MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

TRADE
REMEDIES
GROUP
JUNE 2015

Canned peaches from Greece non-confidential final report

Dumping and Countervailing Duties Act 1988
2015 sunset review

ISBN: 978-0-908335-52-7

New Zealand Government

Table of contents

Abbreviations

The following abbreviations are used in this Report:

Act (the)	Dumping and Countervailing Duties Act 1988
Anti-Dumping Agreement	WTO Agreement on Implementation of Article VI of the GATT 1994
Chief Executive	Chief Executive of the Ministry of Business, Innovation and Employment
CIF	Cost, Insurance and Freight
EBIT	Earnings Before Interest and Tax
EUR	Euros
FOB	Free on Board
HWL	Heinz Wattie's Ltd
Ministry (the)	Ministry of Business, Innovation and Employment
NIFOB	Non-injurious free-on-board price
NV(VFDE)	Normal value (value for duty equivalent)
NZCS	New Zealand Customs Service
NZD	New Zealand dollar
POR(D)	Period Of Review for Dumping – 1 October 2013 to 30 September 2014
POR(I)	Period Of Review for Injury – 1 January 2012 to 31 December 2014
VAT	Value Added Tax
VFD	Value for Duty
WTO	World Trade Organisation
ZAR	South African Rand

Executive summary

1. A review of the anti-dumping duties that currently apply against imports of canned peaches from Greece was initiated by the Ministry of Business, Innovation and Employment (the Ministry) on 14 November 2014. Duties under review have been in place since March 1998. The last review and reassessment was completed in November 2009.

2. The goods under review are described as:

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

3. This report considers the likelihood of a continuation or recurrence of dumping causing a continuation or recurrence of material injury, should anti-dumping duties be removed.

4. The investigation was initiated following an application by Heinz Wattie's Limited (HWL). HWL is the only New Zealand producer of goods "like" those imported from Greece and therefore constitutes the New Zealand industry for the purpose of this review.

Dumping

5. There were no imports of the subject goods into New Zealand over the period of review for dumping (1 October 2013 to 30 September 2014). The Ministry has based its analysis on the likelihood of a recurrence of dumping, if the duties were removed, having regard to all information available.

6. On the basis of the information gathered in the review the Ministry has concluded that canned peaches originating from Greece and exported to New Zealand are likely to be dumped. The margin of dumping established is 62 percent of the export price.

7. From the information gathered during the review the Ministry has concluded that should the anti-dumping duties be removed, there is likely to be a recurrence of dumping.

Injury

8. HWL is not currently being injured by the dumping of canned peaches imported from Greece, due to the absence of any such imports.

9. The review of injury has focused on the likelihood of a recurrence of material injury to the domestic industry should the present anti-dumping duties be removed. The Ministry has concluded that:

- While the volume of imports of canned peaches from Greece has been negligible since duties were imposed, a significant increase in import volumes is likely if anti-dumping duties were to be removed. Market conditions are more favourable now than they have been previously. The Greek industry appears to have capacity to increase exports to New Zealand and there are no significant barriers to entry into the New Zealand peach market.

- HWL's prices are likely to be significantly undercut by canned peaches from Greece, should imports resume in significant volumes. This undercutting will likely result in price depression and suppression.

- If duties are removed and imports resume in significant volumes, HWL is not likely to experience material declines in sales volume and market share; however, sales revenue and profits will be materially affected. Consequent on these effects, there are likely to be adverse effects on return on investments, cash flow, growth and ability to raise capital and investments.

- HWL is not likely to experience adverse effects on productivity, utilisation of production capacity, inventories, employment or wages unless [redacted].

- HWL is being undercut by imports from other sources (South Africa, China and Spain). The Ministry considers this level of undercutting is likely to continue.

Conclusion

10. The Ministry concludes that if anti-dumping duties are removed it is likely that dumping will resume and this will likely cause a recurrence of material injury to the New Zealand industry.

11. On this basis, the Ministry has further concluded that anti-dumping duties should be continued and that a reassessment of the level of the anti-dumping duties should be initiated at the conclusion of this review.

1. Proceedings

1.1 Introduction

12. On 19 September 2014, the Chief Executive of the Ministry of Business, Innovation and Employment (the Ministry) received a properly documented application from Heinz Wattie's Ltd (HWL) for a review of the anti-dumping duties that currently apply to imports of canned peaches from Greece.

13. The anti-dumping duties that currently apply to imports of canned peaches have been in place since March 1998 when the original investigation was completed.

14. On 14 November 2014, the Chief Executive of the Ministry initiated a review of the continued need for the imposition of the anti-dumping duties, pursuant to s.14(8) of the Dumping and Countervailing Duties Act 1988 ("the Act"), on the basis of positive evidence submitted by HWL justifying the need for the review.

15. The purpose of the Ministry's review is to examine whether dumping and injury would be likely to continue or recur if the duties were removed, in accordance with Article 11 of the World Trade Organisation Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the Anti-Dumping Agreement).

1.2 Reviews

16. In terms of sections 14(9) and 14(9A) of the Act, the anti-dumping duties on canned peaches from Greece, in the absence of a review, would have ceased to apply from 18 November 2014. The existing anti-dumping duties will continue to apply pending the outcome of this review and any reassessment that may follow it.

17. Interested parties were advised of the initiation of this review in writing and provided with the opportunity to make written submissions to the Ministry.

1.3 Ministry's approach to sunset reviews

18. The Ministry carries out sunset reviews under the provisions of Section 14(8) of the Act, which states as follows:

> The Secretary 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 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.

19. In applying the provisions of Section 14(8), in the absence of any specific provisions relating to sunset reviews, the Ministry has had regard to the provisions of Article 11.3 of the Anti-Dumping Agreement. In interpreting Article 11.3, the Ministry takes guidance from New Zealand legal reports, World Trade Organisation (WTO) Panel reports and approaches taken by other WTO member countries.

20. Article 11.3 requires that a duty be terminated 5 years after it was imposed or last reviewed unless an investigating authority determines in a review that "… the expiry of the duty *would be likely* to lead to continuation or recurrence of dumping and injury" [emphasis added]. Some

guidance regarding the interpretation of the phrase "would be likely" has been provided by the New Zealand Court of Appeal which interpreted the phrase to mean 'a real and substantial risk…, a risk that might well eventuate" (Commissioner of Police vs Ombudsman [1988] 1 NZLR 385). Guidance can also be found in WTO jurisprudence e.g. *"United States – Sunset Reviews of Anti-dumping Measures on Oil Country Tubular Goods from Argentina"*[1] and *United States Anti-Dumping Duty on Dynamic Random Access Memory Semi-Conductors (DRAMS) from Korea*[2].

21. For example, in *Oil Country Tubular Goods*, the Appellate Body stated (at paragraph 308) "[W]e agree with Argentina that, in *US – Corrosion – Resistant Steel Sunset Review*[3], the Appellate Body equated "likely", as it is used in Article 11.3, with "probable". We also agree with Argentina that this interpretation of "likely" as "probable" is authoritative in relation to injury as well, given that the term "likely" in Article 11.3 applies equally to dumping and injury." The Appellate Body also noted in *Oil Country Tubular Goods* (at paragraph 340) that an investigating authority's likelihood determinations under Article 11.3 must be based on "positive evidence" and quoted with approval the following statement by the Appellate Body in *US – Hot Rolled Steel*:

> "The term "positive evidence" relates . . . to the quality of the evidence that authorities may rely upon in making a determination. The word "positive" means . . . that the evidence must be of an affirmative, objective and verifiable character and must be credible."

22. The Ministry has also referred to the approaches taken by the European Union, United States, Canada and Australia to sunset reviews.

23. The Ministry notes that the consideration of whether 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 dumping and injury. In determining "likelihood", it is considered that regard should be had to the timeframe within which an event may occur. Article 11.3 of the Anti-Dumping Agreement makes no express reference to the length of time within which a continuation or recurrence of injury has to take place.

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

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

---

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

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

[3] In that case the Appellate Body stated (at paragraph 111): " . . . an affirmative likelihood determination may be made only if the evidence demonstrates that dumping would be probable if the duty were terminated – and not simply if the evidence suggests that such result might be possible or plausible."

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

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

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

25. To gauge the extent to which the removal of the anti-dumping duties will likely cause material injury to the domestic industry in the foreseeable future, the Ministry generally requires the domestic industry to provide projections or forecasts of the injury it considers it will suffer as a result of the removal of the duties. The Ministry will examine these projections in light of the company's past performance (with the duties in place to prevent injurious dumping) and projected future performance (both with the presence and absence of duties) in order to assist it in making a likelihood of recurrence of injury determination.

1.4 Grounds for the review

26. HWL claims that as a result of a likely recurrence of dumping, there is likely to be a recurrence of material injury as a result of:

- an increase in volume of the dumped imports;
- price undercutting, price depression and price suppression;

which will likely result in:

- decline in sales revenue and profits;
- decline in return on investments,
- decline in utilisation of production capacity; and
- adverse effects on cash flow, inventories, employment and growth.

1.5 Reassessment of anti-dumping duties

27. If the outcome of this review indicates that anti-dumping 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.

1.6 Interested parties

1.6.1 New Zealand industry

28. The application for the review was submitted by HWL. The Ministry was satisfied in initiating the review that the application was made by or on behalf of the New Zealand industry producing like goods.

29. As set out in section 2.1 below, the Ministry is satisfied in terms of section 3A of the Act that HWL is the only New Zealand producer of like goods and, therefore, that HWL constitutes the New Zealand industry for the purpose of this review.

1.6.2 Importers and exporters

30. The Ministry has found that there were no exports of the subject goods from Greece to New Zealand over the period of review for dumping (POR(D)). The Ministry requested information from Greek exporters and New Zealand importers that had been involved in previous sunset reviews and reassessments and that imported goods under the same tariff item (though not subject goods). None of these companies provided information.

1.6.3 Imported goods

31. The goods which are the subject of the anti-dumping duty, hereinafter referred to as canned peaches, or "subject goods", are:

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

32. The New Zealand Customs Service (NZCS) has stated that the canned peaches enter under tariff item and statistical key 2008.70.09.00L.

1.7 Disclosure of information

33. In order to meet its obligations under section 10(6)(b) of the Act, the Ministry makes available all non-confidential information to any interested party through its public file system.

34. A verification visit was carried out at HWL's premises to verify the information supplied by the company in its application for a review and in its response to the Ministry's request for further information. A copy of the verification report relating to the company visit was provided to the company and a non-confidential version was placed on the public file.

35. Where information was not made available, some of the findings in this report have been made having regard to all available information, that is, on the basis of the best information available in accordance with section 6 of the Act and Article 6.8 and Annex II of the Anti-Dumping Agreement. The information relied on by the Ministry is detailed in the relevant sections in this report.

1.8 Report details

36. In this report, unless otherwise stated, years for evaluating injury are years ending 31 December. Dollar values are in New Zealand Dollars (NZD) or Euros (EUR) unless otherwise specified. In tables,

column totals may differ from individual figures due to rounding. The term VFD refers to value for duty for NZCS purposes.

37. The POR(D) is from 1 October 2013 to 30 September 2014, while the period of review for injury (POR(I)) involves an evaluation of the data submitted by HWL for financial years 2012 to 2014 (HWL's financial year is the year to 31 December). The Ministry has also evaluated HWL's forecasts for its 2015 and 2016 financial years in terms of the impact on HWL's domestic operation, should the anti-dumping duties remain and should they be removed.

2. New Zealand industry

38. 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.

39. “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

40. In order to establish the existence and extent of the New Zealand industry for the purposes of an investigation into injury, and having identified the subject goods, it is necessary to determine whether there are 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.

41. The goods subject to the duty (the subject goods) are described as:

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

42. HWL is the sole New Zealand producer of canned peaches. HWL’s canned peaches are mostly sold under brand names Wattie’s, Oak or Weight Watchers, of halves or slices in net weights of 410g, 820g and 3kg. The company sometimes manufactures private label (house brand) canned peaches. The Weight Watchers branded peaches are not considered to be like goods to the imported goods.

43. MBIE considers that peaches in mediums containing any type or amount of sugar, naturally from the peaches in water or as fruit juice, or sugar syrup, in any concentration, are covered by the goods description. However, peaches in containers other than cans (such as plastic pottles) are not covered by the description.

44. HWL has not produced any new peach products that could be considered to be like goods to the Greek imports since 2009 (the previous review).

45. The Ministry considers that HWL continues to produce a like good and as a consequence remains the New Zealand industry in terms of section 3A of the Act.

