MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

TRADE AND INTERNATIONAL

Trade (Anti-dumping and Countervailing Duties) Act 1988

Canned Peaches from Greece

2020 Full Review

Stage 1 Final Report

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MBIE/AD/R/2020/003

New Zealand Government

Table of Contents

ABBREVIATIONS AND ACRONYMS

The following abbreviations are used in this report:

Act, the	Trade (Anti-dumping and Countervailing Duties) Act 1988
AD Agreement	WTO Agreement on Implementation of Article VI of the GATT 1994
Bidfood	Bidfood Limited
chief executive	Chief Executive of the Ministry of Business, Innovation and Employment
CIF	Cost, Insurance and Freight
Customs	New Zealand Customs Service
EBIT	Earnings Before Interest and Tax
EUR	Euro(s)
FOB	Free on Board
FY	The financial year ended or ending December
HWL	Heinz Wattie's Ltd
kg	Kilogram
Ltd	Limited
MBIE	the Ministry of Business, Innovation and Employment
Minister	the Minister of Commerce and Consumer Affairs
MT	Metric ton/tonne
NIFOB	Non-Injurious FOB
NIP	Non-injurious price
NV(VFDE)	Normal Value (Value for Duty Equivalent)
NZD	New Zealand Dollars
POR(D)	Period of review for dumping assessment, the year ended 31 December 2019
POR(I)	Period of review for injury assessment, 1 January 2014 to 31 December 2020 for actual injury and out to 31 December 2022 for forecast injury
Review	A full review of the imposition of anti-dumping duties on canned peaches from Greece (also known as a "sunset review"), authorised under section 17D of the Trade (Anti-dumping and Countervailing Duties) Act 1988
Stage 1 EFC Report	Stage 1 Essential Facts and Conclusions Report
Stats NZ	Statistics New Zealand
subject goods	Imported goods that are the subject of the review
USD	United States dollars
VFD	Value for Duty
WTO	World Trade Organization

1. Introduction

1.1 Summary

1. The purpose of this Stage 1 Final Report is to meet the requirements of section 17F(5) of the Act, which requires the chief executive to report the findings of full review stage 1 to the Minister of Commerce and Consumer Affairs (the Minister). This report fulfils that requirement.

2. In accordance with section 17C of the Act, the purpose of a full review is to investigate, in relation to an anti-dumping duty, whether continued imposition of the duty is necessary to offset dumping; and material injury would be likely to continue or recur if the duty expired or were otherwise removed or varied.

3. In its investigation of dumping, Ministry of Business Innovation and Employment (MBIE) has examined the information available to it to establish export prices and normal values, and to identify any differences that might affect price comparability. MBIE calculated export prices for actual imports in 2019 and for likely (notional) export prices. Normal values were derived from retail sales prices in Greece. MBIE's comparison of export prices and normal values shows that imports of canned peaches from Greece were dumped in 2019 and that future imports are likely to be dumped.

4. In investigating the likelihood that material injury will continue or recur if anti-dumping duties are removed, MBIE has considered what is likely to happen in the foreseeable future and has made an objective examination of the evidence available in the context of an assessment of likelihood. MBIE has assessed likelihood in the context of the injury factors identified in section 8 of the Act, including volume and price effects, and the consequent impact on the domestic industry. Injury caused by factors other than the dumping of the subject goods has not been attributed to the dumping.

5. MBIE has examined Heinz Wattie's Ltd's (HWL) projections in light of the company's past performance (with the duties in place to prevent injurious dumping) and projected future performance (both with the presence and absence of duties) in order to assist MBIE in making a determination of the likelihood of recurrence of injury.

6. In this report, MBIE finds that

   - there is a likelihood of the continuation of dumping of the subject goods imported from Greece
   - if the anti-dumping duties expire, dumped imports of canned peaches from Greece are likely to result in the recurrence of material injury to the domestic industry
   - the continued imposition of anti-dumping duties on the subject goods is necessary to offset dumping and prevent material injury to the New Zealand industry.

1.2 Proceedings

7. On 11 May 2020, the chief executive of MBIE received a properly documented application from HWL, the New Zealand industry, for a review of the anti-dumping duties applicable to imports of canned peaches from Greece.

8. On 14 July 2020, the chief executive initiated a full review of the continued need for the imposition of the anti-dumping duties, pursuant to section 17D of the Act, on the basis of positive evidence submitted by HWL justifying the need for the review.

9. On 7 December 2020, MBIE released advice of the essential facts and conclusions (EFC). Under section 17F(2) of the Act, the Stage 1 EFC Report was given in order to provide notified parties with written advice of the essential facts and conclusions that would likely form the basis for a determination to be made by the Minister under section 17G(1) of the Act. Interested parties were provided with 10 working days to comment on the Stage 1 EFC Report. Comments were received from the Government of Greece. MBIE's response to the comments made is in Annex 1. MBIE considers that the comments from the Government of Greece do not require making any changes to the conclusions in this report.

Previous Proceedings

10. Anti-dumping duties were first imposed on canned peaches imported from Greece in March 1998, following an application from HWL, the New Zealand industry. Since then, at the application of HWL, MBIE, or its predecessor, has conducted reviews of the anti-dumping duties.

11. The last full review and reassessment was completed on 15 July 2015. As a result of the reassessment, reference price anti-dumping duty rates were set for a range of different can sizes applying to all exporters of canned peaches from Greece. A confidential Non-Injurious Free on Board (NIFOB) amount was set and a non-confidential Normal Value (Value for Duty Equivalent) (NV(VFDE)) amount of Euro (EUR) 1.68.

12. The amount of anti-dumping duty to be paid is the amount by which the NIFOB amount exceeds the New Zealand Value for Duty (VFD) of the goods. The NV(VFDE) amount, set in EUR, is payable instead of the NIFOB amount if the NV(VFDE) is less than the NIFOB when converted to New Zealand dollars.

13. This report recommends a new rate of anti-dumping duty.

1.3 Full Reviews

Legal Basis

New Zealand Legislation

14. In terms of section 13A(1)(c) and 3(1) of the Act, the anti-dumping duties relating to canned peaches from Greece, in the absence of a review, would have ceased to apply from 15 July 2020, that being 5 years from the last review . The existing anti-dumping duties will continue to apply pending the outcome of this current review.

15. MBIE is undertaking a sunset review under the provisions of Part 6 of the Act. Section 17C of the Act sets out the purpose of a full review as follows:

> *The purpose of a full review is to investigate, in relation to an anti-dumping or a countervailing duty, whether—*
>
> *(a) continued imposition of the duty is necessary to offset dumping or subsidisation; and*
>
> *(b) material injury or threatened material injury to an industry, or material retardation of the establishment of an industry, would be likely to continue or recur if the duty expired or were otherwise removed or varied.*

16. Section 17F of the Act provides that, at stage 1, the chief executive must undertake an investigation of these matters, and goes on to require that the chief executive must, within 150 days of starting a full review stage 1, give the notified parties written advice of the essential facts and conclusions that are likely to form the basis for a determination under section 17G(1) of the Act. Section 17F also requires the chief executive to report the findings of a full review stage 1 to the Minister.

17. Section 17G of the Act provides that within 180 days after the start of the full review stage 1 (but no less than 30 days after the written advice is given by the chief executive under section 17F(2)) the Minister must determine whether (a) continued imposition of the duty is necessary to offset dumping or subsidisation; and whether (b) material injury or threatened material injury to an industry, or material retardation of the establishment of an industry, would be likely to continue or recur if the duty expired or were otherwise removed or varied. If this determination is in the affirmative, the Minister must determine the rate or amount of anti-dumping duty, in accordance with section 10E of the Act, that will form the basis for a stage 2 review into whether continuing to impose an anti-dumping duty at the rate determined is in the public interest, and direct the chief executive to immediately start full review stage 2.

WTO Anti-Dumping Agreement

18. The World Trade Organization (WTO) Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the AD Agreement) sets out the rights and obligations of WTO Members when undertaking reviews of anti-dumping duties.

19. In applying the provisions of section 17F of the Act, MBIE has had regard to the provisions of Article 11.3 of the AD Agreement relating to sunset reviews. In interpreting Article 11.3, MBIE takes guidance from New Zealand legal reports, WTO Panel and Appellate Body findings and approaches taken by other WTO member countries.

20. Article 11.3 requires that a duty be terminated five years after it was imposed or last reviewed unless an investigating authority determines in a review that "… the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury."

Likely to continue or recur

21. Some guidance regarding the interpretation of the phrase in section 17C of the Act "would be likely" has been provided by the New Zealand Court of Appeal which

interpreted the phrase (in another context) to mean ”a real and substantial risk…, a risk that might well eventuate”.[1]

22. Guidance can also be found in WTO dispute settlement findings, e.g. *US — Oil Country Tubular Goods Sunset Reviews* where the Appellate Body stated:

> *[W]e agree with Argentina that, in* US – Corrosion-Resistant Steel Sunset Review*, the Appellate Body equated 'likely', as it is used in Article 11.3, with 'probable'. In that case the Appellate Body stated (at paragraph 111), " . . . an affirmative likelihood determination may be made only if the evidence demonstrates that dumping would be probable if the duty were terminated – and not simply if the evidence suggests that such result might be possible or plausible." We also agree with Argentina that this interpretation of 'likely' as 'probable' is authoritative in relation to injury as well, given that the term 'likely' in Article 11.3 applies equally to dumping and injury.*[2]

23. The Appellate Body also noted in *US — Oil Country Tubular Goods Sunset Reviews* (at paragraph 340) that an investigating authority's likelihood determinations under Article 11.3 must be based on "positive evidence" and quoted with approval the following statement by the Appellate Body in *US – Hot Rolled Steel*:

> *The term "positive evidence" relates . . . to the quality of the evidence that authorities may rely upon in making a determination. The word "positive" means… that the evidence must be of an affirmative, objective and verifiable character and must be credible.* [3]

Methodology

24. MBIE 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 continued imposition of the duty is necessary to offset dumping, and whether material injury to an industry would be likely to continue or recur if the duty expired or were otherwise removed or varied. In determining "likelihood", MBIE considers that regard should be had to the timeframe within which an event may occur. Neither section 17F of the Act nor Article 11.3 of the AD Agreement make express reference to the length of time within which a continuation or recurrence of injury has to take place.

25. Mindful of the particular factors relating to this review, and taking guidance from the sources referred to above, MBIE approaches all investigations and reviews on a case-by-case basis. Based on its interpretation of the Act and the AD Agreement, and in light of the situation of this review, MBIE adopts the following general principles in considering dumping and injury in sunset reviews:

[1] *Commissioner of Police v Ombudsman* [1988] 1 NZLR 385.

[2] WTO Appellate Body Report, WT/DS268/AB/R, *US — Oil Country Tubular Goods Sunset Reviews*, paragraph 308, page 113.

[3] WTO Appellate Body Report, WT/DS184/AB/R, *US — Hot Rolled Steel,* paragraph 192, page 65.

