Non-confidential Final Reassessment Report

Canned Peaches from Greece

Dumping and Countervailing Duties Act 1988

Dumping "Sunset" Review

Ministry of Economic Development

Trade Rules, Remedies and Tariffs Group
November 2009

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Abbreviations

The following abbreviations are used in this Report:

Act (the)	Dumping and Countervailing Duties Act 1988
Anti-Dumping Agreement	WTO Agreement on Implementation of Article VI of the GATT 1994
ALMME	AL.M.M.E Growers, Greece
Chief Executive (the)	Chief Executive of Ministry of Economic Development
EUR	Euro
FOB	Free on Board
HW	Heinz Wattie's Limited
Ministry (the)	Ministry of Economic Development
NIFOB	Non-Injurious Free-on-Board Price
NIP	Non-Injurious Price
NUPFOB	Normal Unsubsidised Price Free-on-Board
NV(VFDE)	Normal Value (Value for Duty Equivalent)
NZCS	New Zealand Customs Service
NZD	New Zealand Dollars
POR(I)	Period of Review for Injury: 1 May 2005 – 30 April 2009
POR(D)	Period of Review for Dumping : 1 December 2007 – 30 November 2008
PPI	Producer Price Index
VFD	Value for Duty
WTO	World Trade Organisation

1. Executive Summary

Introduction

1. On 3 July 2009, a review of the anti-dumping duties on imports of canned peaches from Greece concluded there is a continued need for the anti-dumping duties to prevent a continuation or recurrence of dumping, which would likely cause material injury to the New Zealand industry (referred to in this report as the review). A reassessment of the anti-dumping duties was initiated immediately following the completion of the review.

Reassessment

This Reassessment Report considers the appropriate level of anti-dumping duties. A section on the proposed rates of anti-dumping duty was included in the Final Report for the Review and interested parties were given the opportunity to make submissions on the proposed rates of anti-dumping duty but no submissions were received by the Ministry.

2. The subject goods from Greece are described as:

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

Conclusion

3. This report concludes that the current anti-dumping duties on canned peaches from Greece be reassessed to the rates listed in the Proposed Levels of Anti-Dumping Duty section of this report.

2. Introduction

2.1 Review

4. A review of the anti-dumping duties that currently apply against imports of canned peaches from Greece was initiated by the Ministry of Economic Development (the Ministry) on 14 December 2008. The review was completed on 3 July 2009 and concluded that there is a continued need for the anti-dumping duties to prevent a continuation or recurrence of dumping, which would likely cause material injury to the New Zealand industry.

5. A reassessment of the anti-dumping duties was initiated on 3 July 2009 immediately following the completion of the review. An Interim Reassessment Report which set out the proposed changes to the anti-dumping duty rates was released as part of the Final Report. Interested parties were given until 20 July 2009 to make submissions upon the proposed changes to the current anti-dumping duties but no submissions were received.

6. The Interim Reassessment Report stated that a Final Reassessment Report would be completed as soon as practicable after submissions closed. The Interim Reassessment Report also noted that the process was dependent upon the nature of the submissions received and that it may be necessary to lengthen the reassessment process in order to include new information in the Ministry's analysis. If submissions resulted in significant changes to the proposals, the Ministry would consider issuing another report to allow parties to defend their interests before final recommendations were placed before the Minister.

7. The current anti-dumping duties are integrated with the countervailing duties that applied to canned peaches from the EU. A review of this countervailing duty was undertaken concurrently with the anti-dumping duty on canned peaches from Greece. The countervailing duty review concluded that this duty was no longer necessary and a recommendation was made to the Minister of Commerce that it should be terminated. The Minister asked for more information and further analysis to be undertaken before he made a decision about whether to terminate the duty. Following his consideration of this further information and analysis the Minister terminated the duty on 14 October 2009. Because of the way in which these two duties were integrated, the reassessment of the anti-dumping duty was deferred until the Minister made a decision on whether to terminate the countervailing duty.

8. The reassessment was conducted in accordance with the Dumping and Countervailing Duties Act 1988 (the Act) and having regard to the World Trade Organisation (WTO) Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the Anti-Dumping Agreement). Electronic links to copies of both the Act and the Agreement are annexed to this report.

