



**MINISTRY OF BUSINESS,  
INNOVATION & EMPLOYMENT**  
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# **Initiation Memo: Full Review of Anti-dumping Duties**

## **Canned Peaches from Greece**

**Trade (Anti-dumping and Countervailing Duties) Act 1988**

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## Full Review: Canned peaches from Greece

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1. Anti-dumping duties were first imposed on canned peaches imported from Greece in March 1998, following an application from Heinz Wattie's Ltd (HWL), the New Zealand industry. Since then, at the application of HWL, the Ministry of Business, Innovation and Employment (MBIE), or its predecessor, have conducted reviews of the anti-dumping duties.
2. The last full review and reassessment was completed on 15 July 2015. As a result of the reassessment, reference price anti-dumping duty rates were set for a range of different can sizes applying to all exporters of canned peaches from Greece.
3. The current duty was due to expire on 15 July 2020, unless subject to a review.
4. On 11 May 2020, MBIE received an application from HWL for a review of the current duty on canned peaches from Greece. HWL claims that if the anti-dumping duty is removed, dumped imports of canned peaches from Greece would cause a recurrence of material injury to HWL.

## Legal context

5. New Zealand implements its obligations under the World Trade Organization (WTO) Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the AD Agreement) through the Trade (Anti-dumping and Countervailing Duties) Act (the Act).
6. Under section 17D(1) of the Act, if an interested party submits positive evidence justifying the need for a review, then the chief executive must initiate a full review of the continued need for the duties.
7. MBIE considers that the standard for initiating a review as outlined in section 17D(1) of the Act, which speaks of "positive evidence justifying the need for a review" is not the same as that for a new investigation, as outlined in section 10A(1), which speaks of "sufficient evidence".
8. MBIE also takes guidance from the Appellate Body of the World Trade Organization (WTO) in *US – Hot Rolled Steel* which states (at paragraph 192) that regarding "positive" evidence, "the evidence must be of an affirmative, objective and verifiable character, and that it must be credible."<sup>1</sup>
9. Section 17C of the Act sets out the purpose of a full review:

The purpose of a full review is to investigate, in relation to an anti-dumping or a countervailing duty, whether—

  - (a) continued imposition of the duty is necessary to offset dumping or subsidisation; and

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<sup>1</sup> United States – Anti-dumping measures on certain hot-rolled steel products from Japan, Report of the Appellate Body, WT/DS184/AB/R

- (b) material injury or threatened material injury to an industry, or material retardation of the establishment of an industry, would be likely to continue or recur if the duty expired or were otherwise removed or varied.
10. MBIE considers therefore that in a review, the positive evidence provided in an application should support a proposition that the continued imposition of anti-dumping duty is necessary to offset dumping and that material injury to the New Zealand industry would be likely to continue or recur if the duty expired or were otherwise removed or varied.
11. Dumping is defined in section 3(1) of the Act as “the situation where the export price of goods imported into New Zealand or intended to be imported into New Zealand is less than the normal value of the goods as determined in accordance with the provisions of this Act.”
12. The basis for considering material injury is set out in section 8(1) of the Act:
- (1) In determining for purposes of this Act whether or not any material injury to an industry has been or is being caused or is threatened or whether or not the establishment of an industry has been or is being materially retarded by means of the dumping or subsidisation of goods imported or intended to be imported into New Zealand from another country, the chief executive shall examine –*
- (a) the volume of imports of the dumped or subsidised goods; and*
- (b) the effect of the dumped or subsidised goods on prices in New Zealand for like goods; and*
- (c) the consequent impact of the dumped or subsidised goods on the relevant New Zealand industry.*
13. The Act goes on to set 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 set out in section 8(2)(a) to (d) of the Act include:
- The extent to which there has been or is likely to be a significant increase in the volume of dumped goods, either in absolute terms or relative to production or consumption;
  - The extent to which the prices of dumped goods represent significant price undercutting in relation to prices in New Zealand;
  - The extent to which the effect of the dumped goods is or is likely significantly to depress prices for like goods of New Zealand producers or significantly to prevent price increases for those goods that otherwise would have occurred;
  - The economic impact of the dumped goods on the industry, including actual or 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.
14. In addition, the chief executive must have regard to factors other than dumped imports which may be injuring the industry, since in accordance with Article 3.5 of the AD Agreement, it must be demonstrated that the dumped imports are, through the effects of dumping, causing material injury, and injury caused by other known factors must not be attributed to the dumped imports. These other factors, set out in section 8(2)(e) of the Act,

include the volumes and prices of non-dumped imports of the goods; contraction in demand or changes in the patterns of consumption; trade restrictive practices of and competition between the foreign and domestic producers; developments in technology; and the export performance and productivity of the domestic industry.