- The legal requirement is for MBIE to investigate whether the continued imposition of an anti-dumping duty is necessary to offset dumping, and whether material injury to an industry would be likely to continue or recur if the duty expired or was otherwise removed or varied.
- In order to investigate whether a duty is necessary to offset dumping, MBIE establishes whether there is current dumping, and whether dumping is likely to continue or recur.
- The investigation of current dumping is based on the provisions of the Act relating to the determinations of export price (section 4), normal value (section 5) and the ascertainment of export price and normal value when sufficient information has not been furnished or is not available (section 6).
- When determining whether dumping is likely to continue or recur MBIE needs to be satisfied that, based on positive evidence, certain events are likely to occur, and that those events mean that dumping is likely to continue or recur.
- The investigation of the material injury to an industry is based on the matters set out in section 8 of the Act.
- When determining whether the expiry or removal of the anti-dumping duty would be likely to lead to a continuation or recurrence of injury, MBIE needs to be satisfied, based on positive evidence, that material injury to the industry is likely to continue or recur if the anti-dumping duties expire or are otherwise removed or varied.
- Interpretation of the phrase "would be likely" is guided by a New Zealand Court of Appeal judgment[4] referring to "a real and substantial risk…, a risk that might well eventuate" and by relevant WTO dispute settlement findings.
- In considering whether removal of the duty would be likely to lead to a recurrence of dumping and injury, MBIE considers what is likely to happen in the foreseeable future. The extent to which MBIE 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 longer timeframes.

26. To gauge the extent to which the removal of the anti-dumping duties will likely cause material injury to the domestic industry in the foreseeable future, MBIE generally requires the domestic industry to provide projections or forecasts of the injury it considers it will suffer as a result of the removal of the duties. MBIE examines these projections in light of the company's past performance (with the duties in place to prevent injurious dumping) and projected future performance (both with the presence and absence of duties) in order to assist it in making a determination of the likelihood of recurrence of injury.

[4] *Commissioner of Police v Ombudsman* [1988] 1 NZLR 385

1.4 Grounds for the Review

27. In its application for a review, HWL provided evidence to support its contention that it will suffer a recurrence of material injury if the current anti-dumping duties are removed due to the likely recurrence of dumped imports of canned peaches from Greece. HWL claimed that imports of Greek canned peaches will recommence and be dumped if the anti-dumping duties are removed and that material injury to the company will recur through:

- Price undercutting, price depression, and price suppression;

resulting in:

- a decline in output and sales;
- a decline in market share;
- a decline in profits and return on investments;
- a decline in productivity and utilisation of production capacity; and
- negative effects on cash flow, inventories, employment and growth.

1.5 Review Stages

Full Review

28. The purpose of a full review is to investigate whether the continued imposition of a duty is necessary to offset dumping and whether material injury to an industry would be likely to continue or recur if the duty expired or were otherwise removed or varied. At the end of stage 1 of a full review, the Minister must make a determination of whether the continued imposition of the duty is necessary to offset dumping and whether material injury to an industry is likely to continue or recur if the duty expired or were otherwise removed or varied.

Determination of Anti-Dumping Duties

29. Where the outcome of a review indicates that anti-dumping duties should continue to be applied, then in accordance with section 17G(2)(a) of the Act the Minister must determine the rate or amount of duty, in accordance with section 10E, that will form the basis for a stage 2 public interest investigation.

Public Interest Investigation

30. Where the outcome of a stage 1 review indicates that anti-dumping duties should continue to be applied, then in accordance with section 17G(2)(b) of the Act the Minister must direct the chief executive to immediately start a stage 2 public interest investigation, as provided for in sections 17H to 17K of the Act. The Minister must make a determination, within 90 days after the start of stage 2 of the review, whether continuing to impose the anti-dumping duty is in the public interest.

31. Upon the initiation of a review, duties will remain during the review. If, following stage 2 of the review, the Minister determines that the duties should continue to be imposed at the new rate, they will apply for another five years. If the Minister determines that the

duties should not be continued, the Minister must terminate the imposition of the duty under section 17Y(1) of the Act.

1.6 Treatment of Information

Availability of information

32. The foundation of MBIE's approach to the gathering and assessment of information is the relevant provisions of the Act and the AD Agreement, assisted by the interpretation of the AD Agreement provided in WTO dispute settlement proceedings.

33. Sections 4 and 5 of the Act set out the bases for establishing export prices and normal values for the purposes of determining the existence and extent of dumping, while section 6 of the Act provides as follows:

> *Where the chief executive is satisfied that sufficient information has not been furnished or is not available to enable the export price of the goods to be ascertained under section 4, or the normal value of goods to be ascertained under section 5, the normal value or export price, as the case may be, shall be such amount as is determined by the chief executive having regard to all available information.*
>
> *For the purposes of subsection (1), the chief executive may disregard any information that the chief executive considers to be unreliable.*

34. Articles 6.6 and 6.8 of the AD Agreement provide as follows:

> *6.6 Except in circumstances provided for in paragraph 8, the authorities shall during the course of an investigation satisfy themselves as to the accuracy of the information supplied by interested parties upon which their findings are based.*
> *…*
> *6.8 In cases in which any interested Member or interested party refuses access to, or otherwise does not provide necessary information within a reasonable period or significantly impedes the investigation, preliminary and final determinations, affirmative or negative, may be made on the basis of the facts available. The provisions of Annex II shall be observed in the application of this paragraph.*

35. Annex II to the AD Agreement sets out the basis on which investigating authorities can use the best information available in terms of Article 6.8. Article 11 of the AD Agreement, which addresses reviews, provides in Article 11.4, that "The provisions of Article 6 regarding evidence and procedure shall apply to any review carried out under this Article." Information relating to those parties who have not provided information is based on the facts available that MBIE considers reliable according to the provisions of the Act and the AD Agreement.

36. In an investigation or review MBIE seeks and obtains information directly relevant to that proceeding, and satisfies itself as to the accuracy of the information provided. Such information includes questionnaire responses from interested parties; laws, regulations and other official documents; relevant WTO documents, such as notifications; New Zealand Customs Service (Customs) and statistical data; and other relevant data such as exchange rates, interest rates and prices. MBIE can use verification visits and the review of evidence available to substantiate the information provided by interested parties and to assess its reliability.

37. Where MBIE is not satisfied as to the accuracy of the information provided, or where information is not available, other information can be used as “facts available”. The use of “facts available”, including secondary information, is limited to instances where information is not available because an interested party refuses access to, or otherwise does not provide the necessary information within a reasonable period or significantly impedes the investigation or review. In such circumstances, the normal value and export price are to be ascertained having regard to all available information. MBIE is required by the AD Agreement to take due account of any difficulties experienced by interested parties, in particular small companies, in supplying information requested.

38. In considering “facts available” MBIE can take into account information, such as the application (in relation to dumping); information from previous MBIE investigations or reviews; information from investigations or reviews undertaken by counterpart authorities in other jurisdictions; and information from reports and publications covering matters related to the subject matter of the investigation or review. In using information, MBIE undertakes a process of reasoning and evaluating which “facts available” constitute reasonable replacements for missing information that can be considered reliable. In this context, MBIE notes that information that is not based on positive evidence but relies on inferences and assumptions may not be considered to be reliable.

Protection of information

39. Confidential information is defined in section 3F(5) of the Act:

> *In this section, confidential information means information about which the submitter of the information has shown a good reason for the chief executive to believe 1 or more of the following:*
> *(a) that making the information available would give a significant competitive advantage to a competitor of the submitter of confidential information:*
> *(b) that making the information available would have a significantly adverse effect on—*
> *(i) the submitter of confidential information; or*
> *(ii) the person from whom the information was acquired by the submitter of the information; or*
> *(iii) any person to whom the information relates:*
> *(c) that the information should be treated as confidential for reasons other than the reasons described in paragraphs (a) and (b).*

40. A relevant report from the WTO Appellate Body noted:

> *Under Article 6.5, an investigating authority is required to assess objectively whether the request for confidential treatment has been sufficiently substantiated such that "good cause" has been shown. The fact that the investigating authority has conducted this objective assessment must be discernible from its published report or related supporting documents.* [5]

[5] WTO Appellate Body Report, WT/DS504/AB/R, *Korea – Pneumatic Valves*, paragraph 6.29, page 147.

41. The Appellate Body also upheld the Panel's findings with regard to summaries of confidential information:

> *In the present dispute, the Panel found that, "[i]n the complete absence of data, and with no narrative summary with respect to the deleted information, the 'Disclosed' versions of the three communications identified by Japan cannot be said to contain a summary in sufficient detail to 'permit a reasonable understanding of the substance of the information submitted in confidence'."*[6]

42. In seeking information from interested parties, MBIE points out that where a party requests that information be treated as confidential it should provide a non-confidential version, or a non-confidential summary of the information, or if the information is not susceptible to summarisation, an explanation of the reasons why not, and provide justification for the information being treated as confidential. MBIE points out to parties that section 3F of the Act allows the chief executive to disregard any information for which a satisfactory non-confidential version (or summary or satisfactory statement of why such a summary cannot be given) is not provided.[7]

43. Section 3F(1) of the Act provides that an interested party may ask the chief executive to provide copies of information relevant to trade remedy proceedings, but this provision does not apply to confidential information, or information that would be likely to be withheld if it was requested under the Official Information Act 1982.

44. MBIE has made available all non-confidential information via the public file for this review. Any interested party has been able to request both a list of the documents on this file and copies of the documents on it.

45. In this Stage 1 Final Report, detailed information relating to the calculation of the dumping margins has been included in the **Confidential Attachment**. The information is considered to be confidential for the reasons set out in section 3F(5) of the Act. In particular, MBIE is satisfied that documentation relating to transactions, such as invoices, information relating to costs and prices, information relating to commercial relationships, and non-public financial information, will generally come within the meaning of confidential information. Much of this information is not susceptible of summarisation except in broad descriptive terms.

46. Information relating to the domestic industry and the analysis of injury is considered to be confidential, and in this Stage 1 Final Report the analysis is presented as a summary of information analysed, with tables and charts used to assist in the summarisation of the material. The domestic industry's application and the desktop verification report in respect of the applicant include non-confidential summaries of the information provided.

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[6] Ibid, paragraph 6.31.
[7] The AD Agreement adds the proviso, "unless it can be determined to their satisfaction from appropriate sources that the information is correct," and adds the footnote, "Members agree that requests for confidentiality should not be arbitrarily rejected."

Verification of information

47. MBIE carried out desktop verification of the information provided by HWL. MBIE chose to verify information through desktop verification because of the ongoing uncertainty caused by the COVID-19 public health emergency and because it had carried out a recent onsite verification visit in May 2019 for the review of anti-dumping duties on canned peaches from South Africa and the reconsideration of the review of anti-dumping duties on preserved peaches from Spain. A copy of the verification report is available on the public file for this review.

48. MBIE was unable to identify the Greek suppliers of canned peaches due to a lack of responses from interested parties. In response to MBIE's inquiries with representative associations in Greece, MBIE received a submission from E.K.E., the Greek Canners' Association, but it did not identify Greek suppliers to New Zealand. MBIE was therefore unable to verify information from Greek suppliers.

49. A desktop verification involves considering the information provided for consistency and accuracy, checking the information against other available information, and requesting further information or explanation where necessary.

50. On-site verifications are neither the only nor the prescribed method of verifying information under the Act or the Agreement. Article 6.7 provides for on-site visits as an option for the investigating authority to fulfill its obligation under Article 6.6 to "satisfy itself as to the accuracy of the information supplied by interested parties on which findings are based."[8]

1.7 Report Details

51. The POR(D) is 1 January 2019 to 31 December 2019. This period is in accordance with the period for assessing dumping of twelve months recommended by the WTO and is the most recent such period to the 5-year sunset date for the duties.

