Canned Peaches from Greece:

Non-Confidential

Final Report

Author Trade Remedies Group

Dumping and Countervailing Duties Act 1988

Sunset Review

ISBN 0-478-26342-2

The following abbreviations are used in this Report:

Act (the)	Dumping and Countervailing Duties Act 1988
Anti-Dumping Agreement	World Trade Organisation 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
EBIT	Earnings Before Interest and Tax
EC	European Commission
E.K.E.	Greek Canners Association
FOB	Free on Board
HW	Heinz Wattie's Ltd
LDC	Less Developed Countries
LLDC	Least Developed Countries
Ministry (the)	Ministry of Economic Development
NIP	Non-Injurious Price
NSV	Net Sales Value
NZCS	New Zealand Customs Service
NV(VFDE)	Normal Value (Value for Duty Equivalent)
Pac	Forum Island Members of the South Pacific Regional Trade and Economic Cooperation Agreement
POD(R)	Period of dumping (Review)
Venus	Venus Growers Co-operative
VFD	Value for Duty
WTO	World Trade Organisation
[Text deleted due to confidentiality]	Deleted due to confidentiality (used in text)
xxxx	Deleted due to confidentiality (used in tables)

1. Proceedings

1.1 Proceedings

1. 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.

2. A new shipper reassessment was carried out in April 2000 of the level of anti-dumping duties calculated for a Greek exporter, Venus Growers in the original investigation. 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.

3. 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 Heinz Wattie's Australasia justifying the need for the review.

4. In accordance with Article 11 of the WTO Anti-Dumping Agreement ("the Agreement"), the purpose of the Ministry's review is to examine whether the expiry of the duty would be likely to lead to a continuation or recurrence of dumping and injury.

5. The purpose of this report is to provide a summary of the matters established by the review team as a basis for a determination to be made under section 14(8) of the Act as to whether the expiry of the current anti-dumping duty would be likely to lead to the continuation or recurrence of dumping and injury. It should be noted that this report provides a summary only of the information, analysis and conclusions relevant to this review, and should not be accorded any status beyond that.

1.2 Reviews

6. Section 14(8) of the Act states:

The [Chief Executive] may, on his or her own initiative, and shall, where requested to do so by an interested party that submits positive evidence justifying the need for a review, initiate a review of the imposition of anti-dumping duty or countervailing duty in relation to goods and shall complete that review within 180 days of its initiation.

7. Section 14(9) of the Act states:

(9) Anti-dumping duty or countervailing duty applying to any goods shall cease to be payable on those goods from the date that is five years after--

(a) The date of the final determination made under section 13 of this Act in relation to those goods; or

(b) The date of notice of any reassessment of duty given under subsection (6) of this section, following a review carried out under subsection (8) of this section—

whichever is the later, unless, at that date, the goods are subject to review under subsection (8) of this section.

8. In terms of section 14(9)(b) of the Act, anti-dumping duties relating to the subject goods would, in the absence of a review, have ceased to apply as from 9 March.

9. The provision of sections 14(8) and 14(9) of the Act give specific effect to Article 11 of the Anti-Dumping Agreement which provides additional guidance as follows:

11.1 An anti-dumping duty shall remain in force only as long as and to the extent necessary to counteract dumping which is causing injury.

11.2 The authorities shall review the need for the continued imposition of the duty, where warranted, on their own initiative or, provided that a reasonable period of time has elapsed since the imposition of the definitive anti-dumping duty, upon request by any interested party which submits positive information substantiating the need for a review. Interested parties shall have the right to request the authorities to examine whether the continued imposition of the duty is necessary to offset dumping, whether the injury would be likely to continue or recur if the duty were removed or varied or both. If, as a result of the review under this paragraph, the authorities determine that the anti-dumping duty is no longer warranted, it shall be terminated immediately.

11.3 Notwithstanding the provisions of paragraphs 1 and 2, any definitive anti-dumping duty shall be terminated on a date no later than five years from its imposition (or from the date of the most recent review under paragraph 2 if that review has covered both dumping and injury, or under this paragraph), unless the authorities determine, in a review initiated before that date on their own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time prior to that date, that the expiry of the duty would be likely to lead to a continuation or recurrence of dumping and injury. The duty may remain in force pending the outcome of such a review.

11.4 The provisions of Article 6 regarding evidence and procedure shall apply to any review carried out under this Article. Any such review shall be carried out expeditiously and shall normally be concluded within 12 months of the date of initiation of the review.

11.5 The provisions of this Article shall apply *mutatis mutandis* to undertakings accepted under Article 8.

Note: Footnotes excluded from the above Articles of the Agreement.

10. On 8 January 2003, being satisfied that positive evidence justifying the need for a review had been provided, the Chief Executive initiated a review. A notice to this effect was published in the *New Zealand Gazette* of 16 January 2003. The existing anti-dumping duties

will continue to apply pending the outcome of this review and any reassessment that may follow it.

11. Interested parties to the original investigation were advised of the initiation of this review in writing and provided with the opportunity to make written submissions to the review team.

1.3 Dumping and Injury for the Purposes of a Review

Ministry's Approach to Sunset Reviews

12. The Ministry carries out sunset reviews on the basis of the above provisions in the Act and the Agreement. In interpreting Article 11 of the Agreement, the Ministry takes guidance from New Zealand legal reports, WTO Panel reports and approaches taken by other WTO member countries.

13. Article 11.3 infers a necessity to clearly demonstrate that, "...the expiry of the duty *would be likely* to lead to continuation or recurrence of dumping and injury" *[emphasis added]*. Some guidance regarding the interpretation of the phrase "would be likely" has been provided by the New Zealand Court of Appeal which interpreted the phrase to mean "a real and substantial risk..., a risk that might well eventuate" *(Commissioner of Police vs Ombudsman [1988] 1 NZLR 385).*

14. For further guidance on the level of evidence that is required to meet the "would be likely" criteria of Article 11.3, the Ministry also referred to the findings of the WTO panel report, *United States Anti-Dumping Duty on Dynamic Random Access Memory Semi Conductors (DRAMS)from Korea*, and to the approaches taken by the EU, US, Canada and Australia to sunset reviews.

15. The Ministry notes that the consideration of whether duties should be removed does not exist in isolation but is dependent on whether the evidence shows that the expiry of duty would be likely to lead to a continuation or recurrence of dumping and injury. In determining "likelihood", it is considered that regard should be had to the timeframe within which an event may occur. Article 11.3 of the Agreement makes no express reference to the length of time within which a continuation or recurrence of injury has to take place.

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

- The Ministry is required to establish whether the expiry of the anti-dumping duty would be likely to lead to a continuation or recurrence of dumping and injury.
- The test to be applied in respect of the likelihood of a continuation or recurrence of dumping and material injury is a positive one, i.e., the Ministry needs to be satisfied, based on positive evidence, that certain events are likely to occur, and that those events will cause dumping and material injury to the industry to continue or recur in the absence of anti-dumping duties.
- Interpretation of the phrase "would be likely" is guided by a court judgement referring to "a real and substantial risk..., a risk that might well eventuate".

- In considering the likelihood of injury, the Ministry may refer to provisions in the Agreement that are helpful in assessing that likelihood and those provisions may include, where appropriate, the factors used in Article 3.7 in assessing a threat of injury.

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

1.4 Grounds for the Review

18. The New Zealand industry provided evidence that material injury will recur should the subject goods be imported into New Zealand without adequate anti-dumping duties. The industry claimed that imports of the subject goods will be dumped with the removal of anti-dumping duties and that material injury to the industry will recur through:

- significant increase in import volumes, price undercutting, price suppression and depression

resulting in:

- a decline in outputs and sales
- a decline in market share
- a decline in profits and return on investments
- a decline in utilisation of production capacity
- adverse effects upon cash flow, inventories, employment and growth.

Reassessment of Anti-Dumping Duties

19. If the outcome of this review indicates that anti-dumping duties should continue to be applied, then the rate or amount of duty can be reassessed in accordance with section 14(6) of the Act.

1.5 Interested Parties

New Zealand Industry

Heinz Wattie's Ltd

20. Heinz Wattie's Limited (HW) submitted the application for a review. HW is the sole New Zealand producer of canned peaches. 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.

21. 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. pottled peaches from Australia and, when there is a shortfall in domestic raw peach production, canned peaches from Europe.

22. 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

23. The review has established that over the POD(R), only one company, Venus Growers Co-operative (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

24. The NZCS data shows that **[Text deleted due to confidentiality]** that imported canned peaches from Greece over the POD(R).

1.6 Imported Goods

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

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

26. NZCS has advised that the subject goods enter under the following tariff classification and statistical key:

20.08	Fruits, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included:
	[- Nuts, ground nuts and other seeds, whether or not mixed together]
	[- Pineapples]
	[- Citrus fruit]
	[- Pears]
	[- Apricots]
	[- Cherries]

2008.70		- Peaches, including nectarines:
		[- - Cooked and preserved by freezing, not containing added sugar]
2008.70.09	00L	- - Other
		[- Strawberries]
		[- Other, including mixtures other than those of subheading no 2008.19]

27. Applicable duty rates are:

Normal	7%
Australia	Free
Canada	Free
LDC	5.5%
LLDC	Free
Pac	Free
Singapore	Free

1.7 Investigation Details

28. In this report, unless otherwise stated, years are April years and dollar values are New Zealand dollars. In tables, column totals may differ from individual figures because of rounding.

29. The period of investigation for establishing if the subject goods have been dumped is December 2001 to November 2002. The investigation of injury involves evaluation of historical data for the period (in years ended April) from 1999 to 2003 and the evaluation of data forecasting the effect of the removal of the duties.

1.8 Exchange Rates

30. Article 2.4.1 of the Anti-Dumping Agreement provides as follows:

When the comparison under paragraph 4 [*of Article 2*] requires a conversion of currencies, such conversion should be made using the rate of exchange on the date of sale[8], provided that when a sale of foreign currency on forward markets is directly linked to the export sale involved, the rate of exchange in the forward sale shall be used. Fluctuations in exchange rates shall be ignored and in an investigation the authorities shall allow exporters at least

60 days to have adjusted their export prices to reflect sustained movements in exchange rates during the period of investigation.

[8] Normally, the date of sale would be the date of contract, purchase order, order confirmation, or invoice, whichever establishes the material terms of sale.

31. In this report normal values are expressed in Euros, export transactions take place in **[Text deleted due to confidentiality]** and **[Text deleted due to confidentiality]**, and any injurious effect is reflected in New Zealand dollars. The review team has used the dates of contracts entered into between **[Text deleted due to confidentiality]** and Venus to establish the date of export sales, which have been converted into Euros at the date of sale. The exchange rates used are the interbank rates recorded on the OANDA currency conversion site on the internet.

1.9 Disclosure of Information

32. The Ministry of Economic Development makes available all non-confidential information to any interested party through its public file system.

33. Article 6.7 of the Agreement provides as follows:

In order to verify information provided or to obtain further details, the authorities may carry out investigations in the territory of other Members as required, provided they obtain the agreement of the firms concerned and notify the representatives of the government of the Member in question, and unless that Member objects to the investigation. The procedures described in Annex I shall apply to investigations carried out in the territory of other Members. Subject to the requirement to protect confidential information, the authorities shall make the results of any such investigations available, or shall provide disclosure thereof pursuant to paragraph 9, to the firms to which they pertain and may make such results available to the applicants.

34. The review team carried out a verification visit to Venus in Veria, Greece.

35. Section 10(1) of the Act provides as follows:

Subject to subsection (2) of this section, within 150 days after the initiation of an investigation under section 10 of this Act, the [Chief Executive] shall give to the parties to the investigation referred to in section 9(b) of this Act written advice of the essential facts and conclusions that will likely form the basis for any final determination to be made under section 13 of this Act.

36. While section 10(1) does not apply to reviews, the Ministry attempts as far as possible to follow investigation procedure in reviews. Written advice of the essential facts and conclusions in the form of an Interim Report was released to all known interested parties on 11 June 2003. Comments received from the Government of Greece, the European Commission, and Venus were taken into account in preparing this Final Report.

2. New Zealand Industry

37. Section 3A of the Act provides the definition of "industry":

3A. Meaning of "industry"- For the purposes of this Act, the term "industry", in relation to any goods, means-

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

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

38. "Like goods" is defined in section 3 of the Act:

"Like goods", in relation to any goods, means-

(a) Other goods that are like those goods in all respects; or

(b) In the absence of goods referred to in paragraph (a) of this definition, goods which have characteristics closely resembling those goods:

2.1 Like Goods

39. In order to establish that a New Zealand industry still exists, and the extent of the New Zealand industry, for the purposes of a review into injury, and having identified the subject goods, it is necessary to determine whether there are still New Zealand producers of goods which are like those goods in all respects, and if not, whether there are New Zealand producers of other goods which have characteristics closely resembling the subject goods.

40. HW produces, *inter alia*, a range of styles of canned peaches (halved, sliced, diced), packed in various concentrations of sugar syrup, "lite" media (artificial sweetener in water) and fruit juice, and in various can sizes. In addition to its branded lines of "Wattie's", "Oak", and "Weight Watchers", HW also produces house brands for supermarkets and for suppliers to the food service sector.

41. In the original investigation, the Ministry reached the conclusion that the canned peaches produced by HW in syrup and juice, while not alike in all respects because of differences in can sizes, varieties of peaches used, the use of juice and variations in concentrations of sugar syrup, had characteristics closely resembling the imported canned peaches and were therefore like goods to the subject goods. HW stated in its application that there has been no material change to the like goods produced by it in New Zealand or to the subject goods produced in Greece since the original investigation.

42. In the review of anti-dumping duty on canned peaches from South Africa, completed in January 2002, the Ministry concluded that all styles of canned peaches in sugar syrup, "lite" media and fruit juice produced by HW (except for product produced under the Weight

Watchers brand) were like goods to the subject goods. That review also concluded that the fruit salad and two fruits products produced by HW were not like goods to the subject goods.

43. HW said it accepts the conclusions reached during the South African review. The review team has seen no other evidence that would lead it to change the conclusions reached during the South African review.

44. Injury and the likelihood of a recurrence of injury has therefore been assessed on the basis of HW's production of canned peaches in sugar syrup, "lite" media and fruit juice (except for its production of product under the Weight Watchers brand) in retail size cans (i.e. cans up to size A10).

2.2 Imports of Canned Peaches

45. The subject goods are not separately identified in the Tariff of New Zealand. Information from this review, from the concurrent review of the countervailing duties on canned peaches from the European Union, and from the review of the anti-dumping duty on canned peaches from South Africa (completed in January 2002) shows that there are significant differences in the proportions of the subject goods imported from different countries. In order to more accurately estimate the volume of imports of the subject goods from various sources, different proportions have been applied to various countries, as set out below.

46. An analysis of NZCS data over the POD(R) revealed that **[Text deleted due to confidentiality]** percent of total imports from Greece during this period were subject goods. A similar calculation for imports from Spain showed that **[Text deleted due to confidentiality]** percent of Spanish imports during the POD(R) were subject goods. These two proportions were applied to the total imports from Greece and Spain, and then **[Text deleted due to confidentiality]** for each of the years concerned. The review team notes that even though the review is only concerned with Greek exports, Spanish exports have been included to ensure accuracy through a larger sample, and consistency with the Ministry's concurrent review of the countervailing duties on canned peaches from the European Union.

47. From these two calculations, a combined proportion for the subject goods, of **[Text deleted due to confidentiality]** percent of total imports was found. This proportion was then applied to total imports from EU countries other then Greece and Spain to estimate the volume of subject goods entering New Zealand from these countries.

48. In calculating the total import volumes of the subject goods from South Africa, the review team relied on the South African canned peaches review case. It was calculated in that case that **[Text deleted due to confidentiality]** percent of the total goods imported from South Africa were subject goods. This proportion was then applied to NZCS data relating to South Africa for the current review.