2.2 Background

9. On 9 March 1998, the Minister of Commerce first imposed anti-dumping duties on canned peaches from Greece which were imported into New Zealand, based on an investigation which found that dumped imports from Greece had caused material

injury to the domestic industry. A review of the anti-dumping duties on canned peaches from Greece in 2003 concluded that if the anti-dumping duties were removed, it was likely there would be a recurrence or continuation of dumping, which would likely cause material injury to the domestic industry.

10. As noted above, on 3 July 2009 a review was completed which concluded that a removal of the anti-dumping duties would likely result in a continuation or recurrence of dumping and material injury to the New Zealand industry. Based on the information gathered during the course of the review on the current and likely pricing behaviour of the Greek producers of canned peaches and their ability to supply New Zealand importers with significant volumes of dumped product, the Ministry initiated a reassessment immediately following the completion of the review. At the same time the Ministry released an Interim Reassessment Report which recommended that the anti-dumping duties be reassessed and proposed a set of new anti-dumping duty rates.

2.3 Disclosure of information

11. The Ministry makes available all non-confidential information to any interested party or any other member of the public through its public file system, in accordance with the requirements of section 10 of the Act and Article 6 of the Anti-dumping Agreement.

12. The Ministry has, given the timing of this reassessment, continued the public file for the review to include all non-confidential information used in relation to the current reassessment. This was communicated to all interested parties so that they could continue to request information from the public file during the course of this reassessment.

2.4 Interested Parties

13. The interested parties involved in the reassessment are listed below:

New Zealand Industry

14. Heinz Wattie's Ltd (HW) is the only producer of canned peaches in New Zealand and therefore constitutes the New Zealand industry.

Exporters

15. The New Zealand Customs Service (NZCS) data identified A.L.M.M.E. Growers (ALMME) as the exporter of the only shipment of subject goods during the period of review for dumping (POR(D)).

Importers

16. The NZCS data identified [redacted] as the importer of subject goods from Greece during the POR(D).

2.5 Imported Goods

17. The goods from Greece which are subject to the anti-dumping duties are referred to as the “subject goods”, and are described as:

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

18. The subject goods enter New Zealand under tariff Item 2008.70.09 and statistical key 00L. The normal tariff of 5 percent applies to imports of subject goods from Greece.

3. Anti-Dumping Duties

3.1 Method of Imposing Duties

19. The objective of an anti-dumping duty is to remove injury attributable to dumping, and is not to punish the exporter or to provide protection to an industry beyond the impact of the dumping. The Act prevents the Minister from imposing a duty that exceeds the margin of dumping.[1] Furthermore, the Act requires that the Minister have regard to the desirability of ensuring the amount of duty is not greater than is necessary to prevent material injury to the New Zealand industry.[2] This requirement is known as the "lesser duty rule".

20. There are numerous considerations that are taken into account when deciding on the form of the anti-dumping duty. Factors such as the ability to ensure the dumping margin is not exceeded, the ability to maintain fairness between parties, the predictability of the duty payable and the ease of administration, are all important aspects of an anti-dumping duty.

21. Anti-dumping duties can be applied in a number of different ways. The three basic approaches are:

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

A Specific Duty

22. A specific duty is a set amount of duty payable per unit of product imported. This specific amount of duty is based on the monetary value of a margin of dumping. The approach is convenient to apply, impossible to evade by incorrectly stating the value for duty, and it clearly indicates to the importer the amount of duty payable on the product.

23. Some problems with a specific duty approach may occur if there are a wide range of goods involved, exchange rates may fluctuate to the extent that the margin of dumping will be exceeded without constant reassessments of the specific amount, or where an exporter manipulates prices so that the duty is either greater than the margin of dumping or less than the margin of dumping previously established.

24. A specific duty, expressed as a monetary amount, can only operate effectively when two conditions are present. The first is that prices and exchange rates are consistent and stable. The second is that the transaction-to-transaction comparison does not result in a range of different dumping margins.

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[1] Dumping and Countervailing Duties Act 1988, s14(4).

[2] Dumping and Countervailing Duties Act 1988, s14(5).