52. The period of review for assessing injury (POR(I)) is 1 January 2014 to 31 December 2020 and out to 31 December 2022 for forecast injury. HWL provided forecast information for financial years 2021 and 2022, in terms of the impact on its domestic operation, for the scenarios where duties are imposed to meet the margin of price undercutting, and where duties are not imposed. It should be noted that in a review, involving as it does the consideration of the likelihood of the continuation or recurrence of dumping and injury, MBIE has regard to any dumping that may have been occurring prior to the POR(D). MBIE also takes account of forecasts of both dumping and injury based on past experience and future scenarios.

53. In this report, unless otherwise stated, years are calendar years, and, unless otherwise stated, dollar values are New Zealand dollars (NZD). In figures, column totals may differ

[8] WTO Panel Report, WT/DS189/R, *Argentina – Ceramic Tiles*, footnote 65 to paragraph 6.57, page 178.

from individual figures due to rounding. The term VFD refers to value for duty for New Zealand Customs Service (Customs) purposes.

54. All volumes are expressed on a metric ton/tonne (MT) basis unless otherwise stated. Exports to New Zealand are generally invoiced in US dollars (USD) or EUR, while domestic sales were in EUR.The exchange rates used are those relating to specific transactions, where available, or the Customs exchange rates for the relevant time or shipment, or the rate that MBIE considers most appropriate in the circumstances.

2. Subject Goods and New Zealand Industry

2.1 Subject Goods

55. The imported goods that are the subject of the review (the subject goods) are described as:

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

56. This description includes any concentration of sweetness in the medium found in the can and therefore covers mediums containing both natural and artificial sugars. It therefore includes 'lite' styles of peaches and those in fruit juice as all these styles contain some amount of sweetness in the medium. Peaches in containers other than cans are not covered by the description.

57. The goods covered by the description above include can sizes ranging from 110 grams to A10 cans (nominal weight 3 kilograms)".

Tariff Description

58. The subject goods are classified in the Working Tariff of New Zealand under tariff item and statistical key 2008.70.09.00L. Imports of the subject goods from Greece are currently subject to the Normal rate of Customs duty of 5 per cent.

59. During the POR(D), the subject goods entered under the Customs tariff item and statistical key set out below. The tariff description is broader than the description of the subject goods.

Figure 2.1: Tariff Heading

NZ Customs Tariff: Chapter 20 – Preparations of vegetables, fruit, nuts or other parts of plants					
Number	Statistical key		Goods	Rate of Duty	
	Code	Unit		Normal	Pref.
20.08			**Fruit, 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:**		
2008.70			**– Peaches, including nectarines:**		
2008.70.09	**00L**	**Kg**	**– – Other** *[than cooked and preserved by freezing, not containing added sugar]*	5	Free *See Below CA Free
*Unless otherwise indicated, AAN, AU, CN, CPT, HK, KR, LLDC, MY, Pac, SG, TH, TPA and TW rates in the Preferential Tariff are Free.					

60. Previous concessions, requested by HWL, provided for concessional entry of preserved peaches during particular periods when there was a shortfall of fresh peaches for its

canning operation. There have been no tariff concessions of this nature for canned or preserved peaches since 2008.

61. There are no tariff concessions under tariff item 2008.70.09 applying to goods of the description of the subject goods.

2.2 Imports of Subject Goods

62. Figure 2.2 below shows import volumes of canned peaches into New Zealand in the period 2014-2019. These figures have been sourced from Customs data that cover the goods imported into New Zealand under the tariff item and statistical key shown in the previous section. The tariff item and statistical key covers a wider range of goods than those under investigation, but where possible MBIE has excluded goods that are not subject to the review. The figures include HWL's imports.

Figure 2:2: Imports of Canned Peaches (MT)

	2014	2015	2016	2017	2018	2019
Greece	-	1	-	-	-	47
Australia	238	56	91	156	77	72
China	806	1,104	651	756	584	589
South Africa	1,728	1,537	2,378	1,672	2,260	2,214
Spain	17	52	17	52	34	37
Other	2	21	76	10	2	1
Total	**2,791**	**2,771**	**3,212**	**2,646**	**2,958**	**2,962**

63. The volumes reported in this table may differ from those presented in other proceedings involving preserved peaches, since some imports included in those proceedings may have included different subject goods. The non-subject goods included peach puree, peaches in jelly, dried peaches, salted peaches, and pie fillings, as well as preserved peaches in containers of over 3 kg and peaches in containers other than cans.

64. Imports from Greece made up 1.6 per cent of total imports of the subject goods in the POR(D). The provisions of Article 5.8 of the AD Agreement relating to the termination of an investigation where imports are negligible (less than 3 per cent) do not apply to sunset reviews.

65. During the POR(D), imports of the subject goods from Greece included diced peaches in 3.06kg cans. MBIE does not have information on other imports attributed to a food service provider, but assumes those imports would also have been in 3kg cans given the nature of the importer's business. There is no evidence that peaches in can sizes of less than 3kg were imported during the POR(D).

2.3 Like Goods and New Zealand Industry

66. Section 3A of the Act provides that for the purposes of the 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.

Section 3(1) of the Act defines **like goods**, in relation to any goods, as:

a. other goods that are like those goods in all respects, or

b. in the absence of goods referred to in paragraph (a), goods which have characteristics closely resembling those goods.

2.3.1 Like Goods

67. To establish the existence and extent of the New Zealand industry for the purposes of an investigation into injury, and having identified the subject goods, it is necessary to determine whether there are New Zealand producers of goods which are like those goods in all respects, or have characteristics which closely resemble the subject goods.

68. HWL produces a range of styles of canned peaches, for example, sliced and halved, and suspended in syrup; or in a 'lite' medium (artificial sweetener in water), or in fruit juice. HWL produces preserved peaches only in cans. The peaches are packaged in three sizes, 400g/410g, 820g, and 2.95kg/3kg, under the brands Wattie's, Oak and Weight Watchers. In previous proceedings, taking into account can size; varieties of peaches used; the use of juice; and variations in the concentrations of sugar syrup, MBIE concluded that the canned peaches produced by HWL, while not alike in all respects, had characteristics closely resembling the subject goods and were therefore like goods to the subject goods.

69. The Weight Watchers brand and canned peaches in "lite" media were not produced by HWL at the time of the original investigation but were produced at the time of subsequent reviews. In the 2003 review, MBIE's predecessor, the Ministry of Economic Development, concluded that all styles of canned peaches in sugar syrup, "lite" media and fruit juice produced by HWL (except for product produced under the "Weight Watchers" brand) were "like goods" to the subject goods. MBIE has no reason to reconsider this conclusion.

70. During the 2019 review of anti-dumping duties on canned peaches from South Africa, claims were made that diced peaches in A10 cans sold to food manufacturers as an ingredient, were not produced by the New Zealand industry. HWL produces slices in A10 cans but it is claimed that these require further processing in order to be incorporated into food products as an ingredient.

71. In considering whether domestic goods are like the imported subject goods, MBIE considers physical characteristics, function and usage, pricing structures, marketing, and any other relevant considerations. In particular, where the domestic goods are not like the imported goods in all respects, MBIE must determine whether the domestic goods have characteristics closely resembling the imported goods.

72. With regard to the imports of diced peaches in A10 cans imported for sale to food manufacturers, MBIE noted in the review of anti-dumping duties on canned peaches from South Africa, that the primary question is the nature of the product – diced – which is not currently produced by HWL. MBIE has previously addressed similar issues relating to the domestic production of like goods to the imported subject goods, and has concluded that any physical differences between domestic and imported goods were not significant enough to suggest that the preserved peaches produced by HWL were not like goods to

those imported. In this review, MBIE does not consider that it should revisit the consideration of like goods, but does note that while differences may not be sufficient to allow a conclusion that there is no domestic production of like goods, they may be relevant to a consideration of the extent to which dumped imports are causing injury to the domestic industry.

2.3.2 New Zealand Industry

73. The application for review was submitted by HWL, which is a limited liability company and subsidiary of H.J. Heinz Company (New Zealand) Limited, and ultimately held by The Kraft Heinz Company, an entity incorporated in the United States.

74. MBIE understands that HWL remains the sole manufacturer of canned peaches in New Zealand.

75. In terms of section 3A of the Act, MBIE is satisfied that HWL’s production constitutes all of the New Zealand output of canned peaches, and HWL therefore constitutes the New Zealand industry for the purpose of this review.

3. Interested Parties

3.1 Legal Requirements

76. Interested parties are those parties who have an interest in the review and may provide information to defend their interests.

77. Section 3 of the Act defines “notified parties” as including the Government of the country of export; exporters and importers known to have an interest in the goods; and the applicant in relation to the goods. Section 3E of the Act sets out the provisions relating to the giving of notice and written advice to notified parties.

78. Section 17F(2) requires that within 150 days from starting a full review stage 1, notified parties are to be given written advice of the essential facts and conclusions that are likely to form the basis for a determination to be made by the Minister under section 17(G)(1).

79. Section 17F(3) provides that the chief executive must give interested parties a reasonable opportunity to present evidence.

80. Article 6.11 of the AD Agreement describes interested parties who shall be included, covering the same parties as those referred to in the Act as “notified parties,” but adding trade associations of importers, exporters or domestic industry. Article 6.12 provides opportunities for some other parties, such as industrial users of the product under investigation and representative consumer organisations, to participate in an investigation or review.

3.2 New Zealand Industry

81. As set out in section 2.3.2, HWL constitutes the New Zealand industry.

82. In addition to the information provided in its application for the review, HWL was asked to update and provide some further information.

83. A desktop verification was carried out of information supplied by HWL in its application for a review and in its response to MBIE’s requests for further information. A copy of the verification report was provided to the company and a non-confidential version is available on the public file.

3.3 Greek Producers

84. Due to a lack of cooperation from an importer and intermediaries, MBIE was unable to identify Greek manufacturers whose canned peaches were exported to New Zealand over the POR(D).

85. MBIE has identified the importers involved in importing the subject goods from these Greek suppliers to the New Zealand market and known intermediaries.

86. MBIE also identified the suppliers from the initial investigation and subsequent reviews, noting that the description in the Act of notified parties refers to “exporters . . . known by the chief executive to have an interest” in the goods subject to duties.

87. As well as the exporters outlined above, MBIE identified two intermediaries involved in the sale of the goods from Greece to New Zealand, JTC Imports Exports (JTC) and Avondale Foods (Avondale).

Past Suppliers

88. MBIE sent requests for information to past suppliers of Greek peaches, namely Venus Growers, AL.M.ME S.A., Intercomm Foods S.A., Vitom S.A., RD2 International Ltd and Fruit and Concentrates International Pty Ltd. MBIE received no responses to these requests.

3.4 Importers

89. MBIE identified two importers from Customs data and invited them to respond to Importer Questionnaires. The importers were Bidfood and Reduced To Clear. MBIE invited these parties to cooperate in the full review, but neither completed the Importer Questionnaires, although one importer provided an invoice and an import entry.

90. MBIE also identified the importers from the initial investigation and subsequent reviews, but did not receive any responses to the Importer Questionnaire from these parties.