49. The South African review also identified that **[Text deleted due to confidentiality]** percent of imports from all countries other than South Africa, were subject goods (nearly all of these imports were from Australia). Hence, the review team applied this proportion to imports from countries other than the EU and South Africa in order to estimate the volume of imports of the subject goods from these countries. **[Text deleted due to confidentiality]**.

50. The estimated import figures are as follows:

Table 2.1: Import Volumes of Subject Goods (Tonnes) (Years Ended April)

	1999	2000	2001	2002	2003
Greece[1]	0	0	15	0	0
Australia[2]	2,176	2,818	3,229	2,985	4,743
Other	32	496	91	129	390
Total Imports	2,208	3,314	3,335	3,114	5,133

51. The table shows there were no imports of the subject goods over the period except for 2001 when a negligible quantity was imported.

2.3 New Zealand Market

52. The following table shows the New Zealand market for canned peaches. Import figures used in this table are as per Table 2.1 above and those relating to domestic production are as provided by HW.

Table 2.2: New Zealand Market for Canned Peaches (Tonnes) (Years Ended April)

	1999	2000	2001	2002	2003
Subject Goods[3]	0	0	15	0	0
Australia[4]	2,176	2,818	3,229	2,985	4,743
Other Imports	32	496	91	129	390
Domestic					
Production	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**
Total NZ Market	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**

---

[1]**[Text deleted due to confidentiality]**.

[2]**[Text deleted due to confidentiality]**.

[3]**[Text deleted due to confidentiality]**.

[4]**[Text deleted due to confidentiality]**.

3. Review of Dumping

53. Section 3(1) of the Act states:

"Dumping", in relation to goods, means the situation where the export price of goods imported into New Zealand or intended to be imported into New Zealand is less than the normal value of the goods as determined in accordance with the provisions of this Act, and "dumped" has a corresponding meaning:

3.1 Findings of the Original Investigation

54. Two producers, Vermion Naoussa and AL.M.ME, were investigated in the original investigation in 1998. The original investigation established dumping margins between nil and 20 percent for Vermion Naoussa. AL.M.ME was found not to be dumping. Anti-dumping duties in the form of an NV(VFDE) amount and an *ad valorem* rate were imposed on Vermion Naoussa. A nil of rate of duty was set for AL.M.ME. An *ad valorem* rate of anti-dumping duty was imposed for all other exporters.

3.2 Findings of the Previous Reassessment

55. A reassessment was carried out in April 2000 of the level of anti-dumping duties applicable to canned peaches exported by Venus. The reassessment determined a nil dumping margin in respect of exports to New Zealand by Venus and therefore a nil rate of duty was set. Other rates of duty remained unchanged.

3.3 Purpose of Review of Dumping

56. The Ministry's sunset reviews are intended to determine whether the expiry of the existing anti-dumping duties after five years would be likely to lead to a continuation or recurrence of dumping and injury and therefore whether there is a continued need for the imposition of anti-dumping duties. Questions to be asked in relation to dumping are:

- Whether the goods under review continue to be dumped and, if so, the extent of that dumping.
- The likelihood of a continuation of any such dumping should anti-dumping duties be removed.
- Where imports of the goods subject to anti-dumping duty have ceased or are no longer dumped, the likelihood of a recurrence of dumping should anti-dumping duties be removed.

57. The likelihood of dumped imports is considered in section 3.7 (Likelihood of Continuation or Recurrence of Dumping) below.

3.4 Export Prices

58. Export prices are determined in accordance with section 4 of the Act which provides, *inter alia*, as follows:

(1) Subject to this section, for the purposes of this Act, the export price of any goods imported or intended to be imported into New Zealand which have been purchased by the importer from the exporter shall be-

(a) Where the purchase of the goods by the importer was an [arm's] length transaction, the price paid or payable for the goods by the importer other than any part of that price that represents-

(i) Costs, charges, and expenses incurred in preparing the goods for shipment to New Zealand that are additional to those costs, charges, and expenses generally incurred on sales for home consumption; and

(ii) Any other costs, charges, and expenses resulting from the exportation of the goods, or arising after their shipment from the country of export;

Exporters

Venus Growers Co-Operative

Export Sales Distribution

59. Over the POD(R), all export sales of the subject goods to New Zealand by Venus were made to **[Text deleted due to confidentiality]**. The price and terms and conditions of those sales were set out in contracts between Venus and **[Text deleted due to confidentiality]** dated **[Text deleted due to confidentiality]** and **[Text deleted due to confidentiality]**.

60. Venus invoiced **[Text deleted due to confidentiality]** on an **[Text deleted due to confidentiality]** basis (except for customs brokerage fees which were met by Venus) in **[Text deleted due to confidentiality]**, and therefore **[Text deleted due to confidentiality]**. **[Text deleted due to confidentiality]** then invoiced **[Text deleted due to confidentiality]** on a **[Text deleted due to confidentiality]** basis in **[Text deleted due to confidentiality]**. The cost of the ocean freight is borne by **[Text deleted due to confidentiality]**.

61. There were **[Text deleted due to confidentiality]** importations of the subject goods over the POD(R). **[Text deleted due to confidentiality]** and was supplied under **[Text deleted due to confidentiality]**. **[Text deleted due to confidentiality]** was invoiced in three separate invoices. **[Text deleted due to confidentiality]** and was supplied under **[Text deleted due to confidentiality]**. **[Text deleted due to confidentiality]** was invoiced in eight separate invoices. **[Text deleted due to confidentiality]** imported approximately **[Text deleted due to confidentiality]** tonnes of canned peaches from Venus over the POD(R).

62. The review team is satisfied there is no relationship other than a business relationship between Venus, **[Text deleted due to confidentiality]**, and is therefore satisfied all sales are at arm's length.

63. Venus stated that the Ministry should change its period of review from year ended November 2002 to the year ended December 2002, as this will cover a greater percentage of its exports to New Zealand. Venus noted that **[Text deleted due to confidentiality]**

importations into New Zealand in the year ended November 2002 were **[Text deleted due to confidentiality]** whereas if the period was chosen as year ended December 2002, **[Text deleted due to confidentiality]** of their exports to New Zealand. Venus also stated that the cost information in its submission is based on the cost of processing its 2002 crop and not the 2001 crop. Venus stated that the cost of raw peaches has changed since 2001 while the other costs have remained the same.

64. The review team is of the view that the original POD(R) should be adhered to as this was the period that data relating to the injury suffered by the industry was requested as well as submissions from other interested parties made related to the year ended November 2002 period. To change the POD(R) at this stage would not only be considered unreasonable but also unfair if new information were to be requested from other parties for the new POD(R).

65. The review team considers that there was a satisfactory mix of canned peaches imported in relation to size and style over the year ended November 2002 period to allow a dumping margin (if any) to be calculated. As for the raw material cost from two different seasons, the review team is of the view that the correct raw material cost would be used for any calculations that may be needed for the purposes of calculating dumping margins.

Base Prices

66. The actual amounts invoiced by Venus to **[Text deleted due to confidentiality]** over the POD(R) were used to establish base export prices.

67. Invoice amounts were converted to Euros at the interbank rate at the date of the contracts between Venus and **[Text deleted due to confidentiality]** as this was the date the material terms of sale were established. As the contract covering the importation in **[Text deleted due to confidentiality]** was not recorded), the exchange rate used was the average exchange rate for **[Text deleted due to confidentiality]** 2001. Interbank rates were obtained from the OANDA currency conversion site on the Internet.

Adjustments

Customs Brokerage Fees

68. Venus pays a fixed customs brokerage fee on a per container basis for all its exports of canned peaches which also covers any customs documentation fees. An adjustment was made for this fee on the basis of verified information provided by Venus.

Cost of Credit

69. Normal values have been constructed using costs incurred for the product exported to New Zealand. These costs consequently include financing costs equivalent to those incurred on export sales to New Zealand. No adjustment is therefore required for differences in credit costs.

Other Adjustments

70. No other adjustments were required.

Calculation of Export Prices

71. Export prices were calculated by deducting the adjustment referred to above from base export prices.

3.5 Normal Values

72. Normal values are determined in accordance with section 5 of the Act, which provides, *inter alia*, as follows.

(1) Subject to this section, for the purposes of this Act, the normal value of any goods imported or intended to be imported into New Zealand shall be the price paid for like goods sold in the ordinary course of trade for home consumption in the country of export in sales that are arm's length transactions by the exporter or, if like goods are not so sold by the exporter, by other sellers of like goods.

(2) Where the [Chief Executive] is satisfied that the normal value of goods imported or intended to be imported into New Zealand cannot be determined under subsection (1) of this section because-

(a) There is an absence of sales that would be relevant for the purpose of determining a price under that subsection; or

(b) The situation in the relevant market is such that sales in that market that would otherwise be relevant for the purpose of determining a price under subsection (1) of this section are not suitable for use in determining such a price; or

(c) Like goods are not sold in the ordinary course of trade for home consumption in the country of export in sales that are arm's length transactions by the exporter and it is not practicable to obtain within a reasonable time information in relation to sales by other sellers of like goods that would be relevant for the purpose of determining a price under subsection (1) of this section, -

the [Chief Executive] may determine that the normal value, for the purposes of this Act, shall be either-

(d) The sum of-

(i) Such amount as is determined by the [Chief Executive] to be the cost of production or manufacture of the goods in the country of export; and

(ii) On the assumption that the goods, instead of being exported, had been sold for home consumption in the ordinary course of trade in the country of export, -

(A) Such amounts as the [Chief Executive] determines would be reasonable amounts for administrative and selling costs, delivery charges, and other charges incurred in the sale; and

(B) (An amount calculated in accordance with such rate as the [Chief Executive] determines would be the rate of profit on that sale having regard to the rate of profit normally realised on sales of goods (where such sales exist) of the same general category in the domestic market of the country of export of the goods; or

(e) The price that is representative of the price paid for similar quantities of like goods sold at arm's length in the ordinary course of trade in the country of export for export to a third country.

(3) Where the normal value of goods imported or intended to be imported into New Zealand is the price paid for like goods, in order to effect a fair comparison for the purposes of this Act, the normal value and the export price shall be compared by the [Chief Executive] -

(a) At the same level of trade; and

(b) In respect of sales made at as nearly as possible the same time; and

(c) With due allowances made as appropriate for any differences in terms and conditions of sales, levels of trade, taxation, quantities, and physical characteristics, and any other differences that affect price comparability.

Base Price

73. Venus stated that its business is focussed on exporting and it largely does not sell canned peaches on the domestic market. Venus stated that it does not have a distribution structure to support domestic sales.

74. Venus did, **[Text deleted due to confidentiality]** over the POD(R). The review team therefore firstly considered whether these sales could be used to establish normal values, as set out below.

Sales of [Text deleted due to confidentiality]

75. Over the POD(R) Venus sold **[Text deleted due to confidentiality]** tonnes of canned peaches in **[Text deleted due to confidentiality]** cans are sold at **[Text deleted due to confidentiality]**, ranging from **[Text deleted due to confidentiality]** percent depending on the type of **[Text deleted due to confidentiality]**. Venus said that if it did not sell the **[Text deleted due to confidentiality]** canned peaches to the **[Text deleted due to confidentiality]**. Venus said the sale of **[Text deleted due to confidentiality]**.

76. **[Text deleted due to confidentiality]**. Venus is not related to **[Text deleted due to confidentiality]** and all sales are at arm's length.

77. Over the POD(R) Venus also sold on the domestic market small quantities (**[Text deleted due to confidentiality]** tonnes) of **[Text deleted due to confidentiality]** The **[Text deleted due to confidentiality]**. The **[Text deleted due to confidentiality]**. Venus said that the sliced peaches are **[Text deleted due to confidentiality]** more expensive than halves due to extra cost involved in slicing the peaches.

78. Venus said in its view its **[Text deleted due to confidentiality]**. Venus also stated that it is not in its ordinary course of trade to act as distributors in the domestic market as it does not have an infrastructure to support the domestic transactions and that its core business is in export markets.

79. Venus expressed similar views in relation to its sales of the **[Text deleted due to confidentiality]** canned peaches and noted that it aims to sell all of its **[Text deleted due to confidentiality]** production on the export market, that the **[Text deleted due to confidentiality]**.

Ministry's Consideration of the Issues

80. The sale of **[Text deleted due to confidentiality]** is part of the normal operation of Venus. Such sales are therefore in the ordinary course of trade, they are like goods, are sold for consumption in Greece (i.e. they are consumed through **[Text deleted due to confidentiality]**) and are sold at arm's length.

81. The review team notes, however, **[Text deleted due to confidentiality]**, are somewhat physically different as a result of the **[Text deleted due to confidentiality]** (**[Text deleted due to confidentiality]** for retail sale to consumers) and are sold at a different level of trade (to an end-user) than are the export sales to New Zealand. The review team consequently considers that sales of **[Text deleted due to confidentiality]** cans would not allow for a proper comparison with the export sales to New Zealand and are therefore not relevant, in terms of section 5(2)(a) of the Act, for use in determining normal values.

82. The sale of **[Text deleted due to confidentiality]** over the POD(R) was not part of the normal operation of Venus, which normally exports all of **[Text deleted due to confidentiality]** production. **[Text deleted due to confidentiality]**, which is likely to have affected their price, rendering it irrelevant for the purposes of determining a price in terms of section 5(2)(a) of the Act.

83. The review team consequently considers that the sale of **[Text deleted due to confidentiality]** cans was not in the ordinary course of trade in terms of section 5(1) of the Act. Even if such sales could be considered to be in the ordinary course of trade, the review team considers these sales would not be relevant for determining normal values, in terms of section 5(2)(a) of the Act, for the reasons referred to above.

84. The review team therefore considers it appropriate to construct normal values, in accordance with section 5(2)(d) of the Act.

Constructed Normal Value

85. Normal values were constructed on the basis of verified ex-factory cost of production information provided by Venus for the same size and type of product exported to New Zealand over the POD(R). The cost of production information provided by Venus related to its 2002 crop. The export sales to New Zealand over the POD(R) were made **[Text deleted due to confidentiality]**. The most significant change in costs from 2001 to 2002 was the cost of raw peaches.

86. To ensure a fair comparison with the export price the review team used the 2001 raw peach contract price to construct normal values for comparison with the importation in **[Text deleted due to confidentiality]**. This contract price was **[Text deleted due to confidentiality]** drachmas/kilogram. The review team converted this amount by using the 2001 average exchange rate (drachmas to euros) to €**[Text deleted due to confidentiality]** per kilogram. Normal values for comparison **[Text deleted due to confidentiality]** importation were constructed using the raw peach price paid for the 2002 crop.

Reasonable Selling and Administration Expenses

87. Venus stated that the selling and administrative costs incurred on its export sales to New Zealand would be the same as if it sold on the domestic market as it would sell through a distributor. Selling and administration costs have therefore been set at the same amount as those incurred on export sales to New Zealand.

Reasonable Profit Margin

88. The following paragraphs discuss possible options to calculate a reasonable profit margin that would be achieved if like goods were sold on the domestic market.

Weighted Average Profit Margin on Export Sales

89. Venus submitted that the review team should consider using the weighted average profit margin it achieved on its export sales to New Zealand over the POD(R). Venus calculated this margin by using the exchange rate at the date of finalising the contract for its sales **[Text deleted due to confidentiality]** to convert its export sales in US dollars to Euros. Venus stated that this was appropriate, as its selling price **[Text deleted due to confidentiality]**, given the competition and capacity in its domestic market. On this basis Venus calculated a weighted average profit margin of **[Text deleted due to confidentiality]** percent.

90. The review team notes that Venus did not provide any evidence to substantiate its assertion that the margin it could **[Text deleted due to confidentiality]** The review team also observes that if Venus was exporting to New Zealand at dumped prices, the use of a profit margin derived from those sales to construct a normal value would be illogical. The review team therefore does not consider this to be an appropriate method to establish a profit margin.

