCS data relating to South Africa for the current review.

48. The South African review also identified that **[Text deleted due to confidentiality]** percent of imports from all countries other than South Africa, were subject goods (nearly all of these imports were from Australia). Hence, the review team applied this proportion to imports from countries other than the EU and South Africa in order to estimate the volume of imports of the subject goods from these countries. **[Text deleted due to confidentiality].**

49. The estimated import figures are as follows:

Table 2.1: Import Volumes of Subject Goods (Tonnes) (Years Ended April)

	1999	2000	2001	2002	2003
EU[1]	5	345	104	58	129
Australia[2]	2,176	2,818	3,229	2,985	4,743
Other	27	151	2	71	261

	1999	2000	2001	2002	2003
Total Imports	2,208	3,314	3,335	3,114	5,133

2.3 New Zealand Market

50. The following table shows the New Zealand market for canned peaches in kilograms. Import figures used in this table are as per Table 2.1 above and those relating to domestic production are as provided by HW.

Table 2.2: New Zealand Market for Canned Peaches (Tonnes) (Years Ended April)

	1999	2000	2001	2002	2003
EU[3]	5	345	104	58	129
Australia[4]	2,176	2,818	3,229	2,985	4,743
Other Imports	27	151	2	71	261
Domestic production	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**
Total NZ Market	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**

[1]**[Text deleted due to confidentiality]**.

[2]**[Text deleted due to confidentiality]**.

[3]**[Text deleted due to confidentiality]**.

[4]**[Text deleted due to confidentiality]**.

3. Review of Subsidy

51. Section 3(1) of the Act provides the definition of subsidised goods and subsidy as follows:

"Specific subsidy" means a subsidy that is specific to an enterprise or industry, or a group of enterprises or industries, within the jurisdiction of a foreign government:

"Subsidised goods" means goods in respect of the production, manufacture, growth, processing, purchase, distribution, transportation, sale, export, or import of which a specific subsidy has been or will be paid, granted, authorised, or otherwise provided, directly or indirectly, by a foreign government:

"Subsidy" includes any financial or other commercial benefit that has accrued or will accrue, directly or indirectly, to persons engaged in the production, manufacture, growth, processing, purchase, distribution, transportation, sale, export, or import of goods, as a result of any scheme, programme, practice, or thing done, provided, or implemented by a foreign government; but does not include the amount of any duty or internal tax imposed on goods by the Government of the country of origin or country of export from which the goods, because of their exportation from the country of export or country of origin, have been exempted or have been or will be relieved by means of refund or drawback:

52. Section 3 of the Act provides the following definition of foreign government:

"Foreign government" means-

(a) The Government of a foreign country:

(b) A provincial, State, municipal, local, or regional Government or authority of a foreign country:

(c) A body that exercises authority for an association of foreign countries:

(d) A person, agency, or institution acting for, or on behalf of, a Government or body referred to in paragraph (a) or paragraph (b) or paragraph (c) of this definition:

53. Section 7 of the Act provides the definition of the amount of subsidy as follows:

7. Amount of subsidy

(1) In this Act, the expression "amount of the subsidy", in relation to any subsidised goods, means the amount determined by the [Chief Executive] as being the benefit conferred on the recipient of the subsidy.

(2) For the purposes of subsection (1) of this section,-

(a) The provision of equity capital by a foreign government shall not be regarded as conferring a benefit, unless the investment decision in relation to the provision of that equity capital can be regarded as inconsistent with the usual investment practice (including for the provision of risk capital) of private investors in the territory of the exporting country:

(b) The provision of a loan by a foreign government shall not be regarded as conferring a benefit, unless the amount that the recipient of the loan pays under the loan is less than the amount that the recipient would pay under a comparable commercial loan that the recipient could obtain on the market, in which case, the benefit to the recipient shall be deemed to be the difference between those amounts:

(c) The provision of a loan guarantee by a foreign government shall not be regarded as conferring a benefit, unless the amount that the recipient of the loan pays under the government guaranteed loan is less than the amount that the recipient would pay under a comparable commercial loan that was not so guaranteed, in which case, the benefit to the recipient shall be deemed to be the difference between those amounts:

(d) The provision of goods or services, or the purchase of goods, by a foreign government shall not be regarded as conferring a benefit, unless the goods or services are provided for less than adequate remuneration within the meaning of subsection (4) of this section, or the goods are purchased for more than adequate remuneration, as the case may be.

(3) For the purposes of subsection (1) of this section, the following amounts shall not be included in the amount of the subsidy:

(a) Any application fee or other fees or costs necessarily incurred in order to qualify for, or to receive the benefit of, the subsidy:

(b) Any export taxes, duties, or other charges levied on the export of the goods to New Zealand that are specifically intended to offset the subsidy.

54. Further guidance on the definition of a subsidy is provided in Article 1 of the SCM Agreement, which provides as follows:

1.1 For the purpose of this Agreement, a subsidy shall be deemed to exist if:

(a)(1) there is a financial contribution by a government or any public body within the territory of a Member (referred to in this Agreement as "government"), i.e. where:

(i) a government practice involves a direct transfer of funds (e.g. grants, loans, and equity infusion), potential direct transfers of funds or liabilities (e.g. loan guarantees);

(ii) government revenue that is otherwise due is foregone or not collected (e.g. fiscal incentives such as tax credits)[1]

(iii) a government provides goods or services other than general infrastructure, or purchases goods;

(iv) a government makes payments to a funding mechanism, or entrusts or directs a private body to carry out one or more of the type of functions illustrated in (i) to (iii) above which would normally be vested in the government and the practice, in no real sense, differs from practices normally followed by governments;

Or

(a)(2) there is any form of income or price support in the sense of Article XVI of GATT 1994;

And

(b) a benefit is thereby conferred.

55. Article XVI:1 of the GATT (1994) refers to ". . . any form of income or price support which operates directly or indirectly to increase exports of any product from, or to reduce imports of any product into, its territory. . .".

3.1 Purpose of Review of Subsidy

56. The Ministry's sunset reviews are conducted in accordance with Article 21.3 of the SCM Agreement. The review is intended to determine whether the expiry of the existing countervailing duties after five years would be likely to lead to a continuation or recurrence of subsidy and injury and therefore whether there is a continued need for the imposition of countervailing duties. Questions to be asked in relation to subsidisation are:

- Whether the goods under review continue to be subsidised and, if so, the extent of that subsidy.
- The likelihood of a continuation of any such subsidy should countervailing duties be removed.
- Where imports of the goods subject to countervailing duty have ceased or are no longer subsidised, the likelihood of a recurrence of subsidisation should countervailing duties be removed.

57. The likelihood of subsidised imports is considered in section 4 ("Review of Injury") of this report.

3.2 Findings of the Original Investigation

58. The original investigation established subsidy amounts in relation to exports from Greece and Spain as well as a European Community average figure. These subsidy amounts were established for each of the programmes from which the manufacturers of canned peaches received a subsidy. They are summarised as follows:

Table 3.1: Original Countervailing Duties Imposed in 1998

Countervailable Programmes	Amount of subsidy/kg (NZ$)	Subsidy as % of Avg. NZ$ VFD/kg
Greece		
Vermion Naoussa		
- Production Aid	**xxxx**	16%
- Export Sugar Rebate	**xxxx**	5%
Total Vermion Naoussa	**xxxx**	21%
AL.M.ME.		

Countervailable Programmes	Amount of subsidy/kg (NZ$)	Subsidy as % of Avg. NZ$ VFD/kg
- Production Aid	**xxxx**	15%
- Export Sugar Rebate	**xxxx**	6%
Total AL.M.ME.	**xxxx**	22%
Spain		
Maximino Moreno		
- Production Aid	**xxxx**	12%
Conservas Sanfrutas		
- Production Aid	**xxxx**	15%
European Community Averages		
- Production Aid	0.16	16%
- Sugar Rebate	0.06	6%
Total	0.22	21%

3.3 Subsidy Programmes

59. The review team investigated the countervailable subsidy programmes identified by the original investigation and any other relevant subsidy programmes which may have conferred a benefit on exports of the subject goods over the POS(R).

60. The details of the subsidy programmes examined are discussed below under separate headings.

Aid to Growers of Peaches

Operation of the Programme

Introduction

61. The EC and the Governments of Greece and Spain provided the review team with information on the aid scheme to growers, the details of which are summarised below.

62. The EC Directorate General of Agriculture is responsible for this programme, which is funded through the European Agriculture Guidance and Guarantees Fund (EAGGF). The

payment of the aid to growers is administered by the relevant authorities in each member state.

63. At the time of the original investigation, aid was provided to the manufacturers of canned peaches (hereinafter referred to as "processors"). The programme was changed in 2000/2001 whereby aid is now provided directly to the growers of raw peaches via Producer Organisations (POs), which are groupings of individual growers. This change in the programme was implemented through EC Regulation 2699/2000. EC regulation 2200/96 is the overriding regulation that deals with the common organisation of the markets in processed fruit and vegetables. EC regulation 449/2001 is the implementing regulation that details the processes for administering the aid.

64. Under the old scheme the processor, in return for the aid, had to pay a minimum price to the grower. The minimum price was re-calculated every year based on the difference between EU and world prices. The EC said the new system removes this complication by paying the aid directly to the growers, which promotes greater certainty and minimises fraudulent claims. The EC also said under the new system there is greater transparency and less incentive for fraud as the activities are centralised in the hands of the POs. The EC stated that the POs were established to help producers improve the structure and functioning of their farms. Under the new scheme, POs negotiate a raw peach selling price with processors on behalf of their grower members.

65. The EC advised there was no re-statement of the general purpose of the aid when the new scheme came into effect, i.e., the purpose of the aid is still to compensate for the difference between the EU and world price of peaches.

66. The amount of the aid is published in May of each year and consequently the POs know the aid amount before they negotiate a price with the processors.

67. The aid is only granted to peaches destined for the processing market and not to raw peaches destined for the fresh fruit market.

The Process of Obtaining Aid

68. The POs lodge applications for aid with the relevant administering agency of the member state, along with a copy of the contract(s) it has signed with the processor for supply of raw peaches. Growers only receive aid for the quantity of raw peaches delivered for processing in terms of the contract between their PO and the processors. The national authorities verify the application before paying the aid to the POs, who then pay the individual growers.

Thresholds

69. The new scheme involves processing thresholds for different member states as well as a total EU threshold. According to the EC, the purpose of establishing thresholds was to avoid over production, which it considers the granting of aid could lead to. These thresholds are published in EC Regulations. The rate of aid paid is reduced if the threshold is exceeded, in proportion to the extent by which the threshold is exceeded. If a member state does not process to its allowable threshold, the remainder is distributed to other member states. The threshold of 539,006 tonnes for the whole of the EC calculated in 2000 still remains in place.

Amount of Aid

70. The current amount of aid to producers has been set at €47.70/tonne, which was published in the EC Regulation No 892/2002 in May 2002. The aid rate of €47.7/tonne is set at a level equivalent to the aid given under the last year of the old scheme.

71. The EC stated that the rate of aid has decreased since the original investigation in 1998 but has not changed since 2000/2001. The EC said the rate has been reduced over the last few years because of its commitment to bring prices into some sort of equilibrium with the world price and because of its WTO commitments to reduce the levels of aid provided.

Existence of Subsidy

72. This programme clearly involves a financial contribution by a government to the growers of peaches used in the manufacture of the subject goods that are exported to New Zealand. There is, however, an issue of whether this financial contribution has conferred a benefit on the processors who exported the subject goods to New Zealand, and therefore whether a subsidy exists in terms of section 3(1) of the Act and Article 1 of the SCM Agreement. This issue is examined below.

Submissions by the EC

73. The EC stated that under the new system, the benefit of the aid may or may not be conferred to the processors of canned peaches. The EC said that the review team should make no assumption that aid given to one industry (growers) would confer benefit to another industry (the processors). The EC cited two WTO Appellate Body findings[5] in support of this view and stated that a presumption that the processing sector would benefit is insufficient.

74. The EC submitted that positive evidence of a benefit transferred to the processors from the aid given to the growers is required. The EC also noted that the aid scheme is not contingent upon export performance.

75. The EC made similar comments to those set out above in their response to the Interim Report. In its response to the Interim Report the EC also stated that the subsidy "...mainly aims to compensate the peach growers for higher Community prices, compared with world market prices" and that market conditions and not the level of subsidy determine the prices of the peaches.

Submissions by Government of Greece

76. The Greek Government submitted in its response to the government questionnaire that the aid is one of the factors in determining prices for the raw peaches. The Greek Government subsequently qualified that statement by saying that the cost of production for the grower is inelastic and that the producer does attempt to gain prices that would cover its expenses.

77. The Greek Government also subsequently stated that it does not have any views on whether the subsidy to the grower affects the prices of raw peaches to the processors in any way, noting that the price is freely negotiated between the parties. The Greek Government was of the view that the existence of POs could if anything produce an upward pressure on

prices, as they are in a better position to negotiate compared to individual growers. The Greek Government also observed that the producers are free to use the aid money in whichever way they want.

Submissions by Government of Spain

78. The Spanish Government stated that it is in agreement with the EC that prices are set by market forces and that there is no benefit accruing to the processors of peaches. These comments were re-iterated in its response to the Interim Report.

Submissions by Venus Growers

79. Venus advised that the price paid by processors to POs for raw peaches is negotiated on a national basis between the Greek Canners Association (E.K.E.) and a national association of POs. Venus said that as a member of the E.K.E. it attempts to negotiate a reasonable price as it has a knowledge of farming costs and market conditions and is aware of the need to keep its own grower members viable. Venus said that while the E.K.E. knows the amount of the aid prior to the negotiations, it considers that the aid does not influence the negotiations over the selling price.

80. Venus stated that the price of raw peaches is dependent on quantity. Venus also stated that a shortfall in crop fetches a higher price for the producers of peaches compared to when there is excess supply of peaches. Venus noted that the 2002 crop was poor and the supply shortfall had consequently increased the price. (The Greek Government expressed the same views in relation to the 2002 season).

Submissions by Heinz Wattie's

81. HW, in its application, stated that the processors of canned peaches benefit from the production aid granted to the peach producers. HW, in expressing its views, relied on a review carried out by the Australian Customs Service (ACS) in 2001 relating to countervailing duties imposed on canned peaches from Greece. The salient points from the Australian report are listed below.

- The subsidy under the new regime has been designed to equate with the previous subsidy amount.
- The subsidy is not paid on fresh peaches but is targeted at fruit destined for processing.
- A market where one party sells subsidised goods to another is not normal but distorted.
- Despite the changes of moving the aid payment from the processor to producer organisations the aid payment cannot only benefit the grower, otherwise there would be no need to discriminate between the end uses of the fruit.
- As the aid is only paid to the grower when the fruit is used for processing, a benefit is clearly intended to be passed to the processor as the end user.
- The US Department of Agriculture has independently examined the practical effects of the change to the aid regime and concluded that there is little effective change from the previous EC subsidy arrangements.
- The subsidy paid to the peach growers effectively meant that the processors were not required to pay the full cost of the fruit, but instead were subsidised by the aid amount paid to the growers.

- The Australian Customs Service consequently concluded that a countervailing subsidy continued to be provided by the EC, albeit indirectly, for the processing of peaches.

The Ministry's Consideration of the Issues

82. The review team notes that the stated purpose of the aid, even after the introduction of the new scheme, is still to compensate for the difference between the world price of canned peaches and the price within the European Union, indicating that the world prices are lower than the EC price for raw peaches. In its response to the Interim Report, the EC stated that the scheme mainly aims to compensate for higher Community prices. The review team notes that if growers already receive prices higher than world prices, then it does not make sense that they would require compensation. It is, however, logical that processors would require compensation for higher Community prices, indicating that a benefit is intended to be passed onto processors.