Bidfood

91. Bidfood did not cooperate with the full review as it indicated that its shipment was a one-off purchase of product from Greece, so any future decisions relating to the duty going forward would not impact its business.

Reduced To Clear

92. Reduced To Clear provided some limited information on its business strategy, the goods it purchased and their supplier, but did not cooperate further as it indicated that the questions did not apply to its business.

Past Importers

93. MBIE also requested information from past importers Delmaine Fine Foods, Barker Fruit Processors Limited, Woolworths New Zealand, Foodstuffs and Taste Greece. Taste Greece replied, but responses were not received from the other importers. Delmaine Fine Foods provided information confirming that it did not import the subject goods from Greece.

3.5 Intermediaries

94. MBIE identified two intermediaries involved in the sales of goods from Greece to New Zealand. Both parties are Australian based but their relationship to each other is not known. These intermediaries are JTC and Avondale.

JTC Imports Exports

95. JTC is an Australian importer, exporter and distributor to retailers. While indicating some initial difficulty in replying due to the COVID-19 situation in Victoria, Australia, JTC did not provide information requested by MBIE.

Avondale Foods

96. Avondale Foods is an Australian importer and distributor of food ingredients. Avondale Foods did not respond to MBIE's request for information.

3.6 The Government of Greece

97. The Greek Government is a notified party under section 3(1) of the Act, and is considered an interested party under the AD Agreement.[9] The Greek Government responded to MBIE's requests for export trade data and made a submission in response to the EFC Report.

3.7 The European Commission

98. The European Commission (EC) did not make any submissions.

3.8 Other parties

Greek Associations

99. MBIE requested the assistance of DELCOF, which it understood to be a Greek Canners Association, in identifying Greek producers that may export canned peaches to New Zealand, as well as any information it may be able to provide on the Greek market. MBIE received a response to this questionnaire from E.K.E., the Greek Canners' Association. E.K.E. explained that DELCOF is the business cluster of the Greek industry and not the Association representing the industry.

100. E.K.E. explained that it represents "business organizations that produced canned fruits (mainly peach, but also pear, apricot and fruit cocktail). Today, E.K.E. represents 17 organizations that produce not only canned fruits . . . , but also peach and apricot puree and frozen fruits. Most of the facilities are located in the prefectures of Pella, Imathia and Larissa. Fruits are sourced from the prefectures of Pella, Imathia, Florina, Pieria, Larissa, Argolida and Korinthia. More than 12,000 families of farmers produce these fruits, while more than 10,000 work in the factories, whether full-time or seasonally."

101. MBIE also sent requests for information to the Federation of Hellenic Food Industries (SEVT) and the Hellenic Retail Business Association. MBIE did not receive responses from these organisations.

[9] Article 6.11 of the AD Agreement.

4. Review of Dumping

4.1 Dumping

4.1.1 Purpose

102. As set out in section 1.3, the legal requirement is for MBIE to investigate whether the continued imposition of an anti-dumping duty is necessary to offset dumping, and whether material injury to an industry would be likely to continue or recur if the duty expired or was otherwise removed or varied.

103. In order to investigate whether a duty is necessary to offset dumping, MBIE establishes whether there is current dumping, and whether dumping is likely to continue or recur.

104. The investigation of current dumping is based on the provisions of the Act relating to the determinations of export price (section 4), normal value (section 5) and the ascertainment of export price and normal value when sufficient information has not been furnished or is not available (section 6).

105. When determining whether dumping is likely to continue or recur, MBIE needs to be satisfied that, based on positive evidence, certain events are likely to occur, and that those events mean that dumping is likely to continue or recur.

4.1.2 Legal Requirements

106. 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.*

107. A review of dumping establishes the export price in accordance with section 4 of the Act, and the normal value in section 5 of the Act, with adjustments made to ensure that there is a fair comparison, in order to determine the existence and extent of any dumping, and whether there is a likelihood that dumping will continue or recur.

108. **Export prices** are determined in accordance with section 4 of the Act. Export prices are the prices at which canned peaches are exported from Greece to New Zealand, that are arm's length transactions.

109. In accordance with section 4(1)(a) of the Act, deductions are made from transaction prices where appropriate to cover 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 in the country of export, and any other costs, charges and expenses resulting from the exportation of the goods, or arising after shipment from the country of export.

110. **Normal values** are determined in accordance with section 5 of the Act. The normal value is usually the price at which the canned peaches manufacturers sell canned peaches in their domestic market. The types of sales that can be used to determine normal values

can generally be described as arm's length sales of like goods in the ordinary course of trade for home consumption in the country of export. In the absence of such sales, sales by other sellers of like goods can be used as a basis for establishing normal values.

111. As required by section 5(3) of the Act, in order to effect a fair comparison, export prices and normal values are compared at the same level of trade, normally at the ex-factory level, in respect of sales made at as nearly as possible the same time and with due allowances made, as appropriate, for any differences in conditions and terms of sale, levels of trade, taxation, quantities, and physical characteristics, and any other differences that affect price comparability.

112. Article 2.4.2 of the AD Agreement requires that the existence of margins of dumping shall normally be established on the basis of a comparison of a weighted average normal value with a weighted average of prices of all comparable export transactions or by a comparison of normal value and export prices on a transaction-to-transaction basis. MBIE determines which comparison method it will use based on the circumstances of each case.

113. For the current review, MBIE has compared weighted average export prices with normal values derived from average domestic prices. Due to a lack of cooperation from interested parties in Greece, no information was available to weight the domestic prices or normal values.

114. The general principles concerning MBIE's approach to sunset reviews are set out in section 1 of this report. A sunset review is intended to determine whether the expiry of the existing anti-dumping duties after five years would likely 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.

115. In respect of dumping, MBIE has followed its usual approach of establishing if canned peaches from Greece are currently being dumped into New Zealand, the extent of any dumping and then analysing whether there is a likelihood of a continuation or recurrence of dumping, if the anti-dumping duties were to be removed.

116. Confidential information in relation to the dumping analysis is contained in the **Confidential Attachment** to this report.

4.2 Current Dumping

Information Used

117. MBIE based its analysis of dumping on the information provided by HWL in its application, information from one importer and all other available information, including from previous investigations and reviews.

118. MBIE regards the intermediaries and importers identified in this review as uncooperative, although one importer provided an invoice and customs import entry.

119. MBIE is satisfied that the information provided by one of the importers and information from EC and Greek sources, including supermarkets, and information established from

MBIE's own research, provides a reliable basis for determining export prices and normal values.

4.2.1 Export Price

120. MBIE was unable to identify the Greek supplier of canned peaches exported to New Zealand during the POR(D) due to a lack of cooperation from interested parties.

121. In its application, HWL calculated an ex-factory export price of EUR0.77 per kg (for February 2020). HWL also provided evidence of export prices calculated in two other ways. MBIE considered the ex-factory export price of EUR0.77 per kg to be the most reasonable option for comparison out of the three export prices provided by HWL for the purposes of initiating a review.

Base Prices

122. Bidfood provided no invoices for its imports, so MBIE has had to rely on Customs data, which includes CIF and VFD information. MBIE has decided to use the VFD amounts in Australian dollars as the base prices for calculating export prices for sales to Bidfood. MBIE assumes, in the absence of other information, that the VFD amounts are the FOB prices paid by Bidfood. Given the nature of Bidfood's business as a food service company, MBIE assumes that Bidfood imported peaches in 3kg cans.

123. Reduced To Clear provided an invoice from its Australian supplier for 3.06 kg cans. The invoiced price was exclusive of freight and insurance to New Zealand. MBIE used the value on this invoice as the base price for exports to Reduced To Clear.

124. MBIE has calculated export prices in terms of section 4(1)(a) of the Act.

Adjustments

Additional export costs

125. Section 4(1)(a)(i) of the Act provides for adjustments to export prices for costs, charges and expenses incurred in preparing the goods for shipment to New Zealand that are additional to such costs incurred on sales for home consumption.

Intermediaries' margins

126. Information available to MBIE shows that one shipment of subject goods was exported to New Zealand in the POR(D) via two intermediaries in Australia – an Australian importer of the goods from Greece and an Australian exporter of the goods to New Zealand. Other shipments during the POR(D) were also exported from Australia to New Zealand by the same intermediary, so MBIE assumes that another intermediary was also involved in those shipments, probably an Australian importer.

127. MBIE has reviewed margins and commissions applied by intermediaries in investigations and reviews of peaches from Greece, Spain and South Africa (and also an investigation into canned tomatoes from Italy).

128. MBIE has used a margin that is within the range of margins found in those cases to make adjustments to the intermediary Australian exporter's prices and to the estimated prices

of the Australian importer. MBIE considers that the margins for the two intermediaries will cover port costs in Australia and freight to warehouses in Australia.

Overseas freight and insurance

129. To calculate export prices at the ex-factory level in Greece, adjustments are required for overseas freight and insurance included in the importer's purchase prices.

130. Freight and insurance from Australia to New Zealand is not included in the FOB (Australia) or EXW (Australia) base prices so no adjustment is needed.

131. An adjustment is however needed for the cost of overseas freight from Greece to Australia. No information was available from the original investigation or previous reviews on freight and insurance for exports of Greek peaches to Australia as sales in those cases were made direct to New Zealand. No publicly available information could be found on the websites of the Australian Bureau of Statistics or the Australian Antidumping Commission showing any CIF-FOB ratio.

132. MBIE examined the OECD Database on International Transport and Insurance Costs (ITIC) but found that for Australia only the total CIF-FOB ratio was available, rather than for tariff heading 2008. MBIE could not locate a CIF-FOB ratio for Australian imports from Greece, nor was this information available at the Comtrade website.[10]

133. In its research, MBIE located a 4 per cent average CIF-FOB margin for exports from Germany to Australia[11] which, in the absence of other information, MBIE considered was a reasonable proxy for a freight margin from elsewhere in the European Union, including Greece. MBIE assumes that the CIF-FOB margin is the same as the OECD's CIF-FOB ratio, which is calculated as (CIF value-FOB value)/CIF value. MBIE has made an adjustment on this basis.

Exportation costs

134. Section 4(1)(a)(ii) of the Act provides for adjustments for other costs, charges and expenses resulting from the exportation of the goods, or arising after their shipment.In addition, it may be necessary to provide for adjustments referred to in section 5(3) of the Act regarding relevant adjustments required to ensure fair comparison with normal values. These adjustments are outlined below.

Freight from factory to port

135. In its application, HWL made only one adjustment to derive an ex-factory export price. HWL used a percentage of the FOB value, to represent the expense of freight from the

[10] https://comtrade.un.org/data

[11] Average 2005-2007 in OECD, Statistics Directorate, Committee on Statistics and Statistical Policy, Working Party on International Trade in Goods and Trade in Services Statistics, *Estimating CIF-FOB Margins on International Merchandise Trade Flows*, 11 March 2016, Figure 2. Australia's trade-weighted CIF-FOB margin for its top 10 trading partners, 1995-2007, average 2005-2007 retrieved on 20 October 2020 from http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=STD/CSSP/WPTGS(2016)8&docLanguage=En

factory to the port of export in Greece. This percentage was based on HWL's understanding of local freight to port charges in New Zealand.