25. A specific duty approach can be implemented as a formula, being the difference between equivalent prices to the normal value and the export price of a particular shipment, with the values for the normal value and export price being fixed. When those elements of the formula are expressed in terms of the currency of each transaction, the problem of exchange rate movements can be dealt with. However, a formula approach does not deal with the problem of changes in export prices for reasons other than exchange rate movements or movements in normal values such as a price change.

Ad Valorem Rate Duty

26. An *ad valorem* duty is a duty based on the margin of dumping or the margin of injury (if the margin of injury is less that the margin of dumping), and is expressed as a percentage of the value for duty (VFD). An *ad valorem* duty is convenient to apply and is unlikely to be substantially affected by exchange rate movements. *Ad valorem* rates are often appropriate where there are a large range of goods or where new models appear, provided that the transaction-to-transaction comparison does not result in a range of different dumping margins. As with the other approaches, there is the possibility of collusion between an exporter and importer concerning the manipulation of the invoice value of the goods.

27. Under this approach, a particularly low export price (and therefore a potentially more injurious export price) would result in a lower amount of duty, which may not be sufficient to remove injurious dumping. Conversely, a particularly high export price (and therefore likely to be less injurious), would attract a higher amount of duty, which may be higher than is necessary to remove injurious dumping.

28. An *ad valorem* rate gives an indication of the impact of the duty, but is not as clear an indication as the other forms of duty, although the rate can usually be provided to all parties and is therefore very transparent.

Reference Price Duty

29. Under the reference price approach, the duty payable is the difference between the transaction price and a reference price. A reference price can be based on either a normal value or the domestic industry's non-injurious price (NIP). A Normal Value (Value for Duty Equivalent) or NV(VFDE) amount represents the un-dumped value of the goods at the free-on-board (FOB) level. A non-injurious free-on-board (NIFOB) price is the price at which the imports would not cause injury to the New Zealand industry, calculated at the FOB level. The Ministry prefers to set the NV(VFDE) and NIFOB amounts in the currency in which the like goods are sold in their respective markets. In this case those currencies are euros (for reference prices based on normal values) and New Zealand dollars (for reference prices based on NIPs), as these are the currencies which like goods are traded in their respective markets.

30. A reference price has advantages in that it is best able to deal with movements in the export price and exchange rates (if expressed in the currency of the normal value), and is particularly appropriate for dealing with situations where a lesser duty is applicable. However, it has been argued that it is more easily evaded than the other forms of duty by overstating the VFD of the goods. Nevertheless, a reference

price does have the advantage of clearly signalling to exporters and importers what price is un-dumped or non-injurious. In addition, a reference price duty only collects duty when the goods are priced below the non-injurious or un-dumped reference price, therefore duty is collected only to the extent necessary to remove injurious dumping.

31. One of main problems with reference prices is that the information they are based on represents a snapshot of prices and costs at a particular point in time. If these prices or costs change, the reference prices may no longer be accurate although significant changes in prices or costs can be addressed by way of a reassessment of the reference prices.

3.2 Background

32. On 9 March 1998, the Minister of Commerce first imposed anti-dumping duties on canned peaches imported from Greece. The Ministry concluded in the original investigation that Vermion Naoussa's dumping margins ranged between nil and 20 percent, while ALMME was found not to be dumping. The anti-dumping duties were imposed in the form of reference prices and *ad valorem* rates of duty.

33. A subsidy investigation was completed on 9 January 1998, which concluded that canned peaches from the EU were being subsidised, and therefore countervailing duties were imposed. The countervailing duties were imposed in the form of an *ad valorem* rate.

34. A new shipper reassessment of the level of anti-dumping duty was completed in April 2000 for Venus Growers. The reassessment concluded that canned peaches exported by Venus were not dumped, and therefore a nil rate of anti-dumping duty was set for Venus Growers. All other rates of anti-dumping duty applying to Greek exporters remained unchanged.

35. A sunset review of the anti-dumping duties was completed on 4 July 2003, which found that canned peaches exported by Venus Growers were dumped by margins of 5 to 45 percent. The Ministry concluded that there was a continued need for the anti-dumping duties to prevent a likely continuation and recurrence of dumping, which would likely cause material injury to the New Zealand industry.

