



**MINISTRY OF BUSINESS,  
INNOVATION & EMPLOYMENT**  
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**TRADE AND  
INTERNATIONAL**

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Trade (Anti-dumping and Countervailing Duties) Act 1988

**Full Review**

**Canned Peaches from Greece**

**Stage 2 Final Report**

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## Abbreviations

The following abbreviations are used in this Report:

Act (the)	Trade (Anti-dumping and Countervailing Duties) Act 1988
AL.M.ME	Association of Co-operatives
Bidfood	Bidfood Limited
chief executive, the	Chief Executive of the Ministry of Business, Innovation and Employment
Customs	New Zealand Customs Service
EBIT	Earnings Before Interest and Tax
EUR	Euro(s)
Greek Trade Office	Consulate General of Greece in Sydney, Office for Economic and Commercial Affairs
HWL	Heinz Wattie's Ltd
kg	Kilogram(s)
MBIE	Ministry of Business, Innovation and Employment
Minister, the	The Minister of Commerce and Consumer Affairs
MT	Metric ton/tonne
NIFOB	Non-Injurious Free on Board
NV(VFDE)	Normal Value (Value for Duty Equivalent)
NZD	New Zealand dollar(s)
PIP Report	Public Interest Preliminary Findings Report
PIPES	Public Interest Partial Equilibrium Simulation
POR(D)	Period of review for dumping assessment, the year ended 31 December 2019
Reduced To Clear	Reduced To Clear Limited
Review	A full review of the imposition of anti-dumping duty on canned peaches from Greece (also known as a "sunset review"), authorised under section 17D of the Trade (Anti-dumping and Countervailing Duties) Act 1988
subject goods	Imported goods that are the subject of the review
USD	United States Dollar
WTO	World Trade Organization

## 1. Proceedings

### 1.1 Summary

1. In July 2020, the Ministry of Business, Innovation and Employment (MBIE) initiated a full review of the continued need for the imposition of an anti-dumping duty on canned peaches from Greece under the Trade (Anti-dumping and Countervailing Duties) Act 1988 (the Act).
2. The full review stage 1 was completed, and on 28 January 2021 the Minister of Commerce and Consumer Affairs (the Minister) determined that the continued imposition of anti-dumping duty is necessary to offset dumping and material injury to the domestic industry. Consequently, the Minister determined the rate of the anti-dumping duty that would form the basis for a full review stage 2 and directed the Chief Executive of MBIE (the chief executive) to start a full review stage 2.
3. On 29 January 2021, MBIE started the full review stage 2 into whether continuing to impose an anti-dumping duty at the rate determined is in the public interest. Continuing to impose the duty is in the public interest unless the cost to downstream industries and consumers of imposing the duty is likely to materially outweigh the benefit to the domestic industry of imposing the duty.
4. A Public Interest Preliminary Findings Report (PIP Report) was provided to parties in accordance with section 17I(1) of the Act. The PIP Report set out the preliminary findings likely to form the basis for a determination to be made by the Minister under section 17I(1), as to whether imposing the anti-dumping duty is in the public interest.
5. Notified parties were invited to make written submissions to MBIE on the PIP Report to be taken into account in the preparation of this Stage 2 Final Report. A submission was received from the Government of Greece through the Consulate General of Greece in Sydney, Office for Economic and Commercial Affairs (the Greek Trade Office), and is summarised in the Annex to this Report.
6. The stage 2 review has reviewed the matters set out in section 10F(3) of the Act regarding the effect of the duty on a range of factors, including prices, alternative supplies, and competition in the market, as well as the effect on the domestic industry.
7. MBIE has found that continuing to impose the duty at the determined rate is in the public interest. MBIE has found that the cost of the duty to downstream industries and consumers **is not** likely to materially outweigh the benefit of the duty to the domestic industry.

### 1.2 Legal requirements

8. The requirements for reviews are set out in Part 6 of the Act, and are covered sequentially in this report. The requirements for full review stage 2 (the public interest investigation) are provided in section 17H of the Act:

*(1) If the Minister directs the chief executive to start full review stage 2, the chief executive must investigate whether continuing to impose an anti-dumping or a countervailing duty at the rate determined under section 17G(2)(a) is in the public interest.*

*(2) Continuing to impose the duty is in the public interest unless the cost to downstream industries and consumers of imposing the duty is likely to materially outweigh the benefit to the domestic industry of imposing the duty.*

*(3) In investigating whether continuing to impose the duty is in the public interest, the matters the chief executive must investigate include those referred to in section 10F(3).*

9. Section 10F(3) of the Act provides that in investigating whether imposing the duty is in the public interest, the matters the chief executive must investigate include the following:

- (a) the effect of the duty on the prices of the dumped or subsidised goods;*
- (b) the effect of the duty on the prices of like goods produced in New Zealand;*
- (c) the effect of the duty on the choice or availability of like goods;*
- (d) the effect of the duty on product and service quality;*
- (e) the effect of the duty on the financial performance of the domestic industry;*
- (f) the effect of the duty on employment levels;*
- (g) whether there is an alternative supply (domestically or internationally) of the like goods available;*
- (h) any other factor that the chief executive considers essential to ensure the existence of competition in the market.*

10. MBIE can also investigate other matters that it considers necessary or that are raised by other parties, provided that those matters are relevant in terms of section 17H(2).

### **1.3 Subject goods**

11. The goods which are the subject of the review, hereinafter referred to as canned peaches, or “subject goods”, are:

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

12. This description includes any medium used, including natural juice and syrups containing both natural and artificial sugars. It therefore includes ‘lite’ styles of peaches and those in fruit juice of any kind. Peaches in containers other than cans are not covered by the description.

13. Imports of the subject goods from Greece are currently subject to the Normal rate of Customs duty<sup>1</sup> of 5 per cent.

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<sup>1</sup> Customs duty – for the purposes of this report, a duty imposed under the Tariff Act 1988 and collected by the New Zealand Customs Service.

## 1.4 Like goods

14. Section 3(1) of the Act defines like goods, in relation to any goods, as:
- a. other goods that are like those goods in all respects, or
  - b. in the absence of goods referred to in paragraph (a), goods which have characteristics closely resembling those goods.
15. To determine whether the goods produced in New Zealand are like goods to the subject goods, MBIE normally considers physical characteristics, function and usage, pricing patterns, marketing and distribution, substitutability and commercial interchangeability, and any other relevant considerations, with no one of these factors being necessarily determinative.
16. In the full review stage 1 (section 2.3.1) MBIE noted that these matters had been considered in previous proceedings where MBIE concluded that the canned peaches produced by Heinz Wattie's Ltd (HWL), while not alike in all respects, had characteristics closely resembling the subject goods and were therefore like goods to the subject goods. MBIE did not consider that it should revisit the consideration of like goods.

## 1.5 Interested parties

### 1.5.1 New Zealand Industry

17. Section 3A of the Act provides that the term "industry" (referred to in this report as the New Zealand 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.
18. HWL remains the sole manufacturer of canned peaches in New Zealand and therefore constitutes the New Zealand industry for the purpose of this investigation. HWL also imports canned peaches as a buffer against short supply due to fluctuations in volumes of the domestic crop.
19. MBIE did not undertake a verification visit to HWL's premises during the full review because of the limitations arising from the government's response to the COVID-19 pandemic, and also because MBIE undertook a verification visit to HWL in May 2019 in relation to the review of canned peaches from South Africa and the reconsiderations of preserved peaches from China and Spain. MBIE did however carry out a desktop verification and a copy of the Verification Report is available on the Public File for this investigation. A desktop verification involves considering the information provided for consistency and accuracy, checking the information against other available information, and requesting further information or explanation where necessary.
20. HWL provided a response to the Stage 2 Review Framework and Questionnaire and stated it is in favour of imposing an anti-dumping duty because "the subject goods continue to be dumped and that material injury could recur to the industry, particularly in

the forms of price depression, price undercutting and price suppression leading to a decline in profits by the industry.” HWL did not make a submission on the PIP Report.