15. The chief executive is also required by section 8(2)(f) of the Act to have regard to the nature and extent of importations of dumped goods by New Zealand producers if like goods, including the value, quantity, frequency, and purpose of any such importation.
16. In accordance with section 8(3) of the Act, the chief executive may disregard any information that the chief executive considers to be unreliable.
17. Reviews are addressed in Article 11 of the AD Agreement, and require findings relating to the likelihood of injury. The relationship between Article 11 and Article 3 of the AD Agreement which addresses injury in an investigation, has been the subject of dispute settlement in the WTO.
18. In *US – Oil Country Tubular Goods Sunset Reviews*, the Appellate Body upheld the Panel’s finding that the obligations set out in Article 3 (in relation to the determination of injury) do not apply to likelihood-of-injury determinations in sunset reviews.<sup>2</sup> However, the Appellate Body also noted that this was not to say that in a sunset review determination, an investigating authority is never required to examine any of the factors listed in Article 3. The Appellate Body considered that certain of the analyses mandated by Article 3 and necessarily relevant to the original investigation may prove to be probative, or possibly even required, in order for an investigating authority in a sunset review to arrive at a reasoned conclusion. The Appellate Body stated that, in this respect, it was of the view that the fundamental requirement of Article 3.1 that an injury determination be based on “positive evidence” and an “objective examination” would be equally relevant to a likelihood determination under Article 11.3. It seemed to the Appellate Body that factors such as the volume, price effects, and the impact on the domestic industry of dumped imports, taking into account the conditions of competition, may be relevant to varying degrees in a given likelihood-of-injury determination. An investigating authority may also, in its own judgement, consider other factors contained in Article 3 when making a likelihood-of-injury determination, but that determination results from the requirements of Article 11.3, not Article 3, and must rest on a “sufficient factual basis” that allows the agency to draw “reasoned and adequate conclusions.”<sup>3</sup>
19. Bearing in mind the views of the Appellate Body, as outlined above, MBIE notes that with regard to an injury determination, section 8 of the Act 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 that may be considered. These factors and indices are considered under the relevant headings below. Furthermore, the demonstration of a causal relationship between 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

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<sup>2</sup> US — Oil Country Tubular Goods Sunset Reviews, Report of the Panel, WT/DS268/R, Report of the Appellate Body, WT/DS268/AB/R.

<sup>3</sup> Ibid, paragraph 284.

industry. Any injury, or likely continuation or recurrence of injury, caused by factors other than dumping must not be attributed to the dumped imports.

20. In determining whether the evidence provided by HWL is positive evidence justifying a review, MBIE takes guidance from these provisions of section 3 and 8 of the Act.

## Review framework

21. The imported goods that are subject to the application (the subject goods) are described as:
- Peaches (halves, slices or pieces) packed in retail size cans.*
22. HWL considers the subject goods are classified under the tariff item and statistical keys 2008.70.09.00 of the Tariff of New Zealand. The subject goods are not separately defined as the tariff item also includes preserved nectarines and peaches falling outside of the definition of the subject goods, such as peaches in different container types or sizes.<sup>4</sup>
23. The rate of customs duty that currently applies to canned peaches from Greece is the normal rate of duty of 5 per cent.
24. The goods which HWL produces were confirmed to be “like goods” to the subject goods in the original investigation in 1998. HWL has confirmed that it continues to be the only producer of canned peaches in New Zealand, and that it makes “like goods” to the goods imported from Greece under the tariff code and statistical key above, as they have the same form, function and usage. Based on the statement by HWL in its application and the evidence from the original investigation, and other investigations into like goods from other origins, MBIE considers that there is sufficient evidence to conclude that the canned peaches produced by HWL are “like goods” to the goods subject to the duty.
25. HWL has advised that it is the only New Zealand producer of canned peaches, and therefore constitutes the New Zealand industry. MBIE accepts this claim.
26. The period of review for dumping (POR(D)) is the calendar year 2019, and the period of review for injury (POR(I)) is the calendar years 2014-2019.
27. In terms of the importers and exporters for the POR(D), MBIE has identified through Customs data that there was one exporter, and two importers of the subject goods from Greece. A review will establish the extent to which these parties continue to import canned peaches from Greece, and whether these imports are dumped and causing material injury to HWL.
28. The Government of Greece and the European Commission are also considered interested parties under the AD Agreement.<sup>5</sup>
29. In this Memo, unless otherwise stated, financial years (FY) are years ended 30 June, and dollar values are New Zealand dollars (NZD). All volumes are expressed on a kilogram (kg) basis unless otherwise stated. The exchange rates used are the New Zealand Customs

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<sup>4</sup> For the sake of this review, retail can sizes range between 410g/415g cans, 820g/825g cans and 2.95kg/3kg (A10) cans.

<sup>5</sup> Article 6.11 of the AD Agreement.

