

# **Canned Peaches from Greece**

## **Non-Confidential Final Reassessment Report**

**Dumping and Countervailing Duties Act 1988**

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## Abbreviations

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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 General Agreement on Tariffs and Trade 1994
Chief Executive	Chief Executive of the Ministry of Economic Development
CIF	Cost, Insurance and Freight
Customs	New Zealand Customs Service
EBIT	Earnings Before Interest and Tax
EC	European Commission
FOB	Free on Board
HW	Heinz Wattie's Ltd
Ministry (the)	Ministry of Economic Development
NIFOB	Non-Injurious-Free-On-Board Price
NIP	Non-Injurious Price
NSV	Net Sales Value
NUPFOB	Normal Unsubsidised Price Free-On-Board
NV(VFDE)	Normal Value (Value for Duty Equivalent)
POD(R)	Period of Dumping (Review)
POS(R)	Period of Subsidy (Review)
Venus	Venus Growers Co-operative
VFD	Value for Duty
YE	Year Ended
WTO	World Trade Organisation



# 1. Proceedings

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## 1.1 Summary

1. The purpose of this report is to set out the considerations relating to the reassessment of anti-dumping duties on canned peaches from Greece.
2. Anti-dumping duties on canned peaches were first imposed in 1998. A review, completed in July 2003, concluded that the continued imposition of anti-dumping duties on canned peaches from Greece is necessary to prevent a recurrence of material injury to the New Zealand industry producing like goods.
3. The review report proposed revised levels of anti-dumping duties as the basis for a reassessment of the anti-dumping duty, which was initiated on 4 July 2003.
4. The only substantive submission on the draft reassessment (as part of the Final Review Report) was received from Heinz-Wattie's Ltd (HW), being the New Zealand industry involved in the production and sale of like goods. HW had a number of objections to the methodology and amounts of duty proposed in the Final Review Report.
5. The following summarises the submission made by HW:
  - The anti-dumping duty regime should not make a distinction between good standard and standard quality peaches as it would be difficult to administer, and importers/exporters would be easily able to circumvent the duties. Reference prices should be set on can size alone.
  - The non-injurious price (NIP) used as the basis for the non-injurious free-on-board price (NIFOB) should be updated to reflect recent price increases by HW. The updated NIP should be based on the average selling prices for the 12 months to July 2003.
  - The methodology used by the review team to calculate the reasonable profit margin for the construction of the normal value in Greece was flawed, and HW proposed a new calculation for this profit margin, which increased it from 17.8 percent to 20 percent of net sales. This revised profit margin flowed through into higher NV(VFDE) amounts.
  - The duty regime should be such that it will remedy the injurious effects of dumping effectively at three different levels of trade, depending on which level the imports are to be sold at in the New Zealand market. HW stated that imposing duty at one level of trade, and then inviting it to apply for a reassessment, misses the very reason for a review, which is to determine if duties are necessary to prevent a recurrence of dumping and material injury, and if so, reassess the type and rate of duty.
  - HW stated it cannot be injured by its own imports, therefore a 100% of anti-dumping duty should be imposed for all of its imports of the subject goods, as

██████████ on imports that are not causing injury to the New Zealand industry is contrary to the Dumping and Countervailing Duties Act (“the Act”).

6. The following summarises the Ministry’s findings in response to HW’s submissions above, the details of which can be found under the appropriate headings below.

- The reassessment team has decided that duties be imposed on the basis of the can sizes only, without differentiating between the standard and the good standard styles.
- The period for calculating HW’s NIP should be the most recent 12-month period to smooth out fluctuations in prices across the three can sizes.
- The reassessment team has not changed its method of calculating the reasonable profit margin from the review report. The reassessment team found that HW had erred in its calculation of the profit margin.
- The reassessment team has adhered to the level of trade used in the review i.e. at the ex-store level for the importer and ex-factory level for HW.
- The reassessment team has decided that HW should ██████████ its imports from Greece. The reassessment team is of the view that the purpose of the Act is to provide a local industry a remedy from dumped imports and not to unfairly protect its importing operations. The reassessment team is also of the view that ██████████ amounts to a *de facto* subsidy.

7. The submission by HW outlined above, and the Ministry’s conclusions in response to that submission, resulted in substantive changes to the draft reassessment methodology that the Ministry had adopted. Hence, an interim reassessment report was released for further comment by interested parties. The only submission received was from HW. The following summarises its submission.

- HW agreed that duties should be imposed on can size alone, and make no distinction between standard quality and good standard quality peaches.
- HW proposed an alternative method for calculating the NIP (as the basis for the NIFOB), to more accurately take account of recent price increases, and therefore provide a better duty regime for the future. This alternative method raised the NIP for each of the three can sizes.
- HW disagreed with the Ministry’s findings in relation to the reasonable profit margin used in the calculation of NV(VFDE) and NUPFOB amounts, and stated that this profit margin should be 20 percent, as it outlined in its response to the first draft reassessment report.
- HW disagreed with the Ministry’s findings in relation to the setting of duties at one level of trade, and ██████████ anti-dumping duty, and considered them legally wrong. HW did not outline why it considered the conclusions reached were legally wrong. However, it did state that due to the poor growing season in Greece it is unlikely that HW or other importers will be

sourcing peaches from Greece in the next calendar year. Therefore, given the time already elapsed during the reassessment, HW reserved its position for the time-being, and will address these issues if or when they become relevant in the future.

8. The following summarises the Ministry's conclusions in relation to the issues raised by HW in its submission.

- The Ministry has decided not to adjust the NIPs as proposed by HW, and has kept them at the levels proposed in the interim reassessment report.
- The Ministry accepts that the reasonable profit margin should be 20 percent of sales revenue, resulting in increased normal values, NV(VFDE)s and NUPFOBs.

9. This report concludes that the anti-dumping duties on canned peaches should be reassessed using reference prices for one named exporter and *ad valorem* percentage residual rates for all other exporters (but with the *ad valorem* percentage rates being capped by use of reference prices), to the levels given, using the methodology outlined in the following sections.

## 1.2 Proceedings

10. On 9 March 1998, the Minister of Commerce first imposed anti-dumping duties on canned peaches from Greece imported into New Zealand, because an investigation had established that the goods were being dumped and by reason thereof causing material injury to the New Zealand industry.

11. A new shipper reassessment was carried out in April 2000 for Venus Growers Co-operative (Venus). The reassessment concluded that canned peaches exported by Venus were undumped, which resulted in a nil anti-dumping rate for Venus, with other duty rates remaining unchanged.

12. On 8 January 2003, the Chief Executive of the Ministry of Economic Development (the Chief Executive) initiated a review of the continued need for the imposition of the anti-dumping duties, pursuant to section 14(8) of the Dumping and Countervailing Duties Act 1988 ("the Act"), on the basis of positive evidence submitted by HW justifying the need for the review.

13. On 4 July 2003 the Chief Executive completed the review and determined that the continued imposition of anti-dumping duties was necessary to prevent a recurrence of dumping and injury to the New Zealand industry producing like goods.

14. Following completion of the review, the Chief Executive, initiated on 4 July 2003 a reassessment of the amount of anti-dumping duty pursuant to section 14(6) of the Act.

15. Section 14(6) of the Dumping and Countervailing Duties Act 1988 (the Act) states:

- (6) The [Chief Executive] may initiate a reassessment of any rate or amount of anti-dumping or countervailing duty determined under subsection (4) of this

section, including any elements of any formula used to establish such a rate or amount, —

- (a) On the initiative of the [Chief Executive]; or
- (b) Where a request for a reassessment is submitted to the [Chief Executive] by an interested party who submits evidence justifying the need for a reassessment; or
- (c) Following the completion of a review carried out under subsection (8) of this section —

and the Minister may determine a new rate or amount in accordance with subsection (4) of this section, and, in that event, shall give notice of the new rate or amount.