83. The review team also notes that there are no import quotas or non-tariff restrictions that exist for peach producers and processors. However, the EU has structured its tariff rates in such a way that they differ depending on the price at which the peaches are imported as well as the time of the year. The EU charges a flat *ad valorem* rate of 17.6 percent for all its imports of peaches, plus an additional rate ranging from 1.6 to 13 percent of the VFD, depending on when the imports were made and the cost of the imports. The review team notes from the tariff that the lower the price of the import, the higher the specific rate of duty.

84. The review team observes that the production season in the EU is around August of each year, which means that if the growers or processors were going to import raw peaches, they would have to do so by end of July each year. The minimum import prices at which *ad valorem* and additional duties are charged in this period are significantly lower, however, during the period where one would expect the imports to be low, the minimum import prices (for the *ad valorem* and additional duties to apply) are a lot higher. This indicates that the tariffs are designed to discourage imports on the one hand but encourage the local production of raw peaches on the other.

85. The subsidy to the growers also encourages local production of peaches for processing. The review team considers that the existence of the tariffs and the subsidy are likely to lead to a processor obtaining peaches from its local growers at a lower price than it could from a non-EU market if it were importing. This is also supported by the fact that over the production period (August), the import prices at which the specific tariff rates are activated are low. This would indicate that a processor does benefit from buying locally produced peaches for processing.

86. The review team considered the WTO Appellate Body cases cited by the EC and notes that they deal with facts that are very different to the current review. The two reports refer to cases of privatisation of state owned enterprises that had received subsidies from their government owners. The two cases essentially dealt with the issue of whether privatisation at arm's length and for fair market value extinguished the benefit previously bestowed on the enterprises by the subsidies. The current review is different in that it deals with two separate legal entities as well as a specific product (peaches), which has no value to the recipient of the aid (the grower) without an upstream processor to purchase them.

87. The review team agrees with the EC that a presumption that the aid confers a benefit to the processor is rebuttable. In deciding this the review team considers, in the following paragraphs, whether the raw peaches were sold to the processors of canned peaches at a fair market value and at an arm's length transaction.

88. In considering whether there is still benefit conferred on canned peaches produced by processors under the programme as it now operates, the review team compared the price of raw peaches before and after the new scheme was introduced in 2001/2002. To obtain a proper comparison, the review team deducted from the guaranteed minimum price paid by processors in the last year of the old scheme the amount of the subsidy received by processors in the last year of the old scheme. The amount of the subsidy was deducted in order to calculate the true price paid by processors in the last year of the old scheme taking account of the value of the aid.

89. If there is no longer any benefit conferred on processors by the aid now paid to growers, such a comparison of prices should show a rise in the price paid by processors under the new scheme approximately equal to the amount of the aid. This type of price comparison, however, does not allow for any change in the supply and demand of raw peaches that may have affected prices and needs to be analysed in the light of any such changes.

90. Regulation 1237/2000 specified a guaranteed minimum price of €0.28/kg for raw peaches sold to processors in 2000/2001, being the last year of the old scheme. The amount of the aid paid in the last year of the old scheme was equivalent to the current aid rate, i.e., €0.0477/kg. The net or true price paid by processors in 2000/2001 was therefore €0.2323/kg.

91. The price paid by Venus in 2001/2002, in the first year of the new scheme was **[Text deleted due to confidentiality]** and it contracted to buy for the 2002/2003 season at **[Text deleted due to confidentiality]**. The review team notes that in Greece there is a nationally negotiated price, therefore, the price paid by Venus is the same as that paid by all other processors.

92. There is no nationally negotiated price for raw peaches in Spain. The review team, however, obtained from the Murcia Regional Government in Spain a list of the contracted quantities and prices for raw peaches for all of the contracts entered into between POs and processors in the Murcia region for the 2001/2002 and 2002/2003 seasons. From this list the review team calculated a weighted average price per kilogram of **[Text deleted due to confidentiality]** for both the 2001/2002 and 2002/2003 seasons. The Murcia Regional Government advised that 75 to 80 percent of the Spanish peach crop is grown in the Murcia region. The review team therefore considers the average prices calculated for Murcia to be representative of Spanish prices.

93. The Spanish Government, in its response to the Interim Report, stated that prices increased in 2001/2002 and fell in 2003/2002. The Spanish Government did not provide what it considers to be the actual average price for 2001/2002 and 2002/2003. The review team notes that the weighted average prices it calculated for the two years were based on the information provided by the Murcia Regional Government. Prices were calculated on a weighted average basis due to a large number of contracts that had been signed with prices ranging, for example, from **[Text deleted due to confidentiality]** in the 2001/2002 period. The review team considers that there was no other alternative way to compare prices without first weighting them due to the difference in prices paid by the processors to the growers.

Therefore, in the absence of any other information on prices from the Spanish Government, the review team has used the prices calculated in the paragraphs above.

94. The Spanish Government in its response to the Interim Report also stated that for 2003/2004, an agreement has been recently reached in Murcia between growers and processors for an increase in price of the raw peaches due to a fall in production in Europe. The review team notes that the Spanish Government did not provide any information on the actual prices that were agreed for 2003/2004 and it is therefore unable to assess the significance of the price increase.

95. The Spanish Government also stated that the 2002/2003 contract prices were for growers with and without aid and that "prices do not vary depending on this factor". The review team notes that at the verification visit, the Murcia Regional Government did not advise that some of the contract prices listed were for growers who did not receive the aid. The review team did not expect that it would include contracts for growers who did not receive the aid, as there would presumably be no requirement to lodge copies with the regional government. The review team also notes that the Spanish Government did not provide an analysis of the prices paid to growers who did and did not receive the aid to support its assertion that prices did not vary between the two.

96. The following table shows a comparison of prices from the old scheme to the new scheme, on the basis outlined above.

Table 3.2: Price Paid by Processors (€/kg)

	2000/2001	2001/2002	2002/2003
Greece	0.23	**xxxx**	**xxxx**
- Change		**xxxx**	**xxxx**
- % 2000/2001		**xxxx**	**xxxx**
Spain	0.23	**xxxx**	**xxxx**
- Change		**xxxx**	**xxxx**
- % 2000/2001		**xxxx**	**xxxx**

97. The table shows that in Greece, prices fell in 2001/2002 and rose in 2002/2003 **[Text deleted due to confidentiality]** 2000/2001. In Spain, the table shows a fall in prices in 2001/2002 and then prices **[Text deleted due to confidentiality]** in 2002/2003.

98. The review team examined United States Department of Agriculture reports on the production of peaches for canning in Greece and Spain to gauge the extent to which changes in supply may have impacted on prices in the table above. These reports show that for Greece production in 2001/2002 was down a little on record breaking quantities produced in the two previous seasons, and that because of frost was down significantly in 2002/2003. For Spain,

these reports show that deliveries to processors declined by about 13 percent in 2001/2002 from the previous year and then increased significantly in 2002/2003, the reports noting that weather conditions in 2002/2003 were favourable for peach production in Spain.

99. In Greece there was a decline in the price in 2001/2002, rather than the rise in price that would be expected if there was no longer a benefit flowing through to the processors from the subsidy. It is unclear if the small decline in production in 2001/2002 was sufficient to impact on prices. The rise in the price in Greece in 2002/2003 is presumably related to the significant drop in production in that year, but the price is **[Text deleted due to confidentiality]** the price in the last year of the old scheme when peach production was much higher. The evidence from this price comparison in Greece suggests that there is still a benefit from the subsidy flowing through to the processors reflected in the price of raw peaches.

100. In Spain, there was also a decline in the price in 2001/2002 rather than the rise that would be expected if there was no longer a benefit flowing through to the processors from the subsidy. There was also a decline in production in Spain in 2001/2002 which should if anything have produced upwards pressure on prices. The increase in production in 2002/2003 did not result in any drop in the price as might be expected. The evidence from comparing prices in Spain also suggests that there is still a benefit flowing through to processors reflected in the price of raw peaches.

101. The review team notes that in 2002/2003 the aid represented close to **[Text deleted due to confidentiality]** percent of a grower's revenue from their sale of raw peaches to processors. Hence it is reasonable to conclude that both growers and processors are aware of the amount to be given in aid before they negotiate a price, and take this into account in negotiation.

102. This conclusion is supported by the body of economic literature termed "rational expectations" theory that attempts to explain the behaviour of agents in the economy. The theory of rational expectations assumes that agents in the economy (firms and consumers, or in this case growers and processors), form their expectations about the future on a rational basis, using all information reasonably available to them about past and likely future market situations.

103. If it is assumed that the growers and processors negotiate prices based on rational expectations, then they will take account of all information available to them, which will include the fact that a subsidy exists. The EU has stated that there are no planned changes to the subsidy programme, and hence there is no reason for the parties to believe that it would be removed in the period that the negotiated contract price applies to.

104. The subsidy paid to growers (of which both parties are aware of when negotiating a price) gives them an opportunity to accept a lower price than in the absence of the subsidy, because the subsidy compensates them for the drop in price received. The subsidy may also allow the growers to negotiate a lower price to stimulate increased sales and revenue (depending on price elasticities prevailing in the market, and the limitation imposed by the processing threshold).

105. The Spanish Government, in its response to the Interim Report stated that as the amount of aid is fixed, it holds no relevance as to when the rate is published. The review team notes that what is relevant is that both parties are aware of the subsidy when they negotiate a price.

This view is supported by comments made by the Greek Government in its initial submission, where it stated that the aid is one of the factors in determining prices for the raw peaches. Also, comments made by an EC official that growers who receive aid would be more attractive as a supplier to a processor as their prices would likely be lower, reaffirms the views expressed by the review team.

106. In referring to the submission made by HW in which it refers to the findings of the Australian Customs Service, the review team considers:

- That equating the aid amount paid to growers with that previously paid to processors does not of itself mean that the same level of benefit has flowed through to the processors.
- That paying the aid on peaches grown for processing but not on peaches grown for the fresh fruit market, does indicate that the subsidy is intended to aid not only the growers but also down stream processors. The Greek Government offered an explanation by referring the review team to paragraph 2 in Council Regulation (EC) 2201/96 which states (in part) that "... certain products are of particular importance in the Mediterranean regions of the Community where production prices are noticeably higher than those in third countries...". The review team considers the reference to higher production costs indicates that one of the purposes of the aid is to provide a benefit to processors to compensate them for these higher costs.
- That the findings of the United States Department of Agriculture and the conclusion by the Australian Customs Service that an indirect subsidy continues to be provided to processors under the new scheme, provide further weight to the view that a benefit from the subsidy has flowed through to the processors.

Conclusion

107. On the basis of the considerations set out above the review team concludes that the processors of canned peaches received an indirect benefit through price reductions for the raw peaches used in the manufacture of the subject goods processed and exported to New Zealand over the POS(R). It is therefore concluded that a subsidy exists.

Specificity

108. The assistance is specific in that it is provided to certain enterprises, namely growers of raw peaches for processing purposes only.

Amount of Subsidy

109. The benefit from the subsidy that is passed on to processors is an indirect one and is therefore difficult to precisely quantify. The Spanish Government submitted in response to the Interim Report that it is not reasonable to assume that the benefit is equal to the full amount of the subsidy, "because the supposed fall in prices after the introduction of the new scheme does not reflect at all this quantity". The review team notes that it is the absence of a significant change in prices after the introduction of the new scheme, rather than a change commensurate with the amount of the subsidy, that is indicative of a continuing benefit to processors from the subsidy. In the absence of evidence showing that a lesser amount has been conferred on the processors, the review team considers it reasonable to assume that the

benefit is equal to the full amount of the subsidy. The current amount of aid given to the producers of raw peaches is set at €47.7 per tonne of raw peaches.

110. Venus stated that 3kg of canned peaches would require **[Text deleted due to confidentiality]** of raw peaches. Based on this amount, the review team calculated that 1kg of canned peaches requires **[Text deleted due to confidentiality]** of raw peaches. The review team calculated the amount of aid as **[Text deleted due to confidentiality]** per kg of canned peaches using the average exchange rate (€ to NZ$) of 2.11772 over the period of review.

111. Venus exported a total of **[Text deleted due to confidentiality]** of canned peaches over the POS(R), with a total VFD value of **[Text deleted due to confidentiality]**. The amount of subsidy for Venus as a percentage of VFD during the POS(R) was calculated at **[Text deleted due to confidentiality]** percent. **[Text deleted due to confidentiality]**.

112. MG Campoy exported a total of **[Text deleted due to confidentiality]** of canned peaches over the POS(R), with a total VFD value of **[Text deleted due to confidentiality]**. The amount of subsidy for MG Campoy as a percentage of VFD during the POS(R) was calculated at **[Text deleted due to confidentiality]** percent.

Conclusion

113. The review team concludes that the EU subsidy to growers of peaches does exist. The review team also concludes that the aid to growers is a specific subsidy, which confers benefit to the processors of canned peaches.

Export Refunds on Sugar

Operation of the Programme

114. The EC Directorate-General for Agriculture has the overall responsibility for the administration of this programme, which is governed by EC Regulation 800/1999.

115. The price of sugar in the EU is higher than the world price. The refund is designed to compensate exporters of processed fruit and vegetables containing sugar for the price difference. Articles 16 and 18 of EC Regulation 2201/96 deal with the process of sugar refunds. The refund process has not changed since the original investigation.

116. The EC stated that the sugar refund is based on the amount of sugar used in the canned peaches that are exported and there are no refunds for canned peaches sold in the domestic market or for canned peaches that are produced using sugar imported from outside of the EU.

117. A management committee based in the EC calculates the export sugar refund amount on a weekly basis, taking into account the frequent changes in the world sugar prices. This is then notified to all member states.

118. The exporters of canned peaches submit their application with information on quantity of sugar used, the refund amount claimed and Customs Service documentation, which confirms the volume of canned peaches exported. The relevant agency in each member state carries out the required checks and makes payment to the exporters.

Existence of Subsidy

119. The programme involves the payment by a foreign government that provides a direct benefit to the manufacturer of a product containing sugar which is exported outside of the EU. Therefore a subsidy exists in terms of section 3(1) of the Act and Article 1.1 of the SCM Agreement.

Specificity

120. The subsidy is contingent on the goods containing the sugar being exported. By virtue of Article 3.1 of the SCM Agreement the subsidy is consequently specific.

Amount of Subsidy

121. The EC provided the review team with the average refund amounts paid on sugar used in processed vegetables and fruits exported from the EU. This information was provided for each year ended September from 1998 to 2002. The review team is of the view that this is the most accurate information available on the average refunds paid under the sugar refund scheme. The review team has used the year ending September 2002 refund amount of **[Text deleted due to confidentiality]** of sugar, as this period is closest to the POS(R).

122. Venus, the only exporter of subject goods from Greece over the POS(R) uses sugar **[Text deleted due to confidentiality]** for the production of its canned products, including canned peaches, and therefore has not claimed any rebates on its exports of canned peaches to New Zealand. The Greek Government confirmed that no sugar refunds were paid to Venus over the POS(R). The review team is satisfied that no payments under this scheme were made to Venus.

123. The only exporter from Spain over the POS(R), MG Campoy, stated in its response to the Ministry's exporters questionnaire that it does not receive any subsidy or any other assistance from the EU in relation to its exports of canned peaches to New Zealand. The Spanish Government advised no sugar export refunds were paid to MG Campoy over the POS(R).

124. From the information on refunds provided by the EC, the exporters would have received the following amount of refunds for their total exports over the POS(R) had they used EU sugar in their production and claimed rebates.

Venus	**xxxx** of canned peaches
MG Campoy	**xxxx** of canned peaches

125. Using the same exchange rate over the POS(R) as that used for the calculation of amount of aid to the growers, the sugar refund subsidy would equate to **[Text deleted due to confidentiality]** per kg of canned peaches for both Venus and MG Campoy. As a percentage of VFD, this equates to **[Text deleted due to confidentiality]** and **[Text deleted due to confidentiality]** percent for Venus and MG Campoy respectively.