36. A sunset review of the countervailing duties was also completed on 4 July 2003, which concluded that the countervailing duties should remain in place to prevent a recurrence of material injury to the New Zealand industry caused by subsidised canned peaches from the EU.

37. A reassessment of the anti-dumping and countervailing duties was completed on 15 December 2003. With respect to canned peaches from Greece, the Ministry established reference prices and *ad valorem* rates of duty to address both the dumping and subsidy effects. The rates of duty have not been changed since this reassessment.

38. The current rates of anti-dumping and countervailing duty applicable to canned peaches from Greece are shown in the table below.

Table 3.1: Current Duty Rates on Canned Peaches from Greece (Per kg)

	410g	820g	3kg
Venus Growers Co-operative total duty is ***the lesser of:***			
-NIFOB rate	NZD[redacted]	no rate	NZD[redacted]
-NUPFOB rate	€[redacted]	€[redacted]	€[redacted]
Venus Growers Countervailing Duty Cap	€[redacted]	€[redacted]	€[redacted]
Other exporters total duty is ***the lesser of:***			
-*Ad valorem* rate	34%	34%	34%
-NUPFOB	€[redacted]	€[redacted]	€[redacted]
The other exporters *ad valorem* duty is comprised of:			
-Anti-dumping duty *ad valorem* rate	23%	23%	23%
-Countervailing duty *ad valorem* rate	11%	11%	11%
A Countervailing Duty Cap also applies	€[redacted]	€[redacted]	€[redacted]

* NUPFOB amount is a Normal Unsubsidised Price Free-on-Board

3.3 Rates of Anti-dumping Duty

Specific Duty

39. The Ministry has considered whether a specific duty should be applied. The Ministry considers that there is not sufficient current information on which to establish a specific duty. There are a range of sizes and quality of goods imported and potentially many suppliers with different cost structures and dumping margins. There is also no information available which shows that prices are stable, and as identified in paragraph 143 of the Final Report, exchange rates are not stable at the present time. This method of imposing anti-dumping duties is therefore not considered to be appropriate in this instance.

Ad Valorem Duty

40. An alternative method of setting anti-dumping duties is to apply an *ad valorem* duty. An *ad valorem* duty can be set at the margin of dumping or at the margin of injury. In accordance with the lesser duty rule, the lower of the two margins would be used as the *ad valorem* duty rate. Lower priced goods would attract a lower amount of duty and higher priced goods attract a higher amount of duty, which would not necessarily address the amount of injury caused in respect of each size and type of canned peaches under review.

41. Based on a range of information sourced during the Review, the Ministry concluded that there would likely be a continuation and recurrence of dumping if the duties were removed. As discussed in section 4.6 and 4.7 of the Final Report, the export price information sourced in the present review related to the 3kg can size,

and the normal value information related to the 425g can size. The Ministry considers that there is not sufficient normal value and export price information sourced in the Review to enable a reliable and accurate *ad valorem* rate of duty to be established.

Reference Prices

42. Because it is not feasible, for the reasons outlined above, to set the duties using the specific or *ad valorem* methods, the Ministry has set the duties on a reference price basis. The Ministry's normal practice regarding reference prices is to calculate both NIFOB and NV(VFDE) amounts, and in accordance with the lesser duty rule, the NIFOB amount is applied where it is lower than the NV(VFDE) amount. The following section discusses this approach to setting reference prices.

NIFOB Reference Prices

Calculation of Non-Injurious Prices (NIPs)

43. A NIP is an unsuppressed selling price at which a domestic producer can sell its products in its domestic market and is the basis on which a NIFOB reference price is calculated. An unsuppressed selling price is one that is achievable in the absence of competition from dumped product in the New Zealand market.

44. Although the Review found evidence of some injury to HW during the period of review for injury (POR(I)), the Ministry concluded that the injury suffered over this period is not likely to be attributable to dumped imports from Greece given that anti-dumping duties are currently in place and import volumes from Greece were negligible during the period. Furthermore, the Ministry also notes that anti-dumping duties are currently in place on canned peaches from South Africa and preserved peaches from China. The Ministry considers that HW's current net selling prices are not suppressed by dumped imports, and are therefore an appropriate basis to calculate HW's NIPs.