16. Sections 14(4) and 14(5) of the Act refer to the rate or amount of duty as follows:

(4) The anti-dumping duty or countervailing duty in the case of goods to which this section applies shall be a rate or amount determined by the Minister, —

- (a) In the case of dumped goods, not exceeding the difference between the export price of the goods and their normal value; and
- (b) In the case of subsidised goods, not exceeding the amount of the subsidy on the goods.

(5) In exercising the discretion under subsection (4) of this section, the Minister shall have regard to the desirability of ensuring that the amount of anti-dumping or countervailing duty in respect of those goods is not greater than is necessary to prevent the material injury or a recurrence of the material injury or to remove the threat of material injury to an industry or the material retardation to the establishment of an industry, as the case may require.

17. The final report on the review included a section which set out a proposed basis for reassessing the anti-dumping duties, which was based on and reflected the findings of the review.

## 1.3 Subject Goods

18. The goods which are the subject of the anti-dumping duties, hereinafter referred to as “canned peaches” or “subject goods”, are:

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

## 1.4 Interested Parties

### New Zealand Industry

#### *Heinz Wattie's Ltd*

19. HW is the sole New Zealand producer of canned peaches and submitted the application for the review that preceded this reassessment. HW produces canned peaches under the brand names Wattie's, Oak and Weight Watchers, and also produces various supermarket housebrands. HW is 100 percent owned by H J Heinz Company (New Zealand) Limited which is owned by New Zealand Investment Corporation, which has 20 ordinary shares and H J Heinz Credit Company, a United States company, with 80 ordinary shares and 100,000 redeemable preference shares. HW shares its legal and IT functions with its Australian counterparts.



20. HW produces processed and canned fruit, including peaches, apples, pears, apricots, and nectarines as well as vegetables under its fruit and vegetables division. HW also has a recipe division which produces canned meals, soups, tomato paste, tomato puree, pasta sauce, simmer sauces, canned desserts, canned casseroles and tomato sauces in plastic bottles. HW's canning plant is based in Hastings. HW imports various products, including some peach products from overseas e.g. potted peaches from Australia and, when there is a shortfall in domestic raw peach production, canned peaches from Europe.

21. HW exports small quantities of canned peaches and other canned products to Australia and the Pacific Islands, though it predominantly sells on the New Zealand domestic market.

### **Exporters and Manufacturers**

22. The review examined whether imports of the subject goods were dumped over the year ended November 2002 (the period of dumping (review) or POD(R)). The review established that over the POD(R), ██████████ Venus, exported the subject goods from Greece to New Zealand. Venus is also the producer of the subject goods it exported to New Zealand.

### **Importers**

23. The review established that ██████████ that imported canned peaches from Greece over the POD(R).

## 2. Reassessment of Anti-Dumping Duties

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### 2.1 Existing Levels of Duty

24. Anti-dumping duty in the original investigation in 1998 was imposed at the full margin of dumping as a Normal Value (Value for Duty Equivalent) (NV(VFDE)) amount for exports of 820g cans by Vermion Naoussa. For exports by Vermion Naoussa in can sizes other than 820g, an *ad valorem* percentage duty was imposed, based on the weighted average margin of dumping. Exports by AL.M.ME were assigned a nil rate of duty. Exports by Greek suppliers other than Vermion Naoussa and AL.M.ME were subject to an *ad valorem* percentage anti-dumping duty at the weighted average margin of dumping.

25. In 1999 a new shipper reassessment of the level of anti-dumping duty applicable to exports of canned peaches by Venus was carried out. It found that Venus' exports were not dumped into New Zealand, and therefore it was assigned a nil rate of duty. No other changes were made to the duties that were in place.

### 2.2 Method of Imposing Duty

26. Anti-dumping duties can be applied in a number of ways and can be imposed as a rate or amount, including any rate or amount established by a formula. The basic approaches are:

- (a) a specific amount per unit of product;
- (b) an *ad valorem* rate; and
- (c) a reference price approach

27. The main objective of an anti-dumping duty is to remove the injurious impact of dumping. In deciding on the form of duty, some of the matters considered are ease of administration, ability to ensure the dumping margin is not exceeded, fairness between parties, and predictability of the amount of duty likely to be incurred. The objective of the 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.

28. Section 14(4) of the Act provides that the Minister must not impose a duty that exceeds the margin of dumping for the dumped goods. The Solicitor-General has advised that the references to "export price" and "normal value" in this section are to be read as references to the export prices and normal values established in the investigation or to the values at the time the goods subject to the duty are imported.<sup>1</sup> Given this, the Ministry's approach is to adopt a form of duty that minimizes the possibility of exceeding the margin of dumping on shipments subsequent to the imposition of the duty by the Minister. The Ministry applies the same practice in a reassessment.

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<sup>1</sup> Plasterboard from Thailand, Reassessment, September 1999.

29. A specific duty, based on the monetary value of a margin of dumping, has the advantages of being convenient to apply and impossible to evade by incorrectly stating the value for duty (VFD). A specific rate clearly indicates to the importer the amount of duty payable. However, difficulties can arise where there is a wide range of goods involved, where exchange rates fluctuate to the extent that the margin of dumping will be exceeded without constant reassessments of the specific amount, or where the exporter otherwise changes prices so that the duty is either greater than the margin of dumping or less than the margin of dumping previously established.

30. A specific duty expressed as a monetary amount is best suited to a situation when prices and exchange rates are consistent and stable and where the transaction-to-transaction comparison does not result in a range of different dumping margins. An alternative approach to deal with this problem is to express a specific duty 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, such an approach does not deal with the problem of changes in export prices for reasons other than exchange rate movements or movements in normal values.

31. An *ad valorem* duty, based on the dumping margin expressed as a percentage of the export price, and itself expressed as a percentage of the dutiable value is convenient to apply and is not so affected by exchange rate movements. However, collusion between exporters and importers can lead to the manipulation of the invoice value of the goods concerned. An *ad valorem* rate is often appropriate where there is a large range of goods or where product variations appear, provided that the transaction-to-transaction comparison does not result in a range of different dumping margins. 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.

32. Under the reference price approach, the duty payable is the difference between the transaction price and a reference price. The reference price would normally be based on the normal value, by means of Normal Value (Value for Duty Equivalent) (NV(VFDE)) amounts, or the non-injurious price (NIP), by means of Non-Injurious Free on Board (NIFOB) amounts.

33. A reference price duty has advantages in that it is best able to deal with movements in the export price and exchange rates (if expressed in the currency of the normal value), and is particularly appropriate for dealing with situations where a lesser duty is applicable. However, it has been argued that it is more easily evaded than the other forms of duty, by overstating the value for duty of the goods. Nevertheless, a reference price does have the advantage that it clearly signals to the exporter and importer what level of price is non-dumped or non-injurious, and provided it is carefully described, the problem of evasion can be dealt with.

34. A reference price method is therefore considered the best method of assessing and collecting anti-dumping duties in the circumstances presented in this case.

## 2.3 Amount of Anti-Dumping Duty

### Introduction

35. The Ministry is carrying out a concurrent reassessment of the countervailing duty on canned peaches from the European Union. This reassessment also follows the completion of a review that found that there was a continued need for the duty.

36. The reassessment team notes that it is required to set duties that remedy only the injury caused by the factor that the remedy is in place for. That is, the reassessment team is required not to remedy any injurious effects arising from dumping through a countervailing duty, and vice versa. Or in other words, any anti-dumping duty must only remedy injury caused by dumping, and any countervailing duty must only remedy injury caused by subsidisation of imports.


37. To ensure that this was the case, in the review the Ministry added back both the weighted average dumping margin, and the amount of subsidy, to the likely import prices in the event of the removal of duties (based on 2002 export prices from Greece to non-EU countries, excluding Australia, New Zealand, and Argentina, as these three countries currently have remedial duties in place against Greek canned peaches), to achieve a likely import price which has had the effects of dumping and subsidisation removed from it. This analysis showed that there was still significant price undercutting by the Greek imports, showing that imposing duties in the usual manner would avoid the problem of remedying injury with an incorrect type of duty.