Overall Profit Margin Achieved in 2002

91. Venus provided the verification team with an overall profit margin achieved in 2002 from its audited financial statements. Venus stated that this profit margin might be inappropriate to use as it would not provide a true profit margin for the review period that has been established. Venus stated that the financial statements are in calendar years and it carries out its marketing and trading between **[Text deleted due to confidentiality]** of each year, therefore the financial statements encompass parts of two production years, which would not reflect an accurate profit margin.

92. Venus also stated that its financial statements include fresh fruit sales that have a **[Text deleted due to confidentiality]**, and such sales equate to **[Text deleted due to**

confidentiality] percent of Venus's total revenue. The rate of the profit margin in the financial statements was calculated at **[Text deleted due to confidentiality]** percent, which Venus's considers **[Text deleted due to confidentiality]**.

93. For the reasons given by Venus, and because its operation is largely export oriented, the review team does not consider this to be an appropriate method to establish a profit margin.

Profit Margin Achieved by Other Exporters

94. There were no other Greek exporters of canned peaches to New Zealand over the POD(R). The review team considered information submitted by Manuel Garcia Campoy SA for the concurrent subsidy review case on canned peaches. Manuel Garcia Campoy SA is an exporter of canned peaches to New Zealand from Spain. The review team, however, could not use the information as this company does not sell canned peaches on the domestic market.

Data from Original Investigation and Reassessment

95. The review team also considered using the information provided in the original investigation and the reassessment. Venus was not specifically investigated in the original investigation. In the April 2002 reassessment, the Ministry relied on the original data relating to exporters other than Venus and updated the normal value information by using the wholesale producer index (WPI). Information on profit margins on sales on the domestic market was provided in the original investigation by only one of the producers, and showed a **[Text deleted due to confidentiality]** rate of profit. The review team therefore considers the original investigation and subsequent reassessment do not provide any information that could be used to establish a reasonable profit margin. A **[Text deleted due to confidentiality]** rate of profit is not considered accurate, due to information gathered during the course of the review, **[Text deleted due to confidentiality]**.

Publicly Available Statistical Information

96. The review team requested information from the Greek Ministry of Agriculture and the Greek Canners Association (E.K.E.) on published statistics that could provide some information on the levels of profits achieved in the canned peaches processing sector on domestic sales. The review team was advised by the Greek Ministry of Agriculture that it has no such data. The E.K.E. advised it has no such statistics. The review team also contacted the EC and asked if it was aware of any statistics that could be used for this purpose. The EC also advised it was not aware of any such data.

97. The review team carried out an extensive internet search for data on profit margins achieved in the peach canning industry in Greece, or in the narrowest possible grouping of industry in Greece that would encompass the peach canning industry. The review team was unable to locate any information on profit margins relating to the peach canning industry or even on the canning industry in general in Greece.

98. The closest information that could be located was that contained in an *Economic & Market Analysis* report by the National Bank of Greece dated February-March 2002. This report shows the gross margin percentage of the companies listed on the Athens stock exchange grouped into various categories. The category closest to the peach canning industry

is that for "food and beverages". The gross margin percentage for this category for 2001 (12 month results) is 32.2 percent. The review team notes that these results probably include export sales, however, the review team considers that this is the best information available to it on profit margins.

99. The report does not provide net profit percentages by the same categories of company. The report does, however, provide 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.

100. A reasonable profit margin has therefore been calculated at 17.8 percent of the selling price.

101. Venus and the Greek Government, in their response to the Interim Report, stated that the profit margin used from the publicly listed companies on the Athens Stock exchange under the "food and beverage" category is inappropriate as it is not representative of the Greek peach canning sector. Venus considers that the review team should have relied on the information it obtained during the verification visit. The review team is of the view that it did consider the information that was provided by Venus during the verification visit but for reasons, which are clearly stated in the above paragraphs, it decided not to use them. The review team attempted to get some information on reasonable profit margins from the Greek Government, the EKE and the EC but was unsuccessful in obtaining any information. The review team carried out independent research using its in-house library and the Internet. The review team is of the view that it relied on the best available information, which was from an independent report published by the National Bank of Greece.

Calculation of Constructed Normal Value

102. On the basis set out above, the review team has calculated a normal value for each of the product types exported to New Zealand over the POD(R).

3.6 Comparison of Export Price and Normal Value

103. In order to establish whether imports over the POD(R) were dumped, a comparison of the export prices as established in section 3.4 (Export Prices) of this report and the normal values established in section 3.5 (Normal Values) has been made. The result of this comparison for the importations over the POD(R) is shown below.

Product style and can size	Range of dumping margins (% of export price)
Std. Peach slices in light syrup, 410g	**xxxx**
Good Std. Peach slices in juice, 410g	**xxxx**
Good Std. Peach slices in juice, 820g	**xxxx**

Product style and can size	Range of dumping margins (% of export price)
Std. Peach slices in light syrup, 3kg	**xxxx**
Good Std. Peach slices in light syrup, 3kg	**xxxx**
Std. Peach slices in juice, 3kg	**xxxx**
Good Std. Peach slices in juice, 3kg	**xxxx**

104. Dumping margins range from five to 45 percent. The weighted average margin of dumping was 20 percent. Of the subject goods imported from Greece during the POD(R) 100 percent were dumped.

3.7 Likelihood of Continuation or Recurrence of Dumping

Introduction

105. The Ministry's approach to sunset reviews is recorded in section 1.3 (Dumping and Injury for the Purposes of a Review). In considering the likelihood of a continuation or recurrence of dumping, the review team has applied the general principles set out in this section of the report.

Likelihood of Continuation of Dumping

106. All of the imports over the POD(R) were dumped. Venus said it would continue to sell at the same prices should the duties be removed.

107. Based on the current prices and available evidence, the review team considers it likely that the product style and size of canned peaches found to be dumped over the POD(R) will continue to be dumped should the duties be removed. Any movement in export price resulting from the removal of duties is likely only to be a downward one.

Likelihood of Recurrence of Dumping

108. The review team notes that not all possible product styles are covered by the imports examined over the POD(R). The review team further notes that Venus supply **[Text deleted due to confidentiality]** and has indicated it wishes to maintain its relationship with **[Text deleted due to confidentiality]** and would therefore not supply other New Zealand importers. **[Text deleted due to confidentiality]** The review team has therefore considered the likelihood of a recurrence of injurious dumping by other producers, as set out below.

109. To estimate what export prices to New Zealand might be in the absence of duty, the review team obtained 2001 and 2002 EU export statistics, for each member country, for canned peaches exported to all Non-EU countries under the equivalent tariff items as the subject goods under review. The review team used the 2002 export statistics for Greece to calculate an average FOB price per kilogram. Deductions were made for customs brokerage fees, inland freight, terminal handling charges and **[Text deleted due to confidentiality]**,

using verified information provided by Venus, to estimate an average ex-factory export price to other non-EU countries. At the time this report was written, information on average FOB export prices from Greece to other EU countries was available only for 2001. A similar calculation was made for exports from Greece to other EU countries to estimate an average ex-factory export price using the 2001 export data.

110. In the calculation involving exports to non-EU countries, exports to Australia were excluded. Australia has a countervailing measure in place against canned peaches from Greece, which may result in an inaccurate calculation of the weighted average export price if prices to Australia have been distorted as a result of the countervailing duty. (Argentina also has measures in place against canned peaches from the EU, but there were no exports from Greece to Argentina in 2002.)

111. The export prices calculated on the basis set out above were compared to the weighted average normal values calculated as per section 3.5 (Normal Values) above. The export price calculated on exports to non-EU countries and to other EU countries yield dumping margins respectively of 43 and 93 percent.

112. The review team considers that the Greek export prices to markets that do not have anti-dumping or countervailing duties in place provides a useful basis for estimating the likely prices to New Zealand should duties be removed. These dumping margins are significantly higher than the dumping margins calculated for Venus.

113. Venus was of the view that if the anti-dumping duties were removed **[Text deleted due to confidentiality]**.

114. Venus also provided its ex-factory selling price of 3kg and 410g canned peaches exported to countries other than New Zealand. The Venus data showed that its ex-factory selling prices to countries other than New Zealand were lower by **[Text deleted due to confidentiality]** percent for the 3kg and the 410g cans compared to the ex-factory export price for the same sizes exported to New Zealand. The review team considers this may indicate that if the anti-dumping duties were removed, the prices of the canned peaches exported to New Zealand by Venus would be likely to decrease, at least on average, by 3 percent.

115. The drop in import volumes to negligible levels since the imposition of anti-dumping duty in 1998 indicates that exports from Greece are unable to compete in the New Zealand market at undumped prices. This suggests that a fall in prices to dumped levels would be required if the subject goods were to re-enter the New Zealand market.

116. The review team notes there is no evidence to suggest that normal values are likely to change significantly should the duty be removed.

3.8 Conclusions Relating to Dumping

117. The review team concludes that the canned peaches exported by Venus to New Zealand would continue to be dumped if the anti-dumping duties were removed. The review team also concludes that there is likely to be a recurrence of dumped exports to New Zealand by suppliers other than Venus at dumped prices should the anti-dumping duty be removed.

4. Review of Injury

4.1 Findings of the Original Investigation

118. The original investigation into the dumping of canned peaches from Greece, finalised in March 1998, found that:

- The import volumes of dumped goods had increased in absolute terms and in relation to production and consumption in New Zealand, but it was not concluded that the increase attributable to dumping was significant.
- There was evidence of price undercutting and price depression, a proportion of which could be attributed to the dumping of imported goods. However, there was no evidence of price suppression.
- Consequent primarily upon the price effects, there was evidence of an adverse economic impact reflected in a decline in output, sales, and profits; a decline in market share; likely declines in productivity and in return on investments; and a build up in inventory.
- Factors other than Greek dumped imports had had an impact on the industry.

119. The investigating team in 1998 concluded that dumping had caused material injury to the domestic industry.

4.2 Injury for the Purposes of a Review

120. Section 8 of the Act deals with injury to a New Zealand industry and *inter alia* states:

(1) In determining for the purposes of this Act whether or not any material injury to an industry has been or is being caused or is threatened or whether or not the establishment of an industry has been or is being materially retarded by means of the dumping or subsidisation of goods imported or intended to be imported into New Zealand from another country, the [Chief Executive] shall examine-

(a) The volume of imports of the dumped or subsidised goods; and

(b) The effect of the dumped or subsidised goods on prices in New Zealand for like goods; and

(c) The consequent impact of the dumped or subsidised goods on the relevant New Zealand industry.

(2) Without limiting the generality of subsection (1) of this section, and without limiting the matters that the [Chief Executive] may consider, the [Chief Executive] shall have regard to the following matters:

(a) The extent to which there has been or is likely to be a significant increase in the volume of imports of dumped or subsidised goods either in absolute terms or in relation to production or consumption in New Zealand:

(b) The extent to which the prices of the dumped or subsidised goods represent significant price undercutting in relation to prices in New Zealand (at the relevant level of trade) for like goods of New Zealand producers:

(c) The extent to which the effect of the dumped or subsidised goods is or is likely significantly to depress prices for like goods of New Zealand producers or significantly to prevent price increases for those goods that otherwise would have been likely to have occurred:

(d) The economic impact of the dumped or subsidised goods on the industry, including-

(i) Actual and potential decline in output, sales, market share, profits, productivity, return on investments, and utilisation of production capacity; and

(ii) Factors affecting domestic prices; and

(iii) The magnitude of the margin of dumping; and

(iv) Actual and potential effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investments:

Likelihood of Continuation or Recurrence of Injury

121. The Ministry's approach to sunset reviews is recorded in section 1.3 (Dumping and Injury for the Purposes of a Review). In considering the likelihood of a continuation or recurrence of injury, the review team has applied the general principles set out in this section of the report.

122. The Ministry carries out reviews on the basis of the above provisions in the Act and the Agreement. The Ministry interprets these provisions to mean that the likely continuation or recurrence of injury is to be considered in the context of the likely impact on the industry, arising from the likely volume of the dumped goods and their likely effect on prices.

General Scenarios Submitted by HW

123. During the course of the review HW has submitted a number of scenarios it considers likely should the current duties be removed. All such forecast figures submitted by HW are broken down by brand, and are provided for the year ended April 2004. HW has stated that the scenario that would actually eventuate depends entirely on what strategy the importer takes in regard to marketing and distributing their product.

124. In its application for a review, HW submitted that it could only base any assumptions about likely impacts on what had happened prior to the imposition of the duties in 1998. At this time, HW experienced a **[Text deleted due to confidentiality]** percent decrease in volume, and a **[Text deleted due to confidentiality]** percent decrease in price. If this eventuated, HW has estimated this would translate into a loss of sales of **[Text deleted due to confidentiality]**. HW's sales volume for the 2002/2003 financial year was approximately **[Text deleted due to confidentiality]**, so a loss of **[Text deleted due to confidentiality]** equates to a loss of sales volume of **[Text deleted due to confidentiality]** percent of current sales. HW considers this highly plausible, as the factors present in 1997, are still present now.

125. This situation has been developed as "scenario 1", and it assumes that both duties (the Ministry is carrying out a concurrent review of the countervailing duty on canned peaches from the European Union) would be removed (which is analogous to having no duties prior to the original investigation).

126. The review team notes that at the time of the original investigation, only 820g cans were imported, and they were only sold in certain outlets. Hence, **[Text deleted due to confidentiality]** percent reduction in volume only applied to 820g cans. In the current review, HW has made the assumption that a **[Text deleted due to confidentiality]** percent reduction in volume will occur across all brands. The review team also notes that at the time of the original investigation, HW's actual market share only dropped **[Text deleted due to confidentiality]** percent.

127. HW further submitted a second scenario, "scenario 2", which uses a combination of the price and volume assumptions made based on previous experience (i.e., the situation before duties were imposed in 1998) and an assumption that **[Text deleted due to confidentiality]**, thereby making an **[Text deleted due to confidentiality]**. Scenario 2 is formulated on the assumption that the anti-dumping duty will be removed, and the countervailing duty will remain (and vice versa for the purposes of the review of countervailing duties on canned peaches from the EU). HW is of the opinion that if **[Text deleted due to confidentiality]**, they will be able to access peaches so cheaply, regardless of which duty is removed, that they will capture the entire **[Text deleted due to confidentiality]** market, reducing HW's **[Text deleted due to confidentiality]** sales to **[Text deleted due to confidentiality]**.

128. Under scenario 2, HW assumes that if only the anti-dumping duty were to be removed, it would suffer a **[Text deleted due to confidentiality]** percent volume reduction, and a **[Text deleted due to confidentiality]** percent price reduction across its **[Text deleted due to confidentiality]** brands (with total loss of its **[Text deleted due to confidentiality]** market). If only the countervailing duty were to be removed, HW assumes under scenario 2, that it would suffer a **[Text deleted due to confidentiality]** percent volume reduction, and a **[Text deleted due to confidentiality]** percent price reduction for its **[Text deleted due to confidentiality]** brand (HW assumes no impact on **[Text deleted due to confidentiality]**, and a total loss of **[Text deleted due to confidentiality]** sales). The forecast impact on **[Text deleted due to confidentiality]** is due to the **[Text deleted due to confidentiality][Text deleted due to confidentiality]** product, so that they are not required to incur extra marketing costs to **[Text deleted due to confidentiality]** in the market.

129. HW subsequently submitted a scenario under which the removal of either duty would lead to seasonal fruit processing becoming **[Text deleted due to confidentiality]**, and therefore it would **[Text deleted due to confidentiality]** (the "**[Text deleted due to confidentiality]**" scenario). This scenario is based on the assumption that **[Text deleted due to confidentiality]** from Greece. HW has stated that if this eventuated, it may give consideration to becoming **[Text deleted due to confidentiality]**.

130. To support this scenario HW has calculated an injurious selling price of Greek peaches (i.e. a price at which Greek exporters could feasibly sell at on the New Zealand market) of **[Text deleted due to confidentiality]** per kilogram (refer to section titled "Price Undercutting"). HW has stated that if Greek exporters started selling on the New Zealand market at this price, due to the removal of either duty, it would have to **[Text deleted due to confidentiality]**. This scenario also includes an analysis of two types of importer "models".