Service (Customs) exchange rates, or the rate provided by the applicant and that MBIE considers most appropriate in the circumstances, as indicated in the text.

30. Following initiation, exporters and importers will be directly invited to make submissions and provide responses to questionnaires. Importers will be given 30 days, and exporters and manufacturers will be given 37 days to respond to questionnaires.<sup>6</sup> MBIE allows this additional week for exporters and foreign manufacturers to allow for any translation and postal delays.
31. In reviews MBIE maintains a public file, where non-confidential copies or summaries of all review documents are available on request. Interested parties are entitled to request a copy of the public file at any point during the review.
32. The duty will remain during the course of the review. If, following stage 2 of the review, the Minister of Commerce and Consumer Affairs (the Minister) determines that the duty should continue to be imposed at the new rate, the duty will apply for another five years. If the Minister determines the duty should be terminated, MBIE will recommend that the Minister terminates the duty under section 17Y(1) of the Act.

## Conclusion

33. MBIE considers that the application provides positive evidence justifying the need for a review. The assessment of the application in terms of sections 3(1) (dumping), 8(1) and (2) (material injury) of the Act are presented below.

## Continued imposition of the duty is necessary to offset dumping

### Dumping - Sections 3(1), 4, 5 and 17C(a) of the Act

Application	MBIE's assessment of positive evidence
<b>s.3(1) Dumping, in relation to goods, means the situation where the export price of goods imported into New Zealand or intended to be imported into New Zealand is less than the normal value of the goods as determined in accordance with the provisions of this Act, and dumped has a corresponding meaning</b>	
<b>s.4 Export Price</b>	
To calculate export prices, HWL has used import statistics sourced from Infoshare, as well as export volumes and value from Greece to other global markets from TradeData International Pty Ltd. These statistics show the value for duty (VFD), which is effectively the free on-board (FOB) value.  The statistics that HWL provided show the total	MBIE notes that the trade statistics sourced from Infoshare may include importations of peaches in containers other than cans, as well as other goods, such as canned nectarines (as the New Zealand tariff code and statistical key does not discriminate between canned peaches, nectarines or different types and sizes of cans).  An analysis of the Customs import entries shows

<sup>6</sup> As required by Article 6.1 of the AD Agreement.

VFD for the month February 2020 was NZD9,772 for 7,344 kg of imports. This equates to an average of NZD1.33 per kg for the month of February 2020.

**Adjustments**

To ensure that the export price and normal value are compared at the same level of trade, normally at the ex-factory level, the FOB (VFD) values have to be adjusted by deducting the costs incurred after the goods have left the factory, such as freight, until they are in place on-board the ship at the port of export (FOB).

*Freight*

To calculate the ex-factory export price per kg, HWL made an allowance of one per cent of the FOB, or EUR0.01 per kg, to represent the expense of freight from factory to port of export in Greece.

HWL states that this figure represents a short transit compared to the transit of like goods in Greece, and that it is likely understated. HWL notes that it has no knowledge of the freight rates for the subject goods in Greece.

*Exchange rate*

To reach a free-on-board (FOB) export price in Euros, HWL converted the New Zealand VFD prices to Euros. HWL calculated the exchange rate to be EUR0.586:NZD, by taking the average exchange rate for the month of February 2020 from [www.x-rates.com](http://www.x-rates.com), a free online currency exchange conversion service. HWL calculated the average FOB export price over February 2020 to be EUR0.78 per kg.

*Ex-factory export price*

The result of the adjustments below by HWL is an ex-factory export price of EUR0.77 per kg (for February 2020).

*Other methods*

HWL also provided evidence of export prices calculated in two other ways. The first is based on export prices for the year March 2019 to February 2020 based on Infoshare data to give a figure of NZD1.10, which after the deduction of estimated freight costs is EUR0.64. Secondly, HWL provided export volumes and value from

that the majority of the Greek imports in calendar year 2019 are the canned peaches subject to review. For the purposes of initiation of a review, MBIE considers HWL relied on the best information available to it, and considers the Infoshare information suitable.

MBIE accepts HWL's calculation of the VFD per kilogram of canned peaches from Greece for review initiation purposes. MBIE has assessed HWL's claims against data from Customs and considers HWL's claims to be reasonable, based on the information available to it, for estimating base export prices.

**Adjustments**

*Freight*

MBIE considers that HWL's estimate of one per cent adjustment to the New Zealand dollar VFD (FOB) prices to account for freight from factory to port is reasonable. While the inland freight to port cost information available to MBIE indicates that the one percent figure used by HWL is a little low (as explained by HWL), MBIE does not consider it impacts significantly on the quality and accuracy of the export price information provided by HWL. Also, there are likely to be other costs involved in the export of the goods up to the FOB point in Greece, such as port handling charges and clearance fees. Such costs, if relevant, would reduce the export price further, increasing the corresponding estimated dumping margin.