38. Section 14(5) of the Act requires that the Minister have regard to the desirability of ensuring the amount of duty is not greater than is necessary to prevent material injury to the New Zealand industry. In the situation of a review and reassessment where the presence of an existing duty is likely to have resulted in an increase in export prices, an analysis of the need for a lesser duty based on the level of price undercutting related to the margin of dumping, is not useful. To establish whether a lesser duty should apply, the reassessment team has therefore approached the issue by firstly calculating a NIFOB and secondly calculating a NV(VFDE) to check that the NIFOB has not exceeded the margin of dumping. If the NIFOB is less than the NV(VFDE), then the NIFOB amount (which is a form of lesser duty) will apply. If the NIFOB is greater than the NV(VFDE) then the NV(VFDE) will apply, i.e., duty will be imposed at the full margin of dumping.

### of Duty for Imports by HW

#### Submissions by HW

39. HW, in its response to the Final Review Report, submitted that its imports of the subject goods should have a  of duty for the following reasons:

- The review team concluded in the Final Review Report that imports by HW during the POD(R ) did not cause any injury to it.
- To force the price of future imports by HW from  up to the reference price will cause injury to HW.

- Article 3.5 of the Agreement requires that dumping and injury be demonstrated before any anti-dumping duty can be applied and this is one of the conditions that must be fulfilled before any anti-dumping duty can be applied in terms of Article 9.1.

40. HW submitted that the imports by HW from [REDACTED], even if dumped, do not cause injury to HW. HW also submitted that section 14(5) of the Act requires that the Minister, before imposing any anti-dumping duty, ensures that the duty imposed is not greater than is required to prevent material injury or remove the threat of material injury. HW said that its imports from [REDACTED] do not cause or threaten to cause material injury to it, and therefore to impose any duty on its imports from [REDACTED] would be contrary to the Act. HW further stated that it is inconceivable that any of its imports, because they were dumped, would cause it injury.

41. HW submitted that while the review concluded that a [REDACTED] of duty should not apply to exports by [REDACTED], the Ministry should consider an alternative to ensure that the requirements of the Act and New Zealand's commitments under the WTO Agreement are met and that a duty is not imposed when no material injury is or will be caused or threatened to it. HW proposed that an acceptable alternative would be to [REDACTED].

#### Ministry's Consideration of the Issues

42. The reassessment team notes that all exports by [REDACTED] currently have a rate of duty because [REDACTED]. By contrast [REDACTED].

43. The reassessment team further notes that the review determined that the removal of the anti-dumping duty would be likely to lead to a recurrence of dumping and injury to the New Zealand industry. The issue of whether the duty should remain in place has therefore been addressed in the review.

44. This reassessment was initiated under section 14(6) of the Act, which provides that the Chief Executive may initiate a "reassessment of any rate or amount of anti dumping duty" and that the new rate or amount is to be set by the Minister in accordance with section 14(4) of the Act. Section 14(5) of the Act provides that in exercising the discretion under section 14(4) the Minister "shall have regard to the desirability of ensuring that the amount of anti-dumping or countervailing duty in respect of those goods is not greater than is necessary to prevent the material injury... [to] an industry".

45. Section 3A of the Act defines industry as follows:

##### Meaning of "industry"

For the purposes of this Act, the term industry, in relation to any goods, means—

- (a) The New Zealand producers of like goods; or

(b) Such New Zealand producers of like goods whose collective output constitutes a major proportion of the New Zealand production of like goods.

46. HW is the only producer of like goods in New Zealand, therefore at present it is the “industry” for the purposes of the Act. However, the reassessment team cannot accept the argument that HW should be [REDACTED] because of the lack of injury caused to the “industry” by its own imports.

47. In relation to dumped goods, the purpose of the Act is to provide for the imposition of an anti-dumping duty to remedy the injurious effects of dumped goods on an industry producing like goods in New Zealand. The Minister is required by section 13 of the Act to make a final determination on an investigation as to whether or not, in relation to the importation or intended importation of goods into New Zealand, the goods are dumped and by reason thereof material injury to an “industry” has been or is being caused or threatened. The Act does not provide for the Minister, in regard to setting a duty or setting the level of a duty, to discriminate between importers of goods. Indeed, section 14(5) focuses on the “amount” of duty to be paid not the individual importer of goods.

48. Furthermore, Article 9.2 of the Agreement provides:

“When an anti-dumping duty is imposed in respect of any product, such anti-dumping duty shall be collected in the appropriate amounts in each case, on a non-discriminatory basis on imports of such product from all sources found to be dumped and causing injury, except as to imports from those sources from which price undertakings under the terms of this Agreement have been accepted. The authorities shall name the supplier or suppliers of the product concerned. If, however, several suppliers from the same country are involved, and it is impracticable to name all these suppliers, the authorities may name the supplying country concerned. If several suppliers from more than one country are involved, the authorities may name either all the suppliers involved, or, if this is impracticable, all the supplying countries involved.”

49. The Agreement clearly does not contemplate being able to discriminate among or between single importers or groups of importers.

50. The reassessment team understands HW’s submission to be that all of its imports of the subject goods, not only those from [REDACTED], be subject to a [REDACTED] of duty, regardless of whether or not those goods are dumped. In this situation, if another New Zealand company imported the subject goods from Greece at a dumped price at, for example, the same time and at the same price as HW imported the same goods, such a company would be paying a higher price through the effect of the anti-dumping duty. HW would therefore be in a position to undercut, through the use of its own imports, the price of other canned peaches also imported from Greece. Alternatively, if HW sold into the New Zealand market at the same price as other importers from Greece, it would achieve a higher margin than other importers. ([REDACTED]). In either case an advantage would be conferred on HW’s importing operation, through the action of the anti-dumping duty.

51. The effect of the duty would consequently in part be to unfairly protect HW’s importing operation rather than its domestic production of like goods, which would be

contrary to the purpose of the Act. At the same time the duty is necessary to protect HW's domestic production of like goods from the injurious effects of dumped imports. The reassessment team considers that in order to ensure that the duty achieves this, but does not at the same time provide unfair protection to HW's importing operation, all exports by [REDACTED] and other Greek exporters should be subject to the duty, regardless of the identity of the New Zealand importer.

52. In addition, the reassessment team considers that [REDACTED] is tantamount to a subsidy in terms of the WTO Agreement on Subsidies and Countervailing Measures (the Subsidies Agreement), for the reasons set out below.

53. Articles 1.1(a)(1)(ii) and 1.1(b) of Article 1 of the Subsidies Agreement state as follows:

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

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

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

and

(b) a benefit is thereby conferred.

[Footnote omitted]

54. [REDACTED] would result in government revenue (in the form of anti-dumping duty) that is otherwise due being forgone. As outlined above, a benefit would consequently be conferred on HW through the price advantage it would have over other importers of the subject goods from Greece. A subsidy would therefore be deemed to exist in terms of Article 1 should HW [REDACTED]. The subsidy would also be specific in terms of Article 2 of the WTO Agreement on Subsidies and Countervailing Measures as the exemption would be specific to HW in relation to its imports of canned peaches from Greece.

55. The government of New Zealand operates programmes that provide assistance to New Zealand industry in accordance with its overall objectives, plans and targets and through designated organisations that ensure any assistance complies with government policy and is properly accounted for. The *de facto* subsidy that would be provided to HW through the setting of a [REDACTED] for its own imports would not be part of the government's approved industry assistance programme nor be in accordance with government policy.

## **Rates for Good Standard and Standard Product**

56. In calculating reference prices, the Ministry proposed in the Final Review Report reference prices for good standard and standard quality, 410g, 820g, and 3kg can

sizes (that is, not to distinguish between the media in which the peaches are canned). HW in its response to the Final Review Report submitted that the duties should be imposed based on the three can sizes but not be split between the standard and good standard styles. HW's submissions on this issue are dealt with in the following paragraphs.

### HW's Submission

57. HW, in its response to the Final Review Report stated, in summary, that it is inappropriate to differentiate between good standard and standard canned peaches for the following reasons:

- material injury to HW will not be fully prevented
- it will be impossible for Customs to administer

58. HW stated that it aims to [REDACTED] are stored as britestack, which are later labelled and dispatched [REDACTED], as required to meet sales patterns. As a result, all HW's brands have to compete with the imported product, which are not differentiated between good standard and standard.