The first being one where **[Text deleted due to confidentiality]** the peaches (the traditional importer model). The second is where the **[Text deleted due to confidentiality]** (the new importer model).

131. HW is of the opinion that the new importer model is a highly feasible scenario, given the existing capability of **[Text deleted due to confidentiality]** to store and market canned peaches. HW is of the opinion that **[Text deleted due to confidentiality]** do not consider that a domestic industry is necessary in order to ensure the security and timeliness of supply. HW considers the main concern for a **[Text deleted due to confidentiality]** is price, and often **[Text deleted due to confidentiality]** use fruit to **[Text deleted due to confidentiality]**. HW said if domestic retailers have access to dumped imports they will have the opportunity to have product packed overseas as **[Text deleted due to confidentiality]**, and can drive retail prices down to allow them to achieve these marketing strategies. HW is of the opinion that if this occurred, the **[Text deleted due to confidentiality]** own **[Text deleted due to confidentiality]** would capture the **[Text deleted due to confidentiality]** market (which is currently **[Text deleted due to confidentiality]** percent of the total market in New Zealand), as well as significantly expanding the total market. HW also stated that its relationship with the **[Text deleted due to confidentiality]** is unique, in the sense that the **[Text deleted due to confidentiality]** are **[Text deleted due to confidentiality]** for HW.

132. The Government of Greece and the EC expressed concern in their responses to the Interim Report that the details of the general scenarios outlined above were not disclosed to interested parties, at least, in the form of meaningful indices. The review team notes that it did provide historical data on HW in the form of indices to the EC during the course of the concurrent (countervailing duty) review, which is on the public file. The review team also notes that it is required by the Act not to disclose information it has accepted as confidential, without the express permission of any party that would be adversely affected by its release. The review team considers that what it has already disclosed (through commenting on trends in data) is reasonable disclosure of data.

4.3 Import Volumes

133. Section 8(2)(a) of the Act provides that the Chief Executive shall have regard to the extent to which there has been or is likely to be a significant increase in the volume of imports of dumped or subsidised goods either in absolute terms or in relation to production or consumption in New Zealand.

134. As noted in section 2.2 (Imports of Canned Peaches), the tariff item covering the subject goods also includes peach products falling outside of the definition of the subject goods. The volume of imports of the subject goods from Greece and other countries has been calculated on the basis set out in section 2.2 (Imports of Canned Peaches). The figures for the volume of dumped goods considered in this section of the report is based on the proportion of subject goods identified as dumped in section 3.6 (Comparison of Export Price and Normal Value). In this section of the report it was determined that 100 percent of the subject goods imported over the period of investigation were dumped.

135. The following table sets out the volume of imports of dumped subject goods over the review period together with New Zealand production and consumption volumes. The import figures and the figures for HW's sales are both in April years, as this is HW's financial year. HW advised that its **[Text deleted due to confidentiality]**.

Table 4.1: Import Volumes (Tonnes) (Years Ended April)

	1999	2000	2001	2002	2003
Dumped Imports	0	0	15	0	0
Other Imports	2,208	3,314	3,320	3,114	5,133
NZ Industry Sales	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**
Total NZ Market	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**
Change in:					
- Dumped Imports		0	15	-15	0
- Other Imports		1,106	6	-206	2,019
- NZ Industry Sales		**xxxx**	**xxxx**	**xxxx**	**xxxx**
- Total NZ Market		**xxxx**	**xxxx**	**xxxx**	**xxxx**
Dumped Imports as % of:					
- NZ Industry Sales	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**
- Total NZ Market	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**

136. The table shows that dumped imports, **[Text deleted due to confidentiality]**, have entered New Zealand in negligible quantities, and have not caused injury to HW, and with the duties in place this is expected.

137. Final anti-dumping duties were imposed in March 1998. Since then the volume of dumped subject goods has decreased significantly, and for the period ended April 2003, the volume of dumped imports was zero.

138. In relation to production and consumption in New Zealand, the volume of dumped imports has shown a significant decline since the original investigation and is negligible in relation to both New Zealand production and consumption. For the period ending April 2003, there were no imports of dumped subject goods. In 1997, the last full year not affected by anti-dumping duties, dumped imports represented **[Text deleted due to confidentiality]** and **[Text deleted due to confidentiality]** percent respectively of domestic production and the total New Zealand market, and were not considered to be negligible.

139. The Greek Government and the EC expressed concern in their submissions on the interim report that as the import volumes of the subject goods were negligible over the period of review, it is unlikely that exports from Greece to New Zealand would increase if the duties were removed. The review team notes that anti-dumping duties have been in place over the

POD(R), and hence the low volume of imports is to be expected. The review team notes that the analysis of relevant information and the conclusions reached below all point to a likely significant increase in dumped imports should the duties be removed.

Likely Import Volumes Should Duties be Removed

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

- The volume of imports before and after the imposition of anti-dumping duties.
- The price advantage (in the absence of duties) which such imports may hold.
- The capacity of the Greek canned peach industry to substantially increase its exports to New Zealand.
- The ease of entry into the New Zealand market.
- The ability of importers to handle a significant increase in imports.
- The ease of distribution of the goods in New Zealand.

Import Volumes Before and After Imposition of Duties

141. The review team analysed NZCS data to see whether the imposition of the anti-dumping duty in 1998 caused a decline in imports of canned peaches from Greece. This analysis revealed that prior to the imposition of the duty there were significant, but fluctuating, import volumes from Greece. In the year immediately after the imposition of duty, imports from Greece went to zero and have remained at this level except for a negligible quantity imported in 2001. This indicates that the anti-dumping duty did have an effect at the time of its imposition, suggesting (given the factors outlined in the remainder of this section) that the removal of duty would lead to an increase in imports.

142. Venus Growers stated that its intention regarding future exports to New Zealand **[Text deleted due to confidentiality]**.

Prices

143. The review team used the EU export data to make a comparison between Greek export prices to New Zealand, and export prices to other countries outside of the EU. A lower price to other countries may indicate that the duty is effective, and its removal could result in the price to New Zealand being reduced to lower world prices. This analysis showed that in some years the prices to New Zealand were higher than to the rest of the world, indicating that the removal of the duty could result in the prices to New Zealand being lowered. The review team notes though, that in other years the prices to New Zealand were lower than to the rest of the world.

144. The Price Undercutting analysis in section 4.4 (Price Effects)below shows that, based on the forecast information presented, imports from Greece would undercut the prices of HW's canned peaches by a significant margin and concludes that if the duty was removed, there is likely to be a recurrence of significant price undercutting. It is also concluded in section 4.4 (Price Effects) that there is likely to be a recurrence of significant price depression and suppression, should the duty be removed. The extent of the price undercutting provides a clear incentive to import the subject goods should the duty be removed

Capacity of Greek Industry

145. In its application for a review HW provided figures drawn from a U.S Department of Agriculture report showing annual exports from Greece to be around 385,000 tonnes. With the entire New Zealand market being only about **[Text deleted due to confidentiality]** tonnes, this means only **[Text deleted due to confidentiality]** percent of the Greek export volume would be enough to capture the entire New Zealand market.

146. The Australian Customs Service's (ACS) final report on its continuation inquiry into countervailing duties on canned peaches exported from Greece (2001) noted that Greece had a large peach processing production capacity, and that a relatively small volume of exports from Greece would be expected to have a substantial impact in a small market such as Australia. The report also noted that in 2000, Argentina imposed a countervailing duty of 12 percent and Brazil imposed an anti-dumping duty of 100 per cent (the review team was unable to locate any notification to the WTO of the imposition of such an anti-dumping duty by Brazil). The ACS report noted further that reports from the United States Department of Agriculture indicated that the loss of those two major markets for exports of canned peaches from Greece contributed to an expansion of sales of those goods in other markets. The ACS concluded that the lack of two former major export markets added to the capacity available to exporters of canned peaches from Greece to re-direct exports to other markets including Australia.

147. The review team is of the opinion that this conclusion is applicable to the New Zealand market, given its small relative size, and close proximity to Australia.

148. Subsequent to the overseas verification visits, the review team was made aware of a severe snowstorm and frosts in Greece. A report located on the internet by the US Department of Agriculture reported that the peach crop had been very badly damaged. The report stated that based on preliminary estimates provided by both processors and peach farming groups, the quantity of fresh fruit delivered to processors will be around 235,000 tonnes, subject to better damage assessment. The same report shows that in 2002 and 2001, 258,000 tonnes and 459,000 tonnes respectively were delivered for processing. At this stage of the review, no further or more reliable information has been obtained on this matter. The review team notes that a large reduction in the Greek peach crop in 2003 does not mean it is not possible to foresee that production could be back to normal levels in 2004.

Ease of Entry into New Zealand Market

149. HW said barriers to entry into the New Zealand market are very low, and has made extensive submissions on the market structure in New Zealand.

150. As outlined above, HW is of the opinion that **[Text deleted due to confidentiality]** in New Zealand have **[Text deleted due to confidentiality]** themselves, and have a pre-existing and extensive marketing and warehousing structure which gives them the capability to easily source and sell their own product.

151. HW has a made a submission about the increasing importation of canned peaches by **[Text deleted due to confidentiality]**, by reference to what has happened in the **[Text deleted due to confidentiality]** market where there are no duties. HW provided AC Nielsen

data for **[Text deleted due to confidentiality]** for the two years ended 23 March 2002 and 23 March 2003, which show that the market share of housebrands has increased significantly over the two years. This data further shows that imports from Europe of **[Text deleted due to confidentiality]** have also increased significantly. HW said that this illustrates the point that **[Text deleted due to confidentiality]** can and do import from Europe, and they are doing so to a larger extent than ever. HW submitted that even though this example is in relation to **[Text deleted due to confidentiality]**, it is also applicable to peaches.

152. Entry into the New Zealand market by new suppliers is made easier by the fact that the contracts between HW and their customers for the Wattie's and Oak brands **[Text deleted due to confidentiality]**. The contracts for housebrands are annual agreements (i.e. they are **[Text deleted due to confidentiality]**) that can be reviewed at any stage.

Ability of Importers and Distribution System

153. HW has submitted that many of the importers and exporters previously involved in exporting dumped peaches from Greece and the EU to New Zealand remain active, and some new importers have also appeared. HW said these existing importers have in place the systems and infrastructure to handle an increase in imports, and if they used a sourcing firm like **[Text deleted due to confidentiality]**, who have extensive experience in the procurement of cheap peaches, the importation of large volumes of peaches would become a relatively cheap and easy exercise. HW is also of the opinion that even if **[Text deleted due to confidentiality]** chose not to use an import agent, they still have the experience to procure cheap product themselves.

154. HW stated that **[Text deleted due to confidentiality]** are building significant **[Text deleted due to confidentiality]** businesses supported by specialist infrastructure (such as procurement, marketing, warehousing, distribution, and retailing) which they will continue to do, and will be made easier by the removal of anti-dumping duty.

Conclusion on Import Volumes

155. The review team concludes that over the period covered by this review, import volumes of the subject goods have remained negligible relative to New Zealand production and consumption.

156. The review team further concludes that should duties be removed there is likely to be a significant increase in the volume of dumped imports, on the basis that:

- Following the imposition of the duty in 1998, import volumes from Greece decreased to zero, and have remained virtually at that level since. This suggests that the removal of duty may lead to increased imports.
- Prices of the subject goods significantly undercut the New Zealand industry's prices, in the absence of anti-dumping duty.
- The Greek canned peach industry has the capability to substantially increase its exports to New Zealand.
- There are few barriers to entry in the New Zealand market.
- Importers and **[Text deleted due to confidentiality]** have the ability to import and distribute a significant increase in the volume of canned peaches from Greece.

4.4 Price Effects

Price Undercutting

157. Section 8(2)(b) of the Act provides that the Chief Executive shall have regard to the extent to which the prices of the dumped or subsidised goods represent significant price undercutting in relation to prices in New Zealand (at the relevant level of trade) for like goods of New Zealand producers.

158. Price undercutting reflects the extent to which prices of the imported goods are lower than those of domestic products. The prices of dumped imports and domestic production are compared at the point of first competition in New Zealand, i.e., the first point of sale in the New Zealand market. This 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 and margins 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.

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

160. The original investigation found that there was evidence of price undercutting which was attributable to dumping. It also found that there was evidence of price undercutting when the effects of dumping were removed.

Level of Trade

161. HW is of the view that the ex-factory level is the appropriate level of trade for its sales of canned peaches. HW is of the opinion that the level of trade for imported product would change from ex-importers store to **[Text deleted due to confidentiality]** if the duties were removed, because HW considers that **[Text deleted due to confidentiality]** would **[Text deleted due to confidentiality]**.

162. The review team agrees that this is the appropriate level of trade for **[Text deleted due to confidentiality]**. It also notes that imports are still likely through separate importers, where ex-store is the appropriate level of trade.

Non-Injurious Prices

163. HW is of the opinion that as a review is a forward looking exercise, and any duties imposed will cover a future period, the non-injurious price (NIP) that is used should be based on the prices that may eventuate in the period that the duty will cover. HW also advised that it had **[Text deleted due to confidentiality]**, that should be taken into account. On the basis of the **[Text deleted due to confidentiality]**, HW provided forecasts of its average net prices

for the period 1 May 2003 to 30 April 2004 (these forecasts were prepared making the same adjustments as all other forecasts in this report). Furthermore, HW considers that a separate NIP should be calculated for each of the three main can sizes.

164. The review team notes that NIPs can be used for the purposes of establishing whether there has been price undercutting over a historical period, whether there is likely to be price undercutting in future should the duty be removed, and to establish whether a lesser duty should apply (should the review find that duties should remain in place). The review team agrees that it is desirable that the most recent available information be used in calculating NIPs if that information is reliable and reasonably matches the period over which any import prices have been calculated for comparison with the NIPs.

165. In the present case, for the reasons set out below, it is not possible to carry out a comparison of prices over a historical period. In relation to the likelihood of price undercutting should the duty be removed, HW has provided its estimate of likely prices using average export prices from Greece in 2001, meaning a comparison would be made of a NIP based on **[Text deleted due to confidentiality]** prices with import prices based on 2001 data.

166. In terms of the reliability of NIPs based on prices **[Text deleted due to confidentiality]**, the review team notes that HW has previously (in October 2000 to March 2001) **[Text deleted due to confidentiality]**. This may indicate that NIPs based on average prices actually achieved over a recent one-year period may provide a better indication of a true NIP bearing in mind that HW has not claimed any price suppression due to dumped imports.

167. With these observations in mind, the review team considers that a price comparison should be carried out using NIPs based on both the actual average net prices achieved by HW over a one year period (in this case over the year ended November 2002) and on the prices prevailing after the **[Text deleted due to confidentiality]**.

168. The review team notes that in section 6 (Reassessment of Anti-Dumping Duties) of this report (the section on proposed re-assessment of anti-dumping duties), the NIP used was based on HW's actual average selling prices for the year ended May 2003. The reason for this is that as a review is a forward-looking exercise, this ensured that the most up to date information was used, which represented prices actually achieved over a one year period.

Relevant Prices for Comparison

169. **[Text deleted due to confidentiality]**, and consequently the review team was not able to carry out a price undercutting comparison. The review team has therefore focussed solely on the likely price undercutting should the duties be removed.

Likelihood of Price Undercutting Should Duties Be Removed

170. The review team has addressed this issue by comparing HW's non-injurious price to the importer's prices at both the **[Text deleted due to confidentiality]** (for comparison with **[Text deleted due to confidentiality]**), and ex-store (for comparison with importation using an agent) levels. This approach ensures that both possible types of importation scenarios are covered.

171. In its application for a review, HW provided estimates of likely export prices to New Zealand in the absence of anti-dumping duties. HW calculated the ex-store-selling price of Greek canned peaches based on the average per kilogram FOB price to other EU countries for 2001 from the Euro Statistics. HW firstly deducted the **[Text deleted due to confidentiality]** to arrive at the ex-store import price per kilogram of **[Text deleted due to confidentiality]**. The cost from Greece FOB to New Zealand wharf (**[Text deleted due to confidentiality]**), costs at New Zealand wharf and into store costs were based on **[Text deleted due to confidentiality]** import costs from **[Text deleted due to confidentiality]** in Greece. HW based its importer's margin figure, on estimates of the margin that a New Zealand importer could make.