126. The EC stated in its response to the Interim report that any calculation of the amount of subsidy should be based on the reduced amount of aid given to the producers of peaches in comparison to when aid was paid to the processors. The review team considers that the impact of the reduced aid has been addressed above under the heading "Amount of Subsidy". The level of countervailing duty based on the amount of subsidy has been dealt with in section 6 (Reassessment of Countervailing Duties) of this report.

Conclusion

127. The review team concludes that the export refund on sugar scheme does exist and is specific in terms of Article 3.1 of the SCM Agreement. The review team also concludes that the exporters to New Zealand have not benefited from this scheme over the POS(R).

Structural Funds

128. The review team discussed with EC, Greek and Spanish Government officials the provision of aid through the structural funds programmes, particularly those under EC Regulation 1257/1999. This regulation relates to the European Agriculture Guidance and Guarantees Fund (EAGGF) that establishes a framework for community support for sustainable rural development by providing investment aid.

129. The main purpose of the EAGGF is to increase competitiveness of the agricultural sector. Officials noted that there are a number of programmes under Regulation 1257/99 that can qualify for assistance, including environmental improvement programmes, providing support for new farmers and providing support in the areas of processing and marketing agricultural products by increasing hygiene levels and decreasing pollution levels.

130. Officials stated that there are constraints related to this, for example the granting of aid should not lead to an increase in production capacity. There are no programmes that are specifically aimed at the peach producers, however, officials stated that peach processing companies could qualify for aid under this programme, for example, those relating to environmental friendly practices and warehousing. Officials noted that processed foods generally have a low priority due to the low levels of profitability achieved. Officials also submitted that there are no linkages between aid under the structural funds programme and trade and any aid is therefore not a trade distorting factor.

131. The Greek Government officials advised that **[Text deleted due to confidentiality]**. Officials advised that **[Text deleted due to confidentiality]**. The Greek Government **[Text deleted due to confidentiality]**. The review team has requested a copy of the **[Text deleted due to confidentiality]** but to date this has not been received. **[Text deleted due to confidentiality]** is well outside the POS(R), has **[Text deleted due to confidentiality]**. **[Text deleted due to confidentiality]** also submitted that if it is **[Text deleted due to confidentiality]**, it would not be countervailable because it is not a specific subsidy in terms of Article 2 of the SCM Agreement as it is available to any party that is carrying out **[Text deleted due to confidentiality]**. **[Text deleted due to confidentiality]** was also of the view that even if it were a specific subsidy, it would be **[Text deleted due to confidentiality]** of the SCM Agreement because it involves the **[Text deleted due to confidentiality]**.

132. The EC, along with the Greek and Spanish Governments stated that there are no soft loan schemes that are in operation in the EU relating to canned peaches.

133. The review team identified a programme under the structural funds known as "Murcia Regional Government Subsidy", which was approved under Regulation 1257/99 and was aimed at improving environmental standards of fruit and vegetable growers. The funding for this subsidy comes from the EAGGF, which is part of the structural funds. The review team is of the view that, given the purpose of the Murcia Regional Government Subsidy, it is unlikely to affect prices of exported canned peaches.

Conclusion

134. The review team concludes that there is no evidence to suggest that assistance under the structural funds scheme has influenced the price of canned peaches exported to New Zealand.

3.4 Likelihood of Continuation or Recurrence of Subsidy

Introduction

135. The Ministry's approach to sunset reviews is recorded in section 1.3 ("Subsidisation and Injury for the Purposes of a Review") of this report. In considering the likelihood of a continuation or recurrence of subsidy, the review team has applied the general principles set out in this section of the report.

136. The review team has concluded that, although the aid to growers was not given directly to the processors of canned peaches, it has conferred a benefit to the processors.

137. As noted above, the review team is satisfied that neither Venus nor MG Campoy has benefited from the sugar refund programme over the POS(R).

Likelihood of Continuation of Subsidy

Aid to Growers

138. The EC advised that no modification to this programme is foreseen at present. The EC said it could not say with certainty how long the present aid rate would stay in place.

139. The EC has not yet received notification of the amount of peaches that will be supplied for processing in the 2002/2003 season. The EC noted that the aid for this season could not exceed €47.7 per tonne, but could be lower if production thresholds are exceeded.

Conclusion

140. The review team concludes that aid to growers will continue for the foreseeable future and will therefore continue to confer a benefit to the processors and exporters of canned peaches exported to New Zealand should duties be removed.

Sugar Export Refund

141. The EC stated that there are no plans to change the sugar export refund scheme. The review team notes that Venus and MG Campoy did not benefit from this scheme over the POS(R). The information available from Venus indicates that they are unlikely to participate in this programme in the foreseeable future.

142. There is no information available from MG Campoy on why they have not participated in this programme and the extent to which they may do so in the future is therefore unclear. Any reassessment following the completion of this review will need to consider whether any duties specific to these two companies should cover the sugar export refund programme.

Conclusion

143. The review team concludes that the EU sugar export refund scheme will continue for the foreseeable future and it is therefore likely that it will continue to confer a benefit to the exporters of canned peaches to New Zealand, other than Venus and MG Campoy, should countervailing duties be removed.

3.5 Conclusions Relating to Subsidisation

144. The review team concludes that the subject goods imported into New Zealand over the POS(R) were subsidised and there is likely to be a continuation of subsidisation should the duties be removed.

5 United States-Imposition of countervailing duties on Certain Hot Rolled Lead And Bismuth Carbon Steel Products originating in the United Kingdom (WT/DS138/AB/R) and United States-Countervailing measures concerning certain products from the European Communities (WT/DS212/AB/R).

4. Review of Injury

4.1 Findings of the Original Investigation

145. The original investigation into the subsidisation of canned peaches from the European Union (EU), finalised in January 1998, found that:

- The import volumes of subsidised goods had increased in absolute terms and in relation to production and consumption in New Zealand.
- There was evidence of price undercutting and price depression, a significant proportion of which could be attributed to the subsidisation of imported goods. However, 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 and sales, a decline in profits, a decline in market share; likely declines in productivity and in return on investments; and a build up in inventory.
- Factors other than EU subsidised imports had had an impact on the industry.

146. The investigating team in 1998 found that subsidisation had caused material injury to the domestic industry.

4.2 Injury for the Purposes of a Review

147. Section 8 of the Act deals with injury to a New Zealand industry and *inter alia* states:

(1) In determining for the purposes of this Act whether or not any material injury to an industry has been or is being caused or is threatened or whether or not the establishment of an industry has been or is being materially retarded by means of the dumping or subsidisation of goods imported or intended to be imported into New Zealand from another country, the [Chief Executive] shall examine-

(a) The volume of imports of the dumped or subsidised goods; and

(b) The effect of the dumped or subsidised goods on prices in New Zealand for like goods; and

(c) The consequent impact of the dumped or subsidised goods on the relevant New Zealand industry.

(2) Without limiting the generality of subsection (1) of this section, and without limiting the matters that the [Chief Executive] may consider, the [Chief Executive] shall have regard to the following matters:

(a) The extent to which there has been or is likely to be a significant increase in the volume of imports of dumped or subsidised goods either in absolute terms or in relation to production or consumption in New Zealand:

b) 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:

(c) The extent to which the effect of the dumped or subsidised goods is or is likely significantly to depress prices for like goods of New Zealand producers or significantly to prevent price increases for those goods that otherwise would have been likely to have occurred:

(d) 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.

Likelihood of Continuation or Recurrence of Injury

148. The Ministry's approach to sunset reviews is recorded in section 1.3 ("Subsidisation and Injury for the Purposes of a Review") above. In considering the likelihood of a continuation or recurrence of injury, the review team has applied the general principles set out in this section of the report.

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

General Scenarios Submitted by HW

150. During the course of the review HW has submitted a number of scenarios it considers likely should the current duties be removed. All such forecast figures submitted by HW are broken down by brand, and are provided for the year ended April 2004. HW has stated that the scenario that would actually eventuate depends entirely on what strategy the importer takes in regard to marketing and distributing their product.

151. In its application for a review, HW submitted that it could only base any assumptions about likely impacts on what had happened prior to the imposition of the duties in 1998. At this time, HW experienced a **[Text deleted due to confidentiality]** percent decrease in volume, and a **[Text deleted due to confidentiality]** percent decrease in price. If this eventuated, HW has estimated this would translate into a loss of sales of **[Text deleted due to confidentiality]**. HW's sales volume for the 2002/2003 financial year was approximately **[Text deleted due to confidentiality]**, so a loss of **[Text deleted due to confidentiality]** equates to a loss of sales volume of **[Text deleted due to confidentiality]** percent of current sales. HW considers this highly plausible, as the factors present in 1997, are still present now.

152. This situation has been developed as "scenario 1", and it assumes that both duties (the Ministry is carrying out a concurrent review of the anti-dumping duty on canned peaches from Greece) would be removed (which is analogous to having no duties prior to the original investigation).

153. The review team notes that at the time of the original investigation, only 820g cans were imported, and they were only sold in certain outlets. Hence, the**[Text deleted due to confidentiality]** percent reduction in volume only applied to 820g cans. In the current review, HW has made the assumption that a **[Text deleted due to confidentiality]** percent reduction in volume will occur across all brands. The review team also notes that at the time of the original investigation, HW's actual market share only dropped **[Text deleted due to confidentiality]** percent.

154. HW further submitted a second scenario, "scenario 2", which uses a combination of the price and volume assumptions made based on previous experience (i.e., the situation before duties were imposed in 1998) and an assumption that **[Text deleted due to confidentiality]**, thereby making an **[Text deleted due to confidentiality]**. Scenario 2 is formulated on the assumption that the countervailing duty will be removed, and the anti-dumping duty will

remain (and vice versa for the purposes of the review of anti-dumping duties on canned peaches from Greece). HW is of the opinion that if **[Text deleted due to confidentiality]**, they will be able to access peaches so cheaply, regardless of which duty is removed, that they will capture the entire **[Text deleted due to confidentiality]** market, reducing HW's **[Text deleted due to confidentiality]** sales to **[Text deleted due to confidentiality]**.

155. Under scenario 2, HW assumes that if only the anti-dumping duty were to be removed, it would suffer a **[Text deleted due to confidentiality]** percent volume reduction, and a **[Text deleted due to confidentiality]** percent price reduction across its **[Text deleted due to confidentiality]** brands (with **[Text deleted due to confidentiality]** market). If only the countervailing duty were to be removed, HW assumes under scenario 2, that it would suffer a **[Text deleted due to confidentiality]** percent volume reduction, and a **[Text deleted due to confidentiality]** percent price reduction for its **[Text deleted due to confidentiality]** brand (HW assumes no impact on **[Text deleted due to confidentiality]**, and a total loss of **[Text deleted due to confidentiality]** sales). The forecast impact on **[Text deleted due to confidentiality]** is due to the **[Text deleted due to confidentiality]** product, so that they are not required to incur extra marketing costs to **[Text deleted due to confidentiality]** in the market.

156. HW subsequently submitted a scenario under which the removal of either duty would lead to seasonal fruit processing becoming **[Text deleted due to confidentiality]**, and therefore it would **[Text deleted due to confidentiality]** (the **[Text deleted due to confidentiality]** scenario). This scenario is based on the assumption that **[Text deleted due to confidentiality]** from the EU. HW has stated that if this eventuated, it may give consideration to becoming **[Text deleted due to confidentiality]**.

157. To support this scenario HW has calculated an injurious selling price of EU peaches (i.e. a price at which EU exporters could feasibly sell at on the New Zealand market) of **[Text deleted due to confidentiality]** per kg (refer to section titled "Price Undercutting"). HW has stated that if EU exporters started selling on the New Zealand market at this price, due to the removal of either duty, it would have to **[Text deleted due to confidentiality]**. This scenario also includes an analysis of two types of importer "models". The first being one where **[Text deleted due to confidentiality]** the peaches (the traditional importer model). The second is where the **[Text deleted due to confidentiality]** (the new importer model).

158. HW is of the opinion that the new importer model is a highly feasible scenario, given the existing capability of **[Text deleted due to confidentiality]** to store and market canned peaches. HW is of the opinion that **[Text deleted due to confidentiality]** do not consider that a domestic industry is necessary in order to ensure the security and timeliness of supply. HW considers the main concern for a **[Text deleted due to confidentiality]** is price, and often **[Text deleted due to confidentiality]** use fruit to **[Text deleted due to confidentiality]**. HW said if domestic retailers have access to subsidised imports they will have the opportunity to have product packed overseas as **[Text deleted due to confidentiality]**, and can drive retail prices down to allow them to achieve these marketing strategies. HW is of the opinion that if this occurred, the **[Text deleted due to confidentiality]** own **[Text deleted due to confidentiality]** would capture the entire **[Text deleted due to confidentiality]** market (which is currently **[Text deleted due to confidentiality]** percent of the total market in New Zealand), as well as significantly expanding the total market. HW also stated that its relationship with the **[Text deleted due to confidentiality]** is unique, in the sense that the **[Text deleted due to confidentiality]** are **[Text deleted due to confidentiality]** for HW.

159. The Government of Greece and the EC expressed concern in their responses to the Interim Report that the details of the general scenarios outlined above were not disclosed to interested parties, at least, in the form of meaningful indices. The review team notes that it did provide historical data on HW in the form of indices to the EC during the course of the review, which is on the public file. The review team also notes that it is required by the Act not to disclose information it has accepted as confidential, without the express permission of any party that would be adversely affected by its release. The review team considers that what it has already disclosed (through commenting on trends in data) is reasonable disclosure of data.

4.3 Import Volumes

160. Section 8(2)(a) of the Act provides that the Chief Executive 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 or subsidised goods either in absolute terms or in relation to production or consumption in New Zealand.

161. As noted in section 2.2 (Imports of Canned Peaches) 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 the European Union and other countries has been calculated on the basis set out in section 2.2. The figures for the volume of subsidised goods considered in this section of the report are based on the proportion of subject goods identified as subsidised in section 3.3 (Subsidy Programmes). In this section of the report it was determined that 100 percent of the subject goods imported over the period of investigation were subsidised.

162. The following table sets out the volume of imports of subsidised subject goods over the review period together with New Zealand production and consumption volumes. The import figures and the figures for HW's sales are both in April years, as this is HW's financial year. HW advised that **[Text deleted due to confidentiality]**.

Table 4.1: Import Volumes of Subject Goods (Tonnes) (Years Ended April)

	1999	2000	2001	2002	2003
Subsidised Imports	5	345	104	58	129
Other Imports	2,203	2,969	3,231	3,056	5,004
NZ Industry Sales	xxxx	xxxx	xxxx	xxxx	xxxx
Total NZ Market	xxxx	xxxx	xxxx	xxxx	xxxx
Change in:					
Subsidised Imports		340	-241	-46	71
Other Imports		766	262	-175	1,948

	1999	2000	2001	2002	2003
NZ Industry Sales		**xxxx**	**xxxx**	**xxxx**	**xxxx**
Total NZ Market		**xxxx**	**xxxx**	**xxxx**	**xxxx**
Subsidised Imports as % of:					
NZ Industry Sales	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**
Total NZ Market	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**

163. The table shows that subsidised imports have entered New Zealand in negligible quantities.

164. Final countervailing duties were imposed in January 1998. Since then, while the volume of subsidised imports has fluctuated, such imports have declined significantly.

165. In relation to production and consumption in New Zealand, the volume of subsidised imports has shown a significant decline since the original investigation and is negligible in relation to both New Zealand production and consumption. In 1997, the last full year not affected by countervailing duties, subsidised imports represented **[Text deleted due to confidentiality]** and **[Text deleted due to confidentiality]** percent respectively of domestic production and the total New Zealand market, and were not considered to be negligible.