59. HW argued that setting a lower reference price for standard than for good standard will only ensure that all imports are designated as standard. HW also argued that there is no statutory requirement for the imported product or accompanying documentation to display or contain any evidence that identifies it as either standard or good standard.

60. HW submitted that the difference between standard and good standard is not a term used by the New Zealand industry which more commonly uses the United States Department of Agriculture (USDA) specification of "fancy", "choice", "standard" and "sub-standard", or may use the Camden Fruit Standard which has Camden "A", "B" or "C" as its grades.

61. HW stated that it would be impossible for Customs to identify visually or by documentation whether the imports are standard or good standard when there is no standardised grading system used globally and there is no statutory requirement to show any grading. HW also stated that the end result would be that importers would import only the standard grade or declare all imports as standard. HW submitted that this would result in lower reference prices being applied, when these imports would compete with and injure all HW's products.

62. HW submitted that the only logical method is to set a reference price for each can size irrespective of any "pseudo grading".

### Ministry's Consideration of the Issues

63. [REDACTED] of canned peaches from Greece over the POD(R). All of its peaches were imported from [REDACTED], which were labelled either [REDACTED]. The invoices from [REDACTED] to [REDACTED] describe the canned peaches in a similar way. The description on the invoice also includes the word ,



being the brand and , being the brand. The Ministry does not know how subject goods would be described if importers other than imported them.

64. In the South African canned peaches case, the Ministry reassessed the duties based on sub-standard and choice brands of canned peaches found to be imported over the POD(R) from South Africa. The separation into two styles was justified in that case as there were significant price differences between the two styles of canned peaches imported from South Africa. For example, the difference in the ex-factory export price in the South African case of A10 (3kg) sub-standard and choice canned peaches in syrup was percent. In the current case the difference in the ex-factory export price between A10 standard and good standard canned peaches is percent. The Ministry considers that the price difference in the current case is not sufficient on its own to outweigh other arguments against a split between standard and good standard styles.

65. The Ministry concurs with HW that splitting the anti-dumping duties between standard and good standard would encourage exporters to circumvent the higher duties by describing all canned peaches as standard. Also, as the cans are not required to be labelled as such, it would be difficult for Customs to differentiate between the two styles of canned peaches in order to calculate the appropriate anti-dumping duties.

66. If the anti-dumping duties are to be imposed on a per size basis (410g, 820g and A10), the Ministry is of the view that a simple average price of the two styles be calculated. A weighted average price would not be appropriate in this case, as it would bias the price towards the particular grade that happened to be sold in higher volumes over the POD(R) to one customer, rather than providing a fair average price.

67. Based on HW's submission and its own consideration of the issues, the Ministry concludes that the anti-dumping duties should be imposed on the basis of the can sizes only, with no split between the grade and styles imported into New Zealand.

## **Calculation of NIFOBs**

68. NIFOB's are calculated by deducting from the industry's NIP those costs and importer's margin arising after FOB up to the level of trade at which the imported product first competes with the New Zealand industry's product.

## **Calculation of NIP**

### ***HW Original Submission***

69. HW submitted that the review team accepted in the Final Review Report that a review is a forward-looking exercise, but only based the NIP on prices achieved in the 12-month period to May 2003. HW stated that while this is clearly more correct than using prices over the POD(R), it is still historical and does not reflect the situation going forward. HW also stated that there have been further price increases during the period to July 2003, and to use prices to May 2003 also inaccurately reflects the situation going forward, as these price increases are already in place.

70. HW submitted that the only way to reflect the true situation is to use average prices for the [redacted] months to July 2003, as this most closely represents the situation going forward, being the most recent period since its prices were last increased. HW also noted that these prices are now firmly in place. HW provided the actual average prices achieved for the [redacted] months to July 2003, which are [redacted] for each can size and overall, compared to the prices for the 12 months to May 2003, which [redacted] are [redacted] than the prices achieved over the POD(R).

**Ministry’s Original Consideration of the Issues**

71. The reassessment team agrees that a review is a forward-looking exercise, and therefore duties should be imposed which will best remedy injury caused by dumping in the future. Hence, the reassessment team agrees that the NIP should be based on the most current pricing information available. However, the reassessment team considers that pricing information for a full 12-month period would be more appropriate as this would smooth out any price fluctuations. The evidence on monthly prices provided by HW across all its brands shows a price fluctuation of about [redacted] over the period from December 2001 to November 2002. To base the NIP on only a [redacted] month period would fail to include any price fluctuations from the other [redacted] months of the year.

72. The reassessment team also notes that HW has, in the past, [redacted] [redacted] (refer paragraph 166 of Final Review Report). However, the reassessment team is also of the opinion that the previous [redacted] [redacted] is only an indication of possible future outcomes, and has not been given any weight beyond that.

73. Hence, the reassessment team has based the NIP on [redacted] [redacted] prices achieved by HW over the 12-month period to July 2003.

74. The following table shows the [redacted] [redacted] ex-factory HW’s NIP per kilogram for each can size on the basis set out above.

**Table 2.1: HW’s NIP -Year Ending July 2003**

Can Size	NIP/kg
410g	[redacted]
820g	[redacted]
A10	[redacted]

**HW Submission on Interim Reassessment Report**

75. HW agreed with the reassessment team that duties should be imposed that will best remedy injury caused by dumping in the future, and that a 12 month period should be used so as to take seasonality into account. However, HW disagreed with the 12 month period used in the calculation of the NIP, and proposed an alternative method for calculating this NIP.

76. HW stated that the recent price increases have been effective [REDACTED], and are now permanently in place. HW carried out a comparison of prices during this period to the same period a year ago which showed prices have increased by [REDACTED] percent for 410g cans, [REDACTED] percent for 820g cans, and [REDACTED] percent for A10 cans. HW then applied these price increases to the prices achieved in the [REDACTED] to provide the forward looking prices for the period [REDACTED] with any seasonal fluctuations accounted for. HW stated that by combining the actual [REDACTED] prices and the adjusted [REDACTED] prices, an accurate forward looking price is achieved. These adjusted NIP's are presented in the table below, and compared to the NIP's calculated by the reassessment team in the Interim Report.

**Table 2.2: HW NIP (NZ\$ per kg)**

	410	820	A10
NIP based on 12 Months to July 2003	[REDACTED]	[REDACTED]	[REDACTED]
Adjusted NIP	[REDACTED]	[REDACTED]	[REDACTED]

77. The table shows that the adjusted HW NIP's are greater than the original NIP's for each can size.

### ***Ministry's Consideration of the Issues***

78. The reassessment team notes HW's concern that the anti-dumping duty should be aimed towards preventing injury in the future by taking greater account of the recent price increases. However, the reassessment team considers that this is adequately achieved by basing the NIP on the average prices achieved over the 12 month period to July 2003, and there is no need to apply HW's method (i.e. the price increases have already been properly taken account of by using this 12 month period, and applying HW's methodology gives the price increases too much weight).

79. The reassessment team further notes that even though HW has stated that these price increases are now firmly in place, there is no absolute guarantee that these prices will be retained into the future, and therefore the reassessment team has taken a conservative approach to this issue, by relying on prices actually achieved, and not using adjusted prices that could have been achieved had the price increases been implemented earlier.

80. The reassessment team concludes that the methodology it followed in the interim reassessment report, of basing the NIP on a 12 month period (August 2002 – July 2003) that incorporates the recent price increases, to be the most accurate method, and the NIP has accordingly been established on this basis.

81. The reassessment team notes that HW can apply for a further reassessment if it considers that, after a full 12 month period has elapsed since its [REDACTED] price increases, it has cause to believe that a further reassessment is necessary and provides evidence justifying the need for a reassessment. This reassessment would

only be carried out on the basis that circumstances have changed such that the duty is no longer fully effective.