### **1.5.2 Exporters**

21. In the full review stage 1, due to a lack of cooperation from one importer and intermediaries, MBIE was unable to identify Greek manufacturers whose canned peaches were exported to New Zealand over the year ended 31 December 2019, the period of review for the dumping assessment (POR(D)). MBIE received a submission in stage 1 from E.K.E., the Greek Cannery Association, but it did not identify Greek suppliers to New Zealand. MBIE identified the suppliers from the initial investigation and subsequent reviews, noting that the description in the Act of notified parties refers to “exporters ... known by the chief executive to have an interest” in the goods subject to duty.
22. MBIE also identified two intermediaries involved in the sale of the goods from Greece to New Zealand, JTC Imports Exports and Avondale Foods, who did not provide information requested by MBIE.
23. For the full review stage 2, MBIE sent the Stage 2 Review Framework and Questionnaire to E.K.E., the Greek Cannery Association, JTC Imports Exports, Avondale Foods and past suppliers of Greek peaches, namely Venus Growers, AL.M.ME S.A., Intercomm Foods S.A., Vitom S.A. (CHB Group), RD2 International Ltd, and Fruit and Concentrates International Pty Ltd.
24. No responses were received from these parties or exporters to the questionnaire or the PIP Report.

### **1.5.3 Government of Greece**

25. In the full review stage 1, the Greek Government responded to MBIE’s requests for export trade data and made a submission in response to the EFC Report. The Government of Greece did not make a submission in stage 2 of the review until after the PIP Report was released for comment. The European Commission did not make a submission.
26. In its submission in the full review stage 1, the Greek Trade Office asked MBIE to reconsider the anti-dumping duty on the basis of low import volumes, higher pricing of Greek exports of canned peaches to New Zealand than to other markets, and to “establish a level playing field for Greek exporters who have faced an unfair disadvantage relative to other international competitors for a very long time.”
27. The Government of Greece made a submission on the PIP Report, through the Greek Trade Office. The submission of the Government of Greece is summarised in the Annex to this report, along with MBIE’s responses to the matters raised. The Greek Trade Office mainly repeats its arguments from stage 1 of the review.

### **1.5.4 Importers**

28. For the full review stage 1, two New Zealand-based importers were identified from Customs data, and invited to supply information which would help identify suppliers in Greece and information which would assist in identifying imports of subject goods.

29. In the full review stage 1, questionnaires were sent to the two importers of the subject goods, Bidfood Limited (Bidfood) and Reduced To Clear Limited (Reduced To Clear), in order to obtain and confirm information relating to import shipments, and information on the operation of the New Zealand market for the subject goods. The importers did not respond to the questionnaire. One importer provided some limited information on its business strategy, the goods it purchased and its supplier.
30. For the full review stage 2, MBIE sent the Stage 2 Review Framework and Questionnaire to the current importers, Bidfood and Reduced To Clear, and to past importers; Delmaine Fine Foods, Barker Fruit Processors Limited, Woolworths New Zealand, Foodstuffs and Taste Greece.
31. No responses were received from these importers to the questionnaire or the PIP Report.

### 1.5.5 Downstream Industries

32. Section 17H(4) defines downstream industries for the purposes of section 17H as:
- (a) *each immediate downstream New Zealand industry that uses the dumped or subsidised goods, or like goods, as an input in the production of other goods; and*
  - (b) *if the Minister considers it appropriate for the purposes of this section, any other relevant downstream New Zealand industry.*
33. MBIE sought comments from a number of groups and companies in order to identify potential downstream industries and the effect of an anti-dumping duty. Those approached were the New Zealand Food & Grocery Council, Retail NZ, The Manufacturers' Network, Business New Zealand, Employers and Manufacturers Association, the Importers Institute, and the New Zealand Council of Trade Unions. No responses were received from any of these parties.
34. MBIE considers that downstream industries for canned peaches may include caterers, bakers and restaurants. MBIE notes from the South African review that downstream industries of preserved peaches tend to purchase the goods in A10 (3kg) cans.
35. MBIE saw no reason to consider an extension of the definition of downstream industries to any other downstream New Zealand industry.
36. No comments were received from downstream industries in response to the notice which was published in the *New Zealand Gazette* seeking input from interested and affected parties on MBIE's public interest investigation.

### 1.5.6 Consumers

37. Section 17H(4) defines consumers for the purposes of section 17H as:
- (a) *New Zealand consumers of –*
    - (i) *the dumped or subsidised goods; or*
    - (ii) *like goods; or*
    - (iii) *the other goods referred to in paragraph (a) of the definition of downstream industries; and*

(b) *if the Minister considers it appropriate for the purposes of this section, any other relevant New Zealand consumers.*

38. MBIE sought comments from Consumer NZ as a body representing the interests of consumers. No comments were received from consumers or any other bodies in response to the notice which was published in the *New Zealand Gazette* seeking input from interested and affected parties on MBIE's public interest investigation. Consumer NZ did not make a submission on the PIP report.
39. MBIE saw no reason to consider an extension of the definition of consumers to any other New Zealand consumers.

### **1.5.7 Other parties**

40. The Act does not provide for MBIE to consider the effect of continuing, or not continuing, the anti-dumping duty on other parties, such as peach growers.

## **1.6 Findings of the full review stage 1**

### **1.6.1 Dumping**

41. The full review stage 1 established that imports of the subject goods from Greece are dumped and that there is a likelihood of the continuation of dumping of the subject goods.

### **1.6.2 Injury**

42. MBIE concluded that the dumped imports from Greece are likely to cause a recurrence of material injury to HWL if an anti-dumping duty is not continued. In particular, MBIE considered that:
- Previous behaviour, and the competitive pricing of canned peaches from Greece, indicates that in the absence of anti-dumping duty importers will likely revert to importing significant volumes of canned peaches from Greece.
  - Continued dumping of subject goods from Greece is likely to result in continued price undercutting, with consequent price depression and price suppression.
  - There is likely to be an adverse impact on sales revenue, Earnings Before Interest and Tax (EBIT), cash flow and growth, but not on sales volume, market share or utilisation of production capacity.
  - Any effect on productivity, return on investments and growth will be the outcome of other effects that can be attributed to the recurrence of dumping and injury.
  - In the absence of an anti-dumping duty, a recurrence of material injury will likely be caused by increased volumes of dumped imports from Greece. The likelihood of injury arising from other causes has not been attributed to the dumped goods.

## **1.7 Determined duty**

43. The Minister determined an anti-dumping duty at an ad valorem rate of duty of 34 per cent for all suppliers of canned peaches from Greece.

44. In determining the rate of duty, the Minister had regard to the desirability of ensuring that the rate of duty was not greater than is necessary to prevent material injury or a recurrence of material injury, and was no greater than the margin of dumping. The Minister also had regard to New Zealand's obligations as a party to the WTO Agreement.
45. The determined rate of duty is less than the full margin of dumping but is at a level that will prevent material injury or a recurrence of material injury.
46. The anti-dumping duty forms the basis of MBIE's public interest analysis. The rate of duty does not become applicable unless the Minister makes a final stage 2 determination that the imposition of the duty is in the public interest. The current anti-dumping duty continues to apply during the full review.

## **1.8 Stage 2 Review Framework and Questionnaire**

47. Following the Minister's direction to MBIE to undertake a full review stage 2, MBIE provided interested parties with a Stage 2 Review Framework and Questionnaire, which outlined MBIE's approach to carrying out a full review stage 2, and invited parties to lodge submissions. A questionnaire was provided to assist that process.
48. HWL was the only party to provide a submission on the Stage 2 Review Framework and Questionnaire.

## **1.9 Information Available**

49. The information available to MBIE for the full review stage 2 was limited due to a lack of replies from Greek producers, exporting intermediaries, New Zealand importers, downstream industries and consumers. The Government of Greece and HWL were the only parties to provide submissions in respect of the full review stage 2.
50. In the full review stage 2, MBIE has used information from:
  - HWL's submission on the full review stage 2
  - The submission by the Government of Greece on the PIP Report
  - The full review stage 1
  - Previous investigations and reviews of canned peaches
  - MBIE's own research
  - Other relevant sources.

## **1.10 PIP Report**

51. The PIP Report, setting out the preliminary findings likely to form the basis for a determination to be made by the Minister under section 171(1) as to whether imposing the anti-dumping duty is in the public interest, was sent to parties on 17 March 2021.
52. Comments on the PIP Report were received from the Government of Greece. These comments and MBIE's responses to them, are summarised in the Annex to this Report and are reflected in the text of this report where relevant and appropriate.