172. The review team has carried out its own calculations, based on the HW submission, but with changes considered appropriate by the review team. The importer's margin used by the review team was based on the weighted average margin that another New Zealand importer, **[Text deleted due to confidentiality]**, makes on its imports of canned peaches from **[Text deleted due to confidentiality]**. The review team considers that it cannot make any cost of credit deductions due to the fact that it has no information on what the credit terms may be for a New Zealand importer if the duties were removed. HW submitted that **[Text deleted due to confidentiality]** should be discounted by up to **[Text deleted due to confidentiality]** percent to allow for likely discounts that a regular importer could likely negotiate. HW did not provide any evidence to substantiate this claim. The review team decided to use the full amount of any ocean freight incurred on imports (i.e. not take account of any "bulk" discounts that may apply), because of a lack of evidence that a discount should apply (the review team also notes that **[Text deleted due to confidentiality]** to that for **[Text deleted due to confidentiality]** imports from **[Text deleted due to confidentiality]**, indicating that a discount should not apply).

173. The NIP in the table below is HW's average selling price for the year ended November 2002, net of part of trade spend (trade spend represents the various forms of promotional expenditure that HW pays **[Text deleted due to confidentiality]**, and the various **[Text deleted due to confidentiality]**). That part of trade spend which represents promotional expenditure **[Text deleted due to confidentiality]** (referred to as co-operative expenditure) in the form of **[Text deleted due to confidentiality]**, has not been netted off the selling price. This is consistent with the treatment of this type of expenditure applied in the reassessment of the anti-dumping duty on canned peaches from South Africa, completed in January 2002.

174. The following table shows the result of the review team's calculations of the Greek export prices at the **[Text deleted due to confidentiality]** and ex-store levels, and a comparison of these with HW's NIP.

Table 4.2: Price Undercutting (NIP Based on Year Ended November 2002 Prices)

	410g	820g	A10	All
HWNIP	**xxxx**	**xxxx**	**xxxx**	**xxxx**
Estimated **xxxx** Price	**xxxx**	**xxxx**	**xxxx**	**xxxx**
Price Undercutting	**xxxx**	**xxxx**	**xxxx**	**xxxx**

	410g	820g	A10	All
- as % of NIP	**xxxx**	**xxxx**	**xxxx**	**xxxx**
Estimated Ex-Store Price	**xxxx**	**xxxx**	**xxxx**	**xxxx**
Price Undercutting	**xxxx**	**xxxx**	**xxxx**	**xxxx**
- as % of NIP	**xxxx**	**xxxx**	**xxxx**	**xxxx**

175. The table shows that there would be significant undercutting of HW's NIP by the Greek imports, across all different weights, and also in total, at both the ex-store and **[Text deleted due to confidentiality]** levels of trade.

176. The NIP in the table below is based on HW's **[Text deleted due to confidentiality]** prices, with these prices applied to forecast volumes to give forecast average net selling prices as outlined above. The review team has compared this NIP to the calculated **[Text deleted due to confidentiality]** and ex-store prices in the table below.

Table 4.3: Price Undercutting (NIP Based on **[Text deleted due to confidentiality]** Prices)

	410g	820g	A10	All
HWNIP	**xxxx**	**xxxx**	**xxxx**	**xxxx**
Estimated **xxxx** Price	**xxxx**	**xxxx**	**xxxx**	**xxxx**
Price Undercutting	**xxxx**	**xxxx**	**xxxx**	**xxxx**
- as % of NIP	**xxxx**	**xxxx**	**xxxx**	**xxxx**
Estimated Ex-Store Price	**xxxx**	**xxxx**	**xxxx**	**xxxx**
Price Undercutting	**xxxx**	**xxxx**	**xxxx**	**xxxx**
- as % of NIP	**xxxx**	**xxxx**	**xxxx**	**xxxx**

177. The above table shows that significant price undercutting would exist, at both the **[Text deleted due to confidentiality]** and ex-store levels of trade.

178. The review team, in the concurrent review of the countervailing duty on canned peaches from the EU, has calculated a total amount of subsidy per kilogram of canned peaches equal to **[Text deleted due to confidentiality]** (of which, **[Text deleted due to confidentiality]** is attributable to EU Processing Aid, and **[Text deleted due to confidentiality]** is attributable to Sugar Export Refunds). When this amount of subsidy is added back on to the calculated Greek ex-store and **[Text deleted due to confidentiality]** prices (at either the current or

forecast levels) there still exists significant price undercutting, which is attributable to dumping.

179. Venus Growers stated that the only criterion in its pricing is the **[Text deleted due to confidentiality]**. The EC, in its submission on the Interim Report, stated that the review team should address the issue of whether or not there exists a price difference between Greek exports to countries with and without a canned peach industry. The review team is not aware of any data that would allow such a comparison.

180. The evidence therefore suggests that should duties be removed, there is likely to be significantly increased volumes of imports and these imports will be likely to significantly undercut the price of the New Zealand industry.

Conclusion on Price Undercutting

181. There is no evidence available on price undercutting during the period under review.

182. In the absence of anti-dumping duty, it is likely that canned peaches from Greece would undercut the New Zealand industry's prices by between **[Text deleted due to confidentiality]** and **[Text deleted due to confidentiality]** percent, depending on can size, the level of trade at which comparison is made, and the basis on which the NIP is set.

Price Depression

183. Section 8(2)(c) of the Act provides that the Chief Executive shall have regard to the extent to which the effect of the dumped or subsidised goods is or is likely significantly to depress prices for like goods of New Zealand producers.

184. Price depression occurs when prices are lower than those in a market unaffected by dumping, usually in a previous period.

185. The original investigation found that there was evidence of price depression, which could be attributed to dumped imports of Greek canned peaches.

186. In the current review, HW has provided actual average net selling prices for the years 1999 to 2003 (the 2003 figures are a combination of actual and forecast data). These net average prices were calculated on the same basis as the prices for the year ended November 2002 under "Price Undercutting" above. These prices are presented in the following table:

Table 4.4: Price Depression (Years Ended April)

	1999	2000	2001	2002	2003
Average Net Selling Price per kg	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**
As % of 1999		**xxxx**	**xxxx**	**xxxx**	**xxxx**

187. The above table shows that over all of the period, HW has not suffered price depression. HW has not claimed any price depression attributable to dumped imports, and with duties in place, this would not be expected.

Likely Price Depression Should Duties Be Removed

188. During the review of anti-dumping duty on South African canned peaches, HW provided AC Nielsen data relating to the import of Contel brand canned peaches from Italy in 1999 as an example of what could happen to the price of Wattie's and Oak brand canned peaches should duties be removed. The AC Neilsen data showed the price of Contel dropping and the price of **[Text deleted due to confidentiality]** following the price down soon after. HW also referred to AC Neilsen market share data showing a sharp increase in the Contel market share (around March 2000) at about the same time as the average price per kilogram of Contel decreased in the New Zealand market. HW stated that this is of relevance for the current review, and illustrates the extent to which prices can be depressed by low priced imports.

189. As outlined above, HW has also provided forecasts based on what occurred in the market at the time of the original investigation. HW has forecast that if both duties were to be removed it would suffer a **[Text deleted due to confidentiality]** percent depression of price across all brands. HW has also forecast that if the anti-dumping duty was removed, but the countervailing duty was retained, it would suffer a **[Text deleted due to confidentiality]** percent reduction in the price of its **[Text deleted due to confidentiality]**, and would lose its entire **[Text deleted due to confidentiality]** market. HW considers that this would be due to the **[Text deleted due to confidentiality]** preference for importing **[Text deleted due to confidentiality]**, so that it can **[Text deleted due to confidentiality]** it as **[Text deleted due to confidentiality]**. HW said this strategy has the advantage that it uses an **[Text deleted due to confidentiality]**, so the **[Text deleted due to confidentiality]** does not need to spend money on marketing **[Text deleted due to confidentiality]**.

190. Under the scenario of the removal of either duty leading to HW**[Text deleted due to confidentiality]**, HW would **[Text deleted due to confidentiality]** and would therefore suffer **[Text deleted due to confidentiality]** price depression.

191. The extent of the likely price undercutting attributable to dumping, indicates that the price depression scenarios forecast by HW if the duties are removed are credible.

Conclusion on Price Depression

192. The review team concludes that HW's selling prices over the period examined have not been depressed due to dumped imports.

193. The review team concludes that HW is likely to suffer price depression should the anti-dumping duties be removed.

Price Suppression

194. Section 8(2)(c) of the Act also provides that the Chief Executive shall have regard to the extent to which the effect of the dumped or subsidised goods is or is likely significantly to

prevent price increases for those goods that otherwise would have been likely to have occurred.

195. The Ministry has generally based its assessment of price suppression on positive evidence, in particular the extent to which cost increases have not been recovered in prices. Cost increases not recovered in prices will be reflected as increases in costs expressed as a percentage of sales. Where cost savings have been made, the lack of any price increase will not normally be regarded as price suppression.

196. The original investigation found that there was no evidence of price suppression.

197. The following table shows HW's cost of production and selling and administration expenses relative to sales and revenue:

Table 4.5: Price Suppression (Years Ended April)

	1999	2000	2001	2002	2003
Net Sales Revenue ($000)	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**
Cost of Production ($000)	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**
S&A Expenses ($000)	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**
Total Costs	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**
As % of Sales:					
Cost of Production	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**
S&A Expenses	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**
Total Costs	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**

198. The table shows an increase in total costs relative to sales revenue from 1999 to 2003 indicating prices have been suppressed. However, with the current duties in place, it is unlikely that this can be attributed to dumped imports. HW has not attributed the price suppression to dumped imports.

Likelihood of Price Suppression Should Duties Be Removed

199. HW stated that if dumped imports returned to the market, any decision about increases in marketing spend would depend entirely on how the imports enter the market, and then how they were marketed. For this reason HW has not attempted to quantify the extent to which marketing costs would increase if the duties were removed.

200. HW said that if dumped canned peaches came into the market purely on price, then it would react with price reductions of its **[Text deleted due to confidentiality]**. If importers of

Greek canned peaches undertook increased advertising and promotional activity, HW said it would react by doing the same. HW does not market the **[Text deleted due to confidentiality]** brand, **[Text deleted due to confidentiality]**.

201. HW believes that if **[Text deleted due to confidentiality]** begin importing **[Text deleted due to confidentiality]** as a result of the revocation of duties, marketing would not be carried out in the same way as if **[Text deleted due to confidentiality]** was being imported. HW stated that it too may be sourcing product overseas (if there is a crop shortfall), which would increase its costs, and such cost increases would not be recoverable in the price charged, given that it would have to compete with dumped imports. HW said price suppression would therefore arise through increased sourcing costs, or increased marketing costs, which would not be able to be recovered with price increases.

202. Based on the assumption of a **[Text deleted due to confidentiality]** percent reduction in volume ("scenario 1"), HW has forecast that due to decreases in overhead recovery rates (due to lower throughput), the cost of production per kilogram would rise by **[Text deleted due to confidentiality]**.

203. The following table shows HW's forecasts for the 2003/2004 financial year if anti-dumping duties are removed and if they stay in place (these calculations have been prepared on the basis that the current countervailing duty will also be removed). In making the following forecast, HW has assumed, a **[Text deleted due to confidentiality]** percent reduction in volume, a **[Text deleted due to confidentiality]** percent reduction in price, and an increase in cost of production per kilogram of **[Text deleted due to confidentiality]** (as referred to in the paragraph above). Net sales revenue has been calculated as noted above under "Price Undercutting", and HW has assumed a constant level of selling and administration expenses, reflecting the continued need to sell and market the product, regardless of sales volume.

Table 4.6: Price Suppression Forecast

	If duties remain	If both duties removed
Net Sales Revenue	**xxxx**	**xxxx**
Cost of Production	**xxxx**	**xxxx**
S&A Expenses	**xxxx**	**xxxx**
Total Costs	**xxxx**	**xxxx**
As % of Net Sales		
- Cost of Production	**xxxx**	**xxxx**
- S&A Expenses	**xxxx**	**xxxx**
- Total Costs	**xxxx**	**xxxx**

204. The table shows a large increase in the percentage of total costs relative to net revenue should duties be removed.

205. The review team notes that given the conclusions above on the likely price undercutting and price depression effects, HW's forecast of likely price suppression should the duties be removed is considered credible.

206. HW has also provided a forecast of likely price suppression if the duties remain and are removed, on the basis that the countervailing duty remains. This forecast has been prepared using the assumptions previously referred to, i.e., a **[Text deleted due to confidentiality]** percent reduction in the price of its **[Text deleted due to confidentiality]** brands, and loss of all its **[Text deleted due to confidentiality]** ("scenario 2"). HW's forecast of likely price suppression under these assumptions is presented in the table below.

Table 4.7: Price Suppression Forecast

	If duties remain	If only anti-dumping duty removed
Net Sales Revenue	**xxxx**	**xxxx**
Cost of Production	**xxxx**	**xxxx**
S&A Expenses	**xxxx**	**xxxx**
Total Costs	**xxxx**	**xxxx**
As % of Net Sales		
- Cost of Production	**xxxx**	**xxxx**
- S&A Expenses	**xxxx**	**xxxx**
- Total Costs	**xxxx**	**xxxx**

207. The table shows a large increase in the percentage of total costs relative to net revenue should duties be removed, indicating that it is likely that price suppression will recur if the duties are removed. The table shows that even with residual protection from the countervailing duty, HW would suffer significant price suppression.

208. The review team notes that given the conclusions above on the likely price undercutting and price depression effects, HW's forecast of likely price suppression should the duties be removed is considered credible.

209. The scenario of HW**[Text deleted due to confidentiality]**, would lead to **[Text deleted due to confidentiality]**, which would mean **[Text deleted due to confidentiality]** price suppression.

210. The review team notes that given the conclusions on the likely price undercutting and price depression effects, HW's forecast of likely price suppression should the duties be removed is considered credible.

Conclusion on Price Suppression

211. The review team concludes that there is evidence of price suppression, but it is not attributable to dumped imports.

212. The review team also concludes that HW's prices are likely to be suppressed as a result of dumping should duties be removed, regardless of whether the countervailing duty remains in place or not.

Conclusion on Price Effects

213. The review team concludes there is no evidence of current price undercutting or price depression. The price suppression over the last five financial years is unlikely to be attributable to dumped imports, and HW has not claimed that it is.

214. The review team concludes that there is likely to be a recurrence of price undercutting, price depression and suppression, should duties be removed.

215. The Greek Government and the EC stated that the review team should not make a presumption that Greek import prices into New Zealand will necessarily fall on the basis of the removal of anti-dumping duties, and went on to state that it could not be concluded that there would be price undercutting, price depression and suppression, if the current duties were removed. The review team notes that the argument about the removal of duty directly leading to a decrease in import prices into New Zealand does not rely on a simple presumption that the mere removal of the duty will lead to likely price undercutting, price depression and suppression, but relies on other evidence as set out above.

4.5 Economic Impact

216. Section 8(2)(d) of the Act provides that the Chief Executive shall have regard to the economic impact of the dumped or subsidised goods on the industry, including-

i. Actual and potential decline in output, sales, market share, profits, productivity, return on investments, and utilisation of production capacity; and
ii. Factors affecting domestic prices; and
iii. The magnitude of the margin of dumping; and
iv. Actual and potential effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investments.

Output and Sales

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

Output

218. In the original investigation it was found that output fluctuated with the availability of the raw peaches each season, and HW sometimes imported canned peaches to make up for poor harvests to maintain its presence in the market.