### **Level of Trade**

82. The prices of dumped imports and domestic production are compared at the point of first competition in New Zealand. The levels of trade will normally be the ex-factory price for goods produced in New Zealand and the importer's ex-store price for imports. This approach ensures that differences in distribution costs do not confuse the impact of dumping. This approach therefore compares importer's prices, including relevant selling and administration costs, which involve similar cost elements to those in the New Zealand manufacturer's selling price, but not including cost elements relating to the distribution of goods.

83. In the review, HW agreed that ex-factory was the appropriate level of trade for its sales of canned peaches. HW submitted in the review that the level of trade for imported product would change from ex-importers store to [REDACTED] if the duties were removed, because HW considered that [REDACTED] would [REDACTED]. The review team agreed that this was the appropriate level of trade for [REDACTED]. It also noted that imports were still likely through separate importers, where ex-store was the appropriate level of trade.

### **HW Submission on Level of Trade**

84. HW said that it agrees with the conclusion in the Final Review Report, that there are two levels of trade that could be relevant in this situation. The first is comparing the ex-factory price of HW's sales, to the ex-importer's store price for imports by retailers through an independent importer. The second is comparing the ex-factory selling price of HW's sales to the [REDACTED] price for goods that are [REDACTED].

85. HW submitted that there are two subsets within the first scenario. HW considers that an importer importing a branded product that it markets and sells to retailers would have costs similar to those identified by the review team for an importer investigated during the POD(R), i.e. an independent importer who imports the goods in their own right and on-sells to retailers. However, HW also stated that the current scenario applying to imports from Australia, where an [REDACTED], will become more common in future. HW considers that the costs for this type of [REDACTED] than for an importer who [REDACTED], and therefore they will [REDACTED]. HW further noted that [REDACTED] are currently in this type of arrangement with [REDACTED], and from its own experience estimates that the [REDACTED] in this chain would be making [REDACTED].

86. HW noted that the review team, in the final review report, set six reference prices that would apply (based on NV(VFDE)'s and NIFOB's) regardless of whether the goods are imported by an importer, [REDACTED], that is, no allowance has been [REDACTED].

made for the correct level of trade. HW submitted that when there threatens to be imports at various levels of trade, setting a remedy that does not take account of this is remiss, and will only ensure the remedy is ineffective.

87. HW also referred to the review team's suggestion in the Final Review Report that if imports begin at a different level of trade to that on which the proposed duties were based (the ex-store level) it could apply for a reassessment. HW said this missed the very reason for a review. HW submitted that the purpose of the review is to determine whether injury would recur if the duties were to be removed, and if so, reassess the current rate and type of duty so as to determine what duties are required in future to ensure that material injury does not recur. HW is of the opinion that to not do this and make it rely on a future reassessment leaves it vulnerable to injury.

88. HW submitted that separate duties should be set to cover the three different levels of trade it has referred to above. HW made it's own calculations of new NIFOB's at each of the three levels of trade, which resulted in amounts [REDACTED] than those calculated by the review team across the board. These calculations were based on the NIP for the [REDACTED] months to July 2003 (which as outlined above, the reassessment team considers not representative), and deducted the same costs as those deducted by the reassessment team in the proposed reassessment.

89. HW then compared it's NIFOB and NV(VFDE) calculations, and concluded that duty must be imposed at the full margin of dumping for all can sizes.

### ***Ministry's Consideration of the Issues***

90. The reassessment team accepts that there is more than one possible level of trade at which the subject goods could first compete with HW's product i.e., through a handling importer, [REDACTED]. The reassessment team notes however that this argument was considered in the Final Review Report, and it still holds the opinion that as no imports from Greece have been observed [REDACTED], to impose duty based on this premise, would be purely speculative. The reassessment team also notes that HW took the line of argument during the review that [REDACTED] if duties were removed, and as the duties have been retained, this situation may well not arise.

91. The reassessment team also considers there would be significant difficulties in administering at the border a three tier system like that proposed by HW. It would require Customs to determine at the point of importation what level of trade the goods would subsequently be sold at in the New Zealand market, and would entail practical difficulties similar to those identified by HW above in relation to setting separate duties for standard and good standard product. The reassessment team considers that a three tier system would only practically operate where duties at a particular level of trade were in place against named exporters and importers. This could only happen if actual imports occurred at a level of trade different to that involving a handling importer, and such duties would need to be set by way of a reassessment.

92. The reassessment team concludes that the methodology and calculations used in the proposed reassessment in the Final Review Report should be adhered to in the reassessment i.e., that NIFOBs should be calculated at the ex-store level of trade involving costs incurred by a handling importer.

**NIFOB Amounts**

93. The purpose of a NIFOB is to ensure that the price of the subject goods, when considered at the FOB level, is such that when they are sold at the relevant level of trade, the sale price equates to the NIP.

94. If a NIFOB was to be established in euros, the level of the NIFOB when converted to NZ dollars would vary every time there was a movement in the New Zealand dollar to euro exchange rate. The effect of a variable NIFOB, when converted into NZ dollars, would be to change the consequent ex-store price (assuming the same profit margin is taken). For example, if the NZ dollar depreciated against the euro, then the NIFOB in NZ dollars would increase and result in an ex-store price higher than the NIP. The reverse would result if the NZ dollar appreciated against the euro.
















95. If a NIFOB is set in NZ dollars and the transaction price is below the NIFOB amount, then the anti-dumping duty collected will be such that the ex-store price (assuming the allowable profit margin is taken) will always equate to the NIP, provided there are no significant changes in the costs between FOB and ex-store from those used to establish the NIFOB amount. With the exception of sea freight, all significant costs between FOB and ex-store are incurred in NZ dollars and are not directly affected by exchange rate movements. However, if these costs do change significantly, this can be addressed by way of reassessment. A NIFOB fixed in NZ dollars will also ensure that the duty is administratively simple to operate.

96. The costs between FOB and ex-store were taken from information provided by [redacted] relating to its importations of the subject goods over the POD(R). A reasonable profit margin was [redacted]

97. These adjustments have been made to the NIP to derive the NIFOB and are shown in the table below.

**Table 2.3: NIFOB – All Greek exporters (NZD/kg)**

	410g	820g	A10
HW NIP	[redacted]	[redacted]	[redacted]
<u>Less Costs and Margins</u>			
Ocean Freight	[redacted]	[redacted]	[redacted]
Insurance	[redacted]	[redacted]	[redacted]
Port services charges and Documentation	[redacted]	[redacted]	[redacted]

Inland transport/cartage to store			
Storage			
Reasonable Importer's Margin			
Customs Duty (7%)			
NIFOB Ex-store (NZD/kg)			

## Calculation of NV(VFDE) Amounts

### Original Submission by HW

98. HW stated in response to the Final Review Report that the methodology used to establish a reasonable profit margin to construct normal values was flawed. HW suggested an alternative method, which gave a reasonable profit margin of 20 percent, as opposed to the 17.8 percent margin that the review team calculated in the Final Review Report.

99. The review team calculated the reasonable profit margin in the Final Review Report by making use of figures contained in a report by the National Bank of Greece relating to firms listed on the Athens Stock Exchange. The report provided in aggregate for all of the non-financial companies listed on the Athens Stock Exchange, the gross profit margin and operating profit (as a percentage of sales) for 2001, which were respectively 27.3 and 15.1 percent. This operating profit percentage is 44.7 percent less than the gross margin percentage. An operating profit margin percentage for the food and beverage sector was therefore estimated by reducing the gross profit percentage for this sector (32.2 percent) by 44.7 percent, which is equal to 17.8 percent. A reasonable profit margin was therefore calculated at 17.8 percent of the selling price.

100. HW was of the opinion that the review team had presented no evidence that food companies listed on the Athens Stock Exchange have a proportionally higher cost structure than other companies, and therefore it should be assumed that food companies are more profitable than the average of all companies. HW then presented an alternative calculation of the reasonable profit margin that should be used in the calculation of the NV(VFDE) amounts. This calculation is presented below.