## 2. Public interest investigation

53. In undertaking a full review stage 2, MBIE assesses each factor set out in section 10F(3) of the Act, and can consider any other relevant factors.

### 2.1 Effect of the duty on the prices of the dumped goods

54. MBIE is required to consider the effect of the duty on the prices of the dumped goods. This includes consideration of past experience of the imposition of anti-dumping duties on the subject goods; the extent to which an anti-dumping duty will contribute to price increases that are likely to be passed on to downstream industries and consumers and any subsequent effect on prices for downstream goods; price factors that may be affecting the price of the imported goods and any downstream goods, including input costs, currency fluctuations, and the extent of competition in the market; and any other matters that may be relevant to the effect of the duty on the prices of the goods.

#### 2.1.1 Submissions

55. HWL expects that the anti-dumping duty would create a level playing field by removing the injurious effects of dumped canned peaches from Greece, which may imply that prices of canned Greek peaches in the New Zealand market would increase.
56. In response to the PIP Report, the Greek Trade Office commented on the competitive pricing of canned peaches from Greece and claimed that removal of anti-dumping duties would establish a level playing field for Greek exporters who, they claim, have faced an unfair disadvantage relative to other international competitors for a very long time. The Greek Trade Office did not however comment specifically on the effect of the anti-dumping duty on prices of exports from Greece.
57. MBIE received no submissions from other parties on the effect of the duty on prices of canned peaches from Greece.

#### 2.1.2 Past experience

##### 2.1.2.1 Previous proceedings relating to Greece

###### *Countervailing duties*

58. A subsidy investigation resulted in the imposition of countervailing duties on canned peaches from Member States of the European Union in January 1998. The following duties applied to exports from Greece:
- Vermion Naoussa 21 per cent
  - Association of Co-operatives (AL.M.ME) 22 per cent
  - Other exporters 21 per cent.
59. The countervailing duties were reassessed in April 2000, with a rate of 8 per cent set for Greek producer Venus Growers.

60. Following a review in 2003, the countervailing duties were reassessed in December 2003, with rates for Greek suppliers being:
- Venus Growers – a confidential reference price (threshold) amount
  - Other exporters – an *ad valorem* rate of 11 per cent, with a confidential reference price cap.

61. Countervailing duties on canned peaches from the European Union ceased in July 2009 after a review found that they were no longer subsidised.

*Anti-dumping duties*

62. Anti-dumping duties were first imposed on canned peaches imported from Greece in March 1998 as follows:
- Vermion Naoussa - the amount by which the Normal Value (Value for Duty Equivalent) (NV(VFDE)) amount<sup>2</sup> exceeds the New Zealand Value for Duty of the goods when entered for home consumption.
  - AL.M.ME - a rate of duty of 0 percent *ad valorem*<sup>3</sup>.
  - All other subject goods - 17 percent *ad valorem*.

An anti-dumping duty reassessment in April 2000 found that AL.M.ME and Venus Growers were not dumping.

63. Since the original imposition of anti-dumping duties in 1998, at the application of HWL, MBIE, or its predecessor, has conducted reviews of anti-dumping duties that have resulted in the continuation of duties. Reviews and reassessments of anti-dumping duties on canned peaches from Greece were carried out in 2003, 2009, and 2015.

*2003 review and reassessment*

64. Following the 2003 review and reassessment, anti-dumping duties were continued from December 2003 through reference price amounts<sup>4</sup> for Venus Growers and an *ad valorem* rate of 23 per cent for other exporters.
65. MBIE has Customs data that allows it to analyse imports of canned peaches from 1 January 2005. Following the 2003 reassessment, anti-dumping duties were collected in 2005 and 2006 on significant import volumes at equivalent *ad valorem* duty rates of between 19 and 55 per cent. There was only one shipment in 2007 and anti-dumping duty of 23 per cent was collected on that importation.

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<sup>2</sup> Normal Value (Value for Duty Equivalent) (NV(VFDE)) amounts set a price level equivalent to the normal value in order to remove the effect of dumping.

<sup>3</sup> An *ad valorem* rate of duty is calculated as a percentage of the Customs value for duty.

<sup>4</sup> Non-Injurious Free on Board (NIFOB) or NV(VFDE) amounts.

*2009 review and reassessment*

66. Following the 2009 review and reassessment, the anti-dumping duties were continued from November 2009 for all exporters through confidential NIFOB and alternative NV(VFDE) reference prices. The NV(VFDE) amounts, which if applied removed the full margin of dumping, were set at EUR1.88 (410g), EUR1.66 (820g) and EUR1.53 (3kg).
67. Following this reassessment, anti-dumping duty was collected on only one small shipment of canned peaches from Greece (649kg in 2015) at an equivalent *ad valorem* rate of 90 per cent.

*2015 review and reassessment*

68. Following the 2015 review and reassessment, the anti-dumping duties were continued from July 2015 through confidential NIFOB and alternative NV(VFDE) reference prices. The NV(VFDE) amounts were set at EUR1.68.
69. Following this reassessment, there were no imports of canned peaches until 2019. During 2019, anti-dumping duties were collected on the basis of the amount by which VFDs were below the NIFOB amounts. The anti-dumping duties collected were equivalent to *ad valorem* rates in the range of 158 to 180 per cent, which is partly due to the low value of the imports.

*Impact of duties on prices of dumped goods*

70. For this full review, MBIE had access to Customs data from 2005. In considering the effect of the duties on prices, MBIE notes that the volumes of imports from Greece have been relatively small or non-existent since 2006. There was one importation in 2007, one small importation in early 2015, and then no imports until 2019. In the POR(D), 47 MT were imported from Greece making up 1.6 per cent of total imports of the subject goods in 2019 and these were described by the importers as one-off shipments.
71. Given the limited number of shipments of Greek peaches in recent years, MBIE is unable to draw any broad conclusions regarding any recent impact on prices of the anti-dumping duties that apply to imports from Greece.
72. MBIE considers that recent anti-dumping duties appear to have been imposed at levels that have likely increased purchase costs to the extent that importers have been unable to consider selling canned peaches from Greece in significant volumes in the New Zealand market since 2006.
73. MBIE also notes the Greek Trade Office's comment that Greek exporters "have faced an unfair disadvantage relative to other international competitors for a very long time," but notes that the public interest test takes into account costs to downstream industries and consumers in New Zealand rather than to foreign exporters.

**2.1.2.2 Other proceedings**

74. The anti-dumping duties previously imposed on preserved peaches from China, were terminated from July 2017, following a review and a reconsideration of that review. Anti-

dumping duties currently apply to some preserved peaches from Spain and canned peaches from South Africa, in addition to Greece.

75. Imports from Spain have been at relatively low levels since 2014 and MBIE considers that the amount of data available is not sufficient to allow any broad conclusions to be reached regarding any recent impact on prices of the anti-dumping duties in force against Spain.
76. South Africa is the largest foreign supplier of canned peaches to New Zealand. In the 2019 full review of the anti-dumping duties on canned peaches from South Africa, MBIE concluded that the imposition of the anti-dumping duties had affected the export price of the subject goods. MBIE referred to evidence of past behaviour, and particularly since the 2013 review, which showed that movements in export prices of canned peaches from South Africa had tended to follow changes in the level of anti-dumping duties. This reflected the fact that anti-dumping duties had generally been expressed as reference prices based on the margin of dumping, which meant that increases in export prices had increased returns to exporters, rather than requiring the payment of duties by importers, although the net effect on prices into the New Zealand market was similar.
77. China is also a significant supplier of canned peaches to New Zealand. In the 2019 reconsideration of the sunset review of preserved peaches from China, MBIE analysed the pricing of imports of the subject goods (which cover a broader range of goods than the South African review), and noted that on average, there did not appear to be a strong increase in export prices after the imposition of the duties in 2006, although prices have been steadily increasing since then, likely due to inflation.

### **2.1.2.3 Conclusion on previous duties**

78. MBIE does not have enough data on past pricing behaviour relating to the imposition or reassessment of the anti-dumping duties on canned peaches from Greece to allow an assessment to be made of the extent to which continuation of an anti-dumping duty at the determined amount might impact on prices of canned peaches from Greece. The fact that there have been no imports from Greece in recent years indicates that the duties have increased purchase costs to the extent that Greek peaches have not been able to compete in the New Zealand market.