2.2 Imports of canned peaches

46. There have been no imports of the subject goods from Greece over the POR(I)[4]. Table 2.1 shows total imports of peaches from 1 January 2012 to 31 December 2014. South Africa, China and Australia are significant exporters of peaches to New Zealand (by quantity) – South Africa and China both have anti-dumping duties applying to their exports.

Table 2:1: Total imports of peaches

	2012	2013	2014
Total imports (kg)	4,380,125	5,503,883	3,672,247

[4] Greece appears in the data sourced from Customs and other statistical databases as having exported peaches under the relevant tariff item and statistical key to New Zealand. However, these imports all appear to be either peaches in drums or aseptically packed peaches and are therefore not subject goods. As such, these imports have been deducted from the data.

3. Dumping investigation

47. Dumping occurs when an exporter sells canned peaches to New Zealand at a price lower than they are sold for in Greece. The price at which canned peaches are sold in Greece is referred to as the normal value. In essence dumping is price discrimination between an export and a domestic market.

3.1 Purpose of review of dumping

48. A sunset review is intended to determine whether the expiry of the existing anti-dumping duties after five years would likely lead to a continuation or recurrence of dumping and injury and therefore whether there is a continued need for the imposition of anti-dumping duties. The general principles concerning the Ministry's approach to sunset reviews are set out in section 1 of this report. The Ministry's usual approach is to establish if canned peaches are being dumped into New Zealand, the extent of any dumping and then analyse whether there is a likelihood of a continuation or recurrence of dumping, if the duties were removed.

3.2 Likelihood of continuation or recurrence of dumping

3.2.1 Introduction

49. This section of the report explains the method of comparing export prices with normal values and how these prices have been established over the POR(D), i.e. the year ended 30 September 2014, to determine whether canned peaches from Greece were imported into New Zealand at dumped prices.

50. The Ministry will usually examine the imports during the POR(D) to establish whether or not goods are being dumped. In this case, however, there have been no imports of the subject goods over this period. The Ministry has therefore been unable to analyse the extent to which goods are currently being dumped and the likelihood of a continuation of any dumping. The Ministry's analysis has instead concentrated on assessing whether there is a likelihood of a recurrence of dumping, if the duties were removed. This section of the report explains how the Ministry has established whether or not that likelihood exists.

3.2.2 Methodology/review process

51. The Ministry would normally undertake the comparison of export prices and normal values on either a weighted-average-to-weighted-average or transaction-to-transaction basis.

52. In the present review, the Ministry was unable to select appropriate Greek domestic sales which it could compare with export transactions, or likely export transactions should duties be removed, because there was no cooperation from Greek exporters that participated in the original investigation or any review since. As a result, the Ministry is not able to conduct a transaction-to-transaction analysis, nor is there any information on which to conduct a weighted-average-to-weighted-average analysis.

53. Instead, the Ministry has chosen to base its dumping analysis on information sourced during the review from other sources, including the information on export prices and normal values provided by HWL in its application. The Ministry considers that this is the best information available, and has used this information in accordance with section 6 of the Act and Article 6.8 of the Agreement, which allow for a decision to be made having regard to all available information.

54. Likely export prices and normal values have been established based on information from the following sources:

- HWL's application and additional information provided
- The Trade Map database
- Previous reviews

3.3 Export prices

55. Export prices are determined in accordance with section 4 of the Act. Export prices are the prices at which canned peaches are exported from Greece to New Zealand, that are arm's length transactions, adjusted to allow a fair comparison with the prices of canned peaches sold in Greece.

56. The Ministry has constructed export prices on the basis of likely export prices if canned peaches were shipped from Greece to New Zealand, as there were no exports of the subject goods to New Zealand over the POR(D). The following paragraphs provide an analysis of export prices.

3.3.1 Base prices

57. As noted in paragraph 53 above, an export price has been established having regard to all available information. The Ministry has identified three possible approaches to establishing an export price, each of which is outlined below.

58. In its application for this review, HWL provided [redacted] A10 size cans ([redacted]), at free on board (FOB) level[5], which equates to an FOB price of €[redacted] per kilogram. HWL noted that the price per kilogram for a 3kg can is usually cheaper than the price of a retail pack, but it did not have information available to adjust for this difference.

59. The Ministry has also updated the export price established in the 2009 review by the increase in the Greek consumer price index since that export price was established. The 2009 price was based on an ex-factory export sale of 3kg cans to New Zealand. The increase in the consumer price index in Greece between 2009 and September 2014 was 8.29 percent, yielding an increase in the ex-factory export price from €[redacted] to €[redacted] per kilogram.

60. In addition, the Ministry has obtained from the Trade Map database information on Greece's exports of peaches to all countries over the year ended 30 September 2014. This information is only available at the 6-digit level and may include goods that are not subject goods. The weighted average base export price at the FOB level over the POR(D) established on this basis is €[redacted] per kilogram.

61. The Ministry notes that there were some imports of a small quantity of canned peaches from Greece in February 2015. The Ministry calculated an average VFD price per kilogram (equivalent to FOB) of these imports of €[redacted]. The Ministry is not aware of what type of peach product these

[5] In the initiation report it was noted that HWL would not provide a copy of [redacted] on the grounds that it was confidential (it provided [redacted]) – HWL has since provided [redacted].

imports are (i.e. size or cut) – they are labelled in the data as "canned peaches preserved in syrup". This price is equivalent to that established by HWL.

62. The Ministry considers the best information on which to establish an export price is that obtained from Trade Map of €[redacted] per kilogram. While this data may include goods that are not subject goods, it covers prices over all of the POR(D) and will include a broad range of product types and sizes. The export price provided by HWL in its application relates only to 3kg can sizes and to a price at one point in time. Updating the 2009 price is also based only on 3kg cans, related to only one sale and has to be updated by the increase in the Greek consumer price index which can at best only approximate price changes that may have occurred in the export prices of Greek canned peaches. The Ministry is not able to determine what product type the imports made in February 2015 are, and this date is outside the POR(D).

63. The Ministry notes that the base export price established using Trade Map data is higher than those obtained using the other methods. The base export price calculated by updating the export price established in the last review is the lowest export price while the export price provided by HWL in its application is approximately in the mid-range.

3.3.2 Adjustments

64. Having established base prices at the FOB level, the next step is to deduct any costs between FOB and ex-factory incurred by the exporter in preparing the goods for shipment to New Zealand and to make any other relevant adjustments required to ensure fair comparison with normal values. The Ministry considers that the best source of information for adjustments to the export price is the information supplied by HWL and information from the review of canned peaches from South Africa completed in 2013. These adjustments are outlined below.

3.3.2.1 Transport from factory to port

65. In its application for this review HWL estimated a cost of [redacted]% of the VFD for freight between the factory and the port, based on its understanding of local freight to port charges.

66. In the 2009 sunset review, the transaction used to calculate an export price was already at the ex-factory level and so did not have any adjustments made to it. In the 2003 sunset review, an adjustment was made for inland freight and terminal handling charges of €[redacted] per kilogram. In the more recently completed sunset review of canned peaches from South Africa (completed in 2013), the costs between the factory and the South African port were on average ZAR[redacted], equivalent to €[redacted]. While a different country, this figure is in line with the amount HWL has estimated and has the benefit of being sourced from an exporter.

67. Based on the preceding considerations the Ministry considers HWL's estimate of [redacted]% of the VFD is an appropriate adjustment and an adjustment has been made at this rate.

3.3.2.2 Port handling and clearance costs

68. HWL did not provide any information relating to these costs in its application although these costs would clearly be incurred in getting goods to the FOB point. As noted in paragraph 66 above information on these costs is not available from the 2009 review because base prices were established on an ex-factory basis.

69. The Ministry has therefore referred to information obtained on these costs in the 2013 review of the anti-dumping duty on canned peaches from South Africa. In that review the Ministry obtained verified information on port handling and clearance costs which represented on average [redacted] percent

of the FOB price of canned peaches. The Ministry considers this is the best information available on port handling and clearance costs and an adjustment has been made at this rate.

3.3.2.3 Other adjustments

70. The Ministry does not have any information available which indicates that any other adjustments are necessary to either adjust the base export price back to the ex-factory level or to ensure a fair comparison with the normal value.

3.3.3 Export price calculation

71. The Ministry has deducted the adjustments outlined above from the base export price to calculate an ex-factory export price of €[redacted] per kilogram.

3.4 Normal values

72. Normal values are determined in accordance with section 5 of the Act. The normal value is usually the price at which manufacturers of canned peaches sell canned peaches in their domestic market. The types of sales that can be used to determine normal values can generally be described as arm's length sales of like goods in the ordinary course of trade for home consumption in the country of export, in this case Greece. Where an exporter makes no such sales, sales by other sellers of like goods in Greece can be used to establish normal values.

73. In the absence of relevant and suitable sales in the ordinary course of trade, normal values can be either: (a) constructed on the basis of the sum of cost of production and, on the assumption that the goods had been sold for home consumption in the ordinary course of trade in Greece, reasonable amounts for administrative and selling costs and other costs incurred in the sale, and a rate of profit normally realised on sales of goods of the same general category in the Greek domestic market; or (b) established on the basis of selling prices to a third country.

74. Because no information has been supplied by Greek producers or exporters, the Ministry has determined normal values under section 6(1) of the Act having regard to all available information. Details of the information used in conducting this analysis are set out below.

3.4.1 Base prices

75. The Ministry has identified four possible ways to establish a normal value, each of which is outlined below.

76. In its application, HWL provided information for Greek domestic market prices of canned peaches sourced through Euromonitor. The prices provided relate to four supermarket prices of canned peaches in 420g, 650g, 820g and 825g cans in February 2013. The Euromonitor report shows prices per container, which HWL converted to a per kilogram price. HWL calculated a simple average of these prices to arrive at a retail price of €[redacted] per kilogram. The Euromonitor report does not include quantities, so it is not possible to calculate a weighted average. One of the products on which HWL's base price was estimated is [redacted], and priced significantly higher than the other three prices (over double the next highest price). In the initiation report, the Ministry excluded this price when establishing an estimated normal value and calculated a simple average of the remaining prices of €[redacted] per kilogram.

77. HWL subsequently provided an updated Euromonitor report, which was published in December 2014, with prices that were updated in February 2014. This report contains five prices for can sizes ranging between 420g and 820g, and prices between €[redacted] and €[redacted] per kilogram. This range

of prices includes the same [redacted] as that contained in the February 2013 prices. The Ministry considers it appropriate to exclude this price, as its price is much higher than any of the other brands of canned peaches. The simple average of the remaining prices is €[redacted] per kilogram.

78. The Ministry has searched for other available information on selling prices of canned peaches in Greece, including other retail prices. The only information the Ministry has been able to source is retail prices from Carrefour Marinopoulos, a Greek supermarket. The prices of canned peaches available in their online store relate only to Del Monte 400g or 825g, and CRF 820g (which appears to be the supermarket's private label brand). The simple average of these prices is €2.52 per kilogram.

79. The Ministry has also updated the normal value established in the 2009 sunset review by the increase in the Greek consumer price index since that normal value was established. The 2009 normal value was based on [redacted] prices of two 425g cans. The increase in the consumer price index in Greece between 2009 and September 2014 was 8.29 percent, yielding an increase in the base normal value from €[redacted] to €[redacted] per kilogram.

80. The Ministry considers the best information on which to establish a normal value is the February 2014 Euromonitor prices. While these prices relate to only one month they do fall within the POR(D) and cover a wider range of product types and sizes than the Carrefour Marinopoulos data. The normal value provided by HWL in its application relates to sales which were made outside of the POR(D). The updating of the 2009 normal value relates to only one can size in one sale and the updating by the increase in the Greek consumer price index can at best only approximate price changes that may have occurred on the Greek domestic market for canned peaches.

81. Two of the four Euromonitor prices from February 2014 are brands of Greek producers. One of the other two brands appears to base most of its production in the United States, and the remaining brand is a Belgian company, although it is not clear where they source their canned peaches from. Of the brands sold by Carrefour Marinopoulos, one is the same US based brand as in the Euromonitor data and it is not clear who the other brand is produced by or where it might be produced. Consequently the information used from the Euromonitor 2014 data is not based solely on peaches produced and sold in Greece; however, the Ministry considers this is the best information available. The Ministry also notes that the two Greek brands are priced higher than the other two brands out of the Euromonitor 2014 data. If only these two prices were used, the normal value would increase and therefore so would the dumping margin.