**Table 2.4: HW Reasonable Profit Margin Calculation**

<u>Gross Margin</u>	
Food Companies	32.2%
Less All Company's Athens Stock Exchange	27.3%
Food Company Additional Margin	4.9%
<u>Net Profit</u>	
All Athens Stock Exchange	15.1%

Plus Food Company Additional Margin	4.9%
Revised Net Profit Margin	20.0%

101. HW further submitted that this new profit margin should be applied to the ex-factory costs used to construct the NV(VFDE) amounts to give new NV(VFDE) amounts. HW, through a series of adjustments and additions of costs used in the original calculation, constructed new NV(VFDE) amounts which were [REDACTED] than those calculated by the review team. These adjustments involved, *inter alia*, the introduction of costs representing “traditional marketing costs”, which HW considers are required to build and maintain a local brand. HW also considers that these marketing costs ensure that the normal value is at the same level of trade as its imports. HW neglected to make an adjustment for customs brokerage and document fees.

**Ministry’s Original Consideration of the Issues**

102. The reassessment team considers that HW’s calculation of the reasonable profit margin is fundamentally flawed, in that it adds a difference in percentage gross margins (which is not actually the proportionate difference, just the difference between two percentage amounts), to the percentage net profit margin to reach an overall net profit margin for food companies. The reassessment team considers that differences in percentages cannot be added to other percentages to establish new percentages, because they are measured from different bases. The reassessment team also considers it invalid to begin with percentages as the base of a calculation and insert numbers to satisfy these percentages.

103. The reassessment team considers that the correct calculation should establish proportionately how much greater the gross margin for food companies is than for all companies (which is 17.95 percent), and scale up the net margin for all companies by this percentage. Scaling 15.1 percent up by 1.1795 shows that the reasonable profit margin should be 17.8 percent, which is as calculated for the Final Review Report.

104. The reassessment team concludes that the reasonable net profit margin should be 17.8 percent of sales revenue.

105. HW’s calculation of the normal value included an amount for “traditional marketing costs” which are costs it considers necessary to build and maintain a local brand. The reassessment team notes that predominantly, [REDACTED] does not sell in its local market, and advised that if it did, it would most likely do so through a distributor, and therefore selling and administration expenses would be the same as those incurred on export sales to New Zealand. Selling and administration costs have therefore been set at the same amount as those incurred on export sales to New Zealand.

106. The reassessment team notes that normal values must be compared to export prices at the same level of trade (or an adjustment must be made if normal values cannot be established at the same level of trade). The reassessment team considers



that in the review normal values were correctly constructed such that they were at the same level of trade as the export sales to New Zealand. As noted above, the reassessment team considers that selling and administration expenses incurred on domestic sales would be similar to those incurred on export sales to New Zealand, if those sales were made through a distributor. Sales through a distributor on the domestic market are equivalent to the level of trade at which export sales [REDACTED]. With the addition of a reasonable profit, the reassessment team consequently considers that the constructed normal values represent the prices at which sales would be made on the domestic market if such sales were made at the same level of trade as the export sales to New Zealand.

107. The reassessment team also considers that customs brokerage/document fees should be included in the calculation of the NV(VFDE) as they are actual costs incurred by Venus to get their product to the wharf in Greece when they export canned peaches to New Zealand.

108. Based on the above analysis the reassessment team concludes that the exact methodology and calculations used to calculate the proposed NV(VFDE) amounts in the Final Review Report should be adhered to in the reassessment.

### ***HW Submission on Interim Reassessment Report***

109. HW stated that it had not erred in its calculation of the reasonable profit margin. HW said that its calculation was based on the assumption that costs below gross profit (i.e. administration, general selling and financial expenses) are the same proportionally for food companies as for all other companies, which it considered reasonable given the lack of information to the contrary. HW provided the following table to demonstrate how the 20 percent margin was calculated.

**Table 2.5: Reasonable Profit Margin**

<b>As a share of Sales Revenue:</b>	<b>All Companies</b>	<b>Food Companies</b>	<b>Variance</b>
Gross Profit Margin	27.3%	32.2%	-4.9%
Costs Below GP	12.2%	12.2%	0.0%
Net Profit	15.1%	20.0%	-4.9%

### ***Ministry Consideration of the Issues***

110. The reassessment team notes that there are two methods that can be used to calculate the reasonable profit margin in this instance, that used by HW in its latest submission (giving a 20 percent margin), and that used by the reassessment team in the interim reassessment report (giving a 17.8 percent margin), both of which could be considered correct.

111. However, the reassessment team agrees that given the lack of evidence in favour of selling and administration costs being higher for food companies than for all other companies, it is reasonable to assume that they are approximately equal.

112. Therefore, the reassessment team concludes that the reasonable profit margin should be set at 20 percent of sales revenue.

**Ministry’s Calculation**

113. A NV(VFDE) is calculated by adjusting the normal value to the FOB level. In this case, the costs incurred between the level at which normal values were established and FOB were agent’s commission, inland freight and THC, and customs brokerage/document fees.










114. The only can size for which the review team had cost information, on both good standard and standard quality canned peaches in both juice and syrup, was the A10 sized cans. Where the cost elements differed between juice and syrup within a given quality of A10 can, the review team took a simple average of the costs and incorporated this average figure into the overall figure for that given quality can. This gave an average figure for A10 good standard and standard quality canned peaches across juice and syrup. Where the review team lacked information on a given quality or media (juice or syrup), within a given can size (either 410g or 820g), it constructed these values using conversion rates established from the A10 sized cans. The review team also undertook the same averaging process to reach overall total costs for producing 820g and 410g good standard and standard quality canned peaches.

115. The calculation of the NIFOB amounts above are based on an average NIP for the year ended July 2003. The reassessment team notes that the use of this NIP is correct only if it can be compared to NV(VFDE) amounts that relate to approximately the same time period. As the reassessment team only has NV(VFDE) information to November 2002, it updated the NV(VFDE) amounts by the percentage increase in the Greek Producer Price Index over the period November 2002 to July 2003 of 1.7 percent, to allow a more accurate comparison with the NIFOB prices.

116. The following table shows the NV(VFDE) calculated for each can size.

**Table 2.6: Normal Value (Value for Duty Equivalent)**

	410	820	A10
Ex-Factory Cost per kg (euros)	██████████	██████████	██████████
<u>Plus</u> reasonable profit margin (20%)	██████████	██████████	██████████
Ex-Factory Normal Value	██████████	██████████	██████████
<u>Plus Costs from Ex-Factory to FOB</u>			
Agent's Commission (██████████)	██████████	██████████	██████████
Inland Freight and THC	██████████	██████████	██████████
Customs Brokerage/Document Fees	██████████	██████████	██████████
NV(VFDE) (euro/kg)	██████████	██████████	██████████




Plus PPI Adjustment (1.7%)			
Adjusted NV(VFDE) (euro/kg)			
Adjusted NV(VFDE) (NZD/kg)			

117. The NV(VFDE) per kilogram amounts in NZ dollars for comparison with the NIFOB amounts were calculated by converting the NV(VFDE) in euros per kilogram using the average euro/NZ\$ exchange rate for the POD(R), which according to the [www.oanda.com](http://www.oanda.com) website was 1 euro = NZ\$2.0457.

118. The reassessment team proposes that the NV(VFDE) amounts established above be applicable to all exporters from Greece, as this is the best information available. A comparison of the NIFOB and NV(VFDE) amounts shows that anti-dumping duty should be imposed at the full margin of dumping for imports of 820g and A10 sized cans (that is, the NV(VFDE) is less than the NIFOB for these can sizes) into New Zealand from Greece, and as a lesser duty for imports of 410g sized cans (i.e. NIFOB is less than NV(VFDE) for 410g cans).

119. Based on this, the reassessment team proposes the following reference prices in the form of NV(VFDE) and NIFOB amounts for 410g, 820g, and A10 sized canned peaches imported from Greece.

**Table 2.7: Proposed Reference Price Levels\* (euros/kg)**

Can Size	Reference Price
410g	 **
820g	
A10	

\*Involves only a consideration of dumping, and not subsidy.