45. As stated in paragraph 156 of the Final Report, the relevant level of trade for the New Zealand industry is at the ex-factory level. The Ministry considers that establishing reference prices is a forward looking exercise, and therefore the Ministry has based its calculations on HW's net selling prices for its latest financial year 2008/09. HW advised the Ministry that its contract to supply the [redacted] brand has expired and will no longer be supplied by HW. The Ministry has therefore excluded sales information relating to this brand from the calculation.

46. The Ministry calculated the weighted average selling price for the three retail can sizes. As noted in paragraph 165 of the Final Report, HW's net selling prices include [redacted]. These amounts have therefore been deducted to derive HW's ex-factory selling prices.

47. The following table shows HW's NIPs calculated using the method described above.

Table 3.2: HW's NIPs
(NZD/per kg)

Can Size	NIPs
410g	[redacted]
820g	[redacted]
3kg	[redacted]

Calculation of NIFOB Amounts

48. The purpose of a NIFOB amount is to ensure that the price of imported product, when considered at the FOB level, is such that when the canned peaches from Greece are sold at the relevant level of trade in the New Zealand domestic market, the sale price is not lower than the NIP.

49. As stated in paragraph 154 of the Final Report, the Ministry considers that there are two possible levels of trade for importers of canned peaches from Greece, which is that the goods can be imported by supermarkets directly (the ex-wharf level) or by distributors which then on-sell the goods (the ex-store level). The Ministry has calculated NIFOB amounts based on both levels of trade for comparison purposes.

NIFOB – Ex-Wharf Level

50. NIFOB amounts are calculated by taking the industry's NIP and deducting costs incurred by importers between the FOB level and the importers' relevant level of trade. Amounts for ocean freight, insurance, customs duty, devanning, customs clearance and port services charges were deducted from the NIP to calculate the NIFOB amount for importers' competing at the ex-wharf level of trade. These amounts were sourced in relation to the single shipment of canned peaches imported from Greece during the POR(D).

51. The NIFOB amounts based on the importers' ex-wharf level of trade are shown in table 3.3 below.

NIFOB – Ex-Store Level

52. The Ministry does not have any current information relating to importers' costs from the ex-wharf level to the ex-store level from which it can calculate the NIFOB at the importers' ex-store level of trade, and therefore the best available information has been used to fill the information gap.

53. To calculate the NIFOB amounts based on the importers' ex-store level of trade, the Ministry needed to deduct the additional costs of importing the goods from the ex-wharf level (as established above) to the ex-store level, which include the cost of freight to the importers' warehouse, storage costs, and an importers' margin. The Ministry established a cost for freight to warehouse of [redacted] per kilogram which was estimated by HW in its Application for a Review, and which the Ministry notes is similar to the cost of freight from wharf to warehouse sourced from an importer in the 2003 review. Storage costs ([redacted] per kilogram) and an importers' margin ([redacted]%) were also provided by an importer in the 2003 review, and these costs were used by the Ministry in its calculations to establish a NIFOB at the ex-store

level. The storage cost per kilogram is a negligible amount and up-dating to a current cost would make no material difference to the calculation of the NIFOB.

54. The following table shows the NIFOB amounts established at the importers' ex-wharf and ex-store levels of trade.

Table 3.3: NIFOB – Ex-Wharf and Ex-Store Levels (NZD/kg)

	NIFOB Amount	
Can Size	**Ex-Wharf Level**	**Ex-Store Level**
410g	[redacted]	[redacted]
820g	[redacted]	[redacted]
3kg	[redacted]	[redacted]

55. The Ministry notes that the NIFOB amounts based on the importers' ex-wharf level of trade are higher than the corresponding amounts at the ex-store level. This is to be expected as more costs need to be deducted from the industry's NIPs in the calculation of the NIFOB amounts for each can size at the ex-store level compared to the ex-wharf level.

Conclusion on NIFOB amounts

56. The Ministry considers that the ex-wharf level of trade is the most appropriate level of trade to base the NIFOB calculations. As importers can compete with HW at both the ex-wharf and ex-store levels of trade, if the NIFOB was based on the ex-store level of trade, and supermarkets imported canned peaches from Greece (rather than distributors), the NIFOB would not be set at a level which would remedy any injury suffered by the industry from the dumped imports.