*Exchange rate*

MBIE considers it reasonable to make currency conversions on a monthly basis (rather than annual) for average exchange rates. Converting the export prices at the lowest time interval gives the most accurate picture of what the importers would have likely paid for the relevant shipments.

*Ex-factory export price*

MBIE accepts the use of the February 2020 data for export price (the first method) to be compared with normal values as a reasonable basis for calculating export price, since HWL's normal value data is based on April 2020, as outlined below. MBIE considers this is the most reasonable option for comparison out of the

<p>Greece to other global markets from TradeData International Pty Ltd for the year ended December 2019 and the month January 2020 to give a figure of EURO.88 and EURO.84 respectively, after all deductions.</p>	<p>three export prices provided by HWL for the purposes of initiating a review.</p>
<p><b>s.5 Normal Value</b></p>	
<p>To calculate a normal value for canned peaches sold in the Greek domestic market, HWL obtained retail selling prices of canned peaches in Greece for use as its base prices. It then made adjustments to these prices to arrive at an average ex-factory selling price to compare with the ex-factory export price in its dumping calculations.</p> <p>The prices were provided for April 2020. Evidence of these prices was provided through a print-out showing details of the prices, labels, styles (e.g. halves, sliced), can size (410g and 825g cans) and store/supermarket. Using the above information HWL calculated an average selling price for 410g and 820g size cans. HWL stated that this amount was an average price for 410g cans only.</p> <p><b>Adjustments</b></p> <p><i>Value Added Tax (VAT)</i></p> <p>Normal values are calculated exclusive of value added tax (VAT). HWL notes that the standard VAT rate in Greece is 13 per cent. Export prices do not incur VAT. To ensure a fair comparison with export prices under Article 2.4 of the AD Agreement, HWL deducted the VAT in its normal value calculations to domestic sales but not to export sales.</p> <p><i>Retailer margins</i></p> <p>HWL also deducted an estimated retailer margin. HWL claims that the figure is based on its knowledge of the distribution of canned peaches in New Zealand. HWL has not provided any evidence to support its claim that the New Zealand margin is relevant in the Greek markets, or that the New Zealand market displays sufficiently similar characteristics to the Greek market to use the same retail margin. MBIE does</p>	<p>For the purposes of initiation of a review, MBIE accepts the retail prices that HWL has provided as the basis for establishing a normal value. The prices reflect sales of a suitable range of goods, for a suitable number of labels and are in respect of the range of types of peaches and can sizes available. During the review MBIE will, to the extent possible, investigate the normal value of canned peaches sold in Greece for sales made at as nearly as possible the same time.</p> <p>A check of the prices included in the calculation indicates that this average was not only for 410g cans, but also for 820g cans, 3.55kg cans, 2.55kg cans, etc. As the export prices were calculated for all sizes of subject goods, MBIE considers it is reasonable that the normal value calculations should also be based on all sizes of subject goods to allow for a fair representation of the normal value when compared with the export price.</p> <p><b>Adjustments</b></p> <p><i>Value Added Tax (VAT)</i></p> <p>For the purposes of initiating a review, MBIE considers HWL’s approach to accounting for VAT is reasonable, but will need to investigate VAT rate further in the course of the review.</p> <p>MBIE confirmed this rate through an online search<sup>7</sup>, and notes that the Standard VAT rate is 24 per cent in Greece, but some foodstuffs receive a reduced VAT rate of 13 per cent. MBIE will need to establish in the course of the review whether canned peaches are charged a VAT rate of 13 per cent, rather than 24 per cent.</p> <p><i>Retailers’ margins</i></p> <p>After having considered all of the information available to it, MBIE considers that the retailer margin used by HWL is acceptable for the purposes of initiation of a review. HWL has not</p>

<sup>7</sup> <https://www.avalara.com/vatlive/en/country-guides/europe/greece/greek-vat-rates.html>

<p>not have access to such information at this stage, and will investigate this matter further to the extent necessary in the review.</p> <p><i>Freight to customer</i></p> <p>HWL estimated and deducted the cost of freight to customer. This deduction was made by HWL based on its understanding of local New Zealand freight charges.</p> <p><i>Ex-factory normal value</i></p> <p>After the adjustments, HWL calculated that the ex-factory normal value is EUR1.74 per kg, based on the adjustments outlined below and calculated for a mixture of can sizes.</p>	<p>allowed for a wholesaler’s margin, but it is unclear to what extent wholesalers are involved in the domestic transaction process in Greece. During the review, MBIE will investigate the extent, if any, to which wholesalers are involved in the domestic sales process and make an adjustment for a wholesaler’s margin if relevant.</p> <p><i>Freight to customer</i></p> <p>MBIE is satisfied that the information that HWL has provided likely over-estimates the cost of freight to customers, but MBIE is satisfied that the estimate will suffice for the purpose of initiation.</p> <p><i>Ex-factory normal value</i></p> <p>MBIE accepts HWL’s calculation of an ex-factory normal value.</p>
<p><b>Dumping Margin</b></p>	
<p>Comparing the export price and normal value which HWL calculated gives a dumping margin of EUR1.10 per kg, or 126 per cent of the ex-factory export price.</p>	<p>MBIE is satisfied that the evidence provided in the application indicates that dumping is likely to continue.</p>