\*\*Reference price as a NIFOB (lesser duty) in NZ\$ per kg

120. The above scenario applies only to a situation where dumping is considered independently of any subsidy that may be present in the pricing of the imports. However, in the current reassessment, a consideration of subsidy and likely countervailing duties is also needed. The basis for this is outlined below.

## 2.4 Subsidy Considerations

121. The reassessment team notes that the above method is the normal approach in reassessing anti-dumping duties. However, in the current case, a consideration of the amount of subsidy inherent in the export price of the subject goods is needed, so as to accurately impose countervailing duty to off-set the amount of subsidy.

122. The reassessment team is of the opinion that subsidy issues need to be addressed in this report. An interested party basing any calculation of anti-dumping duty payable on a line of imports on the methodology outlined above may reach a final anti-dumping duty payable that differs from the amount of anti-dumping duty

payable based on the methodology outlined in the reassessment of countervailing duties on canned peaches from the EU (where anti-dumping duty is determined by subtracting the amount of countervailing duty from the total duty payable). The reassessment team considers that the amount of subsidy inherent in the price of exports to New Zealand from Greece will be constant regardless of the VFD of the exports, and therefore should have countervailing duty imposed to off-set it before any anti-dumping duties are calculated. The reassessment team notes that export prices to New Zealand, without the effect of the subsidy would be higher, and therefore the liability for anti-dumping duty would be less on any given line of imports.

123. A major consideration for the reassessment team in calculating duties on this basis is to ensure anti-dumping duty does not remedy injury from subsidisation and vice versa. The reassessment team is of the opinion that the proposed method outlined above will ensure that the amount of subsidy is countervailed accurately, and then any remaining material injury caused by dumping will be remedied by the proposed anti-dumping duty.

124. Another consideration is to ensure that the duties are not levied at such a rate that they over or under compensate HW for the injury it is likely to suffer in the foreseeable future as required by section 14(5) of the Act and that they only remove injury that is attributable to dumping or subsidy. The reassessment team is of the view that by imposing lesser duty rates where appropriate, and through the use of reference prices, this problem has been addressed.

125. To calculate the reference prices in the reassessment of countervailing duty on canned peaches from the EU (on which the anti-dumping duty payable is reliant), the reassessment team has used NV(VFDE) figures as a base for the NUPFOB, which is the normal unsubsidised FOB price. The NUPFOB equals the NV(VFDE) plus the amount of subsidy per kilogram calculated during the review (producer's aid is [REDACTED], and sugar export refund is [REDACTED]).

126. The reassessment team considers that as the subsidy is paid in euros the amount of subsidy to be countervailed in any export transaction, should be set in euros (the rates for producer's aid and sugar refunds are [REDACTED] euros), then converted into New Zealand dollars at the time of importation. The implication of this is that the amount of subsidy in New Zealand dollars will not always equal [REDACTED] (this report only makes use of these figures because they were what resulted from the average NZD/euro exchange rate over the POS(R)). For Customs purposes the base subsidy amount from which the amount of countervailing duty payable will be calculated, will be equal to [REDACTED] euros or [REDACTED] euros converted into New Zealand dollars at the time of importation.

## Duty for Venus

127. Venus has used imported sugar for all its production of canned peaches over the POS(R). As the reassessment team is satisfied that Venus is unlikely to use EU sugar in its future production, it proposes an exemption for Venus from any countervailing duties relating to export sugar refunds.

128. The review team therefore proposes countervailing duty for Venus only in relation to the producer's aid. This NUPFOB has then been compared to the NIFOB

identified for each exporter, and where the NIFOB is less than the NUPFOB, a reference price is proposed at the NIFOB level in NZD. Where the NUPFOB is less than the NIFOB, it is proposed that duty be imposed as a reference price at the full amount of subsidy. Details of the comparison of the NIFOB with the NUPFOB and the relevant rate of duty that should apply, are shown in the table below.

**Table 2.8: Venus Reference Price Amounts (NZD/kg)**

	410	820	A10
NV(VFDE)	██████████	██████████	██████████
NIFOB	██████████	██████████	██████████
NUPFOB	██████████	██████████	██████████
Countervailing Duty	Lesser	Full	Lesser
Reference Price	██████████	██████████	██████████

129. The total duty (anti-dumping plus countervailing duty) is calculated by deducting the VFD from the overall reference price (NIFOB for lesser duty, NUPFOB for full amount). The amount of subsidy is a fixed amount and therefore does not vary according to the export price of the goods. In the case of Venus, the amount of subsidy is ██████████ and this amount represents the countervailing duty payable (unless the total duty payable is less than ██████████ in which case such a lesser amount will all be countervailing duty). The amount of anti-dumping duty payable is obtained by deducting ██████████ from the total duty payable.

130. The reassessment team notes that even though in one case the countervailing duty has been imposed at the “full amount”, all this means in practice is that the NUPFOB is the appropriate reference price from which to make comparisons and not the NIFOB. It does not mean that countervailing duty will always be imposed at the full amount (██████████ or ██████████), because the amount of duty depends on the export price, just as in a purely dumping case.

### Duty for Other Greek Exporters

131. In order to protect confidential information, it is not possible to use the same reference price methodology for other Greek exporters as was used for Venus. In this situation, the reassessment team considers that the best methodology is to impose a residual rate as an *ad valorem* percentage. To ensure that an *ad valorem* percentage rate does not impose duty at a rate that is greater than the margin of dumping the reassessment team considers that the duty should be capped at the duty payable using an appropriate reference price.

132. In the Final Report on the review that preceded this reassessment it was noted that due to the imposition of anti-dumping and countervailing duties on imports from Greece in 1998, the export prices for canned peaches exported to New Zealand from Greece over the last five years have been distorted, and are therefore not useful in the calculation of a weighted average dumping margin. However, the reassessment team notes that exports by Venus since April 2000 have been subject to a ‘nil’ rate of duty, and it can therefore be assumed that export prices for Venus’ exports over the

POI have not been affected by the anti-dumping and countervailing duties, and can be used as the basis for a calculation of a weighted average dumping margin.

133. The weighted average dumping margin calculated during the review for the exports by Venus was 20 percent, for all can sizes and styles. However, the reassessment team agreed, as outlined above, that the reasonable profit margin used to construct normal values for Venus should be increased from 17.8 to 20 percent. This has the effect of increasing the normal value, and consequently increased the weighted average margin to 23 percent. The reassessment team considered whether separate weighted average dumping margins (and therefore separate rates of *ad valorem* duty) should be calculated for each of the three can sizes for which reference prices have been established.

134. The reassessment team notes that there was only a relatively small number of individual transactions investigated for dumping in the review, and that for one can size there was only one transaction. Given this, the reassessment team considers that the number of transactions for each of the three can sizes may not be a sufficient basis on which to calculate a separate rate of duty for each size. It is therefore proposed that the duty be set at an *ad valorem* rate of 23 percent for all can sizes.

135. The reassessment team is of the opinion that the reference prices used to establish the cap on the duty for other Greek exporters should be calculated using the same methodology as above for Venus, and make use of the same NV(VFDE), but include in the NUPFOB both subsidies, as opposed to just the producer’s aid portion for Venus. The cap, however, should be set at the full margin of dumping, i.e., consideration of a lesser duty is not necessary for the purposes of establishing a cap on the *ad valorem* percentage.

136. The reference prices which will be used to establish the cap on the duty for other Greek exporters are shown in the table below.

**Table 2.9: Reference Prices for Calculation of Cap on Duty for “Other” Greek Exporters (NZD/kg)**

	410	820	A10
Reference Price	██████████	██████████	██████████

137. The reassessment team notes that the countervailing duty imposed cannot exceed ██████████, with the remaining duty being levied as anti-dumping duty.