82. The Ministry notes that the base normal value established using the February 2014 Euromonitor data is the second lowest normal value with the lowest normal value being that based on the February 2013 Euromonitor data. The next highest base normal value is that derived by updating the normal value from the 2009 review and the highest base normal value is that based on the Carrefour Marinopoulos prices. The amounts of the other base normal values indicate that the base normal value calculated from the February 2014 Euromonitor data is not unreasonable.

3.4.2 Adjustments

3.4.2.1 Value added tax (VAT)

83. As the February 2014 Euromonitor prices are at retail level, they include VAT. The comparison of normal value and export price must be tax neutral, so a deduction has been made for VAT at a rate of 13 percent (which is the rate applying to foodstuffs in Greece).

3.4.2.2 Retailer's margin

84. In its application for this review HWL estimated an amount for a retailer's gross margin of [redacted] percent of the ex-factory wholesale price, which was based on its knowledge of the distribution of canned peaches in New Zealand. In its initiation report the Ministry noted that in the review this margin may need to be adjusted (should normal values be based on retail selling prices) given it is based on margins in New Zealand. The Ministry has not, however, found any other information on supermarket margins in Greece. The Ministry considers the margin provided by HWL is therefore the best information available and a retailer's margin of [redacted] percent has been deducted.

3.4.2.3 Inland freight

85. In its application for this review HWL deducted an amount for inland freight, of [redacted] percent of the wholesale purchase price, based on its understanding of local domestic freight costs. The Ministry does not consider that this adjustment is required as the cost of inland freight will be encompassed by the gross margin. The Ministry notes that this is small adjustment which would not have a material impact on the amount of the normal value.

3.4.2.4 Other adjustments

86. The Ministry does not have any information available which indicates that any other adjustments are necessary to either adjust the base normal value back to the ex-factory level or to ensure a fair comparison with the export price.

3.4.3 Normal value calculation

87. The Ministry has deducted the adjustments outlined above from the base normal value to calculate an ex-factory normal value of €[redacted] per kilogram.

3.5 Comparison of export price and normal value

88. The following table shows a comparison of the export price with the normal value and the dumping margin.

Table 3.1: Dumping margin (per kg)

Export price (€)	[redacted]
Normal value (€)	[redacted]
Dumping margin (€)	[redacted]
Dumping margin as % of export price	62%

3.6 Conclusions relating to dumping

89. There were no imports of canned peaches from Greece over the POR(D) so it was not possible to determine whether actual imports are dumped or whether there is a likelihood of a continuation of dumping. However, on the basis of an export price and normal value determined having regard to all available information, the Ministry concludes that should anti-dumping duties be removed and should this result in a resumption of imports of canned peaches from Greece, they will likely be imported at dumped prices.

4. Injury investigation

4.1 The 2009 review of injury

90. The last sunset review of canned peaches from Greece found that:

- In absolute terms, the volumes of dumped imports have remained negligible in relation to both New Zealand production and consumption.
- HWL's domestic price of canned peaches was being undercut by imports of 3kg Greek canned peaches. HWL experienced price suppression, although this could not be attributed to dumped imports from Greece. HWL did not experience price depression.
- There was no positive evidence of any economic or other adverse impacts that could be attributed to dumped imports from Greece.
- Should the anti-dumping duties have been removed, it was likely that there would be a significant increase in import volumes, and there would be price undercutting, depression and suppression.
- Consequent upon the likely price and volume effects should the duties have been removed, it was likely there would be a negative impact on: sales volume and revenue, market share, profits, and adverse effects on productivity, utilisation of production capacity, employment and wages, inventories, return on investments, growth and the domestic industry's ability to raise capital and investments.
- Factors other than dumped imports were likely to continue in the same way to be a cause of injury to the industry whether duties were in place or were removed. They could therefore be distinguished from the injurious effects likely to result from dumped imports from Greece.

91. On the basis of the above considerations, the Ministry concluded that if anti-dumping duties were removed, material injury to the New Zealand industry due to dumped imports from Greece was likely to recur.

4.2 Ministry's consideration of injury in a review

92. The Ministry's approach to sunset reviews is recorded in section 1.3 above. In considering the likelihood of a continuation or recurrence of injury, the Ministry has applied the general principles set out in that section.

93. The Ministry carries out its injury analysis for reviews on the basis of Article 11 of the Anti-Dumping Agreement and section 8 of the Act. The Ministry interprets these provisions to mean that the likelihood of a continuation or recurrence of injury is to be considered in the context of the likely impact on the industry, arising from the likely volume of the dumped goods and their likely effect on prices.

94. Section 8 of the Act also sets out a number of factors and indices which the Chief Executive shall have regard to, although noting that this is without limitation as to the matters the Chief Executive may consider. These factors and indices are considered under the relevant headings below. Furthermore, the demonstration of a causal relationship between the dumped imports and any

current or likely injury must be based on an examination of all relevant evidence and any known factors other than the dumped imports which are causing injury, or are likely to cause injury to the domestic industry. Any injury, or likely continuation or recurrence of injury, caused by factors other than dumping must not be attributed to the dumped imports.

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

96. The Ministry is satisfied that HWL is the only New Zealand producer of like goods, and therefore HWL constitutes the New Zealand industry for the purpose of this investigation.

4.3 Injury information submitted by HWL

97. HWL provided financial information for the purpose of the injury analysis. The information provided is in line with HWL's financial year, which is a calendar year. HWL provided historical information for 2012 to 2014 and forecast information for 2015 and 2016 for the scenarios that duties remain in place and that duties are removed.

98. The information provided by HWL includes details of production, revenue, cost of production, gross profit, selling and administration costs, and earnings before interest and tax (EBIT).

99. As there are anti-dumping duties in place it would not be expected that the industry would be suffering material injury from dumped goods. The focus of the injury analysis is therefore on the likelihood of material injury recurring if the duties were removed.

100. HWL's forecasts with duties remaining in place assume that current duties remain at their current levels. HWL has adjusted for a [redacted]% increase in cost of goods, offset by a [redacted]% increase in the net sales value ([redacted]% representing HWL's forecast for [redacted]).

101. HWL has provided two sets of forecasts if duties were to be removed. Both include the assumption that duties will remain until mid-2015 (when this review is due to conclude) when the duties will then cease. The impact of cheaper Greek imports will therefore be felt in the last quarter of 2015. The first scenario sees HWL [redacted] of both Wattie's and Oak brands to [redacted] of imported canned peaches. The second scenario sees HWL [redacted] the price of its Oak brand [redacted] the ex-wharf price of imported product and [redacted] its Wattie's price to a level to [redacted] between [redacted]. HWL considers that the first scenario would be necessary if prices were to [redacted], as at this level it would not [redacted].

102. The Ministry's evaluation of both the historical and forecast injury information provided by HWL is set out below.

4.4 Import volumes

103. 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.

104. As noted above, there were no imports of the subject goods over the period under review for injury. Table 4.1 shows import volumes of canned peaches into New Zealand from 1 January 2012 to 31 December 2014, which is in line with HWL's financial year. The figures have been sourced from NZCS data that covers the goods imported into New Zealand under the tariff item and statistical key 2008.70.09 00L. This tariff item and statistical key covers a wider range of goods than those under investigation – no goods that are obviously non-subject goods are included in the data. South Africa, China and Australia are significant exporters of canned peaches to New Zealand.

Table 4:1: Import volumes (years ended December)

	2012	2013	2014
Total imports	4,380,125	5,503,883	3,672,247
Sales by HWL	[redacted]	[redacted]	[redacted]
New Zealand market	[redacted]	[redacted]	[redacted]
% changes on previous year			
Total imports		26%	-33%
Sales by HWL		[redacted]	[redacted]
New Zealand market		[redacted]	[redacted]

105. In the absence of imports from Greece there can be no evidence that such imports have increased either in absolute terms or relative to production or consumption in New Zealand. The table above shows that there was a significant increase in import volumes in 2013 followed by an even larger decline in 2014 meaning that over all of the period there was a decline in total imports in absolute terms. HWL's sales have been at a similar level over the period. The changes in the total New Zealand market therefore reflect the changes in import volumes with a decline in the market over all of the period.

106. The significant increase in 2013 is driven by imports from South Africa, which increased by [redacted] percent between 2012 and 2013. Almost [redacted] percent of the imports from South Africa were supplied by Langeberg and Ashton, a South African supplier which participated in the sunset review of the duties on South African canned peaches occurring at that time. Imports from Australia declined [redacted] percent between 2013 and 2014 - this decline was driven by the exit of SPC Ardmona from the New Zealand market. The most recent import into New Zealand from SPC was in [redacted] 2014, and imports from this company had slowed down significantly prior to this. SPC exported approximately [redacted] kilograms less in 2014 than it did in 2013.

4.5 Ministry's assessment of likely import volume should duties be removed

107. HWL has said that initial imports from Greece at the end of 2015 are likely to be made by small brands in the market such as [redacted] and on-sold to [redacted] supermarkets – the implication being that they would not import a significant volume. Volumes would become significant in 2016 as more importers are able to switch their source of supply.

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

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

4.5.1 Previous import volumes from Greece

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

110. The 2009 sunset review found no significant volumes of canned peaches from Greece had entered New Zealand since 2006. Even in 2006, the volume that entered was 114,882 kg, which represented only [redacted] percent of the New Zealand market. There have been no significant volumes of imports since the 2009 sunset review, and most import transactions that are recorded in NZCS data appear to be non-subject goods, usually aseptically packed peaches or peaches in drums.

111. As noted in paragraph 59 in the dumping section of this report, there were some small quantities of canned peaches imported into New Zealand in February 2015. While the quantities are small they indicate that there are still supply lines available for the import of canned peaches from Greece. The February 2015 imports from Greece were also made at prices which would, in the absence of anti-dumping duties, significantly undercut HWL's price.

4.5.2 Price advantage held by the imported products

112. HWL considers that canned peaches from Greece would be the cheapest import option if duties were to be removed.

113. HWL considers that, if the duties are removed, initially it will be small brands, such as [redacted], that will buy from Greece and on-sell to [redacted] supermarkets. HWL has claimed this situation will force it to [redacted] its prices to remain competitive. HWL stated that private label buyers will be in the same situation of having to decrease prices to match the imported product, although these brands would be able to make arrangements for the new season (in late 2015/2016).

114. The price undercutting analysis below shows that canned peaches from Greece are likely to significantly undercut HWL's prices if imports resume, in the absence of anti-dumping duty. Section 4.6 also shows that there is likely to be a recurrence of price depression and suppression if duties are removed.

115. To assess whether canned peaches from Greece hold a price advantage over canned peaches from other sources, the Ministry has used NZCS data to calculate a CIF price for sources other than Greece, including Custom's duty and anti-dumping duty where appropriate. The Ministry has used information from HWL for port clearance costs to bring prices to an ex-wharf level of trade. HWL

used its imports of canned tomatoes from Italy to calculate a figure per carton for port clearance costs, which the Ministry has converted to a per kilogram cost.

116. Using the FOB base prices calculated from Trade Map data (as in section 3.3) and adding Custom's duty of 5% and overseas freight and insurance (which HWL sourced from Statistics NZ Infoshare data) and clearance based on HWL's information, the Ministry has also calculated the likely price of canned peaches from Greece. Anti-dumping duties are currently in place on canned and preserved peaches from South Africa, China and Spain and the ex-wharf prices for these countries include anti-dumping duties.

117. The four largest sources of supply for canned peaches to New Zealand are South Africa, China, Australia and Spain. The ex-wharf prices for these sources, calculated on the basis set out above, are shown in the table below, along with an estimated ex-wharf price for peaches from Greece.

Table 4.2: Price undercutting by imports from major sources

Country[6]	Ex-wharf price per kilogram	HWL ex-factory price	% undercutting
South Africa	[redacted]	[redacted]	[redacted]
China	[redacted]	[redacted]	[redacted]
Australia	[redacted]	[redacted]	[redacted]
Spain	[redacted]	[redacted]	[redacted]
Greece	[redacted]	[redacted]	[redacted]

118. It is not clear why the price for Australia per kilogram is so high (resulting in no undercutting), but it is likely that some of the transactions used are not subject goods, although the Ministry is not able to distinguish if there are any non-subject goods from the data it has available. Imports from South Africa, China and Spain are all undercutting HWL's prices by between [redacted] and [redacted] percent.

119. If the anti-dumping duties were to be removed, canned peaches from Greece are likely to hold a price advantage over imports from any other source except South Africa, although there is only a small difference between the South African and Greek prices.

4.5.3 Capacity of the Greek industry

120. HWL provided the Ministry with a Global Agricultural Information Network report, produced in 2014. This report states that Greece is the third largest producer of peaches in the EU-28, after Italy and Spain. It also states that in 2014, there were 444,000 metric tonnes of peaches and nectarines available for processing. This report mentions the Russian embargo banning certain food products and says that this situation dealt a significant blow to the Greek industry, and that industry is concerned there will be global oversupply.