136. In the 2015 review, MBIE considered that HWL's estimate of this percentage of the VFD was an appropriate adjustment. MBIE has no information that would indicate this is no longer the case and information from another review in relation to similar-sized cans is consistent with an adjustment at this rate. MBIE has made an adjustment at this rate.

Port handling and clearance charges

137. No information was available to MBIE on port handling and clearance costs and therefore no adjustment has been made.

Cost of credit

138. MBIE has information on payment terms for one shipment from Australia to New Zealand, but these costs will be included in that intermediary's margin, so no further adjustment is required.

139. MBIE had no information on terms of payments so, as in the 2009 and 2015 reviews, MBIE made no adjustment for cost of credit.

Other adjustments

140. There is no information available to MBIE that would warrant any further adjustments.

Exchange rates

141. MBIE estimated the Greek supplier(s) invoice dates and used historical exchange rates[12] to convert the CIF values in AUD to EUR.

Export Price

142. From the base prices and adjustments set out above, MBIE has calculated a weighted average ex-factory export price for shipments of 3kg cans of peaches from Greece during the POR(D). MBIE notes that this export price is significantly lower than that calculated in the 2015 review, although in the 2015 review the export price was derived from TradeMap data which may have included goods that are not subject goods. The export price so calculated is EUR 0.44/kg.

4.2.2 Notional Export Price

143. Subsection 17F(1)(a) of the Act requires the chief executive to investigate whether "continued imposition of the duties is necessary to offset dumping . . . ." Article 11.3 of the AD Agreement clarifies that MBIE is required to assess whether "the expiry of the duty would be likely to lead to continuation or recurrence of dumping . . .". The Appellate Body, in *US – Corrosion-Resistant Steel Sunset Review,* noted that, as this likelihood determination is a prospective determination, "the authorities must undertake a

[12] https://www.ofx.com/en-nz/forex-news/historical-exchange-rates/

forward-looking analysis and seek to resolve the issue of what would be likely to occur if the duty were terminated."[13]

144. The Act and the AD Agreement do not set out methodologies for establishing whether there is a continuation or recurrence of dumping. The Panel, in *US – Corrosion-Resistant Steel Sunset Review*, observed "that Article 11.3 is silent as to how an authority should or must establish that dumping is likely to continue or recur in a sunset review. That provision itself prescribes no parameters as to any methodological requirements that must be fulfilled by a Member's investigating authority in making such a "likelihood" determination."[14]

145. The Panel in *US – Oil Country Tubular Goods Sunset Reviews (Article 21.5 – Argentina)* clarified that "In principle, therefore, investigating authorities are not restricted in the choice of methodology they will follow in making their sunset determinations. In their choice of methodology, however, the investigating authorities should have regard to both "investigatory and adjudicatory aspects" of sunset reviews and make forward-looking determinations on the basis of evidence relating to the past. They must arrive at reasoned conclusions on the basis of positive evidence. In so doing, the investigating authorities may not remain passive. Rather, the authorities have to act with an 'appropriate degree of diligence'."[15]

146. Further, the Appellate Body in *US – Corrosion-Resistant Steel Sunset Review* has stated: "In view of the use of the word 'likely' in Article 11.3, an affirmative likelihood determination may be made only if the evidence demonstrates that dumping would be probable if the duty were terminated—and not simply if the evidence suggests that such a result might be possible or plausible."[16]

147. There were only three shipments of canned peaches from Greece during the POR(D), all of which appear to be 3kg cans. The total volume was minimal compared with historic exports[17] of the subject goods from Greece. MBIE is not satisfied therefore that the current export prices established are representative of the likely export price of canned peaches from Greece to New Zealand, should duties not be in place.

148. As discussed in Section 5.4 below it is considered likely that there will be a significant increase in the volume of dumped goods if duties are not in place.

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[13] WTO Appellate Body Report, WT/DS244/AB/R, *US – Corrosion-Resistant Steel Sunset Review*, para. 105, page 38.

[14] WTO Panel Report, WT/DS244/R, *US – Corrosion-Resistant Steel Sunset Review*, para. 7.166, page 44.

[15] WTO Panel Report, WT/DS268/RW, *US – Oil Country Tubular Goods Sunset Reviews (Article 21.5 – Argentina)*, para. 7.34, page 17.

[16] WTO Appellate Body Report, WT/DS244/AB/R, *US – Corrosion-Resistant Steel Sunset Review,* para. 111, page 40.

[17] Stats NZ's Infoshare data shows import volumes of 415MT in 1996 and 362MT in 1997 under tariff item and statistical key 2008.70.09 00L in 1997, which was before anti-dumping duties were put in place. These volumes will include some imports that are not subject goods.

149. For these reasons, and since MBIE is required to assess the likelihood that dumping would recur if anti-dumping duties are not in place, MBIE has carried out a general analysis to derive a proxy export price of canned peaches from Greece should anti-dumping duties not be in place. MBIE has used available information, as provided for in section 6 of the Act, to establish notional export prices.

Base price

150. In order to establish a reasonable proxy for a base export price, namely the likely price that will be paid by importers in terms of section 4(1) of the Act, MBIE considered export sales from Greece to non-EU member markets of broadly equivalent size to New Zealand, namely from 10-1,100 MT using data from the European Commission Trade Market Access Database[18] and from the Greek Consulate. All data is at the FOB level, with values in EUR.

151. In establishing markets of a broadly equivalent size to New Zealand, MBIE notes that exports to New Zealand from Greece in 2019 totalled 47 MT. Since 2005, annual export volumes to New Zealand from Greece have ranged between 0 and 1,097 MT tonnes. In years where exports to New Zealand have occurred, the lowest volumes have been between 12 and 18 MT. MBIE has therefore considered comparable markets to be those where exports from Greece fall within the range of 10 - 1,100 MT in 2019, excluding countries within the EU, which form a single market with Greece. Forty countries fall within the comparable market range in the 2019 data. MBIE notes that the export statistics are likely to include some non-subject goods.

152. The base price is the weighted average FOB price per kilogram.

Adjustments

153. MBIE has made adjustments for freight from factory to port on the same basis as above in its calculation of actual export prices for 2019.

Export Price

154. From the base prices and the adjustments set out above, MBIE has calculated ex-factory export prices for potential shipments of preserved peaches for the purposes of the consideration of the likelihood of a recurrence of dumping, with 3kg and similar size cans with an export price of EUR 0.82/kg and other sizes EUR 0.90/kg.

Determined Export Prices

155. On the basis of the conclusions reached, MBIE has determined the export prices set out in Figure 4.1 below.

[18] https://madb.europa.eu/madb/statistical_form.htm using tariff codes 20087061, 69, 71 and 79.

Figure 4.1: Export Prices

EUR/kg

Goods	Export Price
Current Dumping	
3kg and similar	0.44
Likely Dumping	
Exceeding 1kg	0.82
Not exceeding 1kg	0.90

4.2.3 Normal Value

156. Normal values are determined in accordance with section 5 of the Act. The normal value is usually the price at which manufacturers of canned peaches sell canned peaches in their domestic market. The types of sales that can be used to determine normal values can generally be described as arm's length sales of like goods in the ordinary course of trade for home consumption in the country of export, in this case Greece. Where an exporter makes no such sales, sales by other sellers of like goods in Greece can be used to establish normal values.

157. MBIE received some information from E.K.E., the Greek Canners Association, about canned peaches sold in Greece but none from Greek producers on domestic sales of canned peaches for home consumption in Greece. E.K.E. and Greek producers did not cooperate.

158. E.K.E. stated that more than 99 per cent of the final products of its members are exported from Greece. MBIE notes that E.K.E.'s website states that more than 98 per cent of final products are exported.[19] E.K.E. therefore considers domestic sales in Greece are irrelevant. E.K.E. also provided export figures that showed that exports to New Zealand were only 0.004 per cent of all Greek exports of canned peaches in 2019. Using New Zealand Customs data and the total export figure that E.K.E. provided of 260,711,632 kilograms in 2019, MBIE calculates the New Zealand percentage as 0.018 per cent of total Greek exports.

159. Subsection 5(2) of the Act identifies certain circumstances when the chief executive can be satisfied that the normal value cannot be determined under section 5(1) of the Act. One of those circumstances, under subsection 5(2)(a) of the Act, is where "there is an absence of sales that would be relevant for the purpose of determining a price" under subsection 5(1). MBIE notes that there are sales of the like goods in the ordinary course of trade in Greece for home consumption and refers to the AD Agreement for guidance on whether those domestic sales are considered a sufficient quantity for the determination of normal value.

[19] https://ekeenglish.weebly.com/eke-s-background.html

160. MBIE points out that footnote 2 to Article 2.2 of the AD Agreement states that "[s]ales of the like product destined for consumption in the domestic market of the exporting country shall normally be considered a sufficient quantity for the determination of the normal value if such sales constitute 5 per cent or more of the sales of the product under consideration to the importing Member . . . ."

161. E.K.E. notes that the small amount of canned peaches sold in the domestic market in Greece (less than one per cent of total production of canned peaches) is mainly sold in HoReCa (a syllabic abbreviation of the words hotel/restaurant/café, referring to the food service and hotel industries). Export data for HS200870 shows that 262,330 MT were exported in 2019.

162. MBIE notes that sales in Greece for home consumption, even if the equivalent of only 1 per cent of Greek exports was sold domestically (namely 2,600 MT) would be far greater than 5 per cent of sales to New Zealand, which totalled only 47 MT in 2019.

163. E.K.E. considers that the EU market, because it is a common market, constitutes its domestic market, and not the Greek market. E.K.E. considers that prices of Greek peaches in Germany, its biggest market, are relevant to this review and provided evidence of pricing of 0.96 EUR for an 850 ml can of peaches from Greece at a German supermarket (REWE).

164. MBIE notes that sub-section 5(2)(e) of the Act provides for the chief executive to determine the normal value on the basis of "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", but only if the normal value cannot be determined under sub-section 5(1).

165. MBIE notes that section 5(1) of the Act refers to normal value being the price paid for like goods sold in the ordinary course of trade <u>for home consumption in the country of export</u> . . . . *[Emphasis added].* In this review Greece is the country of export rather than any other member country of the European Union and MBIE has information on sales for home consumption in Greece.

166. E.K.E. also considers that brands like Del Monte or Dole are not indicative of the pricing for Greek canners' products and that MBIE should look at the prices of supermarket own brands, given its claim that about 90 per cent of canned peaches for retail are sold with a private label, which is usually retailers' own brands. E.K.E. notes that "[r]etail canned peaches can be in 425 ml or 850 ml sized tins, but does not refer to 3 kilogram cans, which are also subject to this review.

167. MBIE observes that, in the absence of information from E.K.E. or Greek producers, it must have regard to all available information on domestic sales, which consists of information on retail prices. The comparison of normal values and export prices must however be fair. In this regard MBIE notes that it has no information that exports to New Zealand in 2019 were of private label products. Information available indicates that one shipment was labelled with a brand that does not appear to be a private label.

168. In its application, to calculate a normal value for canned peaches sold in the Greek domestic market, HWL obtained retail selling prices of canned peaches in Greece in April 2020 for use as its base prices. It then made adjustments to these prices to arrive at an average ex-factory selling price to compare with the ex-factory export price in its dumping calculations. The average price was for a range of can sizes, including 410g, 820g, 2.55kg and 3.55kg.