### **2.1.3 Pass on of price increases**

79. While the continued imposition of a duty is likely to increase the price that importers have to pay for any imported subject goods, MBIE notes that import volumes have been low since 2006 so there will likely be little or no price impact on Greek canned peaches for current consumers and downstream industries. Both importers during 2019 stated that their imports of canned peaches from Greece were one-off purchases.
80. Because the canned peaches component of any downstream goods (such as baked products or restaurant meals) is likely to be a relatively small part of the total cost of any finished products, and because of the limited current use of Greek canned peaches, the duty is likely to have little effect when passed on to downstream industries in terms of their costs for finished products.

81. In the questionnaire for the full review stage 1 investigation, distributors and retailers were asked to what extent they would absorb the anti-dumping duty or pass it on and for what reasons. No responses were received. Past importers of the subject goods from Greece were asked to comment on the extent to which their prices would be likely to change if an anti-dumping duty was continued. MBIE received no responses.

#### **2.1.4 Price Factors**

82. In assessing the effect of the duty on the prices of the dumped goods, MBIE has considered relevant price factors in the market for the dumped goods, such as the responsiveness of the prices of the dumped goods to fluctuations in exchange rates and the presence of competition in the Greek export market for canned peaches. MBIE has considered these matters to determine whether any price effects are attributable to the continued imposition of anti-dumping duties rather than other causes.

83. As noted above, the limited number of shipments of Greek peaches in recent years means that MBIE is unable to draw any broad conclusions regarding the impact on prices of the anti-dumping duties that apply to imports from Greece.

84. Similarly, MBIE is unable to carry out any meaningful analysis of the effect of exchange rates on prices due to the limited number of imports of canned peaches from Greece in recent years.

85. MBIE notes that there are several producers of canned peaches from Greece, as shown by a search of the website of the Greek Cannery Association.<sup>5</sup> This introduces competition between Greek suppliers, which moderates prices available from those suppliers. The New Zealand market is not being supplied by a foreign monopolist from the Greek market, and prices therefore are not set at an artificially high level.

#### **2.1.5 Conclusion**

86. The determined rate of duty of 34 per cent is significant in terms of the potential impact on prices for canned peaches from Greece in the New Zealand market. However, given that there have been no significant imports of canned peaches from Greece in recent years, downstream industries and consumers are not likely to be affected by any increased prices due to continuation of the anti-dumping duty at the determined rate.

87. Downstream industries and consumers may be affected by the current anti-dumping duties to the extent that they are not able to source dumped canned peaches from Greece at lower prices. This situation may continue with the ongoing imposition of a duty, although MBIE notes that the duty is set at a lesser rate to remove injury only and not the full margin of dumping, so imports from Greece should be able to compete at the level of HWL's prices. The duty is also lower, at 34 per cent, than the equivalent percentage rate that applied to imports in 2019, which may provide scope for importing opportunities.

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<sup>5</sup> <https://www.seve.gr/en/company/greek-cannery-association/>

88. MBIE considers that the continued imposition of the duty at the determined rate is likely to increase prices that downstream industries and consumers will pay for the dumped goods, but notes that anti-dumping duties have been increasing the prices of any Greek canned peaches imported into New Zealand since 1998.

## **2.2 Effect of the duty on the prices of like goods produced in New Zealand**

89. MBIE is required to consider the effect of the duty on the prices of like goods produced in New Zealand. In this assessment, MBIE has had regard to the degree of substitutability between the imported and domestically produced goods; the extent to which the domestic industry is likely to change the price of the like goods in response to a change in the price of imported goods; and whether domestic prices are responding to market factors.
90. MBIE has developed the Public Interest Partial Equilibrium Simulation (PIPES) model to assist in the analysis of the potential economic impacts of the continued imposition of an anti-dumping duty. The use of the model is dependent on the availability of sufficient useful data.

### **2.2.1 Submissions**

91. In its application, HWL provided forecasts for sales revenue, sales volume, cost of production, gross profit and fixed costs for two scenarios – with no anti-dumping duty and with an anti-dumping duty. Where an anti-dumping duty is continued, HWL forecasts a small increase in net sales revenue per kg of like goods produced in New Zealand in 2021 and 2022. The increase makes it possible to recover increased costs of production.
92. On the other hand, HWL's forecast for the scenario where an anti-dumping duty is not continued shows a significant decline in net sales revenue per kg in 2021 which remains at the same reduced level in 2022.
93. HWL submitted that canned peaches are substitutable regardless of country of origin, cut or medium they are packed in. HWL positions the Oak brand to compete on price with other brands in the market and therefore "cost is paramount." HWL imports some of the volume of its Oak branded peaches. HWL advised that after the imposition of the determined anti-dumping duty, it would evaluate the costs from all countries of origin to determine the source of supply for the Oak brand.
94. MBIE received no submissions from other parties on the effect of the duty on the prices of like goods produced in New Zealand.

### **2.2.2 Past behaviour**

95. As noted above, given the limited number of shipments of Greek peaches in recent years, MBIE is unable to draw any broad conclusions regarding any recent impact of anti-dumping duties on prices that apply to imports from Greece.

96. Consumer Price Index information for supermarket retail prices for 410g cans shows that supermarket prices rose from 2006 to 2013, and have been declining since then.<sup>6</sup> Since Greek canned peaches have not been in the New Zealand market in significant quantities since 2006, the anti-dumping duties on canned peaches from Greece have had no impact on prices of like goods in New Zealand, except to the extent that anti-dumping duties may have priced Greek peaches out of the New Zealand market.

### **2.2.3 Substitutability**

97. MBIE considers that imported and domestically-produced canned peaches are like each other, as explained in the Stage 1 Final Report (section 2.3.1), and are substitutable. The goods share similar physical characteristics, function and usage, and distribution channels, and there are no grade distinctions on the New Zealand market.
98. In the 2019 review of anti-dumping duties on canned peaches from South Africa, MBIE noted that demand in New Zealand is sensitive to a change in the price of the goods and that canned peaches are purchased based on the lowest prices available in the market, not based on non-price factors such as quality or consumer perception. This indicates that the goods are highly substitutable for each other, and importers' purchasing behaviour is likely guided by the lowest prices in the market. MBIE has no reason to consider that this situation has changed.

### **2.2.4 Economic Assessment**

99. MBIE has not used the PIPES model to assess the effect of the continued imposition of an anti-dumping duty on canned peaches from Greece, as there is insufficient data available due to the lack of cooperation from the exporters to which the duty would apply.
100. Nonetheless, MBIE notes that in the recent review of anti-dumping duties on canned peaches from South Africa, MBIE concluded that, while the imposition of an anti-dumping duty provides an economic incentive to increase prices of like goods, past behaviour indicated that retail prices remained unaffected. MBIE also noted that even if a price increase of the domestically produced good was to occur, the loss faced by consumers would not be significant.
101. MBIE considers that there is unlikely to be a price response from HWL if the duty is continued at the rate determined, as there are few imports from Greece and the duty has been set at a level that only removes injury caused by price undercutting.

### **2.2.5 Price Factors**

102. In assessing the effect of the duty on the prices of like goods produced in New Zealand, MBIE has had regard to the current market situation, in particular assessing the relevant price factors in the domestic market that arise from competition.

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<sup>6</sup> <https://figure.nz/chart/WNZOpEoBKRYz4hBh-waz9zFPf1THUKbw1>

103. HWL is the sole manufacturer of canned peaches in New Zealand. If New Zealand was not open to trade, HWL would be a pure monopoly for the subject good, giving it market power to raise prices above costs with no risk of losing its profits to a new market participant. This kind of monopolistic behaviour would drive prices up with no incentive to lower them, which would be favourable to the monopolist but potentially very harmful to consumers and downstream industries.
104. Although HWL is the sole domestic producer, New Zealand is a small open economy, and competition is introduced to the market through international trade. HWL does not set monopolistic prices, as importers compete by sourcing the subject goods internationally.
105. If anti-dumping duties were to discourage the importation of canned peaches from global sources, there could be a risk of monopolisation of the New Zealand canned peach market. However, imports are available from several sources that are not subject to anti-dumping duties, including Australia, the United States, China, one supplier from South Africa supplier and one supplier from Spain.