[6] The ex-wharf prices for South Africa, China and Spain include anti-dumping duty at rates the importers were actually charged as recorded in NZCS data. The ex-wharf price for peaches from Greece does not include anti-dumping duty.

121. HWL also provided an article from New Greek TV (dated October 2014) which states that Greek peach exports have increased, despite the Russian embargo. HWL has said that the economic climate in Greece makes it likely that producers will accept any orders to improve their income.

122. HWL considers that Greek exporters could source from discretionary stocks for smaller importers. The capacity of the Greek industry is about 145,000 tonnnes – HWL has said that [redacted] would be enough to cause it injury. Greece's canning season is July to October, with most of the crop harvested in June and July.

123. Profel, the European Association of Fruit and Vegetable Processors, submitted to the Ministry that it is not reasonable to justify a causal link based on the availability of canned peaches in Greece for export. Greece's exports are diversified and New Zealand is not a priority destination. It provided a ranking of main partner regions for Greece's exports of canned peaches, which has Australaisia in last place (out of seven). The most recent year in the information Profel provided is 2012, and shows that the EU, Asia and Latin America are Greece's largest export destination regions. Between 2008 and 2012, Australaisia consistently comes in last place out of the seven regions listed.

124. Profel considers that the export of canned peaches to New Zealand would require a reorganisation of the Greek industry, and there is no reason to believe this might happen. It stated that markets of interest to Greece are the United States, Latin America, South East Asia and India. New Zealand has not been a target market in any of the European promotional programmes for export.

4.5.4 The ease of entry into the New Zealand market

125. The Ministry has in the past considered the canned peach market highly competitive. HWL does not have any exclusive customers, and the market is always open to new sources of supply. The Ministry has concluded in previous investigations and reviews concerning canned peaches that barriers to entry to the New Zealand market are extremely low, for reasons such as the ability of house brand customers to terminate contracts at short notice, the lack of contractual agreements between supermarkets and suppliers, the ability of house brand customers to switch suppliers with ease and the ability of brokers to source the subject goods from anywhere in the world to take advantage of market opportunities.

4.5.5 The ability of importers to handle a significant increase in imports and the ease of distribution

126. HWL has said that small brands, such as [redacted], will source from Greece if anti-dumping duties are removed, and on-sell these products to [redacted] supermarkets. These brands tend to not be locked into contracts, so it would be easy for them to move to a cheap source of supply.

127. New Zealand has well developed distribution channels for canned peaches, giving widespread access to the New Zealand market.

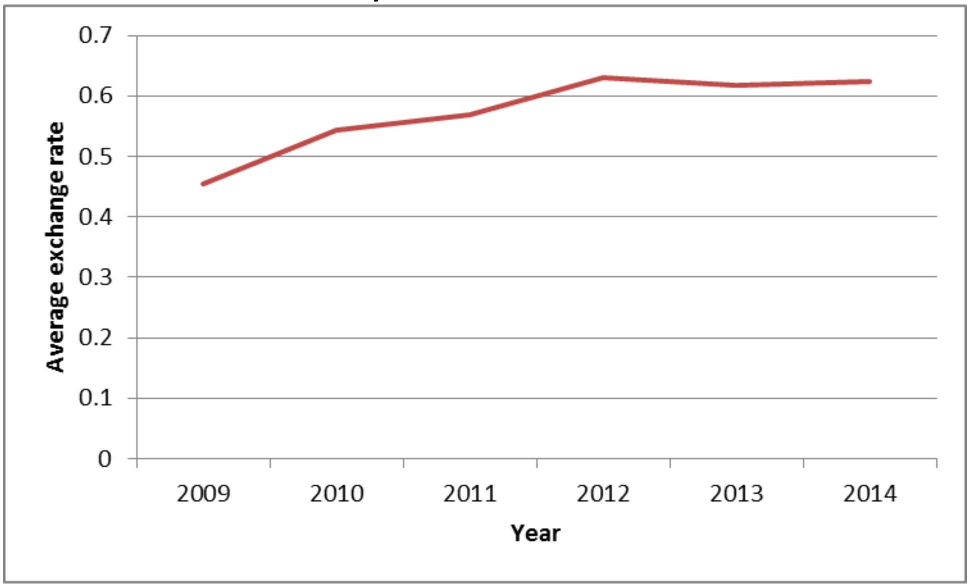
128. The Ministry has consistently found in other canned peach reviews and investigations that the New Zealand market is easy to access, as are its distribution systems. There do not appear to be any changes to the market that would change these conclusions.

4.5.6 Exchange rates

129. A further consideration in respect of the assessment of the likelihood of an increase in import volumes of canned peaches from Greece, in the absence of anti-dumping duties, is the movement of the NZD against the EUR. In the past, shipments from Greece have been invoiced in EUR.

130. The Ministry has analysed the change in the NZD:EUR exchange rate from 2009 (the time of the last review) to 2014. The graph below shows the change in the value of the NZD against the EUR over this period.

NZD:EUR exchange rate
January 2009 to December 2014



131. The information shows that there has been an appreciation of the NZD against the EUR since 2009, suggesting that conditions are more favourable for importers looking to source goods from Europe.

4.5.7 Conclusion on import volumes

132. In examining likely import volumes from Greece if the duties were to be removed in the 2009 review, the Ministry concluded:

- The volume of peaches imported from Greece into New Zealand had dropped to negligible volumes since duties were imposed in 1998.
- Imports of canned peaches from Greece held a price advantage which indicated that there would be an incentive for importers to source peaches from Greece. The CIF price of peaches from Greece was lower than the CIF price of peaches from Australia, but higher than the price of peaches from South Africa or China (these two countries had anti-dumping duties applying to imports from them at the time).
- There were no significant barriers to entry into the New Zealand market and existing import and distribution systems would have been able to cope with a significant increase in import volumes.

- Greek producers had capacity to significantly increase exports of canned peaches to New Zealand, with production of canned peaches in Greece ranging from 61,700 to 407,000 tonnes between 2002 and 2006.

- The NZD had depreciated against the EUR since 2003, suggesting less favourable conditions for New Zealand importers.

133. In this review, in respect of the likely import volumes of canned peaches from Greece if the anti-dumping duties were removed, the Ministry concludes that:

- Imports of canned peaches from Greece are likely to be priced significantly below HWL's canned peaches should imports of Greek canned peaches resume in significant volumes. Canned peaches from Greece are also likely to be priced below the price of canned peaches from any other source, except South Africa (although the South African price is only slightly lower). Peaches from other major sources imported into New Zealand also undercut HWL, except for those sourced from Australia.

- The Greek industry for canned peaches has the capacity to resume exports of canned peaches into New Zealand in volumes that would be significant relative to New Zealand production and consumption. However, Profel, an industry representative, considers that New Zealand is not a priority destination for any exports of canned peaches.

- There is ease of entry into the New Zealand market for imports of canned peaches from Greece and there are available distribution systems that could be used should imports from Greece resume. Importers are likely to have the ability to deal with a resumption of imports of canned peaches from Greece.

- Exchange rates to source from Europe are currently more favourable than they have been previously.

134. In considering the above conclusions the Ministry notes the jurisprudence in section 1.3 above is to be interpreted to mean 'a real and substantial risk…, a risk that might well eventuate'. This jurisprudence also indicates that a continuation or recurrence of dumping and injury must be 'probable' (not simply possible or plausible) and that an affirmative determination must be based on positive evidence (i.e. evidence of an affirmative, objective and verifiable character and which is credible).

135. The Ministry notes that there have been no significant imports of the subject goods since 2006 (prior to the last sunset review) and that imports have been at negligible volumes since the imposition of the duties. While canned peaches from Greece have a relative price advantage compared to HWL and most other import sources (before taking into account anti-dumping duties on the Greek imports), it is likely that the existence of the anti-dumping duty has deterred imports from Greece.

136. Industry representatives (Profel) have stated that New Zealand is not a priority destination and provided evidence that Greek canned peach exporters do not currently see Australasia as a priority (nor have they since at least 2008). Profel has also stated that exporting to New Zealand would require a reorganisation of the industry in Greece. The Ministry does not consider that New Zealand not being a priority destination would prevent a New Zealand importer from arranging the importation of canned peaches from Greece (as evidenced by the recent importation in February

2015) and the Ministry doubts that such imports would require a reorganisation of the Greek industry.

137. Greek exporters have capacity to supply importers in New Zealand at a lower price in the absence of anti-dumping duties and there are likely distribution chains available. The New Zealand market does not have significant barriers to entry.

138. Compared to the market situation in 2009, Greek exporters hold a price advantage over more of the market (imports from Greece would likely be the cheapest source of supply except for South Africa if duties were removed); they have more capacity; and the exchange rate between the NZD and EUR is more favourable.

139. Taking into account the factors above, the Ministry concludes that, should the duties be removed, a recurrence of imports of canned peaches from Greece in sufficient quantities to cause material injury to the New Zealand industry is likely.

4.5.8 Submission on the interim report by the Greek Canners' Association

140. In a submission on the interim report, the Greek Canners' Association expressed its concern and disappointment over "…the preventative imposition of anti-dumping duties, especially since there are no real exports for almost a decade". It had previously expressed concern about the initiation of this review given that there have been no imports of the subject goods into New Zealand.

141. As noted in paragraph 103 above, the test the Ministry undertakes when examining import volumes is that expressed in section 8(2)(a) of the Act, which provides that the Chief Executive shall have regard to the extent to which there has been or *is likely to be* [emphasis added]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.

142. The Ministry considers that it is likely there will be a recurrence of imports from Greece, in significant volumes to cause material injury to the New Zealand industry. The Ministry has reached this conclusion by examining a number of factors, using the best information available. It does not have any other information at its disposal that contradicts this conclusion, and the Greek Canners' Association has not provided any further information.

4.6 Price effects

4.6.1 Price undercutting

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

144. 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. Where possible (and if sufficient information is available), the level of trade is determined for each importer and therefore the prices may be considered at different points in the supply chain for different importers.

145. The Ministry will normally seek to compare prices at the first point of competition in New Zealand, i.e. the first point of sale in the New Zealand market. This will normally be at the ex-factory and ex-wharf or ex-importer's store levels, to ensure that differences in distribution costs and margins do not confuse the impact of dumping.

4.6.1.1 Level of trade

146. HWL's major customer groups are the [redacted]. Sales to supermarkets are on a [redacted] basis.

147. Canned peaches may be imported by supermarkets or distributors directly instead of buying from HWL. The Ministry considers that the most appropriate level of trade is ex-wharf versus HWL's ex-factory price (that is, its FIS price less freight to store). Costs included in an ex-wharf price are those incurred to import the goods into New Zealand such as overseas freight, insurance, port service charges and Custom's duty.

148. In the 2009 review, prices were compared at the ex-wharf and ex-store levels of trade. The Ministry does not consider it likely that distributors will import canned peaches from Greece in sufficient volumes to warrant measuring price undercutting at the ex-store level.

4.6.1.2 HWL's prices

149. HWL's financial year is a calendar year, so the Ministry has used 2014 for the price undercutting comparison as this is the most recent complete financial year and incorporates most of the POR(D).

150. HWL did provide a schedule of ex-factory prices per tonne for each type of canned peaches it sells; however, in the absence of any imports from Greece over the POR(D), and given the broad nature of the pricing information that is available on likely export prices to New Zealand which does not distinguish prices by product type, the Ministry considers an average Net Sales Value (NSV) over 2014 is more appropriate.

151. HWL's average NSV per kilogram is $[redacted]. The NSV excludes trade spend, which broadly covers promotional expenses ([redacted]) and discounts and rebates (economic expenditure). As HWL sells on a FIS basis, the Ministry has excluded the cost of freight to customer of $[redacted] per kilogram to take the NSV back to an ex-factory price level. HWL's ex-factory price for 2014 is $[redacted] per kg.

4.6.1.3 Import price of Greek canned peaches

152. The Ministry has used the import price of Greek canned peaches using the base export price calculated on the basis set out in the dumping section of this report, using data from Trade Map. This base export price was based on export prices from Greece to all export destinations for the year ended 30 September 2014. The price calculated on this basis is a FOB price of €[redacted] per kg, which has been converted to NZD using the average exchange rate for the year ended 30 September 2014 of 1 EUR = 1.6112 NZD.

153. The Ministry has added to this amount costs between FOB and ex-wharf using estimated costs provided by HWL. These costs include overseas freight, insurance and clearance. The Ministry has also added Customs' duty of 5 percent. These costs total $[redacted] per kg.