219. HW stated that there is both excess grower capacity in New Zealand for the production of peaches for processing and spare production capacity for the processing of those peaches. HW stated **[Text deleted due to confidentiality]** fruit requirements **[Text deleted due to confidentiality]** at the start of each season. HW said, however, this is not always sufficient to guard against fluctuations if there has been a bad growing season due to weather or disease. HW said in such cases, it imports canned peaches to maintain continuity of supply to its markets and protect its brand when New Zealand production is unavailable. These peaches are labeled and marketed in the exact same way as HW own branded product, and HW makes no distinction between its imports and own production, in terms of financial reporting and analysis. According to HW, it is more expensive to import than to manufacture canned peaches locally.

220. The following table shows HW's production of canned peaches for each year from 1999 to 2002. The figures given relate to the production season (about 20-22 working days, running from late February to April) in each of the given years.

Table 4.8: HW Output (Tonnes) (Years Ended April)

	1999	2000	2001	2002
Output	**xxxx**	**xxxx**	**xxxx**	**xxxx**
- change on previous year		**xxxx**	**xxxx**	**xxxx**
- As % of 1999		**xxxx**	**xxxx**	**xxxx**

221. The above table shows a significant fluctuation in output, reflecting the availability of peaches. Over the period 1999 to 2002, the table shows a decrease in output. HW has not claimed that changes in output have been affected by dumped imports.

222. HW estimates that production of raw peaches for the 2003 season will be **[Text deleted due to confidentiality]**.

Sales

223. HW stated that sales volumes do, to a degree, reflect supply problems (such as the adverse growing season it has just experienced), but it endeavours to mitigate these effects through importation. HW said the decline in sales volume in the 2002 financial year is due to a shortfall in the crop.

224. When faced with crop shortfalls, HW imports to maintain market share. However, in doing this HW said it faces increased costs through imports being more expensive, and the

fact that decreased production leads to a lower overhead recovery rate. HW said these effects are mitigated through **[Text deleted due to confidentiality]**

225. The following table shows HW's sales volume and revenue for the years 1999 to 2003 (years ended April). The figures in the table include HW's sales of imported canned peaches. The figures for 2003 are actual figures to 9 February and forecast figures thereafter.

Table 4.9: HW Sales Volume and Revenue (Years Ended April)

	1999	2000	2001	2002	2003
Sales (tonnes)	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**
- Change on previous year		**xxxx**	**xxxx**	**xxxx**	**xxxx**
- As % of 1999		**xxxx**	**xxxx**	**xxxx**	**xxxx**
Net Revenue ($000)	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**
- Change on previous year		**xxxx**	**xxxx**	**xxxx**	**xxxx**
- As % of 1999		**xxxx**	**xxxx**	**xxxx**	**xxxx**

226. The table shows that the levels of both sales revenue and volume have fluctuated, but that over all of the period from 1999 to 2003, HW has experienced a decline in its levels of sales revenue and volume. HW has not claimed that its sales have been affected by dumped imports.

Likely Impact of Removal of Duties

227. HW has made forecasts of what it expects would be the effect on its sales volume and revenue if the duties were removed. HW's forecasts are based on its estimate of the volume and price effects under the first scenario referred to above, which is based on the situation at the time of the original investigation.

228. HW stated that it does not believe that the effects of dumped canned peaches will be different from the impact of subsidised canned peaches. Only the quantum of the impact will vary and this will be dependent on the pricing, promotional activity and market areas the importer may target.

229. The following table shows HW's forecasts of sales revenue and volume should both duties be removed, for the year ended April 2004 ("scenario 1").

Table 4.10: HW's Forecast Sales Revenue and Volume

	If duties remain	If both duties removed

	If duties remain	If both duties removed
Sales (tonnes)	**xxxx**	**xxxx**
- Change		**xxxx**
- % Change		**xxxx**
Net Revenue (NZ$)	**xxxx**	**xxxx**
- Change		**xxxx**
- % Change		**xxxx**

230. The table shows that should both duties be removed, HW forecasts significant reductions in both sales revenue (**[Text deleted due to confidentiality]** percent), and sales volume (**[Text deleted due to confidentiality]** percent).

231. HW has also provided a forecast of sales revenue and volume if only the anti-dumping duty is removed, i.e., the countervailing duty remains ("scenario 2"). This forecast is contained in the following table.

Table 4.11: HW's Forecast Sales Revenue and Volume

	If duties remain	If only anti-dumping duty removed
Sales (tonnes)	**xxxx**	**xxxx**
- Change		**xxxx**
- % Change		**xxxx**
Net Revenue (NZ$)	**xxxx**	**xxxx**
- Change		**xxxx**
- % Change		**xxxx**

232. The table shows that should only the anti-dumping duty be removed, HW forecasts significant reductions in both sales revenue (**[Text deleted due to confidentiality]** percent), and sales volume (**[Text deleted due to confidentiality]** percent).

233. HW has also submitted figures relating to the "**[Text deleted due to confidentiality]**" scenario under which the removal of the anti-dumping duty (or the countervailing duty) would lead to it **[Text deleted due to confidentiality]**. Under this scenario, HW would **[Text deleted due to confidentiality]** sales, therefore **[Text deleted due to confidentiality]** sales

revenue, and would **[Text deleted due to confidentiality]**, implying **[Text deleted due to confidentiality]**.

Conclusion on Output and Sales

234. The review team concludes that there is evidence that HW has suffered a decline in output, and in sales volume and revenue over the period examined. However, due to the existence of the anti-dumping duty, it is considered unlikely that this can be attributed to dumping. HW has not claimed that its output and sales have been affected by dumping.

235. The review team has concluded that should duties be removed, there is likely to be a significant increase in import volumes, and there is likely to be significant price undercutting, price suppression and depression. The review team concludes that it is therefore likely there would be a consequent significant impact on output, sales volume and revenue.

Market Share

236. The analysis of market share must take account of changes in the growth of the market as a whole. A decline in the share of the market held by the domestic industry in a situation where the market as a whole is growing will not necessarily indicate that injury is being caused to the domestic industry, particularly if the domestic industry's sales are also growing. There is no "entitlement" to a particular market share.

237. The original investigation found there was evidence of an adverse economic impact reflected in a small decline in market share over the period since injury was claimed to have commenced.

238. The following table shows market share and changes in market share over the years 1999 to 2003.

Table 4.12: Market Share (Tonnes)

	1999	2000	2001	2002	2003
Dumped Imports	0	0	15	0	0
Other Imports	2,208	3,314	3,320	3,114	5,133
HW Sales	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**
Total NZ Market	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**
Change in Volume:					
- Dumped Imports		0	15	-15	0
- Other Imports		1,106	6	-206	2,019

	1999	2000	2001	2002	2003
- HW Sales		**xxxx**	**xxxx**	**xxxx**	**xxxx**
- Total NZ Market		**xxxx**	**xxxx**	**xxxx**	**xxxx**
Percentage Share Held By:					
- Dumped Imports	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**
- Other Imports	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**
- HW Sales	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**

239. The table shows that HW's market share declined over the period examined, and this occurred in a growing total market. The table also shows that the market share held by dumped imports was negligible over the whole period. It also shows that the market share held by imports from other sources has increased **[Text deleted due to confidentiality]**, at the expense of the share held by HW. The increase in market share held by other imports was due to increased Australian imports.

Likely Impact of Removal of Duties

240. As outlined above, HW is of the opinion that should the duties be removed, dumped Greek peaches would take, at least, a market share equal to that which occurred for the one can size then imported, in those areas in New Zealand where the imports were available, when these products were last on the New Zealand market ("scenario 1"). At that time, the only imports were 820g cans and prior to the imposition of duties, in those areas where they were available, they captured a**[Text deleted due to confidentiality]** percent market share. The review team notes, however, that the overall market share data from the original investigation shows that dumped imports captured **[Text deleted due to confidentiality]** percent of the market, resulting in a **[Text deleted due to confidentiality]** per cent decline in the market share held by HW. HW has calculated that if the dumped imports do succeed in capturing **[Text deleted due to confidentiality]** percent of the entire New Zealand market, then it would expect to lose sales of **[Text deleted due to confidentiality]**, which would result in HW's market share reducing from **[Text deleted due to confidentiality]** percent to **[Text deleted due to confidentiality]** percent (the forecast assumes other imports would also lose market share).

241. HW has also calculated that if Greek peaches entered in the same volume as they did at the time of the original investigation (**[Text deleted due to confidentiality]**), HW would expect to lose **[Text deleted due to confidentiality]** of sales (the remaining sales being lost by other imports).

242. HW has also provided figures for the forecast under "scenario 2". **[Text deleted due to confidentiality]** currently hold approximately **[Text deleted due to confidentiality]** percent of the total New Zealand market, and HW calculates that if it lost its share of this **[Text deleted due to confidentiality]** market, its market share would drop from **[Text deleted due**

to confidentiality] percent **[Text deleted due to confidentiality]** percent (with the remaining market share losses being made by other imports).

243. The "**[Text deleted due to confidentiality]**" scenario equates to HW losing **[Text deleted due to confidentiality]** market share. According to HW the scenario that would actually eventuate in the event of the removal of duties, would depend entirely on how the new importers would market and sell their product.

Conclusion on Market Share

244. HW has lost **[Text deleted due to confidentiality]** market share over the period under review, but this cannot be attributed to dumped imports.

245. The review team concludes that given the likely import volume and price effects and the likely consequent economic impact on sales and output, it is likely there will be a significant adverse impact on market share should the duties be removed.

Profits

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

247. The original investigation found that there was evidence of an adverse economic effect reflected in a significant decline in profits over the period since injury was claimed to have commenced. However, the original investigation found that not all of the decline in profits could be attributed to dumping.

248. The following table shows details of HW's earnings before interest and tax.

Table 4.13: Earnings Before Interest and Tax (Years Ended April)

	1999	2000	2001	2002	2003
EBIT ($000)	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**
Change on Previous Year		**xxxx**	**xxxx**	**xxxx**	**xxxx**
EBIT as a % of Net Revenue	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**
EBIT as a % of 1999		**xxxx**	**xxxx**	**xxxx**	**xxxx**
EBIT per kg	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**
Change on Previous Year		**xxxx**	**xxxx**	**xxxx**	**xxxx**
EBIT per kg as % of 1999		**xxxx**	**xxxx**	**xxxx**	**xxxx**

249. The above table shows that EBIT in total, per kilogram and relative to net revenue decreased **[Text deleted due to confidentiality]** over the period 1999-2003, **[Text deleted due to confidentiality]**.

250. HW said the **[Text deleted due to confidentiality]** in profit from **[Text deleted due to confidentiality]** was due to many factors, the first being **[Text deleted due to confidentiality]**. HW has not claimed any adverse effect on its profitability from dumped imports.

Likely Impact of Removal of Duties

251. HW has stated that the effect on profits of the removal of the duty will result from a combination of loss of market share volume, loss of sales revenue, and an inability to recover increased production costs and higher marketing costs through price increases.

252. HW provided forecasts of the effect on its profitability of the removal of both the current duties ("scenario 1") and the removal of the anti-dumping duty only ("scenario 2"). The forecasts are prepared on the same basis as the previous forecasts and use the same data. HW's forecasts are provided below.

Table 4.14: Forecast EBIT (Years Ended April 2004)

	If duties remain	If both duties removed	If anti-dumping duty only removed
EBIT	**xxxx**	**xxxx**	**xxxx**
Change in EBIT		**xxxx**	**xxxx**
% Change in EBIT		**xxxx**	**xxxx**
EBIT as % Net Revenue	**xxxx**	**xxxx**	**xxxx**
EBIT per kg	**xxxx**	**xxxx**	**xxxx**
Change		**xxxx**	**xxxx**
% Change		**xxxx**	**xxxx**

253. The above table shows that should the duties be removed, HW expects its EBIT in total, per kilogram and relative to net revenue to decrease significantly, in relation to what it would expect if the duties were retained.

254. HW has estimated that if it had to **[Text deleted due to confidentiality]** as per the "**[Text deleted due to confidentiality]**" scenario, in the 2003/2004 growing season, in addition to the **[Text deleted due to confidentiality]** profit from its canned peach operation, it would **[Text deleted due to confidentiality]** resulting from **[Text deleted due to confidentiality]** in its peach canning business. In addition HW has estimated that the **[Text deleted due to confidentiality]**.

Conclusion on Profits

255. HW has suffered from a **[Text deleted due to confidentiality]** decline in profits over the period under review, but this cannot be attributed to dumped imports.

256. The review team concludes that given the likely import volumes and the likely consequent economic impact on sales and output, it is likely there will be a significant adverse impact on profits should the duty be removed.

Productivity

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

258. The original investigation found evidence of a decline in output and of a loss of market share to the subject goods. It was therefore found likely that there would be a consequent adverse impact on productivity, which could be attributed in part to dumped imports.

259. HW has stated that it is difficult to quantify productivity, given the number of products going through the plant at once, and the variability of seasonal staff numbers. HW said it was therefore not possible to provide meaningful data on productivity per employee.

Likely Impact of Removal of Duties

260. HW noted that it has the ability to reduce the hours of seasonal staff should the duties be removed, which means that productivity per employee is not necessarily affected.

261. HW said that it has a significant cost structure in place for the production of canned peaches and removal of duties would lead to a decline in productivity because of reduced throughput. HW said this would further result in loss of efficiency and output per employee.

262. The scenario where HW would have to **[Text deleted due to confidentiality]** as a result of the removal of either duty would mean a **[Text deleted due to confidentiality]** in the seasonal fruit-processing department. HW has stated that it would expect reduced working hours for **[Text deleted due to confidentiality]** seasonal employees and **[Text deleted due to confidentiality]** workers. Any possible impact that this **[Text deleted due to confidentiality]** in employee numbers could have on productivity per worker has not been quantified.

Conclusion on Productivity

263. There is no evidence of a loss of productivity due to dumped imports, over the POD(R).

264. The review team concludes that should the duties be removed there may be an adverse effect on productivity, but this could be mitigated to an extent, by a **[Text deleted due to confidentiality]** in staff numbers.

Return on Investments

265. A decline in return on investments will result from a decline in profits with or without a relative increase in the investment factor being used. Movements in the return on investments affect the ability of the industry to retain and attract investment.

266. The original investigation found that as the data provided was not specific to peaches, it was not a useful indicator of injury. However, the original investigation noted that the decline in profitability in 1997 suggested that there would be a corresponding decline in the rate of return on investments.

267. HW said it is unable to provide detailed information on return on investments, as most of its plant is not specific to canned peaches production.

Likely Impact of Removal of Duties

268. HW stated that the return of dumped imports will cause loss of volume, sales revenue, and profits, which will in turn, have a significant adverse effect on HW's achievable return on investments.

269. HW has not specifically quantified any impact on its return on investments under the scenario where it would **[Text deleted due to confidentiality]**, although clearly this would, in relation to its production of like goods, reduce the return **[Text deleted due to confidentiality]**.

Conclusion on Return on Investments

270. The review team is not able to determine trends in the return on investments in the POD(R).

271. Given the likely impact on profits of the removal of the duty, it is likely there will be a corresponding significant adverse impact on return on investments.

Utilisation of Production Capacity

272. The utilisation of production capacity reflects changes in the level of production, although in some cases it will arise from an increase or decrease in production capacity. In either case, a decline in the utilisation of production capacity will lead to an increase in the unit cost of production, and a consequent loss of profit.

273. The original investigation found no evidence of an adverse economic impact related to a decline in the utilisation of production capacity.

274. HW stated that only part of the plant is used solely for canning peaches, i.e. the pitting, peeling, and cutting equipment, and this is only used for 20 to 22 working days per year. Can filling, sealing, sterilisation, brightstacking, and labeling for a large range of products is done all year around. HW said its maximum capacity is approximately **[Text deleted due to confidentiality]** tonnes per year for canned peaches (including fruit salads). Canned fruit

salad uses approximately **[Text deleted due to confidentiality]** percent of the peach crop processed each year.

275. HW said the production capacity of canned peaches is limited by the storage life of the raw fruit, storage space, and also the need to put products, like other canned fruits and vegetables, through the same plant. HW also noted that another major limiting factor on production capacity is the amount of raw fruit supplied, which is why **[Text deleted due to confidentiality]**.