166. The Greek Government and the EC expressed concern in their submissions on the Interim Report that as the import volumes of the subject goods were negligible over the period of review, it is unlikely that exports from the EU to New Zealand would increase if the duties were removed. The review team notes that countervailing duties have been in place over the POS(R), and hence the low volume of imports is to be expected. The review team notes that the analysis of relevant information and the conclusions reached below all point to a likely significant increase in subsidised imports should the duties be removed.

Likely Import Volumes Should Duties be Removed

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

- The volume of imports before and after the imposition of countervailing duties.
- The price advantage (in the absence of duties) which such imports may hold.
- The capacity of the European Union 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.

Import Volumes before and after Imposition of Duties

168. The review team analysed NZCS data to see whether the imposition of the countervailing duty in 1998 caused a decline in imports of canned peaches from the European Union. This analysis revealed that prior to the imposition of the duty there were significant, but fluctuating, import volumes from the European Union. In the year immediately after the imposition of duty, imports from the European Union declined to a negligible amount and have remained so. This indicates that the countervailing duty did have an effect at the time of its imposition, suggesting (given the factors outlined in the remainder of this section) that the removal of duty would lead to an increase in imports.

169. Venus Growers stated that its intention regarding future exports to New Zealand **[Text deleted due to confidentiality]**

Prices

170. The review team used the EU export data relating to Greece, Italy, and Spain to make a comparison between EU export prices to New Zealand, and export prices to other countries outside of the EU. A lower price to other countries may indicate that the duty is effective, and its removal could result in the price to New Zealand being reduced to lower world prices. This analysis showed that in some years over the period 1999 to 2003, the prices to New Zealand were higher than to the rest of the world, indicating that the removal of the duty could result in the prices to New Zealand being lowered. The review team notes though, that in other years the prices to New Zealand were lower than to the rest of the world.

171. The price undercutting analysis in section 3.4 ("Likelihood of Continuation or Recurrence of Subsidy") below shows that, based on the forecast information presented, imports from the European Union would undercut the prices of HW's canned peaches by a significant margin and concludes that if the duty was removed, there is likely to be a recurrence of significant price undercutting. It is also concluded in section 3.4 (Likelihood of Continuation or Recurrence of Subsidy) that there is likely to be a recurrence of significant price depression and suppression, should the duty be removed. The extent of the price undercutting provides a clear incentive to import the subject goods should the duty be removed.

Capacity of European Union Industry

172. In its application for a review HW provided figures drawn from a U.S. Department of Agriculture report showing annual exports from the European Union (Greece, Italy, and Spain) to be around 489,000 tonnes. With the entire New Zealand market being only about **[Text deleted due to confidentiality]** tonnes, this means only **[Text deleted due to confidentiality]** percent of the EU export volume would be enough to capture the entire New Zealand market.

173. The ACS final report on its continuation inquiry into countervailing duties on canned peaches exported from Greece (2001) noted that Greece had a large peach processing production capacity, and that a relatively small volume of exports from Greece would be expected to have a substantial impact in a small market such as Australia. The report also noted that in 2000, Argentina imposed a countervailing duty of 12 percent and Brazil

imposed an anti-dumping duty of 100 per cent (the review team was unable to locate any notification to the WTO of the imposition of such an anti-dumping duty by Brazil). The ACS report noted further that reports from the United States Department of Agriculture indicated that the loss of those two major markets for exports of canned peaches from Greece contributed to an expansion of sales of those goods in other markets. The ACS concluded that the lack of two former major export markets added to the capacity available to exporters of canned peaches from Greece to re-direct exports to other markets including Australia.

174. The review team is of the opinion that this conclusion is applicable to the New Zealand market, given its small relative size, and close proximity to Australia.

175. Subsequent to the overseas verification visits, the review team was made aware of a severe snowstorm and frosts in Greece. A report located on the internet by the US Department of Agriculture reported that the peach crop had been very badly damaged. The report stated that based on preliminary estimates provided by both processors and peach farming groups, the quantity of fresh fruit delivered to processors will be around 235,000 tonnes, subject to better damage assessment. The same report shows that in 2002 and 2001, 258,000 tonnes and 459,000 tonnes respectively were delivered for processing. At this stage of the review, no further or more reliable information has been obtained on this matter. The review team notes that a large reduction in the Greek peach crop in 2003 does not mean it is not possible to foresee that production could be back to normal levels in 2004. There is no evidence that the 2003 peach crop elsewhere in the EU has been affected by adverse weather.

Ease of Entry into New Zealand Market

176. HW said barriers to entry into the New Zealand market are very low, and has made extensive submissions on the market structure in New Zealand.

177. As outlined above, HW is of the opinion that **[Text deleted due to confidentiality]** in New Zealand have **[Text deleted due to confidentiality]** themselves, and have a pre-existing and extensive marketing and warehousing structure which gives them the capability to easily source and sell their own product.

178. HW has a made a submission about the increasing importation of canned peaches by **[Text deleted due to confidentiality]**, by reference to what has happened in the **[Text deleted due to confidentiality]** market where there are no duties. HW provided AC Nielsen data for **[Text deleted due to confidentiality]** for the two years ended 23/3/2002 and 23/3/2003, which shows that the market share of housebrands has increased significantly over the two years. This data further shows that imports from Europe of **[Text deleted due to confidentiality]** have also increased significantly. HW said that this illustrates the point that **[Text deleted due to confidentiality]** can and do import from Europe, and they are doing so to a larger extent than ever. Even though this example is in relation to **[Text deleted due to confidentiality]**, it is also applicable to peaches.

179. Entry into the New Zealand market by new suppliers is made easier by the fact that the contracts between HW and their customers for the Wattie's and Oak brands **[Text deleted due to confidentiality]**. The contracts for housebrands are annual agreements (i.e. they are **[Text deleted due to confidentiality]**) that can be reviewed at any stage.

Ability of Importers and Distribution System

180. HW has submitted that many of the importers and exporters previously involved in exporting subsidised peaches from the European Union to New Zealand remain active, and some new importers have also appeared. These existing importers have in place the systems and infrastructure to handle an increase in imports, and if they used a sourcing firm like **[Text deleted due to confidentiality]**, who have extensive experience in the procurement of cheap peaches, the importation of large volumes of peaches would become a relatively cheap and easy exercise. HW is also of the opinion that even if **[Text deleted due to confidentiality]** chose not to use an import agent, they still have the experience to procure cheap product themselves.

181. HW stated that **[Text deleted due to confidentiality]** are building significant **[Text deleted due to confidentiality]** businesses supported by specialist infrastructure (such as procurement, marketing, warehousing, distribution, and retailing) which they will continue to do, and will be made easier by the removal of countervailing duty.

Conclusion on Import Volumes

182. The review team concludes that over the period covered by this review, import volumes of the subject goods have remained negligible relative to New Zealand production and consumption.

183. The review team further concludes that should duties be removed there is likely to be a significant increase in the volume of subsidised imports, on the basis that:

- Following the imposition of the duty in 1998, import volumes from The EU decreased to a negligible amount, and have remained so since. This suggests that the removal of duty may lead to increased imports.
- Prices of the subject goods significantly undercut the New Zealand industry's prices, in the absence of countervailing duty.
- The EU canned peach industry has the capability to substantially increase its exports to New Zealand.
- There are few barriers to entry in the New Zealand market.
- Importers and **[Text deleted due to confidentiality]** have the ability to import and distribute a significant increase in the volume of canned peaches from the European Union.

4.4 Price Effects

Price Undercutting

184. 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.

185. Price undercutting reflects the extent to which prices of the imported goods are lower than those of domestic products. The prices of subsidised imports and domestic production are compared 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-store price for imports. This approach ensures that differences in distribution costs and margins do not confuse the impact of subsidisation. 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.

186. The purpose of the price undercutting comparison is to establish whether or not there is price undercutting attributable to subsidisation. 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 section 8(2)(d) of the Act.

187. The original investigation found that there was evidence of price undercutting which was attributable to subsidisation. It also found that there was evidence of price undercutting when the effects of subsidisation were removed.

Level of Trade

188. HW is of the view that the ex-factory level is the appropriate level of trade for its sales of canned peaches. HW is of the opinion that the level of trade for comparing **[Text deleted due to confidentiality]** prices would change from ex-importer's store to **[Text deleted due to confidentiality]** if the duties were removed, because HW considers that **[Text deleted due to confidentiality]** would **[Text deleted due to confidentiality]**.

189. The review team agrees that this is the appropriate level of trade for **[Text deleted due to confidentiality]**. It also notes that imports are still likely through separate importers, where ex-store is the appropriate level of trade.

190. The importer **[Text deleted due to confidentiality]** of the subject goods identified during the period of review was **[Text deleted due to confidentiality]**. All of **[Text deleted due to confidentiality]** imports of subject goods during the period of review were of **[Text deleted due to confidentiality]**. The review team considers that the appropriate level of trade for these sales is ex-importer's store, because this is the point where they first compete with HW's sales.

Non-Injurious Prices

191. HW is of the opinion that as a review is a forward looking exercise, and any duties imposed will cover a future period, the non-injurious price (NIP) that is used should be based on the prices that may eventuate in the period that the duty will cover. HW also advised that it had **[Text deleted due to confidentiality]**, that should be taken into account. On the basis of the **[Text deleted due to confidentiality]**, HW provided forecasts of its average net prices for the period 1 May 2003 to 30 April 2004 (these forecasts were prepared making the same adjustments as all other forecasts in this report). Furthermore, HW considers that a separate NIP should be calculated for each of the three main can sizes.

192. The review team notes that NIPs can be used for the purposes of establishing whether there has been price undercutting over a historical period, whether there is likely to be price undercutting in future should the duty be removed, and to establish whether a lesser duty should apply (should the review find that duties should remain in place). The review team agrees that it is desirable that the most recent available information be used in calculating NIPs if that information is reliable and reasonably matches the period over which any import prices have been calculated for comparison with the NIPs.

193. In the present case, a comparison of actual prices over the POS(R) has been carried out below in order to ensure prices established over the same period are being compared. In relation to the likelihood of price undercutting should the duty be removed, HW has provided its estimate of likely prices using average export prices from Greece in 2001, meaning a comparison would be made of a NIP based on **[Text deleted due to confidentiality]** prices with import prices based on 2001 data.

194. In terms of the reliability of NIPs based on prices **[Text deleted due to confidentiality]**, the review team notes that HW has previously (in October 2000 to March 2001) **[Text deleted due to confidentiality]**. This may indicate that NIPs based on average prices actually achieved over a recent one-year period may provide a better indication of a true NIP bearing in mind that HW has not claimed any price suppression due to dumped imports.

195. With these observations in mind, the review team considers that a price comparison to determine any likely price undercutting should duties be removed, should be carried out using NIPs based on both the actual average net prices achieved by HW over a one year period (in this case over the year ended November 2002) and on the prices prevailing after the **[Text deleted due to confidentiality]**.

196. The review team notes that in section 6 ("Reassessment of Countervailing Duties") of this report (the section on proposed re-assessment of countervailing duties), the NIP used was based on HW's actual average selling prices for the year ended May 2003. The review team considers that as a review is a forward-looking exercise, this ensured that the most up to date information was used, which represented prices actually achieved over a one year period.

Relevant Prices for Comparison

197. **[Text deleted due to confidentiality]**.

198. **[Text deleted due to confidentiality]** imports its peaches from the EU from a Spanish company, MG Campoy, through an agent, **[Text deleted due to confidentiality]**.

199. In its questionnaire response, **[Text deleted due to confidentiality]** provided its cost build-up to selling price for **[Text deleted due to confidentiality]** of peach slices and halves in light syrup. The cost build-ups included distribution and freight after store costs, which have been excluded to allow comparison at the ex-store level. The cost build-ups also included countervailing duty, which has likewise been excluded. HW provided average net selling prices for the year ended November 2002, for its **[Text deleted due to confidentiality]** canned peach slices and halves in light syrup, across all brands.

200. The NIP in the table below is HW's average selling price for the year ended November 2002, net of part of trade spend (trade spend represents the various forms of promotional

expenditure that HW pays **[Text deleted due to confidentiality]**, and the various **[Text deleted due to confidentiality]**). That part of trade spend which represents promotional expenditure **[Text deleted due to confidentiality]** (referred to as co-operative expenditure) in the form of **[Text deleted due to confidentiality]**, has not been netted off the selling price. This is consistent with the treatment of this type of expenditure applied in the reassessment of the anti-dumping duty on canned peaches from South Africa, completed in January 2002.

201. The comparison of prices (on a per kg basis) and the amount of price undercutting, are shown in the table below.

Table 4.2: Price Undercutting **[Text deleted due to confidentiality]**

	Slices (syrup)	Halves (syrup)
HWNIP (kg)	**xxxx**	**xxxx**
xxxx price per kg	**xxxx**	**xxxx**
Undercutting	**xxxx**	**xxxx**
- As a % of NIP	**xxxx**	**xxxx**

202. The table shows that over the period of review, HW's prices have, when countervailing duty is excluded, been undercut by EU imports, and this price undercutting is attributable to subsidisation.

Likelihood of Price Undercutting Should Duties be Removed

203. The review team has addressed this issue by comparing HW's non-injurious price to the likely importer's prices at both the **[Text deleted due to confidentiality]** (for comparison **[Text deleted due to confidentiality]**), and **[Text deleted due to confidentiality]** (for comparison with importation using an agent) levels. This approach ensures that both possible types of importation scenarios are covered.

204. In its application for a review, HW provided estimates of likely export prices to New Zealand in the absence of countervailing duties. HW calculated the ex-store-selling price of Greek canned peaches based on the average per kilogram FOB price to other EU countries for 2001 from the Euro Statistics. HW firstly deducted the **[Text deleted due to confidentiality]** to arrive at the ex-store import price per kg of **[Text deleted due to confidentiality]**. The cost from the Greece FOB to New Zealand wharf (Napier), costs at New Zealand wharf and into store costs were based on **[Text deleted due to confidentiality]** import costs from **[Text deleted due to confidentiality]** in Greece. HW based its importer's margin figure, on its estimates of the margin that a New Zealand importer could make.

205. The review team has carried out its own calculations, based on the HW submission, but with changes considered appropriate by the review team. The review team's calculation is based on the average per kilogram FOB price for exports from Greece, Italy, and Spain to other EU countries for 2001 from the Euro Statistics. The importer's margin used by the

review team was based on the weighted average margin that **[Text deleted due to confidentiality]** made on its imports of canned peaches from **[Text deleted due to confidentiality]**. The review team considers that it cannot make any cost of credit deductions due to the fact that it has no information on what the credit terms may be for a New Zealand importer if the duties were removed. HW submitted that **[Text deleted due to confidentiality]** should be discounted by up to **[Text deleted due to confidentiality]** percent to allow for likely discounts that a regular importer could likely negotiate. HW did not provide any evidence to substantiate this claim. The review team decided to use the full amount of any ocean freight incurred on imports (i.e. not take account of any "bulk" discounts that may apply), because of a lack of evidence that a discount should apply (the review team also notes that **[Text deleted due to confidentiality]** to that for **[Text deleted due to confidentiality]** imports from **[Text deleted due to confidentiality]**, indicating that a discount should not apply).

206. The following table shows the result of the review team's calculations of the EU export prices at the **[Text deleted due to confidentiality]** and ex-store levels, and a comparison of these with HW's NIP.

Table 4.3: Likely Price Undercutting (NIP Based on Year Ended November 2002 Prices)

	410g	820g	A10	All
HWNIP	**xxxx**	**xxxx**	**xxxx**	**xxxx**
Estimated**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**
Undercutting	**xxxx**	**xxxx**	**xxxx**	**xxxx**
- As a % of NIP	**xxxx**	**xxxx**	**xxxx**	**xxxx**
Estimated Ex-Store	**xxxx**	**xxxx**	**xxxx**	**xxxx**
Undercutting	**xxxx**	**xxxx**	**xxxx**	**xxxx**
- As a % of NIP	**xxxx**	**xxxx**	**xxxx**	**xxxx**

207. The table shows that there would be significant undercutting of HW's NIP by the EU imports, across all different weights, and also in total, at both the ex-store and **[Text deleted due to confidentiality]** levels of trade.