154. The ex-wharf price calculated on the basis outlined above is $[redacted] per kg.

4.6.1.4 Price undercutting comparison

155. The following table shows a comparison of the estimated ex-wharf price of canned peaches from Greece with HWL's average ex-factory selling price calculated on the basis outlined above.

Table 4.3: Price undercutting (without duty)

HWL's ex-factory price (NZD/kg)	[redacted]
Estimated ex-wharf price of peaches from Greece (NZD/kg)	[redacted]
Price undercutting (NZD/kg)	[redacted]
Price undercutting as % of HWL's price	[redacted]

156. The data in table 4.3 indicates that canned peaches imported from Greece, in the absence of anti-dumping duty, will likely undercut HWL's prices by a significant amount. The Ministry notes, however, that there are limitations on the prices compared in the table above. Both HWL's price and the estimated ex-wharf price are based on a range of products and consequently may not be a comparison of like-to-like products.

157. The Ministry has also completed a price undercutting comparison with the inclusion of anti-dumping duties. Current duties are set on a reference price basis, by size of can. There are two different rates for each size – either set on a non-injurious FOB price (NIFOB) in NZD or a normal value (value for duty equivalent) (NV(VFDE))price in EUR. The NV(VFDE) is applicable, if, when converted to NZD, it is lower than the NIFOB rate. As the Ministry does not have prices for different can sizes, it has averaged the reference prices. The NV(VFDE) average rate, when converted to NZD using the average exchange rate over the POR(D), is higher than the average NIFOB rate, so it is the NIFOB rate which applies.

158. Adding anti-dumping duty brings the estimated ex-wharf price of canned peaches from Greece to $[redacted] per kg. As HWL's average ex-factory price is $[redacted] per kg, and the Greek price is slightly higher, there is no undercutting of HWL's price by imported canned peaches from Greece.

4.6.2 Price Depression

159. 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.

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

161. In the case of a review there is an assumption that the existence of a remedy has had the effect of removing injury due to dumping. The period that anti-dumping duties have been in place, therefore, is considered to be a period where the market is unaffected by dumping.

162. The 2009 review found that HWL had not experienced price depression, but if the duties were removed, HWL's selling prices were likely to be depressed.

163. HWL has provided average selling prices for 2012 to 2014 financial years, on a per kilogram basis. The figures are at the level of net sales value, meaning trade spend has been deducted. The following table shows the average selling price for canned peaches per kilogram for the last three financial years.

Table 4.4: Average selling price (per kg; YE December)

	2012	2013	2014
Average selling price	[redacted]	[redacted]	[redacted]
As % of 2012		[redacted]	[redacted]

164. The table shows that HWL's average price has remained relatively steady over the period, with a slight increase in 2014 from the 2012 price. There has been no price depression over the period.

4.6.2.1 Likely impact of removal of duties

165. HWL considers that the peach market is mature and that wholesale and retail sectors of the market are highly competitive. Supermarkets generally stock a range of brands of canned peaches other than those supplied by HWL.

166. HWL has forecast for 2015 and 2016 likely average net selling prices if the anti-dumping duties were removed. HWL's forecasts have been made on the basis outlined in section 4.3. For the forecasts without duties, Scenario One is HWL [redacted] of both brands to [redacted] of imported goods, while Scenario Two is HWL [redacted] of Oak to [redacted] but [redacted].

167. HWL estimated an 'injurious price' at the into-store level based on [redacted]. The into-store price includes freight, insurance, customs clearance charges and freight to store (added to the FOB price). The Ministry notes that while HWL has said [redacted], it has based its forecast price depression on the estimated into-store price. The cost of [redacted] is however approximately only $[redacted] per kilogram, a very small amount, so the Ministry does not consider that this has a material impact on the forecast price depression.

168. The following table shows the forecasts prepared by HWL on the basis outlined above.

Table 4.5: Forecast average selling price (per kg; YE December)

	With duties		Without duties (scenario 1)		Without duties (scenario 2)	
	2015	2016	2015	2016	2015	2016
Average selling price	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
As % of 2014	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

169. The table above shows that if anti-dumping duties remain in place, HWL forecasts that its average prices will increase. Under scenario one, if anti-dumping duties are removed, HWL's price will decline significantly, with the 2016 price representing [redacted] percent of the 2014 price. Under scenario two, HWL's price will also decrease but to a lesser amount than scenario one, representing [redacted] percent of the 2014 price.

170. As explained in the dumping section of this report, the Ministry has established an export price based on Trade Map data that is higher than that estimated by HWL. To check the impact of this on the forecast price depression, the Ministry has calculated an ex-wharf price using the higher export price based on Trade Map data and using HWL's estimates for the remaining costs. The ex-wharf price calculated on this basis is [redacted] percent higher than the into-store price estimated by HWL If the

ex-wharf price calculated by the Ministry is used there is still significant price depression under both 'without duties' scenarios compared to HWL's 2014 prices. The Ministry is satisfied that HWL will still experience price depression, even if canned peaches from Greece are imported at the higher export price established by the Ministry.

4.6.2.2 Conclusion on price depression

171. There is no evidence of price depression between 2012 and 2014. The Ministry concludes, however, that should anti-dumping duties be removed and should there be a recurrence of imports of canned peaches from Greece, HWL will experience significant price depression under either scenario.

4.6.3 Price Suppression

172. 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.

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

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

175. The 2009 review found that HWL had experienced some price suppression, though it was not attributable to dumped imports from Greece. The 2009 review also found that HWL was likely to experience price suppression if the anti-dumping duties were removed.

176. The following table shows HWL's total costs (cost of goods sold plus selling, administration and general expenses) relative to sales revenue over the period.

Table 4.6: Price suppression (per kg; YE December)

	2012	2013	2014
Net sales revenue	[redacted]	[redacted]	[redacted]
Total costs	[redacted]	[redacted]	[redacted]
Costs as a % of revenue	[redacted]	[redacted]	[redacted]

177. The table above shows that over the period total costs have declined relative to sales revenue, indicating that there has been no suppression of prices over the 2012 to 2014 period.

4.6.3.1 Likely impact of removal of duties

178. HWL considers that its costs will likely remain the same whether duties remain or whether they are removed. It has included a forecast rise to take account of [redacted] of [redacted]% in all scenarios. HWL considers that a decline in its revenue would occur rather than any increase in costs in response to any dumped imports from Greece.

179. HWL has provided forecasts for costs and average selling prices if the anti-dumping duties were retained and if they were removed (in both the scenarios outlined above). The following table shows these forecasts.

Table 4.7: Forecast price suppression (per kg; YE December)

	With duties		**Without duties (scenario 1)**		**Without duties (scenario 2)**	
	2015	**2016**	**2015**	**2016**	**2015**	**2016**
Net sales revenue	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Total costs	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Costs as a % of revenue	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

180. The table above shows that there will be no price suppression should the duties remain in place. Should the duties be removed, however, HWL will experience some suppression in 2015 (likely mainly occurring in the last quarter of the year) and significant suppression in 2016. The price suppression in 2016 is greater in scenario one, as HWL will have [redacted] of both Wattie's and Oak brands [redacted] the imported product, resulting in [redacted]. Costs are forecast to increase from those in 2014 – this is a combination of the [redacted] percent [redacted] cost that has been accounted for and an increase in selling and administration costs. The selling and administration cost increase seems to be caused by variances not being estimated – the [redacted] included in this was [redacted] in 2014, so the non-inclusion of an estimate results in this appearing as an increase in cost.

181. As stated in paragraph 168, the export price established by the Ministry is higher than that estimated by HWL and used in its forecasts. Using the ex-wharf price calculated by the Ministry shows that HWL will still experience price suppression, although to a lesser extent than indicated in the table above. The Ministry is satisfied that HWL will still experience price suppression, even if canned peaches from Greece are imported at the higher export price.

4.6.3.2 Conclusion on price suppression

182. The Ministry concludes that there is no evidence of price suppression over the period under review, and HWL is unlikely to experience any price suppression should duties remain in place. Should duties be removed and should there be a resumption of dumped imports, HWL is likely to experience significant price suppression by 2016.

4.6.4 Conclusion on price effects

183. There is no evidence of current price undercutting (due to the absence of any imports from Greece), nor have HWL's prices been depressed or suppressed over the 2012 to 2014 period.

184. The Ministry concludes that there is evidence that imports of canned peaches from Greece, if they were to resume at dumped prices, would significantly undercut HWL's prices, resulting in HWL's prices being depressed and suppressed.

4.7 Economic impact

185. 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—

- actual and potential decline in output, sales, market share, profits, productivity, return on investments, and utilisation of production capacity;
- factors affecting domestic prices;
- the magnitude of the margin of dumping; and
- actual and potential effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investments.

186. As noted under price effects above, the Ministry has established an export price which is higher than the export price estimated by HWL and which forms the basis of HWL's forecasts. The Ministry has considered the flow-through effects of the higher export price established by the Ministry on HWL's forecasts for the economic impact of removing the duties. The Ministry is satisfied that the difference in export prices does not materially affect the forecasts provided by HWL.

4.7.1 Output

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

188. HWL's output is dependent on the size and quality of the peach crop and its contracts with growers. HWL forecasts for a peach crop of 3500 to 4000 tonnes annually but since the availability of raw peaches fluctuates because of weather, diseases and other factors affecting the volume of fruit recoverable, so too does HWL's domestic output. [redacted].

189. Because HWL processes the entire raw peach crop available each year from its contracted growers and [redacted], its output is unlikely to be affected by the presence of the subject goods in the market, and output is unlikely to be a useful indicator of injury caused by dumped goods. Furthermore, it is unlikely that the industry will be experiencing any injury due to imports from Greece since anti-dumping duties are already in place on canned peaches from Greece.

190. HWL maintains a [redacted] with its peach growers. The company is therefore currently [redacted]. HWL considers that it would have two options concerning buying peaches from growers in the 2016 financial year if duties were removed – (i) [redacted], or (ii) [redacted]. HWL considers that [redacted].

4.7.2 Sales Volume and Revenue

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

192. In the 2009 review, HWL suffered a loss of both sales volume and sales revenue over the POR(I), although it was not attributable to dumped imports from Greece.

193. The following table shows HWL's historical sales volume and sales revenue of canned peaches over the period 2012 to 2014.

Table 4.8: Sales volume and revenue

	2012	**2013**	**2014**
Sales volume (tonnes)	[redacted]	[redacted]	[redacted]
As % of 2012		[redacted]	[redacted]
Sales revenue ($)	[redacted]	[redacted]	[redacted]
As % of 2012		[redacted]	[redacted]

194. The table shows that both volume and revenue have remained relatively steady. Volume declined slightly by [redacted] percentage points and revenue by [redacted] percentage point between 2012 and 2014. The slight declines in sales volume and revenue cannot, in the absence of any imports of canned peaches from Greece over the period, be attributed to dumped imports.

4.7.2.1 Likely impact of removal of duties

195. HWL has forecast its sales and revenue for 2015 and 2016 with and without duties (for the same two scenarios discussed previously). Its forecasts if duties remain are based on budgeted figures. Budgeted net sales value (revenue) figures are based on forecast pricing strategy information. The forecasts also include an increase of [redacted] percent in NSV to cover the same increase in costs (as the cost of [redacted]). If duties were removed, HWL has forecast [redacted] both Wattie's and Oak to [redacted] imports (scenario 1), or [redacted] Oak to [redacted], with [redacted] (scenario 2).

196. The table below shows HWL's forecasts for the 2015 and 2016 financial years for sales volume and revenue in the presence and absence of duties.

Table 4.9: Forecast sales volume and revenue

	With duties		**Without duties (scenario 1)**		**Without duties (scenario 2)**	
	2015	**2016**	**2015**	**2016**	**2015**	**2016**
Sales volume (tonnes)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
As % of previous year	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Sales revenue ($)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
As % of previous year	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

197. The table shows in all scenarios that HWL's volume will remain the same for the 2015 financial year, and in 2016 will decline slightly (by [redacted] percentage points). Revenue, however, is more variable between scenarios, as HWL intends to [redacted]

[redacted]. If duties remain, HWL's revenue is forecast to increase slightly in 2015then decline slightly in 2016, by [redacted] percent. In scenario one without duties in place, HWL's 2015 revenue is forecast to decline to [redacted] percent of that achieved in 2014, and decline even further in 2016, to [redacted] percent of that achieved in 2015. Scenario two paints a slightly better picture, with 2015 revenue forecast to decline to [redacted] percent of that achieved in 2014, and 2016 revenue declining to [redacted] percent of that achieved in 2015.