276. HW said its planned investment in new plant for its Hastings factory (see below) will not compromise the production capacity of the factory, i.e. capacity, at the very least, will be the same, if not greater.

Likely Impact of Removal of Duties

277. HW does not believe that the effects of dumped canned peaches will be different from the impact of subsidised canned peaches. It also believes that only the quantum of the impact will vary and this will be dependent on the pricing, promotional activity and market areas the importer may target. HW is of the opinion that while there will be some correlation between the level of the unfair pricing and a resultant reduction in production, they may not move in tandem.

278. If HW**[Text deleted due to confidentiality]** as per the "**[Text deleted due to confidentiality]**" scenario, it will have **[Text deleted due to confidentiality]** to utilise, due to the fact that it will **[Text deleted due to confidentiality]**.

Conclusion on Utilisation of Production Capacity

279. There is no evidence of an adverse impact on capacity utilisation attributable to dumped imports over the period under review.

280. Due to the multitude of canned products manufactured by HW and the limitations mentioned above regarding the availability of the raw peaches, the review team considers that it is difficult to predict the impact on the utilisation of production capacity for canned peaches if the anti-dumping duties were removed. However, as it has been concluded that there will likely be a decrease in output should duties be removed, it is likely there will also be a decrease in capacity utilisation.

Factors Affecting Domestic Prices

281. The original investigation found no evidence of an adverse economic impact related to factors affecting domestic prices.

282. HW stated that it has just completed the process of aligning itself with the new ANZFA standards, and it considers the cost of this sunk. Any product packed after December 2002 has to comply with ANZFA, and HW has not been able to recover costs involved to get itself up to standard in its prices.

283. HW advised that it is unaware of any pending Government regulation that would affect the canned peaches industry, or any issues arising from genetic engineering debates.

284. HW stated that the key factor impacting price since 1998, has been the growth in Private Label. HW said that Private Label (housebrands) comprise **[Text deleted due to confidentiality]** percent of the market with the clear objective of the first tier brands (Signature and Pams) being to offer national brand quality for below national brand pricing.

Conclusion on Factors Affecting Domestic Prices

285. The review team concludes that the growth in housebrands is likely to have exerted downward pressure on prices, but notes that this situation will prevail regardless of whether duties are removed.

286. The review team further concludes there are no other factors affecting domestic prices and there is therefore unlikely to be any impact arising should duties be removed.

Magnitude of the Margin of Dumping

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

288. The original investigation found a dumping margin that was lower than the margin of undercutting, but on a $/kg basis still constituted a significant proportion of this element of material injury. It was therefore found that anti-dumping duty should be imposed at the full margin of dumping.

289. The review of dumping in section 3 (Review of Dumping) has shown that all imports over the POD(R) were dumped with dumping margins ranging from 5 to 45 percent and a weighted average dumping margin of 20 percent.

290. The review team has examined the likely level of price undercutting when the likely weighted average dumping margins found in section 3Review of Dumping above are added back to estimated ex-importer's store and **[Text deleted due to confidentiality]** prices, in the event of the removal of duties.

291. The likely weighted average dumping margins found in section 3Review of Dumping above were calculated in Euros per kilogram and were converted into New Zealand dollars using the average euro/New Zealand dollar interbank exchange rate for the year ended 30 November 2002. This average exchange rate was taken from the OANDA internet site and the average exchange rate over this period was NZ$1 = €0.48882.

292. The above exercise showed that, in the event of the removal of duties, there would still be significant price undercutting by canned peaches from Greece, a significant proportion of which would be attributable to dumping.

Conclusion on Magnitude of Margin of Dumping

293. The dumping margins found in section 3 (Review of Dumping) would contribute significantly to the large price undercutting margins calculated above, in the event of the removal of duties.

294. It is likely that the removal of the duty would result in large dumping margins contributing significantly to a recurrence of price undercutting and a consequent adverse economic impact.

Other Adverse Effects

Cash Flow

295. HW provided no information on cash flow in the original investigation.

296. HW advised that cash flow from the production and sale of canned peaches is not measured, given it is one part of a very large and complex portfolio of products.

297. In addition to the cost of carrying additional inventory (considered below under "Inventory"), HW said there would also be an impact on cash flow equal to the estimated loss of revenue (referred to above under "Output and Sales"), and another impact arising from **[Text deleted due to confidentiality]** (referred to under "Employment and Wages") that would come from losing market share.

Conclusion on Cash Flow

298. There is insufficient evidence to draw any conclusion on trends in cash flow over the period under review.

299. The review team concludes that the likely impact on sales and profits should the duties be removed, is likely to result in a significant adverse economic impact on cash flow.

Inventory

300. The original investigation found that the inventory level in April 1997 increased significantly, both in absolute terms and in relation to production, indicating an adverse economic impact resulting from a build up of inventory in that year.

301. There is no evidence of an adverse impact on inventory attributable to dumped imports over the period examined for injury.

302. HW has stated that if the duties were to be removed it will **[Text deleted due to confidentiality]** at the end of the 2002/2003 season, **[Text deleted due to confidentiality]**. This unsold inventory incurs costs such as storage and foregone interest earnings on money spent on production. However, HW noted that if the duties were removed in July 2003 there would be sufficient time for it to negotiate with its growers, a reduction in the quantity to be supplied, which would mitigate any impact on inventory in the following season.

Conclusion on Inventory

303. There is no evidence of an adverse impact on inventory over the period of review. There is unlikely to be an adverse impact on inventory levels, should the duties be removed.

Employment and Wages

304. There was no evidence of an adverse impact on employment and wages in the original investigation.

305. There is no evidence of an adverse impact on employment and wages attributable to dumped imports over the period examined for injury.

306. HW was of the opinion that, as staff are spread over different jobs in the factory, it is difficult to quantify the effect under the "first scenario" on wages and employment if the duties were to be removed. HW said permanent staff numbers in the seasonal department would remain the same (at 52), however, seasonal employees would be affected because of the reduction in working hours and production time.

307. HW said the number of hours worked by seasonal staff would probably reduce in proportion to the loss of throughput. For example HW said that if it lost **[Text deleted due to confidentiality]** percent of the market to dumped Greek imports, it would likely reduce its seasonal staff working hours by about **[Text deleted due to confidentiality]** percent. The projected possible **[Text deleted due to confidentiality]** percent volume loss to dumped imports would result in significant reductions for up to **[Text deleted due to confidentiality]** seasonal workers.

308. HW also referred to the "**[Text deleted due to confidentiality]**" scenario referred to variously above, whereby the **[Text deleted due to confidentiality]** would not happen, and the **[Text deleted due to confidentiality]** because it would be**[Text deleted due to confidentiality]**. This would mean the**[Text deleted due to confidentiality]** and hence, seasonal jobs would**[Text deleted due to confidentiality]**.

309. HW referred to information submitted for the review of anti-dumping duties on canned peaches from South Africa, in which it estimated **[Text deleted due to confidentiality]** is spent on labour per year to process peaches. In that review, it was estimated that volume would reduce by **[Text deleted due to confidentiality]** percent if the duties were removed, and this would equate to a **[Text deleted due to confidentiality]** percent drop in wages paid to staff (which equals **[Text deleted due to confidentiality]**). HW is of the opinion that the same situation would apply to the current review. That is, if volume reduced by **[Text deleted due to confidentiality]** percent (as referred to above), there would be a **[Text deleted due to confidentiality]** percent reduction in wages paid, which equates to **[Text deleted due to confidentiality]**. Under the "**[Text deleted due to confidentiality]**" scenario, wages paid to seasonal workers would reduce to **[Text deleted due to confidentiality]**.

Conclusion on Wages and Employment

310. There is no evidence of an adverse impact on wages and employment over the period of review.

311. The review team concludes that should the duties be removed it is likely that there will be an adverse economic impact on employment and wages through reduced volumes of production and sales.

Growth

312. The original investigation concluded that there was no adverse economic impact on HW's ability to grow the market, as a result of dumped imports from Greece.

313. There is no evidence of an adverse impact on growth attributable to dumped imports over the period examined for injury.

314. HW stated that if dumped imports of canned peaches from Greece were allowed to return to the New Zealand market, the resulting lower volume for HW would make it harder to justify marketing and investment expenditure. This is due to lower throughput causing cost of production to increase, and hence, profitability to decrease. HW said all of its marketing spend requires approval from its world headquarters, and with reduced profitability, it becomes harder to get this approval. HW said with reduced marketing, even lower volumes result, and the downward spiral continues, the ultimate result being a lack of ability for it to grow the market.

Conclusion on Growth

315. There is no evidence of an adverse economic impact on growth over the period of review.

316. The review team concludes that should the duties be removed, the likely volume and price effects and consequent economic impact reflected in various factors, will also have an adverse effect on HW's growth. There is also likely to be an adverse economic impact on HW's ability to grow the market due to reduced volumes not justifying current levels of marketing expenditure.

Ability to Raise Capital and Investments

317. The original investigation found no evidence of an adverse impact on ability to raise capital and investments.

318. There is no evidence of an adverse impact on HW's ability to raise capital and investments attributable to dumped imports over the period examined for injury.

319. HW has received approval from its world headquarters for capital funding, which will allow the relocation and upgrade of its seasonal fruit processing plant. The value of this investment is **[Text deleted due to confidentiality]**.

320. HW stated that this future investment in its processing plant depends on the outcomes of the two current reviews. That is to say, if the duties are not retained, HW will not be investing in the new seasonal fruit processing plant. HW stated that if dumped canned peaches started entering the market, the cost of production would go up due to reduction in volumes, **[Text deleted due to confidentiality]**. HW said that the Heinz group has a worldwide budget for

capital expenditure and to qualify for this, a **[Text deleted due to confidentiality]** percent rate of return criteria is required. HW is of the view that its peaches **[Text deleted due to confidentiality]** due to dumped Greek canned peaches.

321. HW stated that alterations to the existing plant are being carried out regardless of the outcome of the review. **[Text deleted due to confidentiality]**.

322. HW stated that it does borrow money on a long-term basis, but said that the peaches operation is not a sufficiently large part of its overall total operation to impact on its ability to borrow, and it would be difficult to isolate the impact on its ability to raise capital investments.

Conclusion on Ability to Raise Capital and Investments

323. There is no evidence of an adverse impact on HW's ability to raise capital and investments over the period of review.

324. Given the conclusion on profits and return on investments, the review team concludes that should the duties be removed and dumped imports from Greece return to the New Zealand market, HW will experience an adverse economic impact on its ability to raise capital and investments.

4.6 Other Causes of Injury

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

i. The volume and prices of goods that are not sold at dumped prices; and
ii. Contraction in demand or changes in the patterns of consumption; and
iii. Restrictive trade practices of, and competition between, overseas and New Zealand producers; and
iv. Developments in technology; and
v. Export performance and productivity of the New Zealand producers; and

the nature and extent of importations of dumped or subsidised goods by New Zealand producers of like goods, including the value, quantity, frequency and purpose of any such importations.

Findings of Original Investigation

326. The original investigation concluded that the subsidisation of peaches from Greece and Spain, the subsidisation of peaches from South Africa, and the price advantage held by peaches from South Africa after the effects of dumping and subsidy were removed, had also adversely affected the New Zealand industry. It further concluded, however, the extent of price undercutting remaining after the effects of dumping had been removed, indicated that any anti-dumping duty applied to remedy injury caused by dumping of peaches from Greece would not also remedy the effects of other factors.

Non-Dumped Imports

327. HW said it competes with non-dumped goods on a daily basis e.g. SPC products from Australia, which have about **[Text deleted due to confidentiality]** percent of the retail market, and Contel products from Italy in 1999/2000. HW said that if duties were removed, SPC would have the ability to stay in the New Zealand market because it is much larger than HW (SPC has turnover of A$480m, and **[Text deleted due to confidentiality]** percent of Australian market, compared with HW which has turnover of **[Text deleted due to confidentiality]**). SPC operates in much the same way as HW, in that it has a **[Text deleted due to confidentiality]**SPC, **[Text deleted due to confidentiality]** Southern Cross (SC), which is new on the market. HW stated that it is hard to tell, as yet, if the SC brand has impacted on its **[Text deleted due to confidentiality]** brand.

328. Since the duties were imposed in 1998, the volumes of canned peaches from other sources have been increasing steadily, and gaining market share. Australian imports have increased the most in volume with a total increase in imports of **[Text deleted due to confidentiality]** over the period, although this has been in a growing total market. Non-dumped imports have significantly increased their market share over the period under review and this has had an adverse impact on HW.

329. The review team constructed estimated **[Text deleted due to confidentiality]** and ex-store prices for imports from Australia by adding to the average CIF price of imports from Australia over the POD(R) the same adjustments used under "Price Undercutting" above. This shows that the price of Australian imports over the POD(R) are significantly higher than the likely prices of Greek imports, at both the **[Text deleted due to confidentiality]** and ex-store levels of trade. This indicates that should the duties be removed, imports of dumped goods from Greece are not likely to be undercut by Australian imports, and therefore imports from Greece will be competitive on the New Zealand market.

330. In considering non-dumped imports in the context of a review, the review team notes that such imports are not affected by the current anti-dumping duty, and therefore their price and availability will not change if the duty is removed. The New Zealand industry has competed with non-dumped imports over a long period. The impact of non-dumped imports on the New Zealand industry is therefore not likely to change if the duty is removed.

331. The EC and the Government of Greece, in their submissions on the interim report, expressed the view that the review team had not fully addressed the issue of injury caused to the New Zealand industry by the increase in imports from Australia since the imposition of the anti-dumping duties in 1998. Both parties were of the view that injury to the New Zealand industry has been caused by imports from Australia, and that injury would not result from imports of Greek canned peaches in the event of the removal of duties. The review team notes that it made a comparison of likely import prices of Australian imports to Greek imports, showing that Greek imports undercut the price of Australian imports, and given the conclusions on likely import volumes of Greek canned peaches, this indicates that Greek imports are likely to have larger injurious effects on the New Zealand industry than Australian imports.

332. The EC expressed the view in its submission on the interim report, that it considers the current duties have caused a situation where the protection against imports from Greece has led to Australian imports being able to increase their market share. The review team is of the

view that these concerns have been adequately addressed in the immediately preceding paragraphs.

Contraction in Demand and Changes in Patterns of Consumption

333. HW said there is growth in the market for peaches packed in plastic containers of about **[Text deleted due to confidentiality]** percent per annum. HW also said there has been a small shift from syrup to juice based products, but syrup still makes up the vast majority of the market. HW considered that its "lite" range was **[Text deleted due to confidentiality]**, and overall consumption likewise.

334. The review team notes that the total New Zealand market grew between April years 1999-2001, shrank in 2002, but then grew again to a level higher than 2001 in 2003.

335. The review team concludes that consumption patterns and demand for canned peaches have not caused injury to HW, and are unlikely to cause injury to HW, if duties are removed.

Restrictive Trade Practices

336. HW does not know of any restrictive trade practices in the canned peach market. HW is of the view that New Zealand is an open market with low barriers to entry. The review team has no evidence of restrictive trade practices being operated by either the New Zealand industry or overseas producers.

Export Performance

337. HW said it exports small volumes of Wattie's peaches to Australia (A10 cans only) and to various Pacific Islands, through Panamex, a HW customer. HW said it has no knowledge of the export price as all exports are carried out independently by Panamex.

338. HW provided the review team with export figures showing exports of **[Text deleted due to confidentiality]** tonnes in FY01, **[Text deleted due to confidentiality]** tonnes in FY02, and **[Text deleted due to confidentiality]** tonnes in FY03 (YT February 2003), which are inconsequential relative to the size of the total business.

339. The review team concludes that due to the insignificant volumes of canned peaches exported, HW export performance has not been a cause of injury to it over the POD(R) and it is not likely to be a cause of injury should the duties be removed.

Developments in Technology

340. According to HW, the equipment used to peel, slice, dice and sterilise canned peaches is similar worldwide. HW said these machines have not changed since the last investigation.