34. On the basis of the information in HWL’s application, and the considerations outlined above, MBIE is satisfied that for the purposes of initiating a review, HWL has provided positive evidence that dumping is occurring with the duty in place, and is likely to continue in the absence of the duty.

## Likelihood of continuation or recurrence of injury

### Injury - Sections 8 and 17C(b) of the Act

Application	MBIE’s assessment of positive evidence
<p><b>s. 8(2)(a) the extent to which there has been or is likely to be a significant increase in the volume of imports of dumped or subsidised goods either in absolute terms or in relation to production or consumption in New Zealand</b></p>	
<p><b>Current import volumes</b></p>	
<p>HWL indicates an import volume of canned peaches from Greece of 73,862 kg for the year ended February 2020.</p> <p>It is noted that canned peaches coming within the subject goods are not separately identified in the Tariff of New Zealand, as the Tariff item (2008.70.09.00) also includes nectarines and peaches in containers outside of the description</p>	<p>MBIE considers the publicly available import statistics from Infoshare to be sufficient for the purpose of initiation and concludes that imports of canned peaches from Greece, under tariff item 2008.70.09.00, held a 1.9 per cent share of total imports for the year ended February 2020.</p>

<p>of the subject goods.</p>	
<p><b>Likely import volumes</b></p>	
<p>HWL identified from TradeData that in the last 12 months, the export price from Greece to the world has been decreasing, which it believes may indicate oversupply and excess capacity. HWL further notes that the threat of injury exists if the existing anti-dumping duty is removed due to the high capacity of the Greek canned peach industry and current global economic pressures being placed upon this industry. HWL believes that inventory will be available, and it is a reasonable expectation that cost savings from the removal of the duty would be passed on to consumers.</p> <p>HWL has not provided any estimates of the likely change in import volumes from Greece should the duty be removed, although it has provided forecasts of its own sales volumes from 2020 to 2022 if the duty is removed, which indicate a loss of sales volume. HWL claims that a volume in the range of 100-300 tonnes of additional imports would be enough to cause the price effects that it claims in section 2.2.</p> <p>It is also believed by HWL that it would be easy for New Zealand parties to set up trading arrangements with exporters from Greece. HWL believes that this, in combination with the economic threat to the Greek industry plus the recent increase of imports into New Zealand, would all indicate that a forecast of increased imports in the absence of the anti-dumping duty would be a logical assumption.</p>	<p>MBIE notes that Greece is not contributing a significant portion of supply to the New Zealand canned peach market.</p> <p>MBIE has considered HWL’s claims and examined Customs data as a cross-check. Looking at Customs data, MBIE notes that all imports of subject goods from Greece in calendar year 2019 were below the reference price, and that anti-dumping duty was collected on them.</p> <p>During the review, MBIE will need to consider the extent to which Greek exporters would likely increase their supply to New Zealand in the absence of an anti-dumping duty.</p> <p>MBIE is satisfied that should anti-dumping duties be terminated, there is positive evidence to indicate the likelihood of significant volumes to recur.</p>
<p><b>s.8(2)(b) the extent to which the prices of the dumped or subsidised goods represent significant price undercutting in relation to prices in New Zealand (at the relevant level of trade) for like goods of New Zealand producers</b></p>	
<p><b>Price Undercutting</b></p>	
<p>HWL claims that price undercutting will occur if the anti-dumping duty is removed. For its price undercutting analysis without the anti-dumping duty, HWL calculated the ex-wharf import price for imported peaches.</p> <p>HWL compared this ex-wharf import price with its own ex-warehouse net sales value per kg. This is the level of trade which HWL considers the</p>	<p>MBIE has identified from Customs data that all imports of subject goods from Greece in calendar year 2019 were below the reference price, and the anti-dumping duty was collected on all shipments. Therefore, MBIE considers that the export price used by HWL and based on FOB import values is indicative of the level of price undercutting in the absence of the anti-dumping</p>