Base Prices

169. In the absence of information on the Greek suppliers' domestic sales prices, MBIE ascertained normal values in terms of section 5(1) of the Act using retail sales, which are sales "in the ordinary course of trade for home consumption in the country of export is sales that are arm's length transactions . . . by other sellers of like goods."

170. MBIE's research indicates that the main grocery retailers in Greece are Sklaventis (15-25% market share 2016-2018), AB Vassilopoulos (15-25%), Lidl (10-15%), Metro (10-15%), Masoutis (5-10%), Pente (0-5%), Kritikos (0-5%), Market In (0-5%), Synka (0-5%), Bazaar (0-5%), Gountsidis (0-5%).[20]

171. MBIE checked the retail prices provided by HWL for supermarkets (Bazaar, My Market, Care Market, e-Fresh, ABC) and for a convenience store (AB Shop and Go). MBIE corrected a calculation and added to the calculations some prices that were included in the evidence provided by HWL, but not included in HWL's calculations. MBIE also searched for other available online information on selling prices of canned peaches in Greece, including other retail prices. MBIE found that online prices for canned peaches were available from two other supermarkets not included in HWL's application, Masoutis and Thanopoulos.

172. MBIE has analysed retail prices in Greece from the supermarkets Bazaar, My Market, Care Market, e-Fresh, ABC, Masoutis and Thanopoulos and the convenience store AB Shop and Go. MBIE notes that many of the products in the convenience store were the same price as in some supermarkets, although the average price of canned peaches in the convenience store was significantly lower than the average price in supermarkets.

173. Since exports to New Zealand in 2019 were of, or assumed to be, 3kg cans, MBIE selected all available retail prices for cans close to 3kg in size, namely 2.55kg and 3.5kg cans of the brands Farmer and Pieria sold in the supermarket Bazaar and the convenience store AB Shop and Go. MBIE used the average retail price of EUR 1.38 as the base price for sales of 3kg and similar can sizes.

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[20] Hellenic Competition Commission (13 April 2020) Executive Summary sector inquire into basic consumer goods sold in supermarkets: preliminary report: sector inquiry in the field of production, distribution and marketing of basic consumer goods and in particular food products as well as cleaning and personal hygiene products.
https://www.epant.gr/files/2020/supermarkets/exec_summary_preliminary_report_en_13_4_20.pdf

174. In order to assess the extent of likely dumping for other can sizes, MBIE calculated that the simple average of retail prices per kilogram across cans ranging in size from 0.235kg to 0.850 kg was EUR 2.97 per kilogram.

Adjustments

Taxes

175. The base retail price is VAT-inclusive, so in order to ensure a proper comparison with the export price, the tax element must be removed. The current VAT rate applicable to sales of preserved peaches in Greece is 13 per cent,[21] so the base price has been reduced accordingly.

Margins and mark-ups

176. In the 2015 review, in the absence of other information, MBIE made an adjustment using HWL's estimate of a retailer's gross margin, which was based on its knowledge of the distribution of canned peaches in New Zealand. HWL provided similar information in its application for this review.

177. In this review, MBIE received no information from E.K.E., Greek producers or any other interested party about margins in Greece. MBIE's research indicates that the gross profit margin for supermarkets in Greece in 2012 was 23.9 per cent[22] of the pre-VAT price and in 2011, for the top ten supermarkets, was 21.6 per cent.[23] In Europe, the wholesale price is on average 60 per cent of the retail price according to the Netherlands Centre for the Promotion of Imports from developing countries.[24] However, mark-ups in Greece appear to be relatively low, and one source in 2013 indicated a mark-up on canned peaches of "about 30 per cent on average", which would equate to a gross profit margin of 23.1 per cent. The 2019 financial statements for the supermarket company Gountsidis show that gross profit as a percentage of turnover is 25.8 per cent.[25] Given that this is the most recent information available and that it approximates the other figures available, MBIE considers that this is the best information available.

178. MBIE considers that an appropriate retail margin for the subject goods is 25 per cent and has made an adjustment on this basis.

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[21] There are several VAT rates in Greece, as explained at https://en.wikipedia.org/wiki/Taxation_in_Greece and http://iobe.gr/docs/po/REM_15052015_REP_ENG.pdf. There is a reduced rate of 13% for food and drink https://www.tmf-group.com/en/services/companies/accounting-tax/vat/country-profile/greece/

[22] http://dx.doi.org/10.1787/9789264206090-en

[23] http://www.oecd.org/daf/competition/Greece-Competition-Assessment-2013.pdf

[24] https://www.cbi.eu/market-information/processed-fruit-vegetables-edible-nuts/canned-fruit-vegetables/europe

[25] https://www.gountsidis.gr/images/pdf/katastaseis2019.pdf

Inland freight

179. In its application for this review HWL deducted an amount for inland freight to customer based on HWL's understanding of local freight charges in New Zealand. MBIE does not consider that this adjustment is required as the cost of inland freight will be encompassed by the gross margin. MBIE notes that this is relatively small adjustment which would not have a material impact on the amount of the normal value.

Other adjustments

180. MBIE does not have any information available which indicates that any other adjustments are necessary to either adjust the base normal value back to the ex-factory level or to ensure a fair comparison with the export price.

Determined Normal Values

181. From the base prices and the adjustments set out above, MBIE has calculated ex-factory normal values for canned peaches from Greece in 2019 during the POR(D). The normal values apply to 3kg and similar size cans as a basis for establishing the level of current dumping, and to all sizes for likely dumping.

Figure 4.2: Normal Values
EUR/kg

Goods	Normal Value
Current Dumping	
3kg and similar	0.92
Likely Dumping	
Exceeding 1kg	0.92
Not exceeding 1kg	1.97

4.3 Findings Relating to Dumping

182. MBIE has compared the export price with the normal value for exports in 2019 and also for the notional levels established to assist in the consideration of the likelihood that dumping could continue or recur should other agents enter or re-enter the market.

183. MBIE has found the following dumping margins:

Figure 4.3: Dumping Margins
EUR/kg

Goods	Dumping Margin
Current Dumping	
3kg and similar	107%
Likely Dumping	
Exceeding 1kg	12%
Not exceeding 1kg	119%

4.4 Likelihood of Continuation or Recurrence of Dumping

184. MBIE has reviewed the likelihood that dumping will continue or recur on the basis set out in section 1.3, in the light of the information provided during the review. In particular, when determining whether dumping is likely to continue or recur MBIE needs to be satisfied that, based on positive evidence, certain events are likely to occur, and that those events mean that dumping is likely to continue or recur.

185. The events that MBIE needs to consider in order to determine the likelihood that dumping will continue or recur, include:

- whether dumping is currently occurring and the magnitude and the scope of the dumping in terms of the goods affected
- recent behaviour in terms of pricing in the context of the existing reference prices and the payment of anti-dumping duties
- the commercial arrangements governing the pricing of exports to New Zealand from Greece
- possible developments in the market in Greece, which could affect the normal values of the goods and their availability for export to New Zealand.

4.4.1 Current and Likely Future Dumping Margins

186. MBIE has determined that all of the subject goods exported from Greece to New Zealand in 2019, limited to 3 kg cans, were dumped and that the dumping margin was 107 per cent.

187. MBIE notes that the imports during the POR(D) were of 3 kg can sizes only, and a notional assessment of dumping was therefore carried out to cover all retail can sizes. On a notional basis, MBIE has found that the subject goods will be dumped by a margin of 119 per cent for cans not exceeding one kilogram and by a margin of 12 per cent for cans exceeding 1 kilogram.

188. MBIE considers that dumping at the levels assessed is an indication that it is likely that in the absence of any anti-dumping duties dumping will continue.

4.4.2 Price Behaviour

189. There have been relatively low volumes of exports of canned peaches from Greece since 2006. MBIE notes, for example, that export prices in 2019 were at significantly lower levels than at any time since 2005. In 2019, the subject goods were all 3 kilogram cans exported to New Zealand in minimal volumes by an Australian wholesale supplier who refers to its "aggressive approach at negotiating heavily discounted prices on quality gift and variety goods."[26] Some of the exports in 2019 were to the New Zealand grocery clearance store, Reduced To Clear.

[26] https://shop.jtcimportexport.com.au/aboutusjtc

190. MBIE considers that the prices in 2019 will not necessarily reflect prices to traditional importers of peaches such as supermarket chains and food distributors. One of the importers, Bidfood Ltd, stated that “this was a one off purchase of product from Greece so any future decisions in relation to dumping duty going forward will not be impacting our business.” The other importer, Reduced To Clear, stated that “the purchase of the peaches was a one-off close-out deal from our supplier in Australia . . . . At this point in time there is no intention to import peaches from Greece or anywhere really unless we get offered a clearance deal on them.”

191. MBIE considers that a trend analysis over several years of low volumes of sporadic imports will not be particularly informative.

192. The Greek Consulate notes that EU export data shows that the average export price to New Zealand is higher than the average price to all countries. MBIE notes that the export data will include non-subject goods. Customs data shows that in 2019 the average VFD per kilogram for imports of the subject goods into New Zealand was significantly lower than the average VFD per kilogram for non-subject imports into New Zealand from Greece. Non-subject goods from Greece included peaches in glass jars and asceptically packaged peaches.

193. MBIE’s notional export price analysis indicates that further imports of canned peaches would be at significantly higher prices than in 2019, but would be sold at a lower export prices than those goods that were found to be dumped in the 2015 review. Past, current and notional export prices all contribute to an overall assessment that the subject goods will continue to be dumped.

194. Since anti-dumping duties were reassessed in July 2015, there have been imports of retail size canned peaches from Greece only in 2019, all of which were subject to anti-dumping duties at lesser duty amounts, namely the amounts by which the VFD was lower than the confidential NIFOB amount. Payment of anti-dumping duty on subject goods imported in 2019 supports MBIE’s analysis that the subject goods were dumped and indicates that they will continue to be dumped.

4.4.3 Commercial Arrangements

195. There have been relatively low volumes of exports of canned peaches from Greece since 2006. In the absence of any information in this review, MBIE assumes that, as for purchases from other suppliers such as South African producers, prices for export sales from Greece to New Zealand are set by negotiation.

196. While New Zealand importers have traditionally sourced canned peaches from a number of countries, MBIE notes that anti-dumping duties apply to some imports of canned peaches from South Africa and some preserved peaches from Spain. Imports of canned peaches not subject to anti-dumping duties include those from a major supplier in South Africa, a supplier in Spain and from all suppliers in China. If anti-dumping duties were not continued on canned peaches from Greece, importers would have an incentive to consider shifting supply to Greece by negotiating competitive prices with Greek suppliers.

197. There is no information that suggests Greek suppliers have priced up to the non-injurious or normal value threshold levels set by the current anti-dumping duties. Significant anti-dumping duties have been collected on the few imports of canned peaches that occurred in 2019.