208. The NIP in the table below is based on HW's prices after the **[Text deleted due to confidentiality]**, with these prices applied to forecast volumes to give forecast average net selling prices, as outlined above. The review team has compared this NIP to the calculated **[Text deleted due to confidentiality]** and ex-store prices in the table below.

Table 4.4: Price Undercutting (NIP Based on **[Text deleted due to confidentiality]** Prices)

	410g	820g	A10	All
HWNIP	**xxxx**	**xxxx**	**xxxx**	**xxxx**
xxxx	**xxxx**	**xxxx**	**xxxx**	**xxxx**
Undercutting	**xxxx**	**xxxx**	**xxxx**	**xxxx**
- As a % of NIP	**xxxx**	**xxxx**	**xxxx**	**xxxx**
Ex-Store	**xxxx**	**xxxx**	**xxxx**	**xxxx**
Undercutting	**xxxx**	**xxxx**	**xxxx**	**xxxx**
- As a % of NIP	**xxxx**	**xxxx**	**xxxx**	**xxxx**

209. The above table shows that significant price undercutting would exist, at both the **[Text deleted due to confidentiality]** and ex-store levels of trade.

210. The review team, in the concurrent review of the anti-dumping duty on canned peaches from Greece, has calculated a weighted average dumping margin of **[Text deleted due to confidentiality]**. As Greece is the only country involved in the dumping review it is only valid to add back the weighted average dumping margin to the margin of price undercutting for Greece, and not for the EU in total. This is also due to the fact that the calculations are made on the basis of export prices from Greece, Italy, and Spain to other EU countries, therefore adding the dumping margin back to this total figure is invalid. When this weighted average dumping margin is added back to the margin of price undercutting by imports from Greece (at both the **[Text deleted due to confidentiality]** and ex-store levels, and current and forecast NIPs), significant price undercutting still exists, which is attributable to subsidisation.

211. Venus Growers stated that the only criterion in its pricing is the **[Text deleted due to confidentiality]**.

212. MG Campoy stated that their prices, if the duties were removed, **[Text deleted due to confidentiality]**. The EC, in its submission on the Interim Report, stated that the review team should address the issue of whether or not there exists a price difference between EU exports to countries with and without a canned peach industry. The review team is not aware of any data that would allow such a comparison.

213. The evidence therefore suggests that should duties be removed, there is likely to be significantly increased volumes of imports and these imports will be likely to significantly undercut the price of the New Zealand industry.

Conclusion on Price Undercutting

214. The prices of canned peaches, excluding countervailing duty, imported over the period of review have undercut HW's prices.

215. In the absence of countervailing duty, it is likely that canned peaches from the European Union would undercut the New Zealand industry's prices by between **[Text deleted due to confidentiality]** and **[Text deleted due to confidentiality]** percent, depending on can size, the level of trade at which comparison is made, and the basis on which the NIP is set.

Price Depression

216. 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 or subsidised goods is or is likely significantly to depress prices for like goods of New Zealand producers.

217. Price depression occurs when prices are lower than those in a market unaffected by subsidisation, usually in a previous period.

218. The original investigation found that there was evidence of price depression, which could be attributed to subsidised imports of EU canned peaches.

219. In the current review, HW has provided actual average net selling prices for the years 1999 to 2003 (the 2003 figures are a combination of actual and forecast data). These net average prices were calculated on the same basis as the prices for the year ended November 2002 under "Price Undercutting" above. These prices are presented in the following table:

Table 4.5: Price Depression (Years Ended April)

	1999	2000	2001	2002	2003
Average Net Selling Price per kg:	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**
As % of 1999		**xxxx**	**xxxx**	**xxxx**	**xxxx**

220. The above table shows that over all of the period, HW has not suffered price depression. HW has not claimed any price depression attributable to subsidised imports, and with duties in place, this would not be expected.

Likely Price Depression Should Duties Be Removed

221. During the review of anti-dumping duty on South African canned peaches, HW provided AC Nielsen data relating to the import of Contel brand canned peaches from Italy in 1999 as an example of what could happen to the price of Wattie's and Oak brand canned peaches should duties be removed. The AC Neilsen data showed the price of Contel dropping and the price of **[Text deleted due to confidentiality]** following the price down soon after. HW also referred to AC Neilsen market share data showing a sharp increase in the Contel market share (around March 2000) at about the same time as the average price per kg of Contel decreased in the New Zealand market. HW stated that this is of relevance for the current review, and illustrates the extent to which prices can be depressed by low priced imports.

222. As outlined above, HW has also provided forecasts based on what occurred in the market at the time of the original investigation. HW has forecast that if both duties were to be removed it would suffer a **[Text deleted due to confidentiality]** percent depression of price across all brands. HW has also forecast that if the countervailing duty was removed, but the anti-dumping duty was retained, it would suffer a **[Text deleted due to confidentiality]** percent reduction in the price of its **[Text deleted due to confidentiality]** brand, and would lose its entire **[Text deleted due to confidentiality]** market. HW considers that this would be due to the **[Text deleted due to confidentiality]** preference for importing **[Text deleted due to confidentiality]** so that it can **[Text deleted due to confidentiality]** it as **[Text deleted due to confidentiality]**. HW said that this strategy has the advantage that it uses an **[Text deleted due to confidentiality]**, so the **[Text deleted due to confidentiality]** does not need to spend money on marketing **[Text deleted due to confidentiality]**.

223. Under the scenario of the removal of either duty leading to HW**[Text deleted due to confidentiality]**, HW would **[Text deleted due to confidentiality]** and would therefore suffer **[Text deleted due to confidentiality]** price depression.

224. The extent of the likely price undercutting attributable to subsidisation, indicates that the price depression scenarios forecast by HW if the duties are removed are credible.

Conclusion on Price Depression

225. The review team concludes that HW's selling prices over the period examined have not been depressed due to subsidised imports.

226. The review team concludes that HW is likely to suffer price depression should the countervailing duties be removed.

Price Suppression

227. 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 or subsidised goods is or is likely significantly to prevent price increases for those goods that otherwise would have been likely to have occurred.

228. The Ministry has generally based 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 recovered in prices will be reflected as increases in costs expressed as a percentage of sales revenue. Where cost savings have been made, the lack of any price increase will not normally be regarded as price suppression.

229. The original investigation found that there was no evidence of price suppression.

230. The following table shows HW's cost of production and selling and administration expenses relative to sales revenue:

Table 4.6: Price Suppression (Years Ended April)

	1999	2000	2001	2002	2003
Net Sales Revenue ($000)	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**
Cost of Production ($000)	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**
S&A Expenses ($000)	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**
Total Costs	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**
As % of Sales:					
Cost of Production	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**
S&A Expenses	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**
Total Costs	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**

231. The table shows an increase in total costs relative to sales revenue from 1999 to 2003 indicating prices have been suppressed. However, with the current duties in place, it is unlikely that this can be attributed to subsidised imports. HW has not attributed the price suppression to subsidised imports.

Likelihood of Price Suppression Should Duties Be Removed

232. HW stated that if subsidised imports returned to the market, any decision about increases in marketing spend would depend entirely on how the imports enter the market, and then how they were marketed. For this reason HW has not attempted to quantify the extent to which marketing costs would increase if the duties were removed.

233. HW said that if subsidised canned peaches came into the market purely on price, then it would react with price reductions of its **[Text deleted due to confidentiality]**. If importers of EU canned peaches undertook increased advertising and promotional activity, HW said it would react by doing the same. HW does not market the **[Text deleted due to confidentiality]** brand, **[Text deleted due to confidentiality]**.

234. HW believes that if **[Text deleted due to confidentiality]** begin importing **[Text deleted due to confidentiality]** as a result of the revocation of duties, marketing would not be carried out in the same way as if **[Text deleted due to confidentiality]** was being imported. HW stated that it too may be sourcing product overseas (if there is a crop shortfall), which would increase its costs, and such cost increases would not be recoverable in the price charged, given that it would have to compete with subsidised imports. HW said price suppression would therefore arise through increased sourcing costs, or increased marketing costs, which would not be able to be recovered with price increases.

235. Based on the assumption of a **[Text deleted due to confidentiality]** percent reduction in volume ("scenario 1"), HW has forecast that due to decreases in overhead recovery rates (due

to lower throughput), the cost of production per kg would rise by **[Text deleted due to confidentiality]**.

236. The following table shows HW's forecasts for the 2003/2004 financial year if countervailing duties are removed and if they stay in place (these calculations have been prepared on the basis that the current anti-dumping duty will also be removed). In making the following forecast, HW has assumed, a **[Text deleted due to confidentiality]** percent reduction in volume, a **[Text deleted due to confidentiality]** percent reduction in price, and an increase in cost of production per kg of **[Text deleted due to confidentiality]** (as referred to in the paragraph above). Net sales revenue has been calculated as noted above under "Price Undercutting", and HW has assumed a constant level of selling and administration expenses, reflecting the continued need to sell and market the product, regardless of sales volume.

Table 4.7: Price Suppression Forecast

	If duties remain	If both duties removed
Net Sales Revenue	**xxxx**	**xxxx**
Cost of Production	**xxxx**	**xxxx**
S&A Expenses	**xxxx**	**xxxx**
Total Costs	**xxxx**	**xxxx**
As % of Net Sales		
- Cost of Production	**xxxx**	**xxxx**
- S&A Expenses	**xxxx**	**xxxx**
- Total Costs	**xxxx**	**xxxx**

237. The table shows a large increase in the percentage of total costs relative to net revenue should duties be removed.

238. HW has also provided a forecast of likely price suppression if the duties remain and only the countervailing duty is removed. This forecast has been prepared using the assumptions previously referred to, i.e., a **[Text deleted due to confidentiality]** percent reduction in the price of its **[Text deleted due to confidentiality]** brand, no impact on the **[Text deleted due to confidentiality]** brand, and loss of all its **[Text deleted due to confidentiality]**. HW's forecast of likely price suppression under these assumptions is presented in the table below.

Table 4.8: Price Suppression Forecast

	If duties remain	If only countervailing duty removed

	If duties remain	If only countervailing duty removed
Net Sales Revenue	**xxxx**	**xxxx**
Cost of Production	**xxxx**	**xxxx**
S&A Expenses	**xxxx**	**xxxx**
Total Costs	**xxxx**	**xxxx**
- Cost of Production	**xxxx**	**xxxx**
- S&A Expenses	**xxxx**	**xxxx**
- Total Costs	**xxxx**	**xxxx**

239. The table shows an increase in the percentage of total costs relative to net revenue should duties be removed, indicating that it is likely that price suppression will recur if the duties are removed. The table shows that even with residual protection from the anti-dumping duty, HW would suffer price suppression.

240. The scenario of HW**[Text deleted due to confidentiality]**, would lead to the **[Text deleted due to confidentiality]**, which would mean **[Text deleted due to confidentiality]** price suppression.

241. The review team notes that given the conclusions above on the likely price undercutting and price depression effects, HW's forecast of likely price suppression should the duties be removed is considered credible.

Conclusion on Price Suppression

242. The review team concludes that there is evidence of price suppression, but it is not attributable to subsidised imports.

243. The review team also concludes that HW's prices are likely to be suppressed as a result of subsidisation should duties be removed, regardless of whether the countervailing duty remains in place or not.

Conclusion on Price Effects

244. The review team concludes that there is evidence of price undercutting and price suppression over the POS(R). There is no evidence of price depression. The price suppression over the last 5 financial years is unlikely to be attributable to subsidised imports, and HW has not claimed that it is.

245. The review team concludes that there is likely to be a continuation of price undercutting, and a recurrence of price depression and suppression, should duties be removed.

246. The Greek Government and the EC stated that the review team should not make a presumption that EU import prices into New Zealand will necessarily fall on the basis of the removal of the countervailing duties, and went on to state that it could not be concluded that there would be price undercutting, price depression and suppression if the current duties were removed. The review team notes that the argument about the removal of duty directly leading to a decrease in import prices into New Zealand does not rely on a simple presumption that the mere removal of the duty will lead to likely price undercutting, price depression and suppression, but relies on other evidence as set out above.

4.5 Economic Impact

247. 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 and Sales

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

Output

249. In the original investigation it was found that output fluctuated with the availability of the raw peaches each season, and HW sometimes imported canned peaches to make up for poor harvests to maintain its presence in the market.

250. HW stated that there is both excess grower capacity in New Zealand for the production of peaches for processing and spare production capacity for the processing of those peaches. HW stated **[Text deleted due to confidentiality]** fruit requirements **[Text deleted due to confidentiality]** at the start of each season. HW said, however, this is not always sufficient to guard against fluctuations if there has been a bad growing season due to weather or disease. HW said in such cases, it imports canned peaches to maintain continuity of supply to its markets and protect its brand when New Zealand production is unavailable. These peaches are labelled and marketed in the exact same way as HW's own branded product, and HW makes no distinction between its imports and own production, in terms of financial reporting and analysis. According to HW, it is more expensive to import than to manufacture canned peaches locally.

251. The following table shows HW's production of canned peaches for each year from 1999 to 2002. The figures given relate to the production season (about 20-22 working days, running from late February to April) in each of the given years.

Table 4.9: HW Output (Tonnes) (Years Ended April)

	1999	2000	2001	2002
Output	**xxxx**	**xxxx**	**xxxx**	**xxxx**
- change on previous year		**xxxx**	**xxxx**	**xxxx**
- As % of 1999		**xxxx**	**xxxx**	**xxxx**

252. The above table shows a significant fluctuation in output, reflecting the availability of peaches. Over the period 1999 to 2002, the table shows a decrease in output. HW has not claimed that changes in output have been affected by subsidised imports.

253. HW estimates that production of raw peaches for the 2003 season will be **[Text deleted due to confidentiality]**.

Sales

254. HW stated that sales volumes do, to a degree, reflect supply problems (such as the adverse growing season it has just experienced), but it endeavours to mitigate these effects through importation. HW said the decline in sales volume in the 2002 financial year is due to a shortfall in the crop.

255. When faced with crop shortfalls, HW imports to maintain market share. However, in doing this HW said it faces increased costs through imports being more expensive, and the fact that decreased production leads to a lower overhead recovery rate. HW said these effects are mitigated through **[Text deleted due to confidentiality].**

256. The following table shows HW's sales volume and revenue for the years 1999 to 2003 (years ended April). The figures in the table include HW's sales of imported canned peaches. The figures for 2003 are actual figures to 9 February and forecast figures thereafter.

Table 4.10: HW Sales Revenue and Volume (Years Ended April)

	1999	2000	2001	2002	2003
Sales (tonnes)	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**
- Change on previous year		**xxxx**	**xxxx**	**xxxx**	**xxxx**
- As % of 1999		**xxxx**	**xxxx**	**xxxx**	**xxxx**
Net Revenue (NZ$000)	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**
- Change on previous year		**xxxx**	**xxxx**	**xxxx**	**xxxx**

	1999	2000	2001	2002	2003
- As % of 1999		**xxxx**	**xxxx**	**xxxx**	**xxxx**

257. The table shows that the levels of both sales revenue and volume have fluctuated, but that over all of the period from 1999 to 2003, HW has experienced a **[Text deleted due to confidentiality]** decline in its levels of sales revenue and volume. HW has not claimed that its sales have been affected by subsidised imports.

Likely Impact of Removal of Duties

258. HW has made forecasts of what it expects would be the effect on its sales volume and revenue if the duties were removed. HW's forecasts are based on its estimate of the volume and price effects under the first scenario referred to above, which is based on the situation at the time of the original investigation.