<p>imported and domestically produced products first compete with each other in New Zealand, and which HWL claims has been used in previous investigations for the price undercutting analysis.</p> <p>HWL calculates the level of price undercutting at 41 per cent for its Wattie’s brand and 30 per cent for its Oak brand.</p> <p>HWL notes that it maintains a price premium on its Wattie’s brand. HWL notes that in recent reviews, MBIE has focused on determining the price undercutting margin to the Oak brand. To maintain the relative percentage premium that Wattie’s maintains in the market, HWL has applied the undercutting percentage from the Oak brand to the Wattie’s brand in the injury analysis.</p>	<p>duty.</p> <p>MBIE considers that there is positive evidence to indicate that it is likely that price undercutting will recur if the current anti-dumping duty is removed.</p>
<p><b>s.8(2)(c) the extent to which the effect of the dumped or subsidised goods is or is likely significantly to depress prices for like goods of New Zealand producers or significantly to prevent price increases for those goods that otherwise would have been likely to have occurred</b></p>	
<p><b>Price Depression</b></p>	
<p>HWL notes in its application that unsustainable price differences have previously occurred when dumped or subsidised imports have entered the New Zealand market, which resulted in such a loss of volume and market share for HWL products that its prices for the premium range were forced downwards. HWL considers that a similar effect is likely to occur if the anti-dumping duty on canned peaches from Greece is removed.</p> <p>HWL also notes that it is attractive to importers and retailers to command a price of less than NZD1.00 per 410g can of peaches and that in the absence of the anti-dumping duty on Greek imports, this would be achievable for canned peaches from Greece. HWL used TradeData international data for the past 12 months globally to illustrate that with the export price calculated in section 1.1, adding an amount for insurance and freight, retailers could retail a 410g can of peaches for NZD0.79 and make a profit.</p> <p>HWL has provided calculations in its application showing likely price decreases for its canned peaches in 2021 and 2022 if the duty is removed and HWL is forced to compete with the dumped</p>	<p>MBIE understands that retailing a 410g can of peaches for less than NZD1.00 per unit would be attractive to retailers, and that on the basis of the information provided by HWL, is likely to be achievable in respect of imports from Greece.</p> <p>MBIE considers that HWL has provided positive evidence of a likely recurrence of price depression in the absence of the anti-dumping duty.</p>

<p>imports on price.</p>	
<p><b>Price Suppression</b></p>	
<p>HWL submits that price suppression would recur if the anti-dumping duty is removed because HWL would be unable to offset significant price undercutting by Greek imports by means of cost savings and price increases elsewhere. HWL claims that its cost base would increase due to a loss of market share causing increased fixed processing costs per tonne.</p> <p>HWL has provided calculations in its application showing likely price suppression in 2021 and 2022 if the duty is removed and HWL is forced to compete with the dumped imports on price.</p>	<p>MBIE has examined the forecast figures provided by HWL and notes that HWL’s contribution margin and gross profit per unit are forecast to decline significantly in the absence of the anti-dumping duty.</p> <p>MBIE considers that HWL has provided positive evidence that if the anti-dumping duty is removed it will face a recurrence of price suppression.</p>
<p><b>s.8(2)(d) the economic impact of the dumped or subsidised goods on the industry, including</b></p>	
<p>i. actual and potential decline in output, sales, market share, profits, productivity, return on investments, and utilisation of production capacity; and</p>	
<p><b>Sales Revenue and Profit</b></p>	
<p>HWL has used the ex-wharf import price of Greek peaches from its price undercutting analysis to indicate the ex-wharf import price in the absence of the duty.</p> <p>HWL claims that, in the absence of the anti-dumping duty, in order to sell its inventory of canned peaches and maintain market share it is reasonable to expect HWL will have to compete at the new depressed price level through increasing promotional discounts (trade marketing) with customers to pass onto consumers. This reflects a loss of sales revenue through price discounting, which passes to HWL’s profit line.</p> <p>HWL has made forecasts in supplementary Confidential Appendices on its assumptions, and calculated that sales revenue would be 68 per cent of the 2019 level for each of the calendar years 2021 and 2022.</p> <p>HWL contends that the loss in sales revenue forecast indicated above reflects that it will need to incur more trade marketing activity to protect its volume market share. Therefore, this loss in sales revenue directly impacts profit by 188% for each of the calendar years 2021 and 2022.</p>	<p>MBIE considers that HWL has provided reasonably available positive evidence that price undercutting will result in losses of sales revenue and Earnings Before Interest and Tax (EBIT).</p>