### **2.2.6 Conclusion**

106. MBIE considers that the continuation of an anti-dumping duty is likely to result in a small increase in prices of the like goods produced in New Zealand to the extent that the duty responds to price suppression and allows HWL to recover increased costs of production. In other words, any increases in prices of like goods produced in New Zealand following the continuation of the duty will not be higher than would have been the case in the absence of injurious dumping.
107. MBIE notes that retail prices of some canned peaches has been declining in recent years. The absence of significant volumes of Greek canned peaches in the New Zealand market in recent years means that Greek peaches have not impacted on prices of like goods, including imports, and the continued imposition of the duty is unlikely to impact on prices of like goods in the New Zealand market.

## **2.3 Effect of the duty on the choice or availability of like goods**

108. MBIE is required to consider the effect of the duty on the choice or availability of like goods. In assessing this, MBIE has had regard to the potential impact that the continued imposition of the anti-dumping duty may have on the choice or availability of like goods in the New Zealand market, domestic production, and market shares of imported and domestically produced goods. MBIE has also considered the impact that the imposition of an anti-dumping duty has had on the choice or availability of like goods.

### **2.3.1 Submissions**

109. HWL expects there would be no changes to the market for canned peaches if the anti-dumping duty is continued, but if the anti-dumping duty ceases HWL expects that importers will look for opportunities to source product from Greece. HWL considers that the duty should have a levelling effect which would allow importers to still have a choice of country of origin and not exclude Greece as a choice.

110. MBIE received no submissions from other parties on the effect of the duty on the choice or availability of like goods.

### **2.3.2 New Zealand market**

111. The market for canned peaches in New Zealand is made up of domestically-produced and imported goods. Domestic production covers a majority of the share of the market while China and South Africa are the main sources of imported canned peaches.

112. Theoretically, two extremes relate to the effect of a duty on the choice or availability of goods.

- If the duty is continued, and the import market is highly price sensitive, the extreme effects of the impact of the duty on prices of the imported goods may be that importers stop purchasing from the dumping source. This could result in a decrease of supply of the internationally produced good, and a restriction on the range of goods available in the domestic market.
- If the duty is not continued, and the domestic industry continues to be materially injured by the dumped goods, the extreme effect may be the exit from the market of the domestic industry.

113. In relation to the first point, MBIE notes that anti-dumping duties have been in place on imports of canned peaches from Greece since 1998 and that there have been no significant volumes of imports since 2006. The lack of imports suggests that the current and previous anti-dumping duties had the effect of increasing prices to the extent that demand for Greek canned peaches decreased significantly.

114. In relation to the second point, if the New Zealand industry was to cease production, New Zealand would be wholly reliant on imports.

115. MBIE does not have sufficient meaningful information on prices of canned peaches from Greece to allow an assessment of their price elasticity. However in the review of anti-dumping duties on canned peaches from South Africa, MBIE considered that imports of canned peaches are highly price elastic, meaning that demand is sensitive to a change in the price of imports. MBIE considers that demand for Greek canned peaches would likewise be sensitive to a change in the price of imports.

116. Therefore, the continued imposition of the duty may motivate importers to continue finding lower-priced alternatives from other sources. Because the domestic industry is unable to meet market demand, importers are incentivised to remain in the market to supply the excess demand by sourcing goods globally. Although importers may be motivated to find a lower priced alternative, they are unlikely to stop supplying the market as there is a market opportunity to continue supplying. Although prices in the market may be affected, MBIE considers it unlikely that there will be a significant effect on the choice and availability in the New Zealand market. There are several other international markets available to supply the New Zealand market, including South Africa, which is the largest supplier of canned peaches to New Zealand, and China which is also a

significant supplier of canned peaches and to which anti-dumping duties do not apply. Anti-dumping duties also do not apply to one of the two South African producers.

117. On the other hand, as MBIE concluded in the Stage 1 Final Report (section 5.10), if the duty is not continued, the domestic industry will likely suffer material injury in terms of price undercutting, with consequent price depression and suppression, resulting in adverse impacts on sales revenue, EBIT, productivity, return on investments and growth. The theoretical extreme is that HWL may be forced to exit the market. If a situation like this were to unfold, the choice of canned peaches would be restricted by the loss of the domestic brands from the market, and only goods produced overseas would be available to consumers.
118. In the Stage 1 Final Report (section 6.3), MBIE noted that the purpose of the anti-dumping duty on canned peaches from Greece is to remove likely injury to the New Zealand industry and is not to prevent trade in canned peaches from Greece. The continued imposition of the anti-dumping duty does not mean that importing from Greece will be untenable. The determined anti-dumping duty has been set at a level that will remove price undercutting but does not remove the full margin of likely dumping. In the Stage 1 Final Report (section 5.4.2), MBIE noted that likely prices for imports from Greece (before the imposition of an anti-dumping duty) will hold a significant price advantage over the New Zealand industry's prices and prices for imports from other sources.

### **2.3.3 Conclusion**

119. MBIE concludes that the choice and availability of like goods after the continued imposition of the anti-dumping duty at the determined rate is likely to remain unchanged from what it has been in previous years.
120. If the anti-dumping duty is not continued, MBIE considers that the likely return of significant imports of peaches from Greece would result in more choice in respect of Greek canned peaches for consumers and end-users but no choice of New Zealand canned peaches if HWL were to decide to cease producing canned peaches.

## **2.4 Effect of the duty on product and service quality**

121. MBIE is required to consider the effect of the duty on product and service quality. In this assessment, MBIE has had regard to the goods' characteristics, including any industry or international standards that might be applicable, the extent to which the quality of goods or services in the market could be lowered upon the continued imposition of an anti-dumping duty, or without a duty in place, customer preferences and perceptions relating to quality of the products and of the service provided by the New Zealand industry and by Greek suppliers, and any other relevant considerations.

### **2.4.1 Submissions**

122. In its application, HWL stated that the canned peaches it produces are very similar to the canned Greek peaches in terms of physical characteristics. HWL noted that previous investigations have found that there is a high level of substitutability between canned

peaches of various cuts and mediums and, therefore, HWL considers that for consumers there will be no expected changes in terms of a standard of quality.

123. MBIE received no submissions from downstream industries or consumers on the effect of the duty on quality.

#### **2.4.2 Characteristics of the goods**

124. MBIE addressed the characteristics of the imported and like goods in section 2.3 of the Stage 1 Final Report, to the extent that it could given a lack of information from Greek producers and exporters. MBIE considered that HWL produces like goods to the canned peaches from Greece.

125. HWL has previously advised that the New Zealand market is not segmented by grade as in some overseas markets where consumers demand that the labels show the grade of the peaches (section 5.6.3 of the Stage 1 Final Report). No information was provided by Greek producers on the grades of canned peaches exported by them.

#### **2.4.3 Conclusion**

126. MBIE has no reason to believe that there will be any adverse impacts on product or service quality in New Zealand resulting from the continued imposition of the anti-dumping duty on the dumped goods.

### **2.5 Effect of the duty on the financial performance of the domestic industry**

127. MBIE is required to consider the effect of the duty on the financial performance of the domestic industry. In this assessment, MBIE has had regard to the current financial state of the domestic industry, the impact of imposing the duty and whether any effects, other than those intended, could arise from the continued imposition of the duty at the determined rate.

#### **2.5.1 Submissions**

128. HWL considers that if the anti-dumping duty ceases, it would be forced to evaluate whether to make a new application for an investigation, taking into account whether this would be futile given the outcome of this full review, or exit the industry.
129. MBIE received no submissions from downstream industries or consumers on the effect of the duty on the financial performance of the domestic industry.

#### **2.5.2 Assessment of injury factors**

130. In the full review stage 1, MBIE assessed the likely financial impact on HWL in terms of whether the expiry or removal of the anti-dumping duty would be likely to lead to a continuation or recurrence of injury. MBIE concluded that, if the anti-dumping duty expires, dumped imports of canned peaches from Greece are likely to result in the recurrence of material injury to HWL, the domestic industry.