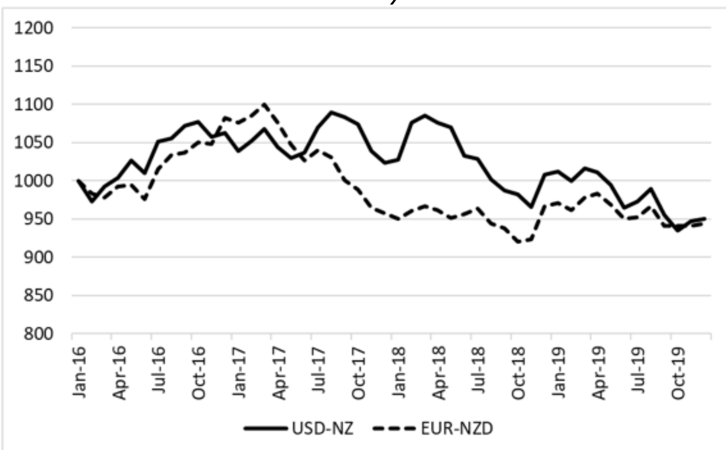
198. MBIE considers that the commercial nature of price negotiations affecting exports of the subject goods to New Zealand means that if anti-dumping duties are not continued, it is likely that dumping will continue.

Exchange rates

199. A further consideration in assessing the likelihood of an increase in import volumes of the subject goods from Greece is the movement of the NZD against the currencies in which exports of canned peaches to New Zealand have been traditionally traded, namely EUR and USD.

200. The determination of dumping can be affected by movements in exchange rates. The effect of exchange rate movements for USD and EUR in relation to the NZD is shown in Figure 4.4 below. The chart shows indexed monthly exchange rates for USD/NZD and EUR/NZD, for January 2016 to December 2019.

Figure 4.4: Monthly Exchange Rates (January 2016-December 2019)
Indexed – January 2016: 1000



201. The information shows that since early 2018, while the NZD has remained relatively stable against the EUR, the NZD has weakened against the USD, although is only slightly weaker than at the beginning of 2016. The relative stablility of the NZD against the EUR in recent years indicates that exchange rates are not adding to favourable conditions for importers looking to source goods from Europe.

4.4.4 Greek Market

Domestic Prices

202. Normal values in Greece are also part of the equation in a dumping determination. Any decrease in prices of the goods sold for domestic consumption would lower normal values and if export prices remained the same, or increased, would lower the dumping margin.

203. E.K.E. noted that “there has been a higher demand for retail sizes and a lower demand for HoReCa sizes” in the European market since the COVID-19 pandemic started. E.K.E. stated that “[c]limate change and the progress of the pandemic are factors that affect production in Greece and demand in Europe and the world.” No information was provided on how demand was affected, other than a shift to retail sizes, and whether the change in demand affected prices for canned peaches in retail sizes in Greece.

204. MBIE has not been provided with any information, such as costing data, to allow MBIE to assess whether domestic prices are likely to change. The retail price information available indicates that prices have remained stable between April (shortly after WHO declared COVID-19 a pandemic) and November 2020.

Product Availability

205. MBIE’s research shows that on 18 October 2019, the United States imposed an additional 25 per cent import tariff on canned peaches, resulting in a total import tariff of 43 per cent. Reuters reported that many US customers - “mainly catering companies that supply hospitals, schools and the military - have either canceled orders or have said they will not be prepared to pay for any tariff increase, producers said. . . . Stuck with excess supply, producers are also uncomfortably aware how their production lines are tailored to the U.S. market. The sector is saddled with 3-kg tins aimed at the United States, which cannot be sold in Europe, Asia or Latin America where 1-kg tins are dispatched.”[27]

206. MBIE calculates that in 2019, the volume of preserved peaches exported by Greece to the United States was 19 per cent of all Greek exports of those goods, so Greek producers may need to seek other markets to dispose of any surplus due to lost sales in the United States.

207. Reuters also reported that “[t]he [Greek] Canners Association and other industry experts . . . are worried that resulting excess product will lead to a collapse in prices” and observed that “[t]he sector is already reeling from the impact of a Russian embargo on the EU fruit and vegetable sector imposed in 2014” which affected fresh peaches.

208. MBIE notes that Greece exports more than 99 per cent of the canned peaches it produces. Prices to export markets may experience downwards pressure due to increased availability caused by loss of sales caused by United States’ trade measures. MBIE has no information on change in the volume of canned peaches available for the domestic market resulting in any changes to domestic prices, although it could be expected that, in response to the United States’ measures, efforts could be made to dispose of product in the domestic market, although the domestic market will likely have little capacity to absorb any increased product availability given consumption is likely to be relatively fixed.

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[27] https://www.reuters.com/article/us-wto-trade-greece-peaches-idUSKBN1X70M5

Greek Production

209. E.K.E. stated that "[c]limate change and the progress of the pandemic are factors that affect production in Greece and demand in Europe and the world."

210. The United States Department of Agriculture reported in September 2020 that in the marketing year 2020/21, Greece's peach and nectarine production is forecast to decrease by six percent due to unfavorable weather conditions, with hail that reduced the volume harvested in the main producing areas."[28]

211. MBIE observes that the six percent loss of production is less than the potential 19 per cent loss of sales to the United States. Given the potential excess supply available due to lost sales to the United States, the current impact of unfavourable weather conditions and any future impact of severe weather events are unlikely therefore to result in a reduction of supply to the domestic or export markets that would result in an increase in prices.

212. MBIE has received no information about the effect of the COVID-19 pandemic on production in Greece.

4.4.5 Conclusions

213. MBIE's analysis indicates that if anti-dumping duties are removed dumping will continue, with the likely dumping margins being high with likely export prices lower than in 2015. The removal of anti-dumping duties would encourage imports from Greece, since there is likely to be downward pressure on export prices due to United States' trade measures.

214. MBIE considers that prices to the New Zealand export market are unlikely to increase and/or prices in the Greek domestic market are unlikely to decline significantly to the extent that exports to New Zealand would not be dumped. MBIE considers therefore that dumping of the subject goods is likely to continue either in the presence or absence of anti-dumping duties.

4.5 Conclusions Relating to Dumping

215. MBIE has ascertained export prices and normal values for imports of the subject goods from Greece in 2019 on the basis of sections 4(1) and 5(1) of the Act respectively. MBIE has used available information, as provided for in section 6 of the Act, to establish notional export prices. On the basis of the resulting dumping margins and the matters considered above, MBIE concludes that there is a likelihood of the continuation of dumping of the subject goods imported from Greece.

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28 https://apps.fas.usda.gov/newgainapi/api/Report/DownloadReportByFileName?fileName=Stone%20Fruit%20Annual_Madrid_European%20Union_08-26-2020

5. Review of Injury

5.1 Basis for consideration of likelihood of injury

Legal basis and methodology

216. As set out in section 1.3, the legal requirement is for MBIE to investigate whether the continued imposition of an anti-dumping duty is necessary to offset dumping, and whether material injury to an industry would be likely to continue or recur if the duty expired or was otherwise removed or varied.

217. The investigation of the material injury to an industry is based on the matters set out in section 8 of the Act.

218. When determining whether the expiry or removal of the anti-dumping duty would be likely to lead to a continuation or recurrence of injury, MBIE needs to be satisfied, based on positive evidence, that material injury to the industry is likely to continue or recur if the anti-dumping duties expire or are otherwise removed or varied.

New Zealand Legislation

219. Section 8(1) of the Act sets out the matters that must be examined when determining whether or not material injury to an industry is being caused or threatened. Section 8(2) sets out in more detail the matters that MBIE must have regard to in any investigation to establish if material injury exists.

220. Section 8(1) of the Act provides:

> *(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.*

221. The Act goes on to set out a number of factors and indices which the chief executive shall have regard to, although noting that this is without limitation as to the matters the chief executive may consider. These factors and indices set out in section 8(2)(a) to (d) of the Act include:

- The extent to which there has been or is likely to be a significant increase in the volume of dumped goods, either in absolute terms or relative to production or consumption;

- The extent to which the prices of dumped goods represent significant price undercutting in relation to prices in New Zealand;
- The extent to which the effect of the dumped goods is or is likely significantly to depress prices for like goods of New Zealand producers or significantly to prevent price increases for those goods that otherwise would have occurred;
- The economic impact of the dumped goods on the industry, including actual or potential decline in output, sales, market share, profits, productivity, return on investments, and utilisation of production capacity; factors affecting domestic prices; the magnitude of the margin of dumping; and actual and potential effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investments.

222. In addition, the chief executive must have regard to factors other than dumped imports which may be injuring the industry, since in accordance with Article 3.5 of the AD Agreement, it must be demonstrated that the dumped imports are, through the effects of dumping, causing material injury. These factors, set out in section 8(2)(e) of the Act, include the volumes and prices of non-dumped imports of the goods; contraction in demand or changes in the patterns of consumption; trade restrictive practices of and competition between the foreign and domestic producers; developments in technology; and the export performance and productivity of the domestic industry.

223. The chief executive is also required by section 8(2)(f) of the Act to have regard to the nature and extent of importations of dumped goods by New Zealand producers of like goods, including the value, quantity, frequency, and purpose of any such importation.

224. In accordance with section 8(3) of the Act, the chief executive may disregard any information that the chief executive considers to be unreliable.

Anti-Dumping Agreement

225. Reviews are addressed in Article 11 of the AD Agreement, and require findings by the investigating authority as to whether or not the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury. The relationship between Article 11 on reviews and Article 3 of the AD Agreement which addresses injury in an investigation, has been the subject of dispute settlement in the WTO.

226. In *US — Oil Country Tubular Goods Sunset Reviews*, the Appellate Body upheld a Panel's finding that the obligations set out in Article 3 (in relation to the determination of injury) do not apply to likelihood-of-injury determinations in sunset reviews.[29] However, the Appellate Body also noted that this was not to say that in a sunset review determination, an investigating authority is never required to examine any of the factors listed in Article 3. The Appellate Body considered that certain of the analyses mandated by Article 3 and

[29] WTO Appellate Body Report, WT/DS268/AB/R, *US — Oil Country Tubular Goods Sunset Reviews*, paragraph 285, page 105.

necessarily relevant to the original investigation may prove to be probative, or possibly even required, in order for an investigating authority in a sunset review to arrive at a reasoned conclusion. The Appellate Body stated that, in this respect, it was of the view that the fundamental requirement of Article 3.1 that an injury determination be based on "positive evidence" and an "objective examination" would be equally relevant to a likelihood determination under Article 11.3. It seemed to the Appellate Body that factors such as the volume, price effects, and the impact on the domestic industry of dumped imports, taking into account the conditions of competition, may be relevant to varying degrees in a given likelihood-of-injury determination.

227. An investigating authority may also, in its own judgement, consider other factors contained in Article 3 when making a likelihood-of-injury determination, but that determination results from the requirements of Article 11.3, not Article 3, and must rest on a "sufficient factual basis" that allows the authority to draw "reasoned and adequate conclusions."[30]

MBIE Approach

228. Bearing in mind the views of the Appellate Body, as outlined above, MBIE notes that with regard to an injury determination, section 8(2) of the Act sets out a number of factors and indices which the chief executive shall have regard to, although noting that this is without limitation as to the matters that may be considered. These factors and indices are considered under the relevant headings below.

229. Furthermore, the demonstration of a causal relationship between dumped imports and any current or likely injury must be based on an examination of all relevant evidence and any known factors other than the dumped imports which are causing injury, or are likely to cause injury to the domestic industry. Any injury, or likely continuation or recurrence of injury, caused by factors other than dumping must not be attributed to the dumped imports.