57. Although the proposed NIFOB amounts are established at the importers' ex-wharf level of trade, importers and exporters are able to request a reassessment of the anti-dumping duty rate if they considered the duty rates did not reflect the level of trade at which their imports were competing with the domestic industry's sales in the New Zealand market.[3] In the case of an importer competing at the ex-store level of trade, the NIFOB amount could be reassessed for that particular importer or exporter provided that sufficient evidence was supplied to the Ministry on which it could establish new anti-dumping duty rates.

58. For the reasons above, the Ministry considers that the ex-wharf level of trade is the appropriate level of trade to establish the proposed NIFOB amounts.

[3] Dumping and Countervailing Duties Act 1988, s14(6).

NV(VFDE) Reference Prices

59. NV(VFDE) amounts are calculated by adding to the Greek normal values established in the Review, all costs incurred by the exporter up to the FOB level. The NV(VFDE) amounts therefore represent an un-dumped price at the FOB level.

60. The Ministry has considered two separate approaches to calculate NV(VFDE) amounts. The first approach updates the 2003 normal value and cost information by a relevant price index to derive updated NV(VFDE) amounts. The second approach involves combining the normal value information obtained in the current review, with the cost information obtained in the 2003 review to establish NV(VFDE) amounts.

NV(VFDE) - Updated 2003 Information

61. In the 2003 review, the Ministry established the ex-factory cost of production for the three retail can sizes based on information provided by a Greek manufacturer/exporter and then added a reasonable profit margin of 20 percent to estimate the ex-factory normal values. Costs incurred by the exporter from the ex-factory to the FOB level were added to the ex-factory normal value to derive the NV(VFDE) amounts. These costs included agent's commission, inland freight, terminal handling charges, customs brokerage and document fees.

62. To update these 2003 normal value and cost amounts to the present date, the Ministry obtained statistical information in the form of the Greek Producer Price Index (PPI) for the calendar years 2003 to 2008. This statistical information is contained in the April 2009 edition of *"International Monetary Fund: International Financial Statistics"* which states that the PPI is designed to monitor the change in prices of items at the first important commercial transaction. In principle, the PPI should include service industries, but in practice it is limited to the domestic agricultural and industrial sectors. Of particular note is that the industrial sector prices should be at the ex-factory level.

63. The PPI increased by 31 percent from 2003 to 2008. In order to establish updated NV(VFDE) amounts, the Ministry has updated the normal values and costs established in the 2003 review by the 31 percent increase of the PPI from 2003 to 2008.

64. The NV(VFDE) amounts established using the above method are contained in table 3.4 below.

NV(VFDE) - 2008 Normal Value Information

65. As discussed in section 4.7 of the Final Report, HW provided normal value information in its Application for a Review relating to the 425g can size. This normal value information was at the retail level of trade, from which HW deducted estimated costs and margins between the ex-factory and retail level of trade to establish the ex-factory price for the 425g can. The Ministry used information obtained in the 2003 review to establish the price differential per kilogram between the can sizes, and applied the price differential percentages to the current normal value information for the 425g can to establish the ex-factory normal values for the 820g and 3kg can sizes.

66. The Ministry does not have any current information regarding the costs from ex-factory to the FOB level, and therefore has used the costs from the 2003 review as identified in paragraph 61 above, and updated these costs by the 31 percent increase in the Greek PPI from 2003 to 2008. These costs were added to the ex-factory normal values established on the basis outlined in paragraph 65 above to derive NV(VFDE) amounts for each of the three can sizes.

67. The following table shows the NV(VFDE) amounts calculated using both methods described above.

Table 3.4: NV(VFDE) Amounts (EUR/kg)

Can Size	Using Updated 2003 Information	Based on 2008 Normal Value Information
410g		1.88
820g		1.66
3kg		1.53

68. The Ministry notes that the estimated NV(VFDE) amounts based on the normal value information sourced in the present review are substantially higher than the NV(VFDE) amounts based on the normal value and cost information sourced from the 2003 review and updated by the PPI. This is mainly due to the large difference in the normal values established in 2003 and those established in the present review. On average, the estimated normal values in this review are 84 percent higher than the estimated normal values established in the 2003 review. The Ministry notes that the 2003 normal values updated by the 31 percent increase in the PPI still remained significantly lower than the 2008 normal values established in this review.