131. MBIE has taken this injury analysis as the basis for assessing the effect of the duty on financial performance of the domestic industry for a full review stage 2. The relevant financial effects considered by MBIE are summarised below.

*Volume effects*

132. In the presence of anti-dumping duties, import volumes of canned peaches from Greece have been minimal since 2006. In the full review stage 1 (section 5.4), MBIE found that previous behaviour, and the competitive pricing of canned peaches from Greece, indicates that, in the absence of an anti-dumping duty, importers will likely revert to importing significant volumes of canned peaches from Greece.

*Price effects*

133. In the full review stage 1 (section 5.4), MBIE concluded that likely prices for imports from Greece will hold a significant price advantage over the New Zealand industry's prices.
134. MBIE's conclusion in the full review stage 1 regarding price effects (section 5.5.4) was that, in the absence of an anti-dumping duty, the continued dumping of subject goods from Greece is likely to result in continued price undercutting, with consequent price depression and price suppression.

*Sales volumes and revenue*

135. In the full review stage 1 (section 5.6.2), MBIE concluded that if the anti-dumping duty is not continued HWL is likely to experience a reduction in sales revenue but not sales volume.

*Market share*

136. In the full review stage 1 (section 5.6.3), MBIE concluded that it is unlikely that there will be a significant effect on HWL's market share if the anti-dumping duty is not continued, at least in the foreseeable future.

*Profits*

137. In the injury analysis in the full review stage 1 (section 5.6.4), MBIE concluded that, in the absence of an anti-dumping duty, EBIT is likely to decline.

*Other financial indicators*

138. In the full review stage 1 (sections 5.6.5 to 5.6.14), MBIE concluded that any effect on productivity, return on investments and growth will be the outcome of other effects that can be attributed to the recurrence of dumping and injury. Potential negative effects on cash flow and growth will likely arise from the impact on sales revenue and profits.
139. MBIE concluded that utilisation of production capacity is unlikely to decline. MBIE was unable to reach any meaningful conclusions on inventories, employment, wages, and ability to raise capital and investments.

### **2.5.3 Unintended effects**

140. MBIE is unaware of any effects, other than those intended, that could arise from the continued imposition of the duty.

## 2.5.4 Conclusion

141. MBIE concludes that the financial performance of the domestic industry will likely be adversely affected if the anti-dumping duty is not continued. The continuation of an anti-dumping duty at the rate determined by the Minister will remove likely significant effects on the financial performance of the domestic industry.

## 2.6 Effect of the duty on employment levels

142. MBIE is required to consider the effect of the duty on employment levels. In assessing this, MBIE has had regard to the extent to which the continued imposition or non-imposition of the duty would likely affect levels of employment in the domestic industry and in downstream industries.

### 2.6.1 Submissions

143. In its application, HWL claimed that the removal of the duty would have a significant adverse effect on its employment. In response to the Stage 2 Review Framework and Questionnaire, HWL considered that if the anti-dumping duty ceases, it would be forced to evaluate whether to make a new application for an investigation or exit the industry.
144. MBIE received no submissions from downstream industries or consumers on the effect of the duty on employment levels.

### 2.6.2 Employment effects on the domestic industry

145. In the full review stage 1 (section 5.10), MBIE noted that it was unable to reach any meaningful conclusions on employment, but considered that, in the absence of an anti-dumping duty, it was unlikely that there could be any adverse effects on employment by HWL, noting the following factors:
- Previous canned peach investigations and reviews show that HWL employs seasonal staff on an “as required” basis, and that year-on-year the number of seasonal staff required depends on the volume of peaches to be processed.
  - HWL processes the entire peach crop available from its contracted growers each year, so there would be no impact on employment in the short term.
  - HWL indicated in its application that, in the absence of an anti-dumping duty, it may have to decrease its prices when competing with dumped imports in order to maintain its sales volume and market share, which MBIE considers would result in no loss of employment.
146. MBIE notes that if HWL considered that decreasing its prices put the viability of its operations at risk, as indicated in its application, or decided not to decrease its prices to maintain volume, production of canned peaches may cease. Cessation of production of canned peaches would result in a loss of employment. HWL also claims that without canned peaches other crops such as canned pears and fruit salad production would not be sustainable, which MBIE notes would result in a further loss of employment.

### **2.6.3 Employment effects on downstream industries**

147. MBIE is not aware of canned peaches forming a significant part of the cost of producing any downstream products. In any case, canned peaches are available from sources other than Greece, should the downstream industries wish to avoid the duty.

### **2.6.4 Conclusion**

148. MBIE concludes that if the anti-dumping duty is continued HWL will benefit by being able to maintain employment. If the anti-dumping duty is not continued, HWL may experience a loss of employment.

149. The continued imposition of the duty would not have an effect on employment levels in any downstream industries.

## **2.7 Alternative supply (domestically or internationally) of like goods available**

150. MBIE is required to consider whether there is an alternative supply (domestically or internationally) of like goods available. In this assessment, MBIE has had regard to whether the domestic industry is able to meet domestic demand; whether the imported good is covering any demand that the domestic industry is unable to supply; whether there are any alternative sources of supply, competitive in price and quality, capable of accommodating additional demand; whether there are any technical specifications demanded by the domestic market that may restrict import possibility; the extent to which there is a risk of monopolisation of the supply of goods to New Zealand; and whether there are any non-price, non-supply factors to consider, such as contract terms and speed of delivery.

### **2.7.1 Submissions**

151. HWL expects that, if the anti-dumping duty is continued, the injurious effects of dumped canned peaches from Greece would be removed, while importers would have the choice of sourcing canned peaches from Greece or other countries of origin, including but not limited to Australia, the United States, South Africa, China and Spain.

152. MBIE received no submissions from downstream industries or consumers on whether there is an alternative supply of like goods available.

### **2.7.2 Domestic supply**

153. The volume of canned peaches produced in New Zealand fluctuates each year depending on production of the domestic crop of fresh peaches. HWL plans each year to import peaches to buffer against fluctuations in volumes of the domestic crop.

154. The New Zealand industry is unable to produce canned peaches to meet total market demand. Imports supply a major proportion of the New Zealand market.

### **2.7.3 Alternative supply**

155. The global market for canned peaches provides sources of alternative supply of like goods for New Zealand importers. These sources are competitive in price and quality, and are

capable of accommodating any additional demand. MBIE also notes that while the applied Customs rate of duty is 5 per cent, the availability of preferential rates at Free means that for some sources of the subject goods (such as Australia and China) there are no tariffs.

156. Anti-dumping duties do not apply to canned peaches from China or to a producer in South Africa which provide alternative sources of significant supply, nor do such duties apply to Australia which has been a significant source of supply in the past. Anti-dumping duties currently apply to all but one supplier of preserved peaches from Spain and to one supplier of canned peaches from South Africa. South Africa has continued to remain a significant source of supply of canned peaches for New Zealand importers, including from the supplier subject to anti-dumping duties.

#### **2.7.4 Technical specifications**

157. MBIE also notes that, as observed in the 2019 Full Review Stage 2 Report on anti-dumping duties on canned peaches from South Africa, there are no technical specifications demanded by the domestic market that might restrict import possibilities from international sources of supply.

#### **2.7.5 Risk of monopolisation**

158. HWL is the sole producer of canned peaches in New Zealand. If New Zealand was not open to trade, HWL would be a pure monopoly supplier of the subject goods, giving it market power to raise prices above costs with no risk of losing its profits to a new market participant. This kind of monopolistic behaviour, if exercised, would drive prices up with no incentive to lower them.
159. In the full review stage 1, Taste Greece, a previous importer of a small quantity of canned peaches from Greece claimed that HWL had almost monopolised the market in New Zealand with domestic and imported canned peaches so it would be impossible for small companies to be able to compete in this highly competitive industry, especially if they had no presence in the two major supermarket chains in New Zealand.
160. Although HWL is the sole domestic producer, New Zealand is a small open economy, and competition is introduced to the market through international trade. HWL states that it does not set monopolistic prices, as importers compete by sourcing like goods internationally.
161. If anti-dumping duties were to discourage importation of canned peaches, there could be a risk of monopolisation of the New Zealand market for canned peaches. However, anti-dumping duties apply only to suppliers found to be dumping, or likely to be dumping, and are intended to remove the material injury caused by dumping. Anti-dumping duties are not intended to discourage importation of goods at prices that do not result in injury attributable to dumping. MBIE notes that apart from some imports from South Africa and Spain, canned peaches from the rest of the world can enter free of anti-dumping duties. In particular, under the Australia New Zealand Closer Economic Relations Trade Agreement, imports from Australia cannot be subject to anti-dumping duties.