259. HW stated that it does not believe that the effects of subsidised canned peaches will be different from the impact of dumped canned peaches. Only the quantum of the impact will vary and this will be dependent on the pricing, promotional activity and market areas the importer may target.

260. The following table shows HW's forecasts of sales revenue and volume should both duties be removed, for the year ended April 2004 ("scenario 1").

Table 4.11: HW's Forecast Sales Revenue and Volume

	If duties remain	If both duties removed
Sales (tonnes)	**xxxx**	**xxxx**
- Change		**xxxx**
- % Change		**xxxx**
Net Revenue (NZ$)	**xxxx**	**xxxx**
- Change		**xxxx**
- % Change		**xxxx**

261. The table shows that should both duties be removed, HW forecasts significant reductions in both sales revenue (**[Text deleted due to confidentiality]** percent), and sales volume (**[Text deleted due to confidentiality]** percent).

262. HW has also provided a forecast of sales revenue and volume if only the countervailing duty is removed i.e. the anti-dumping duty remains ("scenario 2"). This forecast is contained in the following table.

Table 4.12: HW's Forecast Sales Revenue and Volume

	If duties retained	If only countervailing duty removed
Sales (tonnes)	**xxxx**	**xxxx**
- Change		**xxxx**
- % Change		**xxxx**
Net Revenue (NZ$)	**xxxx**	**xxxx**
- Change		**xxxx**
- % Change		**xxxx**

263. The table shows that should only the countervailing duty be removed, HW forecasts reductions in both sales revenue (**[Text deleted due to confidentiality]**), and sales volume (**[Text deleted due to confidentiality]**).

264. HW has also submitted figures relating to the "**[Text deleted due to confidentiality]**" scenario under which, the removal of the countervailing duty (or the anti-dumping duty) would lead to it **[Text deleted due to confidentiality]**. Under this scenario, HW would **[Text deleted due to confidentiality]** sales, therefore **[Text deleted due to confidentiality]** sales revenue, and would **[Text deleted due to confidentiality]**, implying **[Text deleted due to confidentiality]**.

Conclusion on Output and Sales

265. The review team concludes that there is evidence that HW has suffered a decline in output, and sales volume and revenue over the period examined. However, due to the existence of the countervailing duty, it is considered unlikely that this can be attributed to subsidisation. HW has not claimed that its output and sales have been affected by subsidisation.

266. The review team has concluded that should duties be removed, there is likely to be a significant increase in import volumes, and there is likely to be significant price undercutting, price suppression and depression. The review team concludes that it is therefore likely there would be a consequent significant impact on output, sales volume and revenue.

Market Share

267. The analysis of market share must take account of changes in the growth 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 will not necessarily indicate that injury is being caused to the domestic industry, particularly if the domestic industry's sales are also growing. There is no "entitlement" to a particular market share.

268. The original investigation found there was evidence of an adverse economic impact reflected in a small decline in market share over the period since injury was claimed to have commenced.

269. The following table shows market share and changes in market share over the years 1999 to 2003.

Table 4.13: Market Share (Tonnes) (Years Ended April)

	1999	2000	2001	2002	2003
Subsidised Imports	5	345	104	58	129
Other Imports	2,203	2,969	3,231	3,056	5,004
HW Sales	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**
Total NZ Market	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**
Change in Volume:					
Subsidised Imports		340	-241	-46	71
Other Imports		766	262	-175	1,948
HW Sales		**xxxx**	**xxxx**	**xxxx**	**xxxx**
Total NZ Market		**xxxx**	**xxxx**	**xxxx**	**xxxx**
Percentage Share Held By:					
Subsidised Imports	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**
Other Imports	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**
HW Sales	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**

270. The table shows that HW's market share declined over the period examined, and this occurred in a growing total market. The table also shows that the market share held by subsidised imports was negligible over the whole period. It also shows that the market share held by imports from other sources has increased **[Text deleted due to confidentiality]**, at the expense of the share held by HW. The increase in market share held by other imports was due to increased Australian imports.

Likely Impact of Removal of Duties

271. As outlined above, HW is of the opinion that should the duties be removed, subsidised EU peaches would take, at least, a market share equal to that which occurred for the one can

size then imported, in those areas in New Zealand where the imports were available, when these products were last on the New Zealand market ("scenario 1"). At that time, the only imports were 820g cans and prior to the imposition of duties, in those areas where they were available, they captured a **[Text deleted due to confidentiality]** percent market share. The review team notes, however, that the overall market share data from the original investigation shows that subsidised imports captured **[Text deleted due to confidentiality]** percent of the market, resulting in a **[Text deleted due to confidentiality]** per cent decline in the market share held by HW. HW has calculated that if the subsidised imports do succeed in capturing **[Text deleted due to confidentiality]** percent of the entire New Zealand market, then it would expect to lose sales of **[Text deleted due to confidentiality]**, which would result in HW's market share reducing from **[Text deleted due to confidentiality]** percent to **[Text deleted due to confidentiality]** percent (the forecast assumes other imports would also lose market share).

272. HW has also calculated that if EU peaches entered in the same volume as they did at the time of the original investigation (**[Text deleted due to confidentiality]**), HW would expect to lose **[Text deleted due to confidentiality]** of sales (the remaining sales being lost by other imports).

273. HW has also provided figures for the forecast under "scenario 2". **[Text deleted due to confidentiality]** currently hold approximately **[Text deleted due to confidentiality]** percent of the total New Zealand market, and HW calculates that if it lost its share of this **[Text deleted due to confidentiality]** market, its market share would drop from **[Text deleted due to confidentiality]** percent **[Text deleted due to confidentiality]** percent (with the remaining market share losses being made by other imports).

274. The "**[Text deleted due to confidentiality]**" scenario equates to HW losing **[Text deleted due to confidentiality]** market share. According to HW the scenario that would actually eventuate in the event of the removal of duties, would depend entirely on how the new importers would market and sell their product.

Conclusion on Market Share

275. HW has lost **[Text deleted due to confidentiality]** market share over the period under review, but this cannot be attributed to subsidised imports.

276. The review team concludes that given the likely import volume and price effects and the likely consequent economic impact on sales and output, it is likely there will be a significant adverse impact on market share should the duties be removed.

Profits

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

278. The original investigation found that there was evidence of an adverse economic effect reflected in a significant decline in profits over the period since injury was claimed to have commenced. However, the original investigation found that not all of the decline in profits could be attributed to subsidisation.

279. The following table shows details of HW's earnings before interest and tax.

Table 4.14: Earnings Before Interest and Tax (Years Ended April)

	1999	2000	2001	2002	2003
EBIT ($000)	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**
Change on Previous Year		**xxxx**	**xxxx**	**xxxx**	**xxxx**
EBIT as a % of Net Revenue	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**
EBIT as a % of 1999		**xxxx**	**xxxx**	**xxxx**	**xxxx**
EBIT per kg	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**
Change on Previous Year		**xxxx**	**xxxx**	**xxxx**	**xxxx**
EBIT per kg as % of 1999		**xxxx**	**xxxx**	**xxxx**	**xxxx**

280. The above table shows that EBIT in total, per kilogram and relative to net revenue decreased **[Text deleted due to confidentiality]** over the period 1999-2003, particularly **[Text deleted due to confidentiality]**.

281. HW said the **[Text deleted due to confidentiality]** in profit from **[Text deleted due to confidentiality]** was due to many factors, the first being **[Text deleted due to confidentiality]**. HW has not claimed any adverse effect on its profitability from subsidised imports.

Likely Impact of Removal of Duties

282. HW has stated that the effect on profits of the removal of the duty will result from a combination of loss of market share volume, loss of sales revenue, and an inability to recover increased production costs and higher marketing costs through price increases.

283. HW provided forecasts of the effect on its profitability of the removal of both the current duties ("scenario 1"), and the removal of the countervailing duty only ("scenario 2"). The forecasts are prepared on the same basis as the previous forecasts and use the same data. HW's forecasts are provided below.

Table 4.15: Forecast EBIT (Year Ended April 2004)

	If duties remain	If both duties removed	If countervailing duty only removed
EBIT	**xxxx**	**xxxx**	**xxxx**

	If duties remain	If both duties removed	If countervailing duty only removed
Change in EBIT		**xxxx**	**xxxx**
% Change in EBIT		**xxxx**	**xxxx**
EBIT as a % of Net Revenue	**xxxx**	**xxxx**	**xxxx**
EBIT per kg	**xxxx**	**xxxx**	**xxxx**
Change		**xxxx**	**xxxx**
% Change		**xxxx**	**xxxx**

284. The above table shows that should the duties be removed, HW expects its EBIT in total, per kilogram and relative to net revenue to decrease significantly, in relation to what it would expect if the duties were retained.

285. HW has estimated that if it had to **[Text deleted due to confidentiality]**, as per the "**[Text deleted due to confidentiality]**" scenario, in the 2003/2004 growing season, in addition to the **[Text deleted due to confidentiality]** profit from its canned peach operation, it would incur one off costs resulting from **[Text deleted due to confidentiality]** in its peach canning business. In addition HW has estimated that the **[Text deleted due to confidentiality]**.

Conclusion on Profits

286. HW has suffered from a **[Text deleted due to confidentiality]** decline in profits over the period under review, but this cannot be attributed to subsidised imports.

287. The review team concludes that given the likely import volumes and the likely consequent economic impact on sales and output, it is likely there will be a significant adverse impact on profits should the duty be removed.

Productivity

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

289. The original investigation found evidence of a decline in output and of a loss of market share to the subject goods. It was therefore found likely that there would be a consequent adverse impact on productivity, which could be attributed in part to subsidised imports.

290. HW has stated that it is difficult to quantify productivity, given the number of products going through the plant at once, and the variability of seasonal staff numbers. HW said it was therefore not possible to provide meaningful data on productivity per employee.

Likely Impact of Removal of Duties

291. HW noted that it has the ability to reduce the hours of seasonal staff should the duties be removed, which means that productivity per employee is not necessarily affected.

292. HW said that it has a significant cost structure in place for the production of canned peaches and removal of duties would lead to a decline in productivity because of reduced throughput. HW said this would further result in loss of efficiency and output per employee.

293. The scenario where HW would have to **[Text deleted due to confidentiality]** as a result of the removal of either duty would mean a **[Text deleted due to confidentiality]** in the seasonal fruit-processing department. HW has stated that it would expect reduced working hours for **[Text deleted due to confidentiality]** seasonal employees and **[Text deleted due to confidentiality]** workers. Any possible impact that this **[Text deleted due to confidentiality]** in employee numbers could have on productivity per worker has not been quantified.

Conclusion on Productivity

294. There is no evidence of a loss of productivity, due to subsidised imports over the POS(R).

295. The review team concludes that should the duties be removed there may be an adverse effect on productivity, but this could be mitigated to an extent, by a **[Text deleted due to confidentiality]** in staff numbers.

Return on Investments

296. A decline in return on investments will result from a decline in profits 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.

297. The original investigation found that as the fact that the data provided was not specific to peaches, it was not a useful indicator of injury. However, the original investigation noted that the decline in profitability in 1997 suggested that there would be a corresponding decline in the rate of return on investments.

298. HW said it is unable to provide detailed information on return on investments, as most of its plant is not specific to canned peaches production.

Likely Impact of Removal of Duties

299. HW stated that the return of subsidised imports will cause loss of volume, sales revenue, and profits, which will in turn, have a significant adverse effect on HW's achievable return on investments.

300. HW has not specifically quantified any impact on its return on investments under the scenario where it would **[Text deleted due to confidentiality]**, although clearly this would, in relation to its production of like goods, reduce the return **[Text deleted due to confidentiality]**.

Conclusion on Return on Investments

301. The review team is not able to determine trends in the return on investments in the POS(R).

302. Given the likely impact on profits of the removal of the duty, it is likely there will be a corresponding significant adverse impact on return on investments.

Utilisation of Production Capacity

303. 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.

304. The original investigation found no evidence of an adverse economic impact related to a decline in the utilisation of production capacity.

305. HW stated that only part of the plant is used solely for canning peaches, i.e. the pitting, peeling, and cutting equipment, and this is only used for 20 to 22 working days per year. Can filling, sealing, sterilisation, brightstacking, and labelling for a large range of products is done all year around. HW said its maximum capacity is approximately **[Text deleted due to confidentiality]** tonnes per year for canned peaches (including fruit salads). Canned fruit salad uses approximately **[Text deleted due to confidentiality]** percent of the peach crop processed each year.

306. HW said the production capacity of canned peaches is limited by the storage life of the raw fruit, storage space, and also the need to put products, like other canned fruits and vegetables, through the same plant. HW also noted that another major limiting factor on production capacity is the amount of raw fruit supplied, which is why **[Text deleted due to confidentiality]**.

307. HW said its planned investment in new plant for its Hastings factory (see below) will not compromise the production capacity of the factory, i.e. capacity, at the very least, will be the same, if not greater.

Likely Impact of Removal of Duties

308. HW does not believe that the effects of subsidised canned peaches will be different from the impact of dumped canned peaches. It also believes that only the quantum of the impact will vary and this will be dependent on the pricing, promotional activity and market areas the importer may target. HW is of the opinion that while there will be some correlation between the level of the unfair pricing and a resultant reduction in production, they may not move in tandem.

309. If HW**[Text deleted due to confidentiality]**, as per the "**[Text deleted due to confidentiality]**" scenario, it will have **[Text deleted due to confidentiality]** to utilise, due to the fact that they will **[Text deleted due to confidentiality]**.

Conclusion on Utilisation of Production Capacity

310. There is no evidence of an adverse impact on capacity utilisation attributable to subsidised imports over the period under review.

311. Due to the multitude of canned products manufactured by HW and the limitations mentioned above regarding the availability of the raw peaches, the review team considers that it is difficult to predict the impact on the utilisation of production capacity for canned peaches if the countervailing duties were removed. However, as it has been concluded that there will likely be a decrease in output should duties be removed, it is likely there will also be a decrease in capacity utilisation.

Factors Affecting Domestic Prices

312. The original investigation found no evidence of an adverse economic impact related to factors affecting domestic prices.

313. HW stated that it has just completed the process of aligning itself with the new Australian New Zealand Food Authority (ANZFA) standards, and it considers the cost of this sunk. Any product packed after December 2002 has to comply with ANZFA, and HW has not been able to recover costs involved to get itself up to standard in its prices.

314. HW advised that it is unaware of any pending Government regulation that would affect the canned peaches industry, or any issues arising from genetic engineering debates.

315. HW stated that the key factor impacting price since 1998, has been the growth in Private Label. HW said that Private Label (housebrands) comprise **[Text deleted due to confidentiality]** percent of the market with the clear objective of the first tier brands (Signature and Pams) being to offer national brand quality for below national brand pricing.

Conclusion on Factors Affecting Domestic Prices

316. The review team concludes that the growth in housebrands is likely to have exerted downward pressure on prices, but notes that this situation will prevail regardless of whether duties are removed.

317. The review team further concludes there are no other factors affecting domestic prices and there is therefore unlikely to be any impact arising should duties be removed.

Other Adverse Effects

Cash Flow

318. HW provided no information on cash flow in the original investigation.

319. HW advised that cash flow from the production and sale of canned peaches is not measured, given it is one part of a very large and complex portfolio of products.

320. In addition to the cost of carrying additional inventory (considered below under "Inventory"), HW said there would also be an impact on cash flow equal to the estimated loss of revenue (referred to above under "Output and Sales"), and another impact arising from **[Text deleted due to confidentiality]** (referred to under "Employment and Wages") that would come from losing market share.

Conclusion on Cash Flow

321. There is insufficient evidence to draw any conclusion on trends in cash flow over the period under review.

322. The review team concludes that the likely impact on sales and profits should the duties be removed, is likely to result in a significant adverse economic impact on cash flow.

Inventory

323. The original investigation found that the inventory level in April 1997 increased significantly, both in absolute terms and in relation to production, indicating an adverse economic impact resulting from a build up of inventory in that year.