<b>Market Share</b>	
<p>HWL claims that if the anti-dumping duty is removed, HWL will suffer a loss of market share. As evidence, HWL refers to previous investigations, which have indicated that the entry into the New Zealand market of dumped canned peaches has resulted in a loss of market share for HWL canned peaches.</p>	<p>MBIE notes that while HWL refers to a loss in market share due to dumped peaches in the past, it is not positive evidence of what is likely to happen in the future if the anti-dumping duty is removed from Greek imports.</p> <p>In respect of the current review application, while HWL provides data for market share by brand, HWL does not provide forecast figures for any loss of market share.</p> <p>MBIE considers that HWL has not provided positive evidence of a likely loss in market share if the duty on Greek imports is removed. Furthermore, forecasts indicate that any injury to HWL will be mainly through decreased sales revenue and EBIT.</p>
<b>Productivity</b>	
<p>HWL claims that currently, imports of preserved peaches from Greece would appear to not be having an injurious effect on HWL productivity due to either the anti-dumping duty in place partially addressing the magnitude of dumping, or the current imports falling outside of the like goods definition.</p> <p>However, HWL claims that removal of the anti-dumping duty would result in a reduction in its productivity. HWL is currently committed to contracted growers to take their crop for 2021 and 2022. HWL indicates in its application that should dumped import pricing be passed onto consumers, HWL would need to consider whether all or none of the crop would be processed.</p>	<p>MBIE accepts HWL’s claim that imports of preserved peaches from Greece are not currently having an injurious effect on HWL’s productivity, and considers it a reasonable assumption that if duties were removed and dumped goods were imported, it would result in a reduction of productivity.</p>
<b>Return on investments</b>	
<p>HWL states that if the anti-dumping duty is not in place, returns would diminish, and that this in turn could cause further injury to other areas of HWL’s agricultural operations in New Zealand.</p>	<p>MBIE notes HWL’s claims that the removal of the anti-dumping duty will result in lower selling prices, leading to lower profits, as highlighted in its application. If this situation eventuated, HWL would also suffer a lower return on investments.</p>
<b>Utilisation of production capacity</b>	
<p>In its application, HWL notes that production capacity is constrained by the crop its contracted orchardists can deliver.</p> <p>HWL has not provided evidence to support this</p>	<p>MBIE considers that HWL has not provided positive evidence that if anti-dumping duties are removed, there will likely be a significant decline in the New Zealand industry’s utilisation of</p>

claim beyond the loss of profits that it forecasts as outlined above.	production capacity.
ii. factors affecting domestic prices; and	
HWL did not make reference to any other factors affecting domestic prices.	
iii. the magnitude of the margin of dumping; and	
HWL's calculations indicate a dumping margin of 126 per cent for 2019.	MBIE considers the dumping margin presented by HWL constitutes positive evidence supporting an application for a full review of the anti-dumping duties.
iv. actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investments	
HWL considers that it will have significant adverse effects on its achievable cash flow, inventories, employment and growth, should the anti-dumping duties cease to apply, due to the loss of volume, sales revenue and profits from the return of the dumped imports.	MBIE is satisfied by HWL's claims that it may have significant adverse effects on cash flow, inventories, employment and growth, should the anti-dumping duties cease to apply.
<b>s.8(2)(e) factors other than the dumped or subsidised goods that have injured, or are injuring, the industry, including</b>	
i. the volume and prices of goods that are not sold at dumped prices or that are not subsidised; and	
HWL stated in its application that it is not aware of any material injury being caused through fairly traded competitor branded products.	MBIE notes HWL's claims of the absence of any material injury from the imports of goods not sold at dumped prices.
ii. contraction in demand or changes in the patterns of consumption; and	
HWL considers that there does not appear to be any contraction in demand or changes in the patterns of consumption.	MBIE notes HWL's claims of the absence of contractions in demand or changes in patterns of consumption.
iii. restrictive trade practices of, and competition between, overseas and New Zealand producers; and	
HWL stated in its application that it is not aware of any further restrictive trade practices that are currently affecting the New Zealand industry.	MBIE notes HWL's claims of the absence of restrictive trade practices.
iv. developments in technology; and	
HWL stated in its application that it does not believe that there is any evidence of a technology development relevant to the consideration of material injury. HWL is of the	MBIE understands this to mean that HWL considers there is no evidence that developments in technology have caused, or might cause, injury to the domestic industry.

understanding that its method of processing peaches is similar to that of other processors.	
v. the export performance and productivity of the New Zealand producers	
HWL stated that it exports a small volume of preserved peaches to the Pacific Islands.	MBIE understands this to mean that HWL considers there is no evidence that exports by New Zealand producers have caused, or might cause, injury to the domestic industry.
<b>s.8(2)(f) 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</b>	
HWL indicated that it has not recently imported the subject goods from Greece.	MBIE notes that there is no evidence that any injury attributable to imports by the New Zealand industry has been attributed to the dumped goods.

35. MBIE is satisfied that for the purposes of initiating a review, HWL has provided positive evidence that it will experience a recurrence of injury from an increased volume of exports from Greece and adverse price effects, in the absence of anti-dumping duties.