341. HW was not aware of any technology improvements in the planned new processing plant, but noted there would be efficiency gains through better layout and new equipment

342. The review team concludes that developments in technology have not been a cause of injury to HW over the period under review and are not likely to be a cause of injury to HW should the duties be removed.

Industry Imports

343. HW said that it only imports canned peaches in times of shortfall. **[Text deleted due to confidentiality]**, and are labeled and priced in exactly the same way as HW branded product, and therefore do not cause injury.

344. HW also advised that it is not in its best interests to import peaches as it pays a significant premium on imports above what it could produce its own for. HW paid a **[Text deleted due to confidentiality]**% premium on its last batch of imports from **[Text deleted due to confidentiality]**.

345. HW said the other factor, which makes it reluctant to import, is that there are still fixed factory overheads, and imports therefore undermine overhead recovery.

346. The review team concludes that HW's own imports have not been a cause of injury to itself over the period of review through displacing its own production, but such imports have had an adverse impact on HW's profitability. HW's imports are not likely to be a cause of injury to it should the duties be removed.

Other Factors

347. The final report on the review of the anti-dumping duty on canned peaches from South Africa addressed additional issues such as housebrand impact on HW, supermarket purchasing power impact on HW, duty concession effects, and the effect that the availability of raw peaches had on HW's operations. It reached the conclusion that the purchasing power of supermarkets and the trend towards supermarket housebrands were likely to have been a cause of injury to HW over the period examined. It further concluded that these factors were likely to continue to affect HW in the same way regardless of whether or not duties were removed and could therefore be clearly distinguished from the injurious effects that were likely to arise from dumped imports, were the duties to be removed.

348. HW noted that the housebrand and supermarket purchasing power effects are also present in the current market, and are factors that have an impact on how HW plans its business.

349. The review team concludes that these two effects are present in the current market, but any injury to HW caused by them, is unlikely to be attributable to dumped imports. The review team further concludes that these factors are unlikely to be affected by the removal of duties.

Public Interest Test

350. The EC, in its submission on the Interim Report, stated that the review team should consider a public interest test to address whether continuing restrictions on imports of Greek

canned peaches is in New Zealand's public interest. The review team notes that the New Zealand legislation (the Act), does not provide for any test of this type.

Causal Link

351. The EC, in its submission on the Interim Report, stated that, in reference to Article 11.3 of the Agreement, a causal link between dumped imports and material injury should be established. The review team is of the opinion that given the likely import prices of dumped imports, material injury to the New Zealand industry would directly result.

Conclusion on Other Causes of Injury

352. There is evidence that HW has been adversely affected by factors other than dumped imports as demonstrated by its losses in sales, market share, and profits. Those factors considered above, to the extent that they have impacted on the New Zealand industry, will continue to affect the industry in the same way regardless of whether or not the duty is removed. These factors can therefore be clearly distinguished from the injurious effects likely to arise should the duty be removed.

4.7 Conclusions Relating to Injury

Conclusions Relating to Material Injury

353. The review team concludes that:

Volume and Price Effects

a. In absolute terms, the import volumes of subject goods have been negligible over the period of review, in relation to both New Zealand production and consumption.
b. **[Text deleted due to confidentiality]**, no conclusion can be reached on any price undercutting of the domestic production by imports over the period of review.
c. Domestic prices have not been depressed over the period of review.
d. There is evidence of price suppression during the period of review, but this cannot be attributed to dumped imports.

Economic Impact

e. The industry's output has fluctuated considerably, but this is related to fluctuations in the peach harvest and cannot be attributed to dumped imports.
f. The industry's sales volumes and revenue have declined, but these effects are not attributable to dumped imports.
g. The market share held by the domestic industry has decreased over the review period, but this is not attributable to dumped imports.
h. Industry profit levels have decreased **[Text deleted due to confidentiality]**, but this is not attributable to dumped imports.
i. There is no evidence of any injurious effects on productivity, return on investments, utilisation of production capacity, factors affecting domestic prices, cashflow, inventories, employment, wages, growth and ability to raise capital and investments, attributable to dumped imports.

j. Factors other than dumped goods have been a cause of injury to the industry.

354. The review team concludes that there is no current material injury that is attributable to dumped imports from Greece.

Likelihood of Injury if Anti-Dumping Duties Cease or Are Terminated

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

a. It is likely that there would be a significant increase in import volumes.
b. Significant dumping margins are likely to result, which will contribute significantly to a recurrence of price undercutting, price depression and suppression due to dumped imports from Greece, and a consequent adverse economic impact.
c. There is likely to be an adverse economic impact on output, sales, market share, profits, productivity, utilisation of production capacity, cash flow, employment, wages, growth, return on investments, ability to raise capital and investments.
d. There is not likely to be an adverse economic impact on factors affecting domestic prices or inventories.
e. Factors other than dumped imports are likely to continue in the same way to be a cause of injury to the industry and can therefore be clearly distinguished from the injurious effects likely to result from dumped imports.

356. Regardless of the scenario that may actually eventuate, it is likely that HW will suffer price undercutting, price depression and suppression, due to dumped imports. The degree of the impact will depend on which scenario eventuates, the worst case being **[Text deleted due to confidentiality]**, which would mean **[Text deleted due to confidentiality]**.

357. On the basis of these considerations, the review team concludes that if anti-dumping duties were to be removed, material injury to the New Zealand industry due to dumped imports of Greek canned peaches is likely to recur.

5. Conclusions

358. The review team concludes, on the basis of the information available, that should the existing anti-dumping duties be removed, it is likely there will be a recurrence of dumping and material injury.

359. Accordingly, the review team concludes that:

a. Anti-dumping duties on canned peaches from Greece should not be revoked; and
b. That there should be a reassessment of the anti-dumping duty on canned peaches from Greece following the completion of this review.

6. Reassessment of Anti-Dumping Duties

360. The reassessment of anti-dumping duty following the completion of a review is provided for by section 14(6) of the Act as follows:

(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.

361. 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.

6.1 Basis of Reassessment

362. Under the provisions of section 14(6) of the Act the rate or amount of anti-dumping duty may be reassessed following the completion of a review. This section of the report therefore provides the basis for a recommendation to initiate a reassessment immediately following the completion of this review which will be based on, and reflect the findings of the review.

6.2 Existing Levels of Duty

363. 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 **[Text deleted due to confidentiality]** and AL.M.ME were subject to an *ad valorem* percentage anti-dumping duty at the weighted average margin of dumping.

364. 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's 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.

6.3 Method of Imposing Duty

365. 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

366. The main objective of an anti-dumping duty is to remove the injurious impact of dumping. In deciding on the form of duty, considerations relating to ease of administration, ability to ensure the dumping margin is not exceeded, fairness between parties, and predictability all need to be taken into account. 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.

367. 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.[5] Given this, the Ministry's approach is to adopt a form of duty that minimises 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.

368. 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.

369. A specific duty expressed as a monetary amount can really operate only 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.

370. 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.

371. 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.

372. 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.

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

6.4 Amount of Anti-Dumping Duty

Introduction

374. In calculating reference prices, the review team proposes to calculate a reference price for good standard and standard quality, 410g, 820g, and 3kg can sizes (that is, not distinguish between the media in which the peaches are canned).

375. The review 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 review 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.

376. To ensure that this was the case, the review team 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. Further, it showed that imposing duties in the usual manner would avoid the problem of remedying injury with an incorrect type of duty.

377. 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 review 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.

Calculation of NIFOBs

378. NIFOBs 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. Under Price Undercutting above, the relevant level of trade at which the goods first compete on the New Zealand market, for HW, was determined to be ex-factory.

379. For the purposes of the interim report the review team compared HW's average prices for the year ended November 2002, and also its average forecast prices **[Text deleted due to confidentiality]**, to likely import prices at both the ex-store (**[Text deleted due to confidentiality]**), and **[Text deleted due to confidentiality]** (**[Text deleted due to confidentiality]**) levels of trade.

380. In this report, the review team has made all calculations based on an ex-factory level of trade for HW's sales, and ex-store for imports. The review team notes that HW has submitted that **[Text deleted due to confidentiality]** is the appropriate level of trade for imports, based on its argument that the most likely form of injurious imports would result from **[Text deleted due to confidentiality]** if the duties were removed. The review team is not aware of any imports over the POD(R) that have been carried out at the **[Text deleted due to confidentiality]** level of trade, and hence has taken a **[Text deleted due to confidentiality]** reflected in the calculation of NIFOBs at the ex-store level.

Calculation of NIP

381. The review team has found no evidence of injury to HW attributable to imports of the goods subject to anti-dumping duty. Normally in this situation the review team would consider HW's NIP to be the actual net selling price achieved by HW over the POD(R). However, the review team has accepted HW's argument that as a review is a forward looking exercise, any calculation of duties should take account of the most recent information available. For this reason, the review team has used HW's prices to May 2003 in its calculation of the NIFOB amounts (refer to "Price Undercutting" above for further discussion). HW provided this pricing information subsequent to the release of the interim report. The information was compiled on the same basis as all other data submitted for the current review, and trade spend has been treated as outlined in "Price Undercutting" above.

382. The following table shows the **[Text deleted due to confidentiality]** ex-factory HW's NIP per kilogram for each can size on the basis set out above.

Table 6.1: HW's NIP

Can Size	NIP/kg
410g	**xxxx**
820g	**xxxx**
A10	**xxxx**

383. The review team did not find it necessary to make a distinction between the top quality and the lesser quality imported peaches for the NIP, due to the assumption that all HW's products compete with imports of differing qualities.

NIFOB Amounts

384. The purpose of a NIFOB is to ensure that the price of imported product, when considered at the FOB level, is such that when the canned peaches are sold at the ex-store level, the sale price equates to the NIP.

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

386. If a NIFOB is set in New Zealand 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 New Zealand 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 New Zealand dollars will also ensure that the duty is administratively simple to operate.

387. The costs between FOB and ex-store were taken from information provided by **[Text deleted due to confidentiality]** relating to its importations of the subject goods over the POD(R). A reasonable profit margin was calculated at **[Text deleted due to confidentiality]** percent, using **[Text deleted due to confidentiality]** cost build up information relating to its imports over the POD(R).

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

Table 6.2: NIFOB (NZ$/kg)

	410g	820g	A10
HWNIP	**xxxx**	**xxxx**	**xxxx**
Less Costs and Margins			
Ocean Freight	**xxxx**	**xxxx**	**xxxx**
Insurance	**xxxx**	**xxxx**	**xxxx**
Port services charges and Documentation	**xxxx**	**xxxx**	**xxxx**
Inland transport/cartage to store	**xxxx**	**xxxx**	**xxxx**
Storage	**xxxx**	**xxxx**	**xxxx**
Reasonable Importers Margin	**xxxx**	**xxxx**	**xxxx**
Customs Duty (7%)	**xxxx**	**xxxx**	**xxxx**
NIFOB Ex-store (NZD/kg)	**xxxx**	**xxxx**	**xxxx**

Calculation of NV(VFDE) Amounts

389. 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.

390. 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 cost for producing 820g and 410g good standard and standard quality canned peaches.

391. The calculation of the NIFOB amounts above are based on an average NIP for the year ended May 2003. The review 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 review 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 May 2003 of 1.4 percent, to allow a more accurate comparison with the NIFOB prices.

392. The following table shows the NV(VFDE) calculated for each can size and product quality.

Table 6.3: Normal Value (Value for Duty Equivalent)

	A10		820		410	
	Good Std.	Std.	Good Std.	Std.	Good Std.	Std.
Ex-Factory Cost per kg (€)	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**
Plus reasonable profit margin	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**
	xxxx	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**
Plus costs from ex-factory to FOB						
Agent's commission (**xxxx**)	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**
Inland freight and THC	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**
Customs brokerage/document fees	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**
NV(VFDE)(€/kg)	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**
Plus PPI Adjustment (1.4%)	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**
Adjusted NV(VFDE) (€/kg)	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**
Adjusted NV(VFDE) (NZ$/kg)	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**	**xxxx**

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

394. For some can sizes and quality types, a comparison of the NIFOB and NV(VFDE) amounts reveals that a lesser duty should apply to 410g good standard cans (i.e. the NIFOB is less than the NV(VFDE) for 410g good standard cans), and for all other can sizes and qualities, it indicates that anti-dumping duty should be imposed at the full margin of dumping (i.e. the NIFOB is greater than the NV(VFDE) for all 820g, all A10, and 410g standard cans).

395. The review team proposes the following reference prices in the form of NV(VFDE) and NIFOB amounts for good standard and standard, 410g, 820g, and A10 sized canned peaches imported from Greece. The review team also proposes that these reference prices be applicable to all suppliers of canned peaches from Greece.

396. The Ministry considers that the NV(VFDE) 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 NV(VFDE) 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.

Table 6.4: Proposed Reference Price Levels for All Suppliers

	Good Std.	Std.
410g	**xxxx**[6]	**xxxx**[7]
820g	**xxxx**[8]	**xxxx**[9]
A10	**xxxx**[10]	**xxxx**[11]

397. 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 kilogram. For these reasons it is not possible to make a comparison of the rates of proposed duty in the current review, apart from Vermion Naoussa's exports of 820g cans.

398. The original investigation set a NV(VFDE) reference price for Vermion Naoussa's exports of 820g cans to New Zealand in US$/kg of **[Text deleted due to confidentiality]**. At the average US dollar to New Zealand dollar exchange rate over the POD(R) (of US$1 = NZ$2.1996), this equals **[Text deleted due to confidentiality]**. The original investigation made no distinction between good standard and standard quality canned peaches, however, making a straight comparison between NV(VFDE) established in the original investigation and the proposed duties for 820g good standard and standard quality canned peaches in the current review, shows that the reference prices are **[Text deleted due to confidentiality]** and **[Text deleted due to confidentiality]** percent higher respectively.

399. It is also 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 based on a reference price proportionate to the rates established above. The proportionate reference price would be calculated relative to the nearest can size for which a separate rate has been established. For example, a 225g can of good standard peaches is closest in size to a 410g can. A 225g can is 55 percent of a 410g can by weight. The reference price would therefore be 55 percent of **[Text deleted due to confidentiality]** or **[Text deleted due to confidentiality]**.

400. The review team considered whether a **[Text deleted due to confidentiality]** rate of duty should be set for **[Text deleted due to confidentiality]** when HW is the importer as HW cannot be injured as a result of its own imports. The review team notes that anti-dumping duties based on reference prices allow exporters and importers to negotiate prices that will not incur anti-dumping duty. If **[Text deleted due to confidentiality]** chooses to price its exports at undumped levels, it will export to New Zealand at or above the reference price set, and in the process avoid incurring anti-dumping duty. Hence, the review team considers that it is not necessary to assign a **[Text deleted due to confidentiality]** rate of duty for exports by **[Text deleted due to confidentiality]**.

Conclusion

401. The discussion and calculations set down in this section are proposed as the basis for any reassessment of anti-dumping duties.

[5]*Plasterboard from Thailand, Reassessment*, September 1999.

[6]Reference price as lesser duty (NZ$/kg).

[7]Reference price at full margin of dumping (€/kg).

[8]Reference price at full margin of dumping (€/kg).

[9]Reference price at full margin of dumping (€/kg).

[10]Reference price at full margin of dumping (€/kg).

[11]Reference price at full margin of dumping (€/kg).

7. Recommendations

402. On the basis of the information obtained during the review, the review team recommends:

1. that the Chief Executive complete the review by agreeing that the continued imposition of anti-dumping duties on canned peaches imported from Greece is

necessary to prevent a recurrence of material injury to the New Zealand industry producing like goods;

2. that based on the proposal in 6 (Reassessment of Anti-Dumping Duties) of this report, the Chief Executive initiate a reassessment of the rate of the anti-dumping duty on canned peaches from Greece immediately following the completion of this review; and
3. that the Chief Executive sign the attached *Gazette* notice relating to the completion of the review and the initiation of the reassessment.