324. There is no evidence of an adverse impact on inventory attributable to subsidised imports over the period examined for injury.

325. HW has stated that if the duties were to be removed it will **[Text deleted due to confidentiality]** at the end of the 2002/2003 season, **[Text deleted due to confidentiality]**. This unsold inventory incurs costs such as storage and foregone interest earnings on money spent on production. However, HW noted that if the duties were removed in July 2003 there would be sufficient time for it to negotiate with its growers, a reduction in the quantity to be supplied, which would mitigate any impact on inventory in the following season.

Conclusion on Inventory

326. There is no evidence of an adverse impact on inventory over the period of review. There is unlikely to be an adverse impact on inventory levels, should the duties be removed.

Employment and Wages

327. There was no evidence of an adverse impact on employment and wages in the original investigation.

328. There is no evidence of an adverse impact on employment and wages attributable to subsidised imports over the period examined for injury.

329. HW was of the opinion that, as staff are spread over different jobs in the factory, it is difficult to quantify the effect under the "scenario 1" on wages and employment if the duties were to be removed. HW said permanent staff numbers in the seasonal department would remain the same (at 52), however, seasonal employees would be affected because of the reduction in working hours and production time.

330. HW said the number of hours worked by seasonal staff would probably reduce in proportion to the loss of throughput. For example HW said that if it lost **[Text deleted due to confidentiality]** percent of the market to subsidised EU imports, it would likely reduce its seasonal staff working hours by about **[Text deleted due to confidentiality]** percent. The projected possible **[Text deleted due to confidentiality]** percent volume loss to subsidised imports would result in significant reductions for up to **[Text deleted due to confidentiality]** seasonal workers.

331. HW also referred to the "**[Text deleted due to confidentiality]**" scenario referred to variously above, whereby the **[Text deleted due to confidentiality]** would not happen, and the **[Text deleted due to confidentiality]** because it would be **[Text deleted due to confidentiality].** This would mean the **[Text deleted due to confidentiality]**, and hence, seasonal jobs would **[Text deleted due to confidentiality]**

332. HW referred to information submitted for the review of anti-dumping duties on canned peaches from South Africa, in which it estimated **[Text deleted due to confidentiality]** is spent on labour per year to process peaches. In that review, it was estimated that volume would reduce by **[Text deleted due to confidentiality]** percent if the duties were removed, and this would equate to a **[Text deleted due to confidentiality]** percent drop in wages paid to staff (which equals **[Text deleted due to confidentiality]**). HW is of the opinion that the same situation would apply to the current review. That is, if volume reduced by **[Text deleted due to confidentiality]** percent (as referred to above), there would be a **[Text deleted due to confidentiality]** percent reduction in wages paid, which equates to **[Text deleted due to confidentiality]**. Under the "**[Text deleted due to confidentiality]**" scenario, wages paid to seasonal workers would reduce **[Text deleted due to confidentiality]**.

Conclusion on Wages and Employment

333. There is no evidence of an adverse impact on wages and employment over the period of review.

334. The review team concludes that should the duties be removed it is likely that there will be an adverse economic impact on employment and wages through reduced volumes of production and sales.

Growth

335. The original investigation concluded that there was no adverse economic impact on HW's ability to grow the market, as a result of subsidised imports from the European Union.

336. There is no evidence of an adverse impact on growth attributable to subsidised imports over the period examined for injury.

337. HW stated that if subsidised imports of canned peaches from the European Union were allowed to return to the New Zealand market, the resulting lower volume for HW would make it harder to justify marketing and investment expenditure. This is due to lower throughput causing cost of production to increase, and hence, profitability to decrease. HW said all of its marketing spend requires approval from its world headquarters, and with reduced profitability, it becomes harder to get this approval. HW said with reduced marketing, even lower volumes result, and the downward spiral continues, the ultimate result being a lack of ability for it to grow the market.

Conclusion on Growth

338. There is no evidence of an adverse economic impact on growth over the period of review.

339. The review team concludes that should the duties be removed, the likely volume and price effects and consequent economic impact reflected in various factors, will also have an adverse effect on HW's growth. There is also likely to be an adverse economic impact on HW's ability to grow the market due to reduced volumes not justifying current levels of marketing expenditure.

Ability to Raise Capital and Investments

340. The original investigation found no evidence of an adverse impact on ability to raise capital and investments.

341. There is no evidence of an adverse impact on HW's ability to raise capital and investments attributable to subsidised imports over the period examined for injury.

342. HW has received approval from its world headquarters for capital funding, which will allow the relocation and upgrade of its seasonal fruit processing plant. The value of this investment is **[Text deleted due to confidentiality]**.

343. HW stated that this future investment in its processing plant depends on the outcomes of the two current reviews. That is to say, if the duties are not retained, HW will not be investing in the new seasonal fruit processing plant. HW stated that if subsidised canned peaches started entering the market, the cost of production would go up due to reduction in volumes, **[Text deleted due to confidentiality]**. HW said that the Heinz group has a worldwide budget for capital expenditure and to qualify for this, a **[Text deleted due to confidentiality]** percent rate of return criteria is required. HW is of the view that its peaches sector **[Text deleted due to confidentiality]** due to subsidised EU canned peaches.

344. HW stated that alterations to the existing plant are being carried out regardless of the outcome of the review. **[Text deleted due to confidentiality]**HW stated that it does borrow money on a long-term basis, but said that the peaches operation is not a sufficiently large part of its overall total operation to impact on its ability to borrow, and it would be difficult to isolate the impact on its ability to raise capital investments.

Conclusion on Ability to Raise Capital and Investments

345. There is no evidence of an adverse impact on HW's ability to raise capital and investments over the period of review.

346. Given the conclusion on profits and return on investments, the review team concludes that should the duties be removed and subsidised imports from the European Union return to the New Zealand market, HW will experience an adverse economic impact on its ability to raise capital and investments.

4.6 Other Causes of Injury

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

i. The volume and prices of goods that are not subsidised; 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.

Findings of Original Investigation

348. The original investigation concluded that the dumping of peaches from Greece, the subsidisation of peaches from South Africa, and the price advantage held by peaches from South Africa after the effects of dumping and subsidy were removed, had also adversely affected the New Zealand industry. It further concluded, however, that the extent of price undercutting remaining after the effects of EU subsidisation had been removed, indicated that any countervailing duty applied to remedy injury caused by EU subsidisation would not also remedy the effects of other factors.

Non-Subsidised Imports

349. HW said it competes with non-subsidised goods on a daily basis e.g. SPC products from Australia, which have about **[Text deleted due to confidentiality]** percent of the retail market, and Contel products from Italy in 1999/2000. HW said that if duties were removed, SPC would have the ability to stay in the New Zealand market because it is much larger than HW (SPC has turnover of A$480m, and **[Text deleted due to confidentiality]** percent of

Australian market, compared with HW which has turnover of **[Text deleted due to confidentiality]**). SPC operates in much the same way as HW, in that it has a **[Text deleted due to confidentiality]**SPC, **[Text deleted due to confidentiality]** Southern Cross (SC), which is new on the market. HW stated that it is hard to tell, as yet, if the SC brand has impacted on its **[Text deleted due to confidentiality]** brand.

350. Since the duties were imposed in 1998, the volumes of canned peaches from other sources have been increasing steadily, and gaining market share. Australian imports have increased the most in volume with a total increase in imports of 2,567,238 kg over the period, although this has been in a growing total market. Non-subsidised imports have significantly increased their market share over the period under review and this has had an adverse impact on HW.

351. The review team constructed estimated **[Text deleted due to confidentiality]** and ex-store prices for imports from Australia by adding to the average CIF price of imports from Australia over the POS(R) the same adjustments used under "Price Undercutting" above. This shows that the prices of Australian imports over the POS(R) are significantly higher than the likely prices of EU imports, at both the **[Text deleted due to confidentiality]** and ex-store levels of trade. This indicates that should the duties be removed, imports of subsidised goods from the EU are not likely to be undercut by Australian imports, and therefore imports from the EU will be competitive on the New Zealand market.

352. In considering non-subsidised imports in the context of a review, the review team notes that the current countervailing duty does not affect such imports, and therefore their price and availability will not change if the duty is removed. The New Zealand industry has competed with non subsidised imports over a long period. The impact of non-subsidised imports on the New Zealand industry is therefore not likely to change if the duty is removed.

353. The EC and the Governments of Greece and Spain, in their submissions on the Interim Report, expressed the view that the review team had not fully addressed the issue of injury caused to the New Zealand industry by the increase in imports from Australia since the imposition of the countervailing duties in 1998. All three parties were of the view that injury to the New Zealand industry has been caused by imports from Australia, and that injury would not result from imports of EU canned peaches in the event of the removal of duties. The review team notes that it made a comparison of likely import prices of Australian imports to EU imports, showing that EU imports undercut the price of Australian imports, and given the conclusions on likely import volumes of EU canned peaches, this indicates that EU imports are likely to have larger injurious effects on the New Zealand industry than unsubsidised Australian imports.

354. The EC expressed the view in its submission on the Interim Report, that it considers the current duties have caused a situation where the protection against imports from the European Union has led to Australian imports being able to increase their market share. The review team is of the view that these concerns have been adequately addressed in the immediately preceding paragraphs.

Contraction in Demand and Changes in Patterns of Consumption

355. HW said there is growth in the market for peaches packed in plastic containers of about **[Text deleted due to confidentiality]** percent per annum. HW also said there has been a

small shift from syrup to juice based products, but syrup still makes up the vast majority of the market. HW considered that its "lite" range was **[Text deleted due to confidentiality]**, and overall consumption likewise.

356. The review team notes that the total New Zealand market grew between April years 1999-2001, shrank in 2002, but then grew again to a level higher than 2001 in 2003.

357. The review team concludes that consumption patterns and demand for canned peaches have not caused injury to HW, and are unlikely to cause injury to HW, if duties are removed.

Restrictive Trade Practices

358. HW does not know of any restrictive trade practices in the canned peach market. HW is of the view that New Zealand is an open market with low barriers to entry. The review team has no evidence of restrictive trade practices being operated by either the New Zealand industry or overseas producers.

Export Performance

359. HW said it exports small volumes of Wattie's peaches to Australia (A10 cans only) and to various Pacific Islands, through Panamex, a HW customer. HW said it has no knowledge of the export price as all exports are carried out independently by Panamex.

360. HW provided the review team with export figures showing exports of **[Text deleted due to confidentiality]** tonnes in financial year 2001, **[Text deleted due to confidentiality]** tonnes in financial year 2002, and **[Text deleted due to confidentiality]** tonnes in financial year 2003 (year to February 2003), which are inconsequential relative to the size of the total business.

361. The review team concludes that due to the insignificant volumes of canned peaches exported, HW export performance has not been a cause of injury to it over the POS(R) and it is not likely to be a cause of injury should the duties be removed.

Developments in Technology

362. According to HW, the equipment used to peel, slice, dice and sterilise canned peaches is similar worldwide. HW said these machines have not changed since the last investigation.

363. HW was not aware of any technology improvements in the planned new processing plant, but noted there would be efficiency gains through better layout and new equipment.

364. The review team concludes that developments in technology have not been a cause of injury to HW over the period under review and are not likely to be a cause of injury to HW should the duties be removed.

Industry Imports

365. HW said that it only imports canned peaches in times of shortfall. **[Text deleted due to confidentiality]**, and are labelled and priced in exactly the same way as HW's branded product, and therefore do not cause injury.

366. HW also advised that it is not in its best interests to import peaches as it pays a significant premium on imports above what it could produce its own for. HW paid a **[Text deleted due to confidentiality]** percent premium on its last batch of imports from **[Text deleted due to confidentiality]**.

367. HW said the other factor, which makes it reluctant to import, is that there are still fixed factory overheads, and imports therefore undermine overhead recovery.

368. The review team concludes that HW's own imports have not been a cause of injury to itself over the period of review through displacing its own production, but such imports have had an adverse impact on HW's profitability. HW's imports are not likely to be a cause of injury to it should the duties be removed.

Other Factors

369. The final report on the review of the anti-dumping duty on canned peaches from South Africa addressed additional issues such as housebrand impact on HW, supermarket purchasing power impact on HW, duty concession effects, and the effect that the availability of raw peaches had on HW's operations. It reached the conclusion that the purchasing power of supermarkets and the trend towards supermarket housebrands were likely to have been a cause of injury to HW over the period examined. It further concluded that these factors were likely to continue to affect HW in the same way regardless of whether or not duties were removed and could therefore be clearly distinguished from the injurious effects that were likely to arise from dumped imports, were the duties to be removed.

370. HW noted that the housebrand and supermarket purchasing power effects are also present in the current market, and are factors that have an impact on how HW plans its business.

371. The review team concludes that these two effects are present in the current market, but any injury to HW caused by them, is unlikely to be attributable to subsidised imports. The review team further concludes that these factors are unlikely to be affected by the removal of duties.

Public Interest Test

372. The EC, in its submission on the Interim Report, stated that the review team should consider a public interest test to address whether continuing restrictions on imports of EU canned peaches is in New Zealand's public interest. The review team notes that the New Zealand legislation (the Act), does not provide for any test of this type.

Causal Link

373. The EC, in its submission on the Interim Report, stated that, in reference to Article 21.3 of the Agreement, a causal link between subsidised imports and material injury should be established. The review team is of the opinion that given the likely import prices of subsidised imports, material injury to the New Zealand industry would directly result.

Conclusion on Other Causes of Injury

374. There is evidence that HW has been adversely affected by factors other than subsidised imports as demonstrated by its losses in sales, market share, and profits. Those factors considered above, to the extent that they have impacted on the New Zealand industry, will continue to affect the industry in the same way regardless of whether or not the duty is removed. These factors can therefore be clearly distinguished from the injurious effects likely to arise should the duty be removed.

4.7 Conclusions Relating to Injury

Conclusions Relating to Material Injury

375. The review team concludes that:

Volume and Price Effects

a. In absolute terms, the import volumes of subject goods have been negligible over the period of review, in relation to both New Zealand production and consumption.
b. Imports of the subject goods have, when countervailing duty is excluded, undercut the prices of the domestic production over the period of review.
c. Domestic prices have not been depressed over the period of review.
d. There is evidence of price suppression during the period of review, but this cannot be attributed to subsidised imports.

Economic Impact

e. The industry's output has fluctuated considerably, but this is related to fluctuations in the peach harvest and cannot be attributed to subsidised imports.
f. The industry's sales volumes and revenue have declined, but these effects are not attributable to subsidised imports.
g. The market share held by the domestic industry has decreased over the review period, but this is not attributable to subsidised imports.
h. Industry profit levels have decreased **[Text deleted due to confidentiality]**, but this is not attributable to subsidised imports.
i. There is no evidence of any injurious effects 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, attributable to subsidised imports.
j. Factors other than subsidised goods have been a cause of injury to the industry.

376. The review team concludes that there is no current material injury that is attributable to subsidised imports from the European Union.

Likelihood of Injury if Countervailing Duties Cease or are Terminated

377. In relation to the likelihood of a recurrence of material injury should countervailing duties be removed, the review team concludes that:

a. It is likely that there would be a significant increase in import volumes.
b. It is likely that there would be price undercutting, price depression and suppression due to subsidised imports from the European Union.
c. There is likely to be an adverse economic impact on output, sales, market share, profits, productivity, utilisation of production capacity, cash flow, employment, wages, growth, return on investments, ability to raise capital and investments.
d. There is not likely to be an adverse economic impact on inventories or factors affecting domestic prices.
e. Factors other than subsidised 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 subsidised imports.

378. Regardless of the scenario that may actually eventuate, it is likely that HW will suffer price undercutting, price depression and suppression, due to subsidised imports. The degree of the impact will depend on which scenario eventuates, the worst case **[Text deleted due to confidentiality]**, which would mean **[Text deleted due to confidentiality]**.