162. The continued imposition of an anti-dumping duty on imports of canned peaches from Greece at the rate determined by the Minister is not intended to divert trade away from this source, but only to address the material injury caused by dumping. If the duty was not continued and HWL ceased production of canned peaches, there would be no local production in the competitive mix in the market.
163. MBIE considers that there is no risk of monopolisation of the New Zealand market for canned peaches arising from the continued imposition of an anti-dumping duty on canned peaches from Greece. The continued imposition of the anti-dumping duty will support continuing production by the New Zealand industry and further reduce the risk of monopolisation by a dominant exporter.

### **2.7.6 Non-price, non-supply factors**

164. As noted in the 2019 Full Review Stage 2 Report on anti-dumping duties on canned peaches from South Africa, there are some relevant non-price and non-supply factors. Canned peaches are typically contracted for on an annual basis based on the exporting supplying country's season, and therefore a lag in contract timing may contribute to a short term delay in shifting to alternative markets for supply.

### **2.7.7 Conclusion**

165. MBIE notes that there are several countries other than Greece which are available to supply canned peaches to the New Zealand market to meet demand that cannot be supplied by domestic production. There have been relatively low levels of import volumes from Greece in recent years. MBIE concludes that the anti-dumping duty determined by the Minister is not likely to have any significant effect on alternative sources of supply of like goods.

## **2.8 Other factors essential to ensure the existence of competition in the market**

166. MBIE is required to consider the effect of the duty on any factors the chief executive considers essential to ensure the existence of competition in the market. In this assessment, MBIE has had regard to the current situation in the market, whether the market may be influenced by consumers purchasing substitute goods, the extent to which there are any complementary goods that may be affected, whether there is risk of monopolisation, how accessible the market is to new entrants; and any existing protection of the domestic industry.

### **2.8.1 Submissions**

167. HWL expects that, if the anti-dumping duty is continued, there would be no changes to the market, however if the duty ceases it may have to evaluate whether to exit the industry.
168. In its response to MBIE's Stage 2 Review Framework and Questionnaire, HWL stated that the domestic industry is not able to supply the entire market. HWL considers that the market is not monopolised and rather is competitive, with "numerous" brands competing

for market share and several brands holding significant market share. HWL points out that imports from Greece have been at low levels while the various brands have continued to compete for market share. HWL considers therefore that there is no risk of monopolisation if an anti-dumping duty is imposed on canned peaches from Greece.

169. HWL is unaware of any complementary goods whose market might be affected by a price increase on the subject goods from Greece, given that the volume of imports from Greece is low.
170. In its application, HWL considered that the market is highly competitive, noting that there are no long-term supply contracts in place for customers, house brand supply contracts are up for constant tender and all supermarkets stock brands of preserved peaches other than those supplied from HWL. HWL considers that the New Zealand market for canned peaches is accessible to new entrants.
171. As noted above, there are no technical specifications demanded by the domestic market that might restrict import possibilities from international sources of supply.
172. MBIE received no submissions from downstream industries or consumers on factors affecting the existence of competition in the market.

### **2.8.2 Current market situation**

173. In its application, HWL identified 18 brands that have been in the New Zealand market, including Wattie's and Oak. In the year ended 4 April 2020, twelve of those brands had a presence on the New Zealand market and the top six, which included Wattie's and Oak, held 99 per cent of market share. Domestically produced and imported canned peaches each hold major proportions of the New Zealand market and are both represented in major supermarkets.
174. In the 2019 Full Review Final Report on anti-dumping duties on canned peaches from South Africa, MBIE noted that the New Zealand market for canned peaches is sensitive to variations in price, and the domestically produced and internationally sourced goods are substitutable.

### **2.8.3 Substitutability and Complementarity**

175. MBIE considers that there is a high degree of substitutability between the domestically produced and internationally sourced goods, and has concluded above that the continued imposition of an anti-dumping duty is not likely to affect the choice or availability of goods in the market.
176. The continued imposition of an anti-dumping duty may also protect the domestic industry against the potential loss of production of canned fruit salad and canned pears due to dumped pricing of canned peaches.
177. MBIE notes that the continued imposition of an anti-dumping duty will allow the domestic industry to continue domestic production and is not likely to result in any decrease of supply of the internationally sourced goods, and is likely to maintain competition at current levels.

#### **2.8.4 Risk of monopolisation**

178. MBIE has addressed this matter above in section 2.7. MBIE also notes that the risk of monopolisation by the domestic industry is not high, based on the lesser duty approach set out in section 10E(2) of the Act being applied to the proposed duty. The purpose of a lesser duty is to apply the lowest possible duty to remedy the injury to the domestic industry caused by dumping, by setting the duty at a level that will only result in the prices of imports being raised to the non-injurious price level of the domestic industry rather than removing the full margin of dumping. The application of this approach is not intended to eliminate importation, mitigates the risk of monopolisation of the supply of goods by the domestic industry and ensures that competition is maintained in the market.

#### **2.8.5 Market accessibility**

179. The ability of new players to enter the market affects the level of competition. To the extent that there are few formal barriers to trade, new suppliers can freely enter the market.

180. In the 2019 Full Review Final Report on anti-dumping duties on canned peaches from South Africa, MBIE noted that there do not appear to be any significant barriers to entry to the New Zealand market, resulting in a high degree of price competition. The report noted that the market appears to be responding to normal market factors, and although demand exceeds domestic supply, it is being met by importers sourcing goods internationally. The information available to MBIE indicates that this situation has not changed.

181. MBIE considers that it would be relatively easy for established importers to switch to the supply of canned peaches from Greece. While entry to the market for a new importer of canned peaches may be more difficult, MBIE considers that market access would be possible depending on the extent to which a new importer of canned peaches had existing distribution channels in the food industry in New Zealand. In the Full Review Stage 1 Report (section 5.4.2), MBIE concluded that there is sufficient capacity for Greek exporters to supply canned peaches to New Zealand. MBIE considers that, given Greece is the largest supplier of canned peaches globally, Greek producers and exporters would be able to increase their supply of canned peaches to New Zealand.

#### **2.8.6 Existing protection of domestic industry**

182. The Normal rate of Customs duty for canned peaches is set at 5 per cent, but many current or potential sources of imports have preferential access free of duty under the relevant free trade agreements.

183. Recent reviews of anti-dumping duties on canned peaches from South Africa and preserved peaches, including canned peaches, from Spain have resulted in continuing anti-dumping duties on some, but not all, imports from those countries.

- South Africa - in November 2019, anti-dumping duties were continued at a rate of 16.4 per cent on imports from one of two South African producers, except for imports of A10 (3kg) cans on which no duty applied.
- Spain – in August 2019, MBIE reconsidered its previous review of anti-dumping duties on peaches in preserving liquid from Spain, in containers up to and including 4kg. Anti-dumping duties were not applied to imports of Spanish peaches from one Spanish producer, were applied to one producer at rates of 2.5 per cent for 850g cans and 15.9 per cent for 2.65kg cans, and to other producers at 7.9 per cent.

184. Both South African producers continue to export canned peaches to New Zealand and import volumes have been relatively steady for the past eight years. Spanish imports have continued at relatively low levels for the past seven years. Imports from Australia, cannot be subject to anti-dumping duties, but Australia has not been a major supplier for the past seven years.
185. MBIE considers that the anti-dumping duties currently imposed on some imports of preserved peaches from South Africa and Spain ensure that canned peaches enter New Zealand at the equivalent of non-injurious prices.
186. Anti-dumping duties do not appear to be impacting on A10 (3kg) cans, which is the can size likely to be used by downstream industries.