4.7.2.2 Conclusion on sales volume and revenue

198. Sales volume and revenue have remained stable over the POR(I) while anti-dumping duties have been in place. If duties are removed and should there be a resumption of dumped imports, the Ministry concludes that there is likely to be a significant decline in revenue, although volume is likely to remain relatively stable.

4.7.3 Market share

199. 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.

200. In the 2009 review, imports from Greece were negligible. HWL's sales decreased over the period of review, which appeared to be due to an increase in market share held by imports from other sources. It was concluded that should the duties be removed, the extent of the impact on HWL's market share would depend on HWL's strategy, the impact of dumped imports on the market share of imports from other countries, and growth of the total market.

201. SPC Ardmona, an Australian producer of canned peaches, recently exited the New Zealand market. The company was previously a large supplier of canned peaches to Progressive and Foodstuffs and held approximately [redacted] percent of the total market for canned peaches. HWL said SPC's exit has freed up some market share in New Zealand. HWL has stated that its canned peaches have taken up some of this market share although much of it has been taken up by private label imports (mostly from South Africa).

202. The following table shows market share and changes in market share from 2012 to 2014.

Table 4.10: Market share (tonnes)

	2012	2013	2014
HWL's sales	[redacted]	[redacted]	[redacted]
Total imports	[redacted]	[redacted]	[redacted]
NZ market	[redacted]	[redacted]	[redacted]
As % of NZ market:			
HWL's sales	[redacted]	[redacted]	[redacted]
Total imports	[redacted]	[redacted]	[redacted]

203. The table shows that the New Zealand market for canned peaches has declined when taken over all of the period. In 2013, there was a spike in imports of canned peaches, resulting in an increase in the size of the market, but in 2014 imports declined to below the volume imported in 2012. The increase in imports in 2013 is due to a significant increase in the volume of canned

peaches imported from South Africa – other sources have remained comparatively steady (except Australia). HWL's sales have remained relatively steady but its market share has varied along with the changes in the size of the market. HWL's share dipped to [redacted] percent in 2013 but has recovered to a level above that achieved in 2012, of [redacted] percent, in 2014.

4.7.3.1 Likely impact of removal of duties

204. If the duties are removed, HWL intends to maintain its market share by [redacted]. HWL has said that [redacted]. It appears likely that HWL would maintain its market share up to this point, given its strategy.

4.7.3.2 Conclusion on market share

205. The Ministry concludes that HWL has experienced some variation in its market share due to imports from countries other than Greece. Dumped imports from Greece have not been a factor. Overall, HWL's market share has improved in a declining market. It is unlikely that HWL will lose significant market share if duties were removed since [redacted]. However HWL has stated that [redacted].

4.7.4 Profits

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

207. The 2009 review found that HWL's profits had decreased significantly between 2005 and 2009; however, this decline was not attributable to dumped imports from Greece. The Ministry concluded that it was likely HWL would suffer a material loss of profit if duties were removed.

208. The following table shows HWL's earnings before interest and tax (EBIT) from 2012 to 2014.

Table 4.11: EBIT

	2012	2013	2014
EBIT	[redacted]	[redacted]	[redacted]
Change		[redacted]	[redacted]
% change on previous year		[redacted]	[redacted]
As a % of sales revenue	[redacted]	[redacted]	[redacted]
EBIT per kg	[redacted]	[redacted]	[redacted]
Change		[redacted]	[redacted]
% change on previous year		[redacted]	[redacted]

209. The table shows a significant increase in EBIT in 2014 – it has increased [redacted] percent on 2013. As a per kilogram measure it has also increased significantly, by [redacted] percent on 2013. As a percent of sales revenue, EBIT has increased [redacted] percentage points between 2012 and 2014.

210. General and administration costs have decreased since 2012 and especially since 2013, as HWL has made significant cost savings, largely driven by its new ownership. These costs are reflected in

certain cost centres (human resources, finance, supply) and have ultimately been reflected in profits, in the form of the significant increases described above.

4.7.4.1 Likely impact of removal of duties

211. HWL has claimed that should the duties be removed, dumped imports from Greece would re-enter the market, resulting in undercutting of HWL's prices, causing price depression and suppression. These price effects would cause losses in revenue, causing, *inter alia*, a decline in profits.

212. HWL has provided the following forecasts for 2015 and 2016.

Table 4. 11: Forecast EBIT

	With duties		Without duties (scenario 1)		Without duties (scenario 2)	
	2015	**2016**	**2015**	**2016**	**2015**	**2016**
EBIT	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
% change on previous year	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
as % of sales revenue	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
EBIT per kg	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
% change on previous year	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

213. Should the duties remain in place, HWL has forecast that initially, EBIT will fall when measured both as a whole and on a per kilogram basis, and then will increase in 2016. As a percentage of sales revenue, EBIT is forecast to decline slightly and then remain steady.

214. If the duties were removed, EBIT is forecast to decline significantly in all measures, in both scenarios, with the effects being felt more strongly in 2016. EBIT and EBIT per kilogram are both forecast to decline much more significantly in 2016 in scenario two than in scenario one, although the effects are slightly lesser in 2015 (though still significant). EBIT as a percent of sales revenue is forecast to decline more significantly in scenario one. Though the effects are somewhat mixed, HWL has forecast significant negative effects on its profits if the duties were removed.

4.7.4.2 Conclusion on profits

215. HWL has increased its profitability significantly between 2012 and 2014. There is no injury to its profits attributable to dumped imports.

216. The Ministry further concludes that should duties be removed and should there be a resumption of dumped imports, HWL is likely to experience significant declines in EBIT, in either of its strategies.

4.7.5 Productivity

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

218. Productivity is not directly affected by whether anti-dumping duties are in place in the short term. Productivity is mainly affected by the amount of seasonal labour employed when the crop is due for processing. Total labour costs are variable depending on total size of the crop, size of the fruit, yield and factory efficiency in processing.

219. The following table shows productivity figures in relation to domestic production volume per employee and production volume per hours worked from 2012 to 2014.

Table 4.13: Productivity

	2012	2013	2014
Domestic production (kg)	[redacted]	[redacted]	[redacted]
Seasonal staff (FTE)	[redacted]	[redacted]	[redacted]
Permanent staff (FTE)	[redacted]	[redacted]	[redacted]
Total staff	[redacted]	[redacted]	[redacted]
Total hours	[redacted]	[redacted]	[redacted]
Production volume per employee	[redacted]	[redacted]	[redacted]
Production volume per hours worked	[redacted]	[redacted]	[redacted]

220. The table shows that production volume per employee has improved between 2012 and 2014, with a large increase in 2014. The increase in 2014 is due to an increase in domestic production, with no supplementary increase in the number of staff. Production volume per hours worked has increased as well. The Ministry notes that production depends on the total size of the crop, yield and finished tonnage. As this causes production volume to vary, productivity is not a particularly useful measure of injury caused by dumped imports.

4.7.5.1 Likely impact of removal of duties

221. HWL has said that productivity will not change in 2015 whether duties remain or whether they are removed (since peaches are canned early in the year, production will have occurred while this review is being undertaken). In 2016, [redacted], so it is unlikely productivity will be affected by the presence or absence of duties. Post-2016, if duties are removed, HWL has said [redacted].

4.7.5.2 Conclusion on productivity

222. The figures show that productivity has improved when measured by volume per employee and volume per hours worked, showing there has been no adverse effect on productivity over the POR(I). Productivity is not likely to be affected while HWL continues to process the peach crop, whether duties are removed or whether they remain in place[redacted].

4.7.6 Return on investments

223. Return on investments measures profit against the value of the investment in a business. A decline in return on investments will result from a decline in returns with or without a relative increase in the investment factor being used. Movements in return on investments affect the ability of the industry to retain and attract new investment.

224. HWL's view in previous reviews has been that it is difficult to provide any meaningful information on return on investments narrowed to canned peaches. HWL's assets are used to produce a number of different types of seasonal and non-seasonal fruit and vegetable products. It is therefore difficult to find a meaningful measure of return on investments for canned peaches which make up [redacted] percent of HWL's business.

4.7.6.1 Likely impact of removal of duties

225. HWL has commented that it is likely its return on investment for canned peaches would be adversely affected should duties be removed. The Ministry considers that a decline in profitability indicates that there would likely be a corresponding decline in the rate of return on investments. The Ministry has concluded above that there is likely to be a significant decline in profits should the duties be removed. The Ministry therefore considers there will likely be a corresponding decline in the rate of return on investments.

4.7.6.2 Conclusion

226. The Ministry concludes there is no evidence that the rate of return on investments has been adversely affected over the POR(I). The Ministry further concludes that should the duties be removed and should there be a resumption of dumped imports, there would likely be a decline in the rate of return on investments corresponding with the decline in profits.

4.7.7 Utilisation of production capacity

227. 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.

228. HWL's potential production capacity for canned peaches is determined by the availability of raw peaches from its growers. HWL has previously advised that its capacity to process peaches is [redacted] metric tonnes per day, giving a total production capacity over 2 months (its processing season) of [redacted] metric tonnes. Peaches for [redacted].

229. The current crop is expected to produce [redacted] to [redacted] tonnes of raw peach crop, with a recovery rate of [redacted]. Approximately [redacted] percent of this is devoted to [redacted].

230. The Ministry's view has previously been that production capacity utilisation is not a useful measure of injury, given that capacity utilisation is dependent on other factors, including the quantity of raw peaches available, competition for parts of the canning line which are common to other fruit and vegetable products and the storage life of the raw fruit.

231. HWL noted that [redacted].

4.7.7.1 Conclusion on utilisation of production capacity

232. While the Act requires utilisation of production capacity to be considered as an injury factor, the Ministry does not consider it is a useful measure in this case since production is dependent on other factors including the supply of raw peaches.

233. There is not likely to be any impact on the industry's utilisation of production capacity [redacted].

4.7.8 Magnitude of the margin of dumping

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

235. The Ministry has found a dumping margin of 62 percent. The margin of price undercutting of [redacted] percent is therefore lower than the dumping margin, indicating that all of the undercutting is attributable to dumping.

236. HWL has also said that when preserved peaches [redacted].

4.7.9 Factors affecting domestic prices

237. HWL said that its behaviour and that of importers and retailers affect prices in the market, but the main influence is from retailers. Competition between retailers [redacted] was the main driver of prices. Any dumped canned peaches [redacted] would have a direct effect on prices.

4.7.10 Other adverse effects

4.7.10.1 Cash flow

238. HWL said that cash flow continues to be managed at corporate level, so cash flow broken down to the level of canned peaches is not meaningful. Furthermore, HWL has noted that expenditure and revenue are very uneven given the seasonal nature of canned peach production.

4.7.10.2 Inventories

239. Production over a relatively short period once a year means that inventory is at its peak soon after production and then declines as inventory is sold down over the next 12 months. HWL aims to [redacted] at the beginning of each production period in case demand outstrips expected sales in the upcoming year.

240. HWL noted that there had been an increase in inventories in 2011 due to the better than expected crop yield in 2010 (which was mainly due to new varieties of peaches coming on-stream). The [redacted], so stocks were able [redacted]. HWL said that it had been able to [redacted] market effects from [redacted].

241. HWL provided a graph (shown below) showing inventories on hand since 2012, which indicates the seasonal nature of production and inventory levels.

Graph is confidential.

242. The graph clearly shows the peaks and troughs of HWL's year, with peaks occurring at the end of HWL's processing season.

243. HWL's strategy [redacted] to the imports means that HWL's inventory levels are unlikely to be adversely affected by dumped imports should the duties be removed.

4.7.10.3 Employment and wages

244. HWL advised that it employs seasonal staff on an as required basis from [redacted].

245. HWL calculated the number of full-time permanent and seasonal employees that are engaged in the domestic production of canned peaches for 2012, 2013 and 2014. Total hours worked were divided by the total number of seasonal staff to calculate full time equivalents (FTE's) for these employees. HWL calculated FTE's attributable to canned peaches by allocating the percentage canned peach production represents of total production to the total number of employees.

246. Staff is dependent on the volume of peaches to be processed each year; however HWL said that it is [redacted]

247. The table under productivity (paragraph 219) shows both permanent and seasonal staff as FTE's. Total FTE's have dropped slightly from [redacted] to [redacted] over the POR(I).

248. HWL provided information on hourly wage rates for staff engaged directly in the production of canned peaches over the POR(I). Hourly wage rates have increased from [redacted] per hour to [redacted] per hour, although the 2014 figure has dropped slightly from 2013 (which was [redacted] per hour).