379. On the basis of these considerations, the review team concludes that if countervailing duties were to be removed, material injury to the New Zealand industry due to subsidised imports of EU canned peaches is likely to recur.

5. Conclusions

380. The review team concludes, on the basis of the information available, that should the existing countervailing duties be removed, it is likely there will be a recurrence of subsidisation and material injury.

381. Accordingly, the review team concludes that:

a. Countervailing duties on canned peaches from the European Union should not be revoked; and
b. That there should be a reassessment of the countervailing duties on canned peaches from the European Union following the completion of this review.

6. Reassessment of Countervailing Duties

382. The reassessment of countervailing duties following the completion of a review is provided for by section 14(6) of the Act as follows:

(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.

383. 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.

6.1 Basis of Reassessment

384. Under the provisions of section 14(6) of the Act the rate or amount of countervailing duty may be reassessed following the completion of a review. This section of the report therefore provides the basis for a recommendation to initiate a reassessment immediately following the completion of this review which will be based on, and reflect the findings of the review.

6.2 Existing Levels of Countervailing Duty

385. 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.

Method of Imposing Duty

386. 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. a specific amount per unit of product;
b. an *ad valorem* rate; and
c. a reference price approach

387. The main objective of a countervailing duty is to remove the injurious impact of subsidisation. In deciding on the form of duty, considerations relating to ease of administration, ability to ensure the amount of subsidy is not exceeded, fairness between parties, and predictability all need to be taken into account. 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.

388. Section 14(4) of the Act provides that the Minister must not impose a countervailing duty that exceeds the amount of subsidy for the subsidised goods. 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.

389. 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 specific duty expressed as a monetary amount can really operate only when prices and exchange rates are consistent and stable.

390. 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.

391. 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.

392. The review team considers that while this method may be appropriate, it may prove to be an administrative burden on the NZCS, who are responsible for collecting the duties. This is due to the continuation of anti-dumping duties being recommended as a result of a review being conducted concurrently relating to exports of canned peaches from Greece, which the Ministry has recommended be reassessed by way of reference prices.

393. As the amount of subsidy is not likely to vary significantly in proportion to the value for duty of the goods, an *ad valorem* rate of duty is therefore considered the best method of assessing and collecting countervailing duties in the circumstances presented in this case.

6.3 Amount of Countervailing Duty Proposed

Introduction

394. The review 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 review 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.

Unsubsidised and/or Undumped Price vs HW's NIPs

395. The review team 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 prices (excluding Australia, Argentina and New Zealand 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.

396. The following table shows the comparisons of ex-store prices to the non-EU countries and to New Zealand in 2002.

Table 6.1: Comparison of Importer's Ex-Store Price and HW's NIP (2002) (NZ$)

	Greece to Non-EU	Spain to Non-EU
HWNIP	**xxxx**	**xxxx**
- Importer's Ex-store Price	**xxxx**	**xxxx**
- Total Subsidy	**xxxx**	**xxxx**
- Weighted Avg. Margin of Dumping	**xxxx**	**xxxx**

	Greece to Non-EU	Spain to Non-EU
Unsubsidised and/or Undumped Ex-store Price	**xxxx**	**xxxx**
Price Undercutting	**xxxx**	**xxxx**

397. The above table shows that when the subsidy and the dumping amounts are added back to the estimated ex-store price of the exports in 2002 to Non- EU countries (excluding Argentina, Australia and New Zealand), the Greek and Spanish prices undercut HW's NIP by **[Text deleted due to confidentiality]** and **[Text deleted due to confidentiality]** respectively.

398. As there would still be price undercutting, it 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.

399. In calculating *ad valorem* rates, the review team proposes to calculate individual rates for each quality of product in 410g, 825g and 3kg 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.

400. 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.

Calculation of NIFOBs

401. 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. Under price undercutting above, the relevant level of trade at which the goods first compete on the New Zealand market, for HW, was determined to be ex-factory.

402. For the purposes of the Interim Report the review team compared HW's prices to November 2002, and also **[Text deleted due to confidentiality]**, to likely import prices at both the ex-store (**[Text deleted due to confidentiality]**), and **[Text deleted due to confidentiality]** (**[Text deleted due to confidentiality]**) levels of trade.

403. In this report, the review team has made all calculations based on an ex-factory level of trade for HW's sales, and ex-store for imports. The review team notes that HW has submitted that **[Text deleted due to confidentiality]** is the appropriate level of trade for imports, based on its argument that the most likely form of injurious imports would result from **[Text deleted due to confidentiality]** if the duties were removed. The review team is not aware of any imports over the POS(R) that have been carried out at the **[Text deleted due to confidentiality]** level of trade, and hence has taken a **[Text deleted due to confidentiality]** reflected in the calculation of NIFOBs at the ex-store level.

Calculation of NIP

404. The review team has found no evidence of injury to HW attributable to imports of the goods subject to countervailing duty. Normally in this situation the review team would consider HW's NIP to be the actual net selling price achieved by HW over the POD(R). However, the review team has accepted HW's argument that as a review is a forward looking exercise, any calculation of duties should take account of the most recent information available. For this reason, the review team has used HW's prices to May 2003 in its calculation of the NIFOB prices (refer to "Price Undercutting" above for further discussion). HW provided this pricing information subsequent to the release of the Interim Report. The information was compiled on the same basis as all other data submitted for the current review, and trade spend has been treated as outlined in "Price Undercutting" above.

405. The review 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 May 2003. The normal value information currently is based on cost information for year ended November 2002.

406. The following table shows HW's **[Text deleted due to confidentiality]** for the year ended May 2003.

Table 6.2: HW's NIP (NZ$)

Can Size	NIP/kg
410g	**xxxx**
820g	**xxxx**
3kg	**xxxx**

NIFOB Amounts

407. 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. 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. **[Text deleted due to confidentiality]** profit margin of **[Text deleted due to confidentiality]** was used for this calculation. The following tables show the calculation of NIFOB amounts for Venus and MG Campoy. The review team calculated a weighted average NIFOB for all other suppliers out of the EU based on the information provided by Venus, HW, MG Campoy and **[Text deleted due to confidentiality]**.

Table 6.3: NIFOB - Venus (NZ$/kg)

	410g	820g	3kg
HWNIP	**xxxx**	**xxxx**	**xxxx**
Less Costs and Margins			
- Ocean Freight	**xxxx**	**xxxx**	**xxxx**
- Insurance	**xxxx**	**xxxx**	**xxxx**
- Port Services & Documentation Charges	**xxxx**	**xxxx**	**xxxx**
- Inland transport/cartage to store	**xxxx**	**xxxx**	**xxxx**
- Storage	**xxxx**	**xxxx**	**xxxx**
- Duty(7%)	**xxxx**	**xxxx**	**xxxx**
- Reasonable Importer's Margin	**xxxx**	**xxxx**	**xxxx**
NIFOB Ex-store (NZ$/kg)	**xxxx**	**xxxx**	**xxxx**

Table 6.4: NIFOB - MG Campoy (NZ$/kg)

	410g	820g	3000g
HWNIP	**xxxx**	**xxxx**	**xxxx**
Less Costs and Margins			
- Ocean Freight	**xxxx**	**xxxx**	**xxxx**
- Insurance	**xxxx**	**xxxx**	**xxxx**
- Port Service &Documentation Charges	**xxxx**	**xxxx**	**xxxx**
- Inland transport/cartage to store	**xxxx**	**xxxx**	**xxxx**

	410g	820g	3000g
- Devanning Fees	**xxxx**	**xxxx**	**xxxx**
- Customs Duty(7%)	**xxxx**	**xxxx**	**xxxx**
- Other Import Costs	**xxxx**	**xxxx**	**xxxx**
- Reasonable Importer's Margin	**xxxx**	**xxxx**	**xxxx**
NIFOB Ex-store (NZ$/kg)	**xxxx**	**xxxx**	**xxxx**

Table 6.5: Weighted Average NIFOB - EU (NZ$/kg)

	410g	820g	3000g
HWNIP	**xxxx**	**xxxx**	**xxxx**
Less Costs and Margins			
- Ocean Freight	**xxxx**	**xxxx**	**xxxx**
- Insurance	**xxxx**	**xxxx**	**xxxx**
- Port Service & Documentation Charges	**xxxx**	**xxxx**	**xxxx**
- Inland transport/cartage to store	**xxxx**	**xxxx**	**xxxx**
- Devanning Fees	**xxxx**	**xxxx**	**xxxx**
- Customs Duty(7%)	**xxxx**	**xxxx**	**xxxx**
- Other Import Costs	**xxxx**	**xxxx**	**xxxx**
- Reasonable Importer's Margin	**xxxx**	**xxxx**	**xxxx**
Weighted Average Ex-store NIFOB	**xxxx**	**xxxx**	**xxxx**

408. The calculation of the NIFOB amounts above are based on an average NIP for the year ended May 2003. The review 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 review 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 April 2003. The review team calculated the change in the PPI from November 2002 to April 2003 of 1.4 percent. The normal values from the year ending November 2002 were increased by this percentage increase in the PPI. The review team would have ideally preferred to use the PPI for May 2003 to match the period from which the NIP was calculated (year ending

May 2003) but was unable to locate any PPI information for a more recent period than April 2003.

Calculation of NUPFOB Amounts

409. 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. As there were no domestic sales by MG Campoy in the Spanish domestic market, the review team has calculated only one set of NUPFOB amounts, which were taken as valid for MG Campoy and other exporters of canned peaches from the EU. This calculation is based on cost information provided by Venus and the normal value constructed from Venus's base production costs and reasonable profit margin.

410. 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 6.6: NUPFOB-MG Campoy and Other EU Exporters (NZ$/kg)

	A10		820		410	
	Good Std.	Std.	Good Std.	Std.	Good Std.	Std.
Ex-Factory Cost per kg (€)	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**
Plus reasonable profit margin	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**
	xxxx	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**
Plus costs from ex-factory to FOB						
Agent's commission (**[Text deleted due to confidentiality]**)	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**
Inland freight and THC	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**
Customs brokerage/document fees	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**
NV(VFDE)(€/kg)	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**
Plus PPI Adjustment (1.4%)	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**
Adjusted NV(VFDE) (€/kg)	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**
Adjusted NV(VFDE) (NZ$/kg)	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**
Plus Subsidy (NZ$/kg)	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**

	A10		820		410	
	Good Std.	Std.	Good Std.	Std.	Good Std.	Std.
NUPFOB (NZ$/kg)	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**

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

Table 6.7: NUPFOB - Venus (NZ$/kg)

	A10		820		410	
	Good Std.	Std.	Good Std.	Std.	Good Std.	Std.
Ex-Factory Cost per kg (€)	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**
Plus reasonable profit margin	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**
	xxxx	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**
Plus costs from ex-factory to FOB						
Agent's commission (**[Text deleted due to confidentiality]**)	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**
Inland freight and THC	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**
Customs brokerage/document fees	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**
NV(VFDE)(€/kg)	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**
Plus PPI Adjustment (1.4%)	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**
Adjusted NV(VFDE) (€/kg)	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**
Adjusted NV(VFDE) (NZ$/kg)	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**
Plus Subsidy (NZ$/kg)	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**
NUPFOB (NZ$/kg)	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**

412. The NUPFOB per kilogram amounts in New Zealand 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 http://www.oanda.com website was NZ$1.00=€0.48882.

Comparison of the NUPFOB and NIFOB

413. After calculating the NIFOB and NUPFOB amounts, the review team carried out a comparison of the two amounts to determine whether a lesser duty (NIFOB) or duty at the full amount of subsidy (NUPFOB) should apply. This comparison revealed that for some can sizes and qualities the NIFOB was lower than the NUPFOB, indicating that a lesser duty should apply, and for others, the NIFOB was higher than the NUPFOB, indicating that duty should be imposed at the full margin of subsidy.

414. Where this comparison showed that countervailing duties should be imposed at the full margin of subsidy, the rate of subsidy has been calculated as the total amount of subsidy received as an *ad valorem* percentage of the VFD of the exports. Where a lesser duty was found to be appropriate, the review team calculated the proportionate difference between the NUPFOB and the NIFOB, and applied this proportion to the total amount of subsidy found for this review, to establish the "lesser" amount of subsidy to be countervailed. This amount was then multiplied by the total quantity of exports, and divided by the VFD, to calculate a lesser duty rate as an *ad valorem* percentage.

415. The review team proposes the following *ad valorem* rates as a percentage of the VFD for all styles of canned peaches exported from the EU. The review team also proposes a residual weighted average *ad valorem* rate for all other suppliers other than the ones specifically investigated. Venus has used imported sugar for all its production of canned peaches over the POS(R). As the review 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. The review team therefore proposes countervailing duty for Venus only in relation to aid to growers. For MG Campoy the review team has established a rate that incorporates both aid to growers and the export sugar refund subsidy. A weighted average residual rate for all other EU suppliers is proposed, which incorporates both the aid to growers and the export sugar refund subsidies.

Table 6.8: Proposed Countervailing Duty Rates

	410		820		A10	
	Good Std.	Std.	Good Std.	Std.	Good Std.	Std.
Greece						
- Venus	5.5	5.8	5.8[6]	5.8[7]	5.7	5.8[8]
- Others	9.9	10.3	11.0[9]	11.0[10]	10.2	10.7
Spain						
- MG Campoy	11.0	11.5	12.2[11]	12.2[12]	11.3	11.9
- Others	9.9	10.3	11.0[13]	11.0[14]	10.2	10.7

	410		820		A10	
	Good Std.	Std.	Good Std.	Std.	Good Std.	Std.
Other EU	9.9	10.3	11.0[15]	11.0[16]	10.2	10.7

416. The proposed method of imposing duty has not changed since the original investigation. Countervailing duties in the original investigation were imposed as *ad valorem* percentages of the VFD, however, the companies exporting in the original investigation were different to the ones that exported over the POS(R). The review team notes that the proposed rates of countervailing duties have decreased across the board for exporters from Greece, Spain and the rest of the EU.

417. 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 levied at the same rate as that of the nearest can size for which individual rates have been established. For example, a 225g can of good standard peaches exported from a supplier other than Venus in Greece is closest in size to a 410g can. Therefore this product would incur duty at the rate of 9.9 percent.

Conclusion

418. The discussion and calculations set down in this section are proposed as the basis for any reassessment of countervailing duties.

[6]Countervailing duty imposed at full margin of subsidy, all others are lesser duty.

[7]Countervailing duty imposed at full margin of subsidy, all others are lesser duty.

[8]Countervailing duty imposed at full margin of subsidy, all others are lesser duty.

[9]Countervailing duty imposed at full margin of subsidy, all others are lesser duty.

[10]Countervailing duty imposed at full margin of subsidy, all others are lesser duty.

[11]Countervailing duty imposed at full margin of subsidy, all others are lesser duty.

[12]Countervailing duty imposed at full margin of subsidy, all others are lesser duty.

[13]Countervailing duty imposed at full margin of subsidy, all others are lesser duty.

[14]Countervailing duty imposed at full margin of subsidy, all others are lesser duty.

[15]Countervailing duty imposed at full margin of subsidy, all others are lesser duty.

[16]Countervailing duty imposed at full margin of subsidy, all others are lesser duty.

7. Recommendation

419. On the basis of the information obtained during the review, the review team recommends:

1. that the Chief Executive complete the review by agreeing that the continued imposition of countervailing duties on canned peaches imported from the EU is necessary to prevent a recurrence of material injury to the New Zealand industry producing like goods;
2. that based on the proposal in section 6 (Reassessment of Countervailing Duties) of this report, the Chief Executive initiate a reassessment of the rate of the countervailing duties on canned peaches from the EU immediately following the completion of this review; and
3. that the Chief Executive sign the attached *Gazette* notice relating to the completion of the review and the initiation of the reassessment.