### **2.8.7 Conclusions**

187. Significant competition exists in the current market and, given the low level of imports from Greece, is unlikely to be affected by the continued imposition of a duty.
188. There is no risk of monopolisation of the New Zealand market for canned peaches arising from the continued imposition of an anti-dumping duty on canned peaches from Greece, given the availability of sources other than Greece, the ease with which established importers can switch supply and the potential for new entrants, particularly if they have established food distribution channels.
189. The continued imposition of the anti-dumping duty will address the likely injury attributable to likely dumping of canned peaches from Greece and will support continued production by the New Zealand industry, resulting in the maintenance of current levels of competition.
190. Although there is existing protection of the domestic industry in terms of normal tariffs and anti-dumping duties on preserved peaches from South Africa and Spain, anti-dumping duties do not apply to all suppliers in those countries.
191. MBIE therefore concludes that the continuation of an anti-dumping duty is unlikely to reduce competition in the New Zealand market for canned peaches.

## **2.9 Other Matters**

### **2.9.1 Submissions**

192. HWL submitted that if the anti-dumping duty ceases, it may have to evaluate whether to exit the industry. HWL's exit from the industry would have injurious effects on not only HWL as a company, but also peach growers and the wider Hawke's Bay community. HWL claims that orchardists would have to diversify to other crops, at significant cost and time delays. HWL claims that a reduction in employment by HWL would impact on subsequent economic benefits provided to the Hawke's Bay community and that the impact would be wider than just that from canned peaches as without canned peaches other crops such as canned pears and fruit salad production would not be sustainable.

### **2.9.2 MBIE's comments**

193. MBIE notes that its full review stage 2 is limited to consideration of whether the cost to downstream industries and consumers of continuing the imposition of the anti-dumping duty is likely to outweigh the benefit to the domestic industry of imposing the duty. MBIE is therefore unable to take account of the impact of the duty, or its cessation, on parties other than the domestic industry, downstream industries and consumers.

### 3. Conclusions

194. As set out in the Act, imposing the duty is in the public interest unless the cost to downstream industries and consumers of imposing the duty is likely to materially outweigh the benefit to the domestic industry of imposing the duty. MBIE has assessed each factor set out in section 10F(3) of the Act. MBIE considers that there are no additional matters that would affect this assessment.
195. MBIE received no submissions from downstream industries or from consumers and consumer groups. A submission was received from the Greek Trade Office in Sydney.
196. MBIE has found that consumers and downstream industries are likely to face increased prices for canned peaches sourced from Greece and produced domestically than they otherwise would if the anti-dumping duty was not continued. However, as the goods are considered to be highly substitutable, should consumers and downstream industries wish to purchase the goods from other sources, several other sources of supply remain open, free of anti-dumping duties.
197. MBIE has found that the determined anti-dumping duty is likely to benefit the domestic industry. More specifically, MBIE considers that the continuation of the anti-dumping duty will remove the injurious effects attributable to dumped imports from Greece that would otherwise adversely impact on HWL's financial performance, will allow HWL to maintain production of canned peaches, and is likely to ensure that there are no adverse impacts on employment.
198. MBIE considers that downstream industries and consumers will incur the cost of the continuation of the duty if they source, use, or purchase canned peaches from Greece. However, MBIE notes that there have been no significant volumes of imports from Greece since 2006 and that downstream industries and consumers will continue to have access to alternative supplies not subject to anti-dumping duties.
199. MBIE considers that any cost to downstream industries and consumers **is not** likely to materially outweigh the benefit to the domestic industry of imposing the duty.
200. MBIE's conclusion is that imposing the anti-dumping duty **is in the public interest**, and that the duty should be imposed at the determined rate.



## Annex: Comments received on the PIP Report

Comments on the PIP Report were received from the Government of Greece, through the Greek Trade Office. There were no submissions from other parties.

The Greek Trade Office expressed hope that the data it provided will help clarify the issue and prompted MBIE to reconsider the continuation of the anti-dumping duty imposed by New Zealand on Greek exports. MBIE has summarised the Greek Trade Office’s submission and has responded in the following table.

Government of Greece	
Submission	MBIE Comment
<p>The Greek Trade Office stated that Greek exports of canned peaches to New Zealand during the period 2014-2019 remained constantly at <math>\leq 1\%</math> of total New Zealand imports. The Greek Trade Office noted that the import volumes remain lower therefore than the 3% threshold stated in Article 5.8 of the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994.</p>	<p>These comments refer to matters that were dealt with in the full review stage 1, rather than to stage 2 where the consideration is whether imposing the anti-dumping duty is in the public interest.</p> <p>The Greek Trade Office made similar comments in the full review stage 1 with reference to Article 2.2 of the AD Agreement set out in Annex 1 of the Stage 1 Final Report. MBIE’s response was that the provision relating to termination of an investigation when imports are negligible, namely Article 5.8 of the AD Agreement, does not apply to reviews. MBIE found support for this view in <i>US – Corrosion-Resistant Steel Sunset Review</i> where the Panel considered the provisions of Article 11.3 of the AD Agreement, which relate to sunset reviews. The Panel stated that “[o]n its face, Article 11.3 does not mention, either explicitly or by way of reference, any negligibility standard that applies to the likelihood of continuation or recurrence of injury determinations in sunset reviews. Nor does the immediate context of Article 11.3 yield a different result. . . . Although paragraphs 4 and 5 of Article 11 contain several cross-references to other articles of the AD Agreement, no</p>

	<p>such cross-reference has been made to Articles 3.3 or 5.8.”</p> <p>The Act does not provide for any negligibility assessment as part of a review either, and indeed it would not be appropriate to apply the negligibility exclusion for reviews because the volume of dumped imports assessed when a duty is already imposed does not indicate what those volumes will be if the duties are removed.</p> <p>MBIE considers that the submission by the Greek Trade Office provides no reasons to change the conclusions in this Stage 2 Final Report.</p>
<p>The Greek Trade Office noted that Greek exports of canned peaches to the world are offered at consistently competitive prices in all relevant tariff categories (HS 200870, HS 20087061, HS 20087069, HS 20087071, HS 20087079), according to official Greek trade statistics which it provided to MBIE. The Greek Trade Office stated that the statistics show that the average price per kilogram of Greek exports to New Zealand seems to be well above the average price per kilogram of Greek exports to the world. The Greek Trade Office argued that, consequently the observed low cost of Greek products in New Zealand is not a result of unfair dumping practices on the part of Greek producers, and should not be addressed by anti-dumping measures.</p>	<p>These comments refer to matters relating to the full review stage 1 and the question of whether canned peaches from Greece are being dumped and are likely to cause material injury, rather than to stage 2 where the consideration is whether imposing the anti-dumping duty is in the public interest.</p> <p>In relation to dumping, in stage 1 MBIE compared export prices with normal values that were derived from prices for canned peaches sold in the ordinary course of trade for home consumption, as required by the Act. There was no need for MBIE to compare export prices to New Zealand with prices of exports from Greece to a third country or countries.</p> <p>MBIE has commented on the competitive pricing of Greek canned peaches above in section 3.2.2 referring to the Stage 1 Final Report (section 5.4.2), where MBIE noted that likely prices for imports from Greece (before the imposition of an anti-dumping duty) will hold a significant price advantage over the New Zealand industry’s prices and prices for imports from other sources.</p>
<p>The Greek Trade Office states that the market share of Greek canned peaches in New Zealand has been consistently limited during the past decades, therefore Greek products do not present a major risk factor for the</p>	<p>These comments refer to matters relating to the full review stage 1 and the question of whether material injury is likely to continue or recur if an anti-dumping duty is removed. MBIE dealt with market share in section 5.6.3 of the Stage 1 Final Report where it considered what the situation might be if</p>

<p>sustainability of local production.</p>	<p>anti-dumping duties are removed. While MBIE concluded that it is unlikely that there will be a significant effect on HWL's market share if the anti-dumping duty is not continued, at least in the foreseeable future, on the basis of consideration of all factors MBIE concluded that if the anti-dumping duty expires, dumped imports of canned peaches from Greece are likely to result in the recurrence of material injury to the domestic industry.</p>
<p>The Greek Trade Office claimed that removal of the anti-dumping duty will establish a level playing field for Greek exporters who have faced an unfair disadvantage relative to other international competitors for a very long time.</p>	<p>MBIE repeats its conclusion in stage 1 of the full review that if the anti-dumping duty expires, dumped imports of canned peaches from Greece are likely to result in the recurrence of material injury to the domestic industry in New Zealand.</p>