138. To illustrate how the proposed reference prices will operate some examples of how the total duty would be calculated, and then allocated between anti-dumping duty and countervailing duty are given below. The figures in the examples relate only to the application of reference prices (not *ad valorem* percentage rates), are purely illustrative, and bear no resemblance to actual numbers calculated for this reassessment. (It should be noted that the difference between the NV(VFDE) and the NUPFOB is the constant amount of subsidy per kilogram, and therefore the amount of countervailing duty imposed on any imports cannot exceed this amount). It is assumed in the following table that the amount of subsidy (in euros) when

converted to New Zealand dollars at the NZD/Euro exchange rate on the date of importation is equal to NZ\$1.00.

**Table 2.10: Examples of Duty Rates**

	<b>410</b>	<b>820</b>	<b>A10</b>
NIFOB	\$5.50	\$5.60	\$2.50
NUPFOB	\$6.00	\$3.00	\$2.40
NV(VFDE)	\$5.00	\$2.00	\$1.40
Countervailing Duty	Lesser	Full	Full
Reference Price	\$5.50	\$3.00	\$2.40
If VFD equalled 1.00			
- Total Duty	\$4.50	\$2.00	\$1.40
- CV Duty	\$1.00	\$1.00	\$1.00
- AD Duty	\$3.50	\$1.00	\$0.40
If VFD equalled 2.60			
- Total Duty	\$2.90	\$0.40	0
- CV Duty	\$1.00	\$0.40	0
- AD Duty	\$1.90	0	0
If VFD equalled 5.00			
- Total Duty	\$0.50	0	0
- CV Duty	\$0.50	0	0
- AD Duty	0	0	0

## 2.5 Proposed Reference Prices

139. The Ministry considers that the NUPFOB amounts should be expressed in the currency of the country of origin, since normal values and costs to FOB would normally be established in the country of origin and representation of NUPFOB in the currency of the country of origin ensures that exchange rate movements do not result in collection of anti-dumping duty above the margin of dumping, and countervailing duty above the amount of subsidy.

140. The reassessment team also proposes that where a lesser duty in the form of a NIFOB reference price currently applies, and the New Zealand dollar appreciates (which increases the NIFOB when expressed in euros) against the euro to a level

that causes the NIFOB to be higher than the NUPFOB, then the NUPFOB reference price would apply. In other words, when a lesser duty rate currently applies for a certain can size, and the euro/NZD exchange rate becomes such that the NUPFOB (when expressed in New Zealand dollars at the euro/NZD exchange rate on the date of importation) is lower than the NIFOB, the NUPFOB reference price will take effect. The purpose of this proposal is to ensure that the duty regime is effective in not over-compensating for the injury suffered by HW, even when taking into account exchange rate movements. The overall proposed reference prices are given in the table below.

**Table 2.11: Proposed Reference Prices for Greek Exporters in NZ\$ or Euros (per kg) and Ad Valorem Percentage Rates**

	410	820	A10
GREECE			
-Venus			
-Other exporters <i>ad valorem</i> percentage rate	23%	23%	23%
-Other exporters reference price cap			
Alternative Duty***:			
-Venus			

\*Reference price as NUPFOB in euros/kg

\*\*Reference price in NZ\$/kg

\*\*\*Note: The alternative duty rate (NUPFOB) takes effect when exchange rates are such that the NUPFOB is lower than the NIFOB, and only where the proposed reference price is at the NIFOB level originally.

141. For ease of comparison of the proposed duty rates, the following table shows all of the rates in NZ dollars, the euro amounts in the table above being converted into NZ dollars at the average exchange rate over the POD(R).

**Table 2.12: Proposed Reference Prices in NZ\$ (per kg)**

	410	820	A10
GREECE			
-Venus			
- Other exporters <i>ad valorem</i> percentage rate	23%	23%	23%
-Other exporters reference price cap			



## Alternative Duty:

-Venus

142. The reassessment team notes that the above reference prices are the overall prices from which both countervailing and anti-dumping duties (or the cap on those duties) will be calculated. The total duty is calculated first by deducting the VFD from the reference price given above. The countervailing duty is then calculated by subtracting the VFD from the reference price, with the duty not exceeding [REDACTED] for exports by Venus, and [REDACTED] for exports by all “other” Greek exporters. The difference between the total duty payable and the countervailing duty will be levied as anti-dumping duty.

143. The reassessment team notes that as the amount of anti-dumping duty payable is just the result of deducting the countervailing duty from the total duty payable, the comparison of the NV(VFDE) amount to the NIFOB becomes redundant, in relation to the setting of reference prices (it is still useful when addressing the issue of whether a lesser duty should apply), because there is no need to set reference prices to determine duties. The dumping reference price will always be lower than the subsidy reference price, and therefore the subsidy reference price will always apply as the base for calculating total duty and countervailing duty payable (or the cap on such duties) in any event.

144. The reassessment team also notes that the NZ dollar amount of subsidy referred to in this report ([REDACTED]/kg in the case of Venus and [REDACTED]/kg in the case of all other exporters) is the subsidy amount converted from euros at the average exchange rate used in the review. In applying the duty rates the total amount of duty to be allocated to countervailing duty will be based on the amount of subsidy in euros converted to NZ dollars at the time the goods are imported.

145. The proposed method of imposing duty has changed since the original investigation and the new shipper reassessment in 1999. Those two cases, in the main, imposed duties as *ad valorem* percentages of the Value for Duty (VFD). Anti-dumping duty was imposed as a reference price for Vermion Naoussa’s exports of 820g cans to New Zealand, and was set in US dollars per kg. For these reasons it is not possible to make a comparison of the rates of proposed duty in the current reassessment. However, it is possible to compare the residual rates of duty, the current residual rate being 17 percent compared with the 23 percent rate proposed in this reassessment.

146. It is proposed that should canned peaches falling within the description of the goods subject to anti-dumping duty be imported in can sizes other than those for which a separate rate has been established, duty should be imposed using the same reference price or *ad valorem* percentage as that applicable to the nearest can size for which an individual rate has been established. For example, a 225g can of peaches exported by Venus is closest in size to a 410g can. The reference price for a 225g can would therefore be that applicable to 410g cans exported by Venus, which is [REDACTED].

## **Refunds of Anti-Dumping Duties**

147. The Act allows for refund of duties under certain conditions. Section 14(10) of the Act states as follows:

Without limiting the ability of the Minister to require refunds in other circumstances, where a reassessment under subsection (6) of this section results in a lower duty being imposed on any goods, the Minister may require the [Customs] to refund, with effect from the date of initiation of the reassessment (or, in the case of a reassessment carried out under paragraph (c) of that subsection, from the date of initiation of the review referred to in that paragraph), the difference between the duty paid and the lower duty.

148. This reassessment was initiated following the completion of a review. Any anti-dumping duties paid since the review was initiated on 8 January 2003, which exceed the proposed amount, may be refunded if the Minister so directs.

## **2.6 Impact of Anti-Dumping Duties**

149. Any anti-dumping duties imposed will impact only on canned peaches imported from Greece that are being dumped. Anti-dumping duties are set at a level that is no greater than is necessary to remedy the injury that may be suffered by the New Zealand industry.

150. Imports of canned peaches from countries other than Greece will not be affected. Imports from countries other than Greece are also present in the New Zealand market in significant quantities and will also continue to provide competition for canned peaches manufactured in New Zealand.

### 3. Conclusions

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151. On the basis of the information available, it is concluded that the rate of anti-dumping duty on canned peaches from Greece should be reassessed to the levels shown in table 2.11 above, being a combination of *ad valorem* and reference price duties at the full margin of dumping and lesser reference price duty rates (except where exchange rate changes cause the NIFOB to exceed the NV(VFDE)).

# 4. Recommendations

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152. It is recommended that the Minister should:

- a. reassess the anti-dumping duties on canned peaches from Greece on the basis outlined in this report;
- b. agree that any anti-dumping duties paid since the initiation on 8 January 2003 of the review which preceded this reassessment that are in excess of the duties which would have been applicable if the proposed duties were in place, should be refunded to the extent of such excess; and
- c. sign the attached *Gazette* notice, and give notice of the reassessment to interested parties in accordance with sections 9 and 14 of the Act.

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Reassessment Team  
Trade Remedies Group