Conclusion on NV(VFDE)Amounts

69. The Ministry notes that the normal value and cost information sourced in the 2003 review related only to one Greek manufacturer's cost of production for the three retail can sizes. Also, the 20 percent reasonable profit margin was an estimate based on the profit margin of food companies in Greece, and therefore does not specifically relate to Greek manufacturers of canned peaches.

70. Although the normal value information obtained in the current review was based on prices at the retail level in Greece and relates to one retail size can only, the information is more recent than the information obtained in the 2003 review. On this basis, the Ministry considers that the normal value information obtained in the current review is the best available information to establish the proposed NV(VFDE) amounts.

Comparison of NIFOB and NV(VFDE) Amounts

71. The Ministry has compared the NIFOB and NV(VFDE) amounts calculated above, and in accordance with the lesser duty rule, where a NIFOB amount is less

than the NV(VFDE) amount, the NIFOB amount has been set as the reference price. Where the NIFOB amount is not lower than the NV(VFDE) amount, the duty has been imposed at the full margin of dumping i.e. the NV(VFDE) amount.

72. For the purpose of identifying the lesser duty, the Ministry has converted the NV(VFDE) amounts, which are normally set in EUR, to NZD to allow a comparison with the NIFOB amounts which are set in NZD. The Ministry used the exchange rate of EUR1:NZD1.99 as at 28 October 2009 for the purpose of converting the NV(VFDE) amounts.[4]

73. The following table shows the comparison of NIFOB and NV(VFDE) amounts.

Table 3.5: Reference Price Comparison (NZD/kg)

Can Size	NIFOB	NV(VFDE)	Lower Amount
410g	[redacted]	3.73	NIFOB
820g	[redacted]	3.29	NIFOB
3kg	[redacted]	3.04	NIFOB

74. The NIFOB amounts are significantly lower than the corresponding NV(VFDE) amounts for all three can sizes, therefore the proposed reference prices are set at the margin of injury.

Effect of Exchange Rates on Anti-Dumping Duties

75. As noted in paragraph 29, the Ministry sets reference prices in the currency in which the like goods are sold in their respective home markets. NV(VFDE) amounts are set EUR as this is the currency in which the like goods are traded on the domestic market in Greece. NIFOB amounts are set in NZD as this is the currency in which like goods produced by the domestic industry are sold in the New Zealand market.

76. The Ministry recognises the problem of fluctuations of exchange rates when reference prices have been set according to the lesser duty rule i.e. set at a NIFOB amount. Exchange rate movements can result in the NIFOB amount, which was identified as being the lesser duty, later becoming higher than the corresponding NV(VFDE) amount, which would be contrary to the requirement that anti-dumping duties do not exceed the margin of dumping. For this reason, the Ministry has capped the proposed NIFOB amounts in table 3.6 below by the corresponding NV(VFDE) amounts to ensure that the amount of anti-dumping duty collected does not exceed the margin of dumping.

Residual Rate of Duty

77. The 2003 reassessment imposed a residual rate of duty which applied to all Greek exporters other than Venus Growers. For the current reassessment, the

[4] www.oanda.com

proposed reference prices apply to all Greek exporters, and therefore a residual rate of duty is not necessary.

3.4 Proposed Levels of Anti-Dumping Duty

78. The following table shows the proposed levels of anti-dumping duties for canned peaches from Greece, calculated on the basis set out above.

Table 3.6: Proposed Reference Price Levels Per Kilogram

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

*Note: An alternative reference price has been set as the NV(VFDE). This reference price will apply where the NV(VFDE) amount is lower than the NIFOB amount due to exchange rate movements.

Other Can Sizes

79. Regarding canned peaches imported in can sizes for which specific rates have not been established in the table 3.6 above, the applicable rate of duty shall be the reference price for the can size stated in table 3.6 which is closest in size to the size of the can being imported. The Ministry also notes that a 3kg retail can size can include cans with a nominal net weight up to 3.06kg. Such cans are considered to be subject goods and are therefore subject to anti-dumping duty. Can sizes with a nominal net weight in excess of 3.06kg are not subject to the anti-dumping duties.