36. MBIE is also satisfied that HWL has provided positive evidence that it will experience consequent adverse economic impacts in relation to sales revenue, profits, productivity, and return on investment, with potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investments. MBIE is also satisfied that injury attributable to factors other than the dumped goods has not been attributed to the dumped goods.

## Conclusions

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37. On the basis of its examination of the information available to and provided by the applicant, MBIE concludes that:

- a) Positive evidence has been provided for the purposes of initiation that the continued imposition of the duty is necessary to offset dumping, and that;
- b) Positive evidence has been provided for the purpose of initiation to show that, material injury to an industry would be likely to recur if the duty expired.

38. MBIE concludes that HWL has provided positive evidence justifying the need for a full review of anti-dumping duties on canned peaches imported from Greece, and that notice should be given of the initiation of the full review.

## Recommendations

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39. Based on the above conclusions, MBIE recommends that the Acting Manager of the Trade and International team of MBIE, acting under delegated authority from the chief executive:

**Note** that, in accordance with section 17D(1) of the Act, the chief executive must start a full review of the duty after receiving an application from an interested party that includes positive evidence justifying the need for a full review.

**Note** that anti-dumping duty on canned peaches from Greece will expire on 15 July 2020 unless a review has been started before that date.

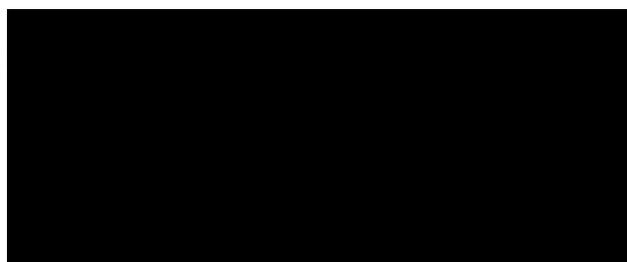
**Note** that if a full review is started, in terms of section 17D(4) of the Act, the existing duty does not cease to be payable until the duty is:

- a. Terminated following a negative determination by the Minister; or
- b. Terminated following a determination by the Minister that continuing to impose the duty is not in the public interest; or
- c. Replaced with a new duty.

**Agree** to give notice of the decision to start step 1 of the review, in accordance with section 17E(2) of the Act, and to sign the attached *Gazette* notice.

**Agree**, under section 17D(1) of the Act, to start a full review.

*Agree/Disagree*



Adam Dubas  
**Acting Manager**  
Trade & International Team  
Ministry of Business, Innovation and Employment

14 / 07 / 2020



## **Initiation of Full Review of Anti-Dumping Duties: Canned Peaches from Greece**

Pursuant to sections 17E(2) and 17D of the Trade (Anti-dumping and Countervailing Duties) Act 1988 (the Act), and acting under delegated authority from the Chief Executive of the Ministry of Business, Innovation and Employment (MBIE), I have initiated a full review of anti-dumping duties on the goods described in the Schedule of this notice ("goods"). This initiation follows the receipt of an application made by the New Zealand industry providing positive evidence justifying the need for a full review.

Anti-dumping duties were due to lapse on 15 July 2020 unless MBIE initiated a review of the continued need for these duties. In accordance with section 17D(4) of the Act, the existing anti-dumping duty will continue to be payable until the outcome of this review results in either termination of the duty or replacement with a new duty.

### **Schedule Goods Subject to Review**

#### ***Country of Origin***

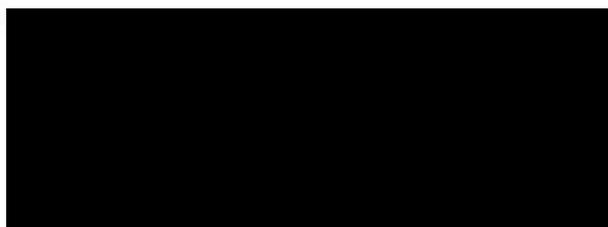
Greece

#### ***Description of Goods***

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

The goods are currently classified under Tariff Item 2008.70.09 and Statistical Key 00L, which classification is provided for convenience and New Zealand Customs Service purposes only, the written description being dispositive.

Dated at Wellington this 14<sup>th</sup> day of July 2020



Adam Dubas  
**Acting Manager**  
Trade & International Team  
Science, Innovation & International Branch  
Ministry of Business, Innovation and Employment

#### ***Invitation for Submissions***

*Interested parties are invited to make submissions in relation to the review by emailing [traderem@mbie.govt.nz](mailto:traderem@mbie.govt.nz). A non-confidential version of the Initiation Memorandum, which contains details of consideration of the application for the initiation of a review, is available on MBIE's website at [www.mbie.govt.nz/business-and-employment/business/trade-and-tariffs/trade-remedies/trade-remedy-investigations/](http://www.mbie.govt.nz/business-and-employment/business/trade-and-tariffs/trade-remedies/trade-remedy-investigations/)*