249. HWL has not experienced any adverse effects on employment and wages attributable to dumped imports over the POR(I). Given that the number of employees and hours worked is dependent on the volume of peaches to be processed, it is not likely that employment and wages will be affected if duties were to be removed. Effects will be felt, however, if HWL [redacted].

4.7.10.4 Growth

250. HWL said that it had not experienced any impact caused by dumping on its ability to grow the seasonal business. HWL's peach sales [redacted] since 2006 – it was noted in the South African review in 2013 that this was because the company [redacted] but instead focused on [redacted]. The South African review also noted that this decline was likely due to a declining market (in which HWL has actually increased its share).

251. HWL has stated that the peach crop is an important part of its business and any significant decline in growth [redacted].

252. The Ministry considers that any detrimental effects on growth would be reflected in other injury indicators such as sales, profits and return on investment. While there is no effect on these factors currently caused by dumped imports from Greece, the Ministry considers these factors are likely to be adversely affected if the duties were removed and if dumped imports resume. It is likely that there would consequently be a negative effect on growth should duties be removed.

4.7.10.5 Ability to raise capital and investments

253. HWL confirmed that any proposed capital expenditure [redacted]. The ability to raise capital is dependent only on [redacted]. There has been [redacted] significant capital expenditure [redacted].

254. It is not clear the extent to which the ability to raise capital would be affected if duties were to be removed. Any consideration of expenditure would likely include assessment of benefits to other products produced, not just canned peaches. In any case, it is not likely that HWL would be able to raise capital if duties were removed, as its ownership would likely be reluctant to invest in an area that is unprofitable.

4.8 Other causes of injury

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

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

ii. contraction in demand or changes in the patterns of consumption;

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

iv. developments in technology;

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.

4.8.1 Non-dumped imports

256. Imports that are not dumped also have the potential to cause injury to the New Zealand industry.

257. HWL has said that it has been competing successfully with non-dumped goods for many years, including imports from Australia. HWL noted the significant presence of Australian canned peaches in the market (confirmed by the strong presence of [redacted], an Australian brand, in AC Nielsen data). [redacted] has recently withdrawn from the market, but HWL said that it had not been injured by the

presence of that brand. HWL was not aware of any increased competition from non-dumped sources.

258. The 2009 review concluded that although peaches from China had injured HWL in the past, Chinese imports were not likely to have caused injury since anti-dumping duties were imposed on this source in 2006. The 2009 review also concluded that Australian imports were not likely to have any more impact on HWL than previously.

259. In addition to canned peaches of Greek origin, there are currently anti-dumping duties payable on preserved peaches from China, Spain and South Africa. The Ministry consequently considers that imports from these sources enter New Zealand at non-dumped prices. Goods from Australia have free access to the New Zealand market under the Closer Economic Relations Agreement.

260. The Ministry has analysed import volumes from significant supplying countries over the POR(D) and undertaken a price undercutting analysis using the ex-wharf prices of imported goods (calculated as per paragraph 115) and HWL's 2014 ex-factory price on a per kilogram basis.

261. The following table shows the comparison of the industry's average prices with goods that are considered to be non-dumped.

Table 4.14: Comparison of average prices of non-dumped goods

Country	Volume (kg)	Ex-wharf price (per kg)[7]	HWL's price per kg	Price undercutting per kg	% price undercutting
South Africa	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
China	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Australia	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Spain	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

262. The table above shows that imports from South Africa, China and Spain have undercut HWL's price, but there was no undercutting by goods of Australian origin. Goods of Australian origin are priced significantly higher than any other source.

263. Imports from South Africa, China and Spain are respectively the largest, second largest and fourth largest sources by volume and are undercutting HWL. Imports of canned or preserved peaches from these countries are subject to anti-dumping duties so can be considered non-dumped.

4.8.1.1 Conclusion on non-dumped imports

264. The information available indicates that HWL is being undercut at the ex-wharf level by non-dumped imports. Imports from South Africa, China and Spain are therefore likely to be causing some injury to HWL, although this injury cannot be attributable to dumping. The Ministry considers that this situation is likely to continue whether the duties on peaches from Greece remain or are removed.

[7] Includes anti-dumping duty where appropriate.

4.8.2 Changes in consumption or demand

265. Changes in the pattern of consumption or a reduction in demand can also be a potential cause of material injury to the New Zealand industry.

266. HWL said that the market has been [redacted] and there have been no changes in consumption patterns that it was aware of. The [redacted].

267. The total New Zealand market has declined so it is likely that there has been some decline in consumption. However HWL has maintained its sales volume and revenue so HWL has not experienced an adverse impact caused by this decline.

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

268. HWL continues to have concerns that the European Union canned peach industry, including Greece, is receiving assistance under the European Commission's single payment scheme, even though the agricultural subsidy programme continues to be reformed.

269. The Ministry considered the European Commission's single payment scheme in a 2009 sunset review of the countervailing duty on canned peaches from the European Union and found insufficient evidence that canned peach processors were benefitting from the scheme. As a result the countervailing duties that were in place at this time were terminated.

4.8.4 Imports by the industry

270. HWL imports canned peaches to [redacted]. HWL has developed its growing and processing to [redacted]

271. HWL has not imported any canned peaches from Greece (or any other country) over the last financial year and imports in previous financial years have been removed from the injury data provided.

4.8.5 Developments in technology

272. HWL continues to produce peaches in cans and [redacted]. There has been no significant change in technology other than the import into the New Zealand market of peaches in plastic pottles.

4.8.6 Export performance and productivity

273. In any given year, if there is a better than expected peach yield, HWL will look to export a negligible amount of canned peaches to [redacted] countries. In the year to July 2014, it had exported [redacted] tonnes to [redacted]. HWL said that it had removed all the costs of exports from data provided.

274. The Ministry considers that such a small amount would not have a negative effect on HWL's profitability. Productivity would not be adversely effected either, as these peaches are produced at the same time as the rest of canned peach production.

4.9 Conclusions relating to injury

275. The Ministry has reached the following conclusions from information made available during the review:

4.9.1 Volume and price effects

276. The volume of imports of canned peaches from Greece has been negligible since duties were imposed and particularly since 2006.

277. There is no evidence of current price undercutting due to the absence of any imports from Greece. Similarly, HWL has not experienced price depression or suppression.

4.9.2 Economic impact

278. HWL's output is not a useful indicator of injury, given that output is dependent on the size and quality of the peach crop, rather than the presence of any dumped goods in the market.

279. Since there were no imports of canned peaches from Greece over the POR(I), HWL has not experienced material injury as a result of dumping of these goods in any of the factors used to measure economic impact, including sales volume and revenue, market share, profits, productivity, return on investments, utilisation of production capacity, cash flow, inventories, employment and wages, growth or ability to raise capital and investments.

280. The magnitude of the margin of dumping is more than the extent of price undercutting, indicating that all of the undercutting is attributable to dumping.

281. Non-dumped imports from South Africa, China and Spain are undercutting HWL's average prices and likely to be causing HWL injury. The Ministry considers this situation is likely to continue whether duties remain or whether they are removed. The Ministry does not consider that HWL is being injured by any other cause.

4.9.3 Likelihood of injury if anti-dumping duties are terminated

282. In relation to the likelihood of a recurrence of material injury should anti-dumping duties be removed, the Ministry concludes that:

- A significant increase in import volumes from Greece is likely as market conditions are more favourable for any likely importers of canned peaches from Greece than they have been previously.

- If imports from Greece were to resume in significant volumes, they would likely significantly undercut HWL's prices. HWL is likely to [redacted], resulting in depression and suppression of HWL's prices.

- Consequent upon the likely price and volume effects, if duties are removed and imports resume in significant volumes, HWL's sale volume is likely to remain stable while its revenue is likely to decline significantly.

- If HWL [redacted], it would likely also maintain its market share. However if duties were removed HWL would [redacted].

- As a result of the likely price effects, HWL's profits would likely decline.

- As a consequence of the adverse economic impacts set out above, including a significant decline in revenue, HWL is likely to experience adverse impacts on return on investments, cash flow, growth and ability to raise capital and investments.

- There is unlikely to be an adverse impact on productivity, utilisation of production capacity, inventories, employment and wages unless HWL [redacted].

283. On the basis of the above considerations, the Ministry concludes that if the anti-dumping duties were to be removed, material injury to the industry due to dumped imports of canned peaches from Greece is likely to recur.

5. Conclusions

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

6. Reassessment of anti-dumping duties

6.1 Introduction

285. Section 14(6)(c) of the Act allows the Chief Executive to initiate a reassessment of the rate or amount of anti-dumping duty following the completion of a review and for the Minster to determine a new rate or amount of anti-dumping duty.

286. The section of the report forms an Interim Report for the reassessment of anti-dumping duties on canned peaches from Greece, and provides parties with the opportunity to comment on the proposed duties. Interested parties have until 17 June 2015 to make submissions.

6.2 Method of imposing duties

287. Anti-dumping duties are intended to remedy injury attributable to dumping, not to punish an exporter or provide a domestic industry with protection beyond the impact of the dumping. For this reason, the duty should only remedy the amount of injury attributable to dumping.

288. Considerations taken into account in deciding an appropriate form of the anti-dumping duty include the ability to ensure the dumping margin is not exceeded, the ability to maintain fairness between parties, predictability of the duties payable, and ease of administration at the border. These considerations are discussed in more detail in Box 1 below.

289. There are three main forms of anti-dumping duty:

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

290. A specific duty is a set amount of duty payable per unit imported. It is based on the monetary value of the margin of dumping or the margin of injury.

291. An *ad valorem* duty is based on the margin of dumping or the margin of injury as a percentage of the value for duty.

292. The reference price approach imposes duty based on the difference between the transaction price and a benchmark price. The amount of the difference is the duty payable. A reference price can be based on either a domestic price (in the exporting country) or the New Zealand domestic industry’s non-injurious price.

Box 1: Pros and cons of the three methods of imposing anti-dumping measures

Specific Duty

A specific duty is a set amount payable per defined unit. A specific duty is convenient to apply, impossible to evade by incorrectly stating the value for duty, and the amount of duty payable is clear. However, problems may arise when dealing with a wide range of goods or where exchange rates fluctuate to the extent that margins of dumping will be exceeded without constant reassessments of the specific amount. A specific duty expressed as a monetary amount will operate effectively when prices and exchange rates are consistent and stable enabling the dumping remedy to remain relevant to the margin of dumping.

Ad Valorem Duty

An *ad valorem* rate is a fixed percentage of duty usually applied to the value for duty of the defined goods. *Ad valorem* duty rates can be provided to all parties, and therefore are transparent. They are also convenient to apply and are unlikely to be substantially affected by exchange rate movements. They are appropriate where a large range of goods exist or where new models appear.

As with other approaches, the possibility exists for collusion between exporter and importer to manipulate invoice values of goods subject to duty, particularly if imported in conjunction with similar goods. Under this approach, a particularly low, and potentially more injurious, export price would result in a lower duty, which may be insufficient to remove injurious dumping. Conversely, a particularly high, and less injurious export price, would attract a higher duty, perhaps higher than is necessary to remove injurious dumping.

Reference Price Duty

A reference price is a set value per unit below which duty is payable. Reference prices are most suitable when dealing with movements in export price and exchange rates (if expressed in the currency of the normal value). They are particularly useful for dealing with situations where a lesser duty is applicable, that is, a duty set at less than the margin of dumping but at a level that would still not be injurious to the industry.

Reference price duties have the advantage of clearly signalling to exporters and importers what non-dumped or non-injurious prices are. Additionally they are collected only when goods are priced below the reference price. Therefore, duty is only collected to the extent necessary to remove injurious dumping.

Reference price duties are claimed to be more easily evaded than other forms of duty by overstating the VFD of the goods. Another drawback is that they are set at a fixed level based on a snapshot of price and cost, which obviously change over time and so may become less accurate. Significant changes which may occur over time in prices and exchange rates can be addressed by a reassessment of reference prices.

Also, reference prices are often not suited to goods where there is a wide range of individual sizes and types of goods sold at significantly different prices. Under these circumstances individual reference price mechanisms may need to be set for each type and size of imported good, which can lead to difficulties with importation and delay the free flow of goods over the border. An alternate approach to resolve the problems that an extensive list of reference prices creates is to place the reference price on an aggregated group of the goods in question. An aggregated group reference price, however, dampens the attractiveness of the transaction-based component of a reference price mechanism as it aggregates individual product types and sizes, becoming a proportionate duty similar to the duties resulting from specific or *ad valorem* methodologies.