Dates the Duties Become Effective

80. Under section 17(c) of the Act reassessed anti-dumping duties can apply from either the day after the Minister determines new rates of anti-dumping duty or a specified day thereafter. There is no basis in this case for the new rate to apply on a specified day other than the day after the date of the Minister’s determination.

Refunds of Anti-Dumping Duty

81. Section 14(10) of the Act allows for refunds of anti-dumping duty, where the reassessed amount is lower than the measure that is currently in force, for the period since the initiation of the preceding review. According to NZCS data, there have been no imports of canned peaches from Greece since the review was initiated on 14 December 2008 up to 14 October 2009. The Ministry considers that it is unlikely that there have been any imports from Greece since 14 October 2009 and it is therefore unlikely that any refunds will be sought.

3.5 Impact of Anti-Dumping Duty

82. The proposed reference prices are higher than reference prices established in the previous reassessment in relation to dumping duty. The proposed NIFOB and NV(VFDE) amounts are higher than those calculated in the previous reassessment by [redacted] percent and [redacted] percent respectively. The Ministry notes that the removal of the countervailing duty on imports of canned peaches from Greece would negate, to some extent, the impact of the increased reference prices on the cost of importing from Greece. Overall, the proposed reference prices will increase the cost of importing canned peaches from Greece.

83. The Ministry considers that the increased cost of importing canned peaches from Greece is unlikely to affect the selling price of canned peaches in the retail market as the import volumes from Greece have been negligible since the imposition of the duties, the imported price of canned peaches from a number of other sources is lower than the imported price from Greece, and the only importer currently sourcing canned peaches from Greece is [redacted]. As [redacted], it is unlikely that the increased cost of the small volumes of canned peaches from Greece would result in an [redacted]. The Ministry notes that the proposed reference prices are based on updated information and have been set at amounts which impose the least amount of duty to remedy the injury caused by dumping.

3.6 Future Reassessments

84. Under section 14(6) of the Act, the Ministry may initiate a reassessment of any rate or amount of anti-dumping duty where a request for a reassessment is submitted by an interested party who submits evidence justifying the need for a reassessment.

85. Normally, the Ministry would not undertake a reassessment within six months of new duty rates being set, as prices can still be adjusting to the new rates of anti-dumping duties during this time. However, if an application for a review or reassessment was presented that illustrated a significant change in circumstances had occurred, the Ministry would consider this application within the six month timeframe. Sufficient evidence would be required that an importer's or exporter's behaviour in the market had changed such that it was likely to cause material injury to the New Zealand industry, for a reassessment to be initiated.

4. Conclusions

86. The Ministry concludes that the current rates of duty should be replaced by the proposed rates of duty, which are solely in the form of reference prices but have been established using updated information. The proposed reference prices have been set in the form of NIFOB amounts, which have been set at amounts which will prevent injury to the New Zealand industry caused by dumping, but to ensure that the amount of anti-dumping duty paid does not exceed the margin of dumping, an alternative rate of duty has been imposed in the form of a NV(VFDE) amount where this amount is less than the NIFOB amount.

5. Recommendations

87. It is recommended that the Minister:

a. Determine new rates of anti-dumping duty as set out in Table 3.6 in the Proposed Levels of Anti-Dumping Duty section of this report.

b. Agree that the new rates of anti-dumping duty should apply from the day after the date the Minister determines the new rates of anti-dumping duty in accordance with section 17(c) of the Act.

c. Sign the attached *Gazette* notice publicly notifying the above decisions.

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Investigating Team
Trade Rules, Remedies and Tariffs Group
Ministry of Economic Development

Appendix One

88. A full copy of the WTO Agreement on Implementation of Article VI of the GATT 1994 can be found at:

http://www.wto.org/english/docs_e/legal_e/19-adp.pdf

89. A full copy of the Dumping and Countervailing Duties Act 1988 can be found at:

http://www.legislation.govt.nz/act/public/1988/0158/latest/whole.html#DLM138364