6.3 2009 reassessment

293. Anti-dumping duties have been imposed on canned peaches from Greece since 1998. A sunset review of these duties was last completed in 2009. Duties were set on a reference price basis in the form of non-injurious free-on-board (NIFOB) amounts which are capped by normal value (value for duty equivalent) (NV(VFDE)) amounts to ensure that changes in exchange rates do not result in the amount of anti-dumping duty collected exceeding the margin of dumping.

6.3.1 Current rate of duty

294. The current duty rates are as follows:

Can Size	Reference Price NIFOB amounts/kg	*Alternative Duty NV(VFDE) amounts/kg
410g	NZD [redacted]	EUR 1.88
820g	NZD [redacted]	EUR 1.66
3kg	NZD [redacted]	EUR 1.53

* Note: An alternative duty rate has been set as NV (VFDE) amounts. The NV (VFDE) amount shall apply instead of the NIFOB amount where the NV (VFDE) amount is less than the NIFOB amount when converted to NZD.

6.4 Proposed methods of imposing anti-dumping duty

6.4.1 Introduction

295. The Ministry's practice is to consider the suitability of all methods of imposing anti-dumping duties in the circumstances of each dumping investigation.

296. During the review it was determined that there had been no imports of the subject goods from Greece over the period of review for dumping. The review determined, however, that there was likely to be a recurrence of dumped imports from Greece should the duty be removed. It was also determined that if the duties were removed HWL would likely experience a recurrence of material injury.

297. The amount of an anti-dumping duty levied in respect of an exporter shall not exceed its margin of dumping[8]. The Appellate Body noted that this is the overarching requirement in Article 9.3, i.e. that the anti-dumping duty "shall not exceed the margin of dumping as established under Article 2" (as stated in the Anti-Dumping Agreement). This requirement is an important consideration in the Ministry's decision to impose a particular form of duty and also whether the duty should consist of one aggregated rate for each exporter's entire range of imported goods or if separate rates should be established for categories or product types of imported goods.

[8] US – Final Anti-Dumping Measures on Stainless Steel from Mexico (WT/D344/AB/R April 2008).

Box 2: Ensuring anti-dumping duty is not paid in excess of the margin of dumping

In practice, duty is collected on individual export transactions and it is up to the authorities to ensure that the total amount of anti-dumping duty paid is not greater than the margin of dumping. At a practical level this can have varying results, as shipments usually contain a mix of product types and the prices of each product type in a shipment may vary. Also exchange rates move, sometimes considerably over a comparatively short period, changing the relative costs and prices of the imported goods.

The above issues may arise regardless of the form of duty put in place and, under the Act, an importer is able to apply for a refund of anti-dumping duty if fluctuations in prices mean that the amount of anti-dumping duty paid by that importer exceeds the margin of dumping calculated over the imports within a set period of time.

The refunds process covers set periods of 6 months and an application can be made by providing export price and normal value information to support a claim that duty in excess of the dumping margin has been paid.

6.4.2 Proposed form of the anti-dumping duty

298. Box 1 outlines the different types of anti-dumping duty that can be imposed. The review found that there were no imports of the subject goods from Greece over the period considered for injury and therefore that the New Zealand industry had experienced no injury caused by dumped imports from Greece. The current duties could therefore been seen as effective in preventing material injury to the New Zealand by dumped imports from Greece.

299. In *US – Final Anti-Dumping Measures on Stainless Steel from Mexico* (WT/DS344/AB/R, April 2008) (at paragraph 121), the WTO Appellate Body commented that "[t]he Anti-Dumping Agreement is neutral as to the different systems for levy and collection of anti-dumping duties." In terms of the different systems used to levy and collect anti-dumping duties, the Appellate Body also commented (in the same paragraph) that the amount of duties collected on a prospective basis [the system used in New Zealand] is subject to review, such that, while duties are only "collected" in individual export transactions "[w]here the prices are less than the prospective normal value, … a review can be requested if the prospective normal value has been improperly determined so as to result in collection of anti-dumping duties in excess of the ceiling prescribed in Article 9.3" [Article 9.3 states that "The amount of the anti-dumping duty shall not exceed the margin of dumping as established under Article 2"].

300. The normal requirement that a single dumping margin be calculated for the product as a whole for each exporter therefore does not necessarily prevent reference prices from being established for separate models or categories which make up the product as a whole, provided that the duty collected as a result does not exceed the margin of dumping for the product as a whole for an exporter. As the Appellate Body has noted in the case referred to in the paragraph above, where this does occur an importer is entitled to request a refund. Details of the refund system in New Zealand are outlined in Box 2 above.

301. In the circumstances of this case where there is no detailed pricing information available by type or category of product, it is not possible to set separate rates of duty by product type or category regardless of the form of the duty.

302. HWL has noted that it prefers the setting of anti-dumping duties on a reference price basis, as it considers that an *ad valorem* rate does not necessarily stop goods coming in cheaply. When duties are set on an *ad valorem* basis, there is an incentive for exporters to keep their prices low in order to pay less duty at the border.

303. The Ministry considers that reference prices are the most appropriate basis on which to set duties in this case. The Ministry does not have the information available on which to set a specific duty. An *ad valorem* duty is the most suitable form of duty in some cases. It can, however, collect duty which is insufficient to remedy injurious dumping where the import price is particularly low and over collect duty where the import price is particularly high. A reference price is more appropriate, as it will only collect duty if the goods are priced below the reference price.

304. The current duties are differentiated by can size; however, in this review the Ministry does not have the information available on which to set separate rates. The Ministry has found in previous reviews of duties on canned peaches (e.g. the 2013/14 review and reassessment of the anti-dumping duties on canned peaches from South Africa) that can size on a per kilogram basis has less influence on different selling prices per kilogram than other factors do, such as the grade of product. There is sufficient information in this case on which to set a single reference price that will apply to all types and sizes of canned peaches imported from Greece. The normal value that has been calculated is representative of different can sizes, although it is more heavily weighted towards 800 – 820g size cans. It is possible that any duty set on the basis of the information available may therefore over- or under-collect duty if smaller or larger can sizes are imported, however, the Ministry considers the risk is small. As noted above, a refund process is available if an importer considers they have paid duties in excess of the margin of dumping.

305. The current rates consist of both a normal value (value for duty equivalent) and a non-injurious FOB price (the application of the appropriate rate depends on exchange rate movements between the NZD and the Euro). The Ministry considers that duties should continue to be set on this basis, to account for any exchange rate volatility.

6.5 Calculation of proposed anti-dumping duties

6.5.1 Introduction

306. Section 14(5) of the Act requires that the Minister has 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.

307. To determine whether a lesser duty should apply, the Ministry uses a comparison of the NV(VFDE) amount (that is, the normal value with the addition of relevant costs to FOB level) with the NIFOB (the New Zealand industry's average ex-factory price less the average costs incurred in importing the goods between FOB and the relevant level of trade). If the NIFOB is less than the NV(VFDE) this normally indicates a lesser duty should apply.

6.5.2 Calculation of NV(VFDE) amount

308. A NV(VFDE) amount represents the non-dumped price of imports at the FOB level, that is, the level at which the goods are loaded onto the vessel ready to be exported. A NV(VFDE) starts with the weighted average normal value at the ex-factory level. Any costs incurred to export the goods to the point of being loaded onto the vessel in the exporting country (the free on board level) are then added. Such costs would normally include inland freight, handling, Customs' clearance costs and any

agent's fees that would be taken into account in the New Zealand Customs' value for duty (VFD). The resulting value is the NV(VFDE) amount.

309. The Ministry calculated a NV(VFDE) amount on this basis, starting with the ex-factory normal value established in the review. The normal value was adjusted to the FOB level by adding the adjustments used to calculate the ex-factory export price in the review. These adjustments cover inland freight and port handling and clearance costs.

310. Table 6.1 shows the calculation of the NV(VFDE) amount.

Table 6.1: NV(VFDE)

	NZD/kg	EUR/kg
Ex-factory normal value		[redacted]
Inland freight		[redacted]
Port handling and clearance		[redacted]
NV(VFDE)		1.683
Average EUR/NZD exchange rate (1 EUR = 1.6112 NZD)*		
NV(VFDE)	2.72	

*Average exchange rate over the POR(D), that is, the year ended 30 September 2014.

6.5.3 Calculation of NIFOB amount

6.5.3.1 Calculation of a non-injurious price (NIP)

311. In order to calculate a NIFOB amount it is necessary to first establish a non-injurious price (NIP) for the New Zealand industry, that is, the price at which a domestic producer can sell its goods in the domestic market in the absence of dumped goods. There are a number of methods that can be used to calculate a NIP including:

- the use of current prices (adjusted by price depression incurred during the POR(I), if necessary);
- the current cost of production, plus industry profit taken at a time when the industry was unaffected by dumped imports;
- the use of pre-injury prices scaled up by a relevant index; or
- determining the lowest price non-dumped product in the market.

312. The Ministry normally considers the domestic industry's current ex-factory selling price to be its NIP when an anti-dumping duty is already in place. In other words, the Ministry normally considers that the anti-dumping duties have acted to prevent any injurious dumping occurring and that the industry's prices are at levels achieved in the absence of dumping.

313. In the review, there had been no significant imports of canned peaches from Greece over the period considered for injury, and the industry did not claim it had been injured by any such imports. The Ministry therefore considers that HWL's ex-factory NIP can be based on its average ex-factory selling price.

314. The Ministry has therefore established the NIP on the basis of HWL's latest financial year, which is the 2014 calendar year. The NIP is NZD $[redacted] per kilogram and represents HWL's ex-factory net sales value per kilogram, excluding freight, over this period.

6.5.3.2 NIFOB calculation

315. A NIFOB is calculated by deducting from the New Zealand industry's NIP the costs for an importer arising between the FOB level of trade and the level of trade at which the domestic industry's products first compete with the importer's products. The Ministry determined in the review that the relevant level of trade for the imported product is ex-wharf (versus the New Zealand industry's ex-factory price). The NIFOB calculation has therefore been made on the basis of costs between FOB and ex-wharf.

316. In the absence of any imports of the subject goods from Greece, the Ministry has used estimated costs of freight, insurance and clearance provided by HWL, which were calculated from actual costs incurred by HWL on its imports of canned tomatoes from Italy.

317. The following table shows the calculation of the NIFOB on the basis outlined above.

Table 6.2: NIFOB (NZD/kg)

Non-injurious price (NIP)	[redacted]
Freight, insurance, clearance	[redacted]
NIFOB	[redacted]

6.5.4 Comparison of NV(VFDE) and NIFOB amounts

318. As noted above, whether a lesser duty should apply is determined by comparing the NV(VFDE) amount with the NIFOB amount. A lesser duty applies if the NIFOB is lower than the NV(VFDE). The NIFOB amount calculated in table 6.2 is lower than the NV(VFDE) amount calculated in table 6.1, indicating that the duty should be imposed at the margin of injury, instead of the full margin of dumping.

319. As stated in paragraph 305, the Ministry considers that the duties should continue to be set on both a NV(VFDE) and NIFOB basis. The NV(VFDE) amount will effectively cap the NIFOB amount. The NV(VFDE) amount will be set in EUR and will be payable if, it is less than the NIFOB amount when it is converted to NZD.

6.6 Proposed reassessed rate of duty

320. On the basis of the information outlined above, the Ministry proposes that the duty be set on a single reference price basis, with both a NV(VFDE) and NIFOB in place, for all imports of canned peaches from Greece. The NV(VFDE) will be payable instead of the NIFOB if it is less than the NIFOB when converted to NZD.

321. No exporters or manufacturers provided any information in the review and consequently the Ministry has used best available information, which is not exporter specific, and nor is it product specific (i.e. by size, cut or medium).

322. The proposed NIFOB reference price is NZ[redacted] per kilogram and the NV(VFDE) is €1.68 per kilogram.

6.7 Refunds of anti-dumping duty

323. Section 14(10) of the Act provides that if a reassessment results in a lower duty being imposed, the Minister may require the NZCS to refund, with effect from the date of initiation of the review, the difference between the duty paid and the lower duty. However, if the reverse situation applies, the shortfall is not required to be paid.

324. The Ministry notes that there were some imports of the subject goods in February 2015. However, it appears that the dumping duty paid on these imports is less per kilogram than the proposed new rate of duty, so any refunds are not likely.

6.8 Opportunity for comment

325. Interested parties have until close of business 17 June 2015 to make submissions upon this Interim Reassessment Report. All submissions must be accompanied by a non-confidential version. A final reassessment report will be completed and referred to the Minister as soon as practicable after receiving submissions on this interim reassessment report.