5.2 Previous Review

230. The last sunset review, completed in 2015, found that:

- While the volume of imports of canned peaches from Greece had been minimal since duties were imposed, a significant increase in import volumes was likely if anti-dumping duties were to be removed;
- The Greek industry appeared to have capacity to increase exports to New Zealand and there were no significant barriers to entry into the New Zealand peach market;

[30] Ibid, paragraph 284.

- Should imports from Greece resume in significant volumes HWL's prices were likely to be significantly undercut by the imports. This undercutting would likely result in price depression and suppression;
- If duties were removed and imports resumed in significant volumes, HWL was not likely to experience material declines in sales volume and market share, but sales revenue and profits would be materially affected. There were also likely to be adverse effects on return on investments, cash flow, growth and ability to raise capital and investments.

231. On the basis of these considerations, MBIE concluded that if anti-dumping duties were removed it was likely that dumping would resume and this would likely cause a recurrence of material injury to the New Zealand industry.

5.3 Injury Information Submitted by HWL

232. HWL provided financial information for the purpose of the injury analysis. The information provided is in line with HWL's financial year which ends 31 December, which matches the POR(D) and POR(I).

233. As there are anti-dumping duties in place it would not be expected that the industry would currently be suffering material injury from dumped goods. The focus of the injury analysis is therefore on the likelihood of material injury recurring if the duties were removed.

234. In assessing the likelihood of a recurrence or continuation of material injury, MBIE has taken into account the information provided by HWL regarding its forecasts for volume and price effects attributable to dumped imports. With regard to the levels of price undercutting to be used in assessing those effects, MBIE has used the outcome of its own calculations of price undercutting.

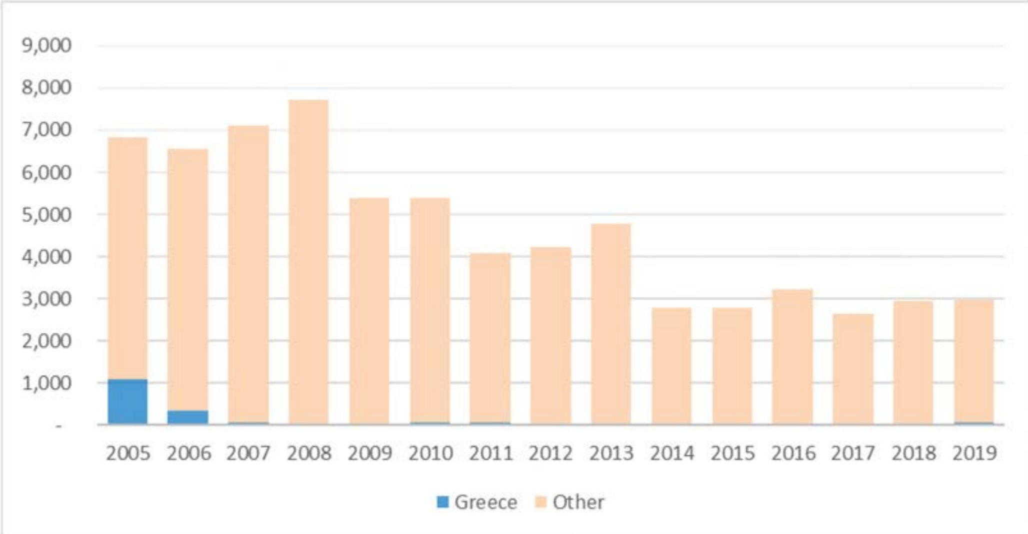
5.4 Volume Effects

235. 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.

236. As noted in Section 2.2, the tariff item covering the subject goods also includes products outside the definition of the goods subject to review. MBIE has therefore, where possible, removed from the data any goods not obviously covered by the subject goods description.

5.4.1 Import Volumes

Figure 5.1: Import volumes of canned peaches from Greece (MT) 2005-2019



237. Figure 5.1 above shows that there were minimal imports from Greece over the period 2014 – 2019. In 2019, 47 MT were imported from Greece making up 1.6 per cent of total imports of the subject goods in the POR(D). From 2007, import volumes have been minimal compared to total imports into New Zealand, but anti-dumping duties have been in place since 1998.

238. Import volumes of Greek canned peaches into New Zealand in 2019 were small relative to both production and consumption in New Zealand.

5.4.2 Likely Import Volumes

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

- the price advantage (in the absence of duties) which such imports may hold
- the capacity and intent 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 and intent of importers to handle a significant increase in imports from Greece
- exchange rates
- evidence from previous behaviour.

Price advantage held by imports from Greece

240. The analysis below shows that canned peaches from Greece are likely to undercut HWL's prices significantly if imports resume, in the absence of anti-dumping duties.

241. MBIE calculated a likely price for Greek canned peaches at the ex-wharf level in New Zealand for 2019 based on the notional export price calculated in section 4 above. MBIE

first calculated an FOB value for all retail can sizes using European Commission Market Access Data Base information for tariff codes 20087061, 20087069, 20087071 and 20087079 for exports to non-EU member countries with an export market size for Greek peaches of between 10 and 1,100 MT. MBIE arrived at an FOB value of EUR 0.90/kg which was converted to NZD using an average exchange rate for 2019 from www.ofx.com to arrive at an FOB value of NZD 1.53.

242. MBIE added to this amount estimated costs between FOB and ex-wharf for overseas freight, insurance, clearance costs and customs duty of 5 per cent. Overseas freight and insurance was estimated using the difference between CIF and VFD of imports under tariff item 2008.70.09. Clearance costs were taken from HWL's 2014 application for the review of anti-dumping duties on Greek peaches.

243. MBIE found that the estimated likely ex-wharf value per kilogram of Greek canned peaches significantly undercut the ex-factory price of HWL's Oak brand.

244. MBIE has also compared the likely ex-wharf price for Greek canned peaches with the weighted average ex-wharf prices in 2019 for canned peaches from South Africa, China, Australia and Spain. The likely ex-wharf value for canned peaches from Greece is significantly lower than ex-wharf values for canned peaches from all of the other sources, even without applying anti-dumping duty to imports from South Africa and Spain. The average ex-wharf value per kilogram is lowest for Greece, followed by Spain and then China and South Africa.

245. MBIE concludes that Greek canned peaches hold a significant price advantage over New Zealand peaches and peaches from other countries supplying the New Zealand market.

Capacity and intent of the Greek industry

246. HWL claimed that "the threat of injury exists if existing anti-dumping duties are removed due to the high capacity of the Greek canned peach industry and current global economic pressures being placed upon this industry meaning inventory will be available and the reasonable expectation that cost savings from the removal of the duty would be passed on."

247. HWL considers that "[t]he current global canned peach situation has placed an increasing amount of pressure on the Greek industry." HWL refers to two key actions which it considers would lead to "surplus capacity for Greek producers and readily available stocks for importers into New Zealand." These two actions are the 2014 Russian trade embargo, which HWL claims "prevents Greece exporting canned peaches to Russia", and the 2019 increased tariffs into the United States.

248. MBIE received no comments on these matters from Greek suppliers or interested parties.

249. In section 4.4.4 above MBIE referred to these two actions, noting that Greece exports more than 99 per cent of the canned peaches it produces.

Russian import restrictions

250. On 7 August 2014, the Russian Federation introduced import restrictions on a range of EU agricultural products, notably meats, dairy products, and fruit and vegetables. The ban was set to run until 31 December 2019[31] but was extended to the end of 2020.[32]

251. MBIE understands from its review of preserved peaches from Spain, that the Russian import restrictions impacted on the supply of fresh peaches from the EU, whereas HWL claims that the Russian action "prevents Greece exporting canned peaches to Russia". MBIE also notes that Greek export data for preserved peaches of HS200708 show that there was no decline in export volumes to the Russian Federation between 2014 to 2015 and since then exports have declined to about 80 percent of their volume in 2014, but are still significant.

United States import tariffs

252. As noted in section 4.4.4 above, United States import tariffs on Greek canned peaches were increased on 18 October 2019 by an additional 25 per cent to 43 per cent. MBIE referred in section 4.4.4 to information indicating that sales had been affected and producers consequently had excess supply, particularly of 3 kilogram cans "which cannot be sold in Europe, Asia or Latin America where 1-kg tins are dispatched." While export data available to MBIE does not yet show the extent of any impact on Greek sales to the United States, the information available indicates that there is excess supply seeking markets.

253. MBIE concludes that there is likely to be increased availability of canned peaches from Greece caused by loss of sales due to United States' trade measures and that prices to export markets may experience downwards pressure as a result of the excess supply.

Capacity and intent of the Greek industry

254. In its application, HWL noted its understanding that "many of the importers and exporters previously and currently involved in importing preserved peaches to New Zealand remain active. If anti-dumping duties were removed it is almost without question that these parties would be able to use the unfair advantage of dumped prices to increase imports of canned peaches into New Zealand from Greece."

255. MBIE has not been provided with capacity figures for the Greek industry. MBIE notes however that exports for Greece under HS200870 have ranged between 213,481 and 262,330 MT between 2014 and 2019, with the highest volume in 2019. During that same period, New Zealand imported between 2,646 and 3,212 MT of the subject goods from various source countries.

[31] https://ec.europa.eu/agriculture/russian-import-ban_en

[32] https://www.freshfruitportal.com/news/2019/06/25/russia-extends-eu-food-import-ban-until-end-of-2020/

256. While MBIE has no information on the intent of the Greek industry to export to New Zealand, it is clear that the Greek industry has the capacity to supply the New Zealand market.

Conclusion

257. The New Zealand market for processed peaches is not large compared to many other international markets. This fact, in itself, suggests that the Greek producers would not find it difficult to supply the New Zealand market with sufficient product at short notice if the demand arises.

258. From the information available on the production capacity of the Greek canned peach industry, MBIE concludes that there is sufficient capacity for Greek exporters to supply canned peaches to New Zealand.

Ease of entry into the New Zealand market

259. In its application, HWL notes that "the New Zealand wholesale market for the supply of preserved peaches to distributors and retailers is highly competitive. There are no long-term supply contracts in place for customers and house brand supply contracts are up for constant tender. All supermarkets stock brands of preserved peaches other than those supplied from HWL. HWL therefore has no exclusive customers with the market always open to new sources of supply."

260. MBIE is satisfied that the canned peach market in New Zealand is highly competitive, noting that HWL does not have any exclusive customers, and the market is always open to new sources of supply. MBIE has concluded in previous investigations and reviews into preserved peaches that barriers to entry to the New Zealand market are extremely low and that distribution systems are available. House brand customers are able to terminate contracts and switch suppliers at short notice, and brokers have the ability to source subject goods from anywhere in the world to take advantage of market opportunities.

261. MBIE also notes that while the applied Customs rate of duty on imports from Greece is 5 per cent, the availability of preferential rates at Free, means that for many other potential sources of the subject goods there is no tariff protection.

262. MBIE continues to conclude that there is easy entrance to the New Zealand market.

The ability and intent of importers to manage an increase in imports

263. Currently, the bulk of imports into New Zealand are made by the supermarket chains and HWL. Imports by the supermarket chains are for private label lines, which HWL no longer supplies.

264. Any increase in imports of private label brands by supermarkets from Greece would be affected by the size of the Greek peach crop and the consequent availability of product, the prices that could be negotiated in the context of international prices, and trends in the size of the New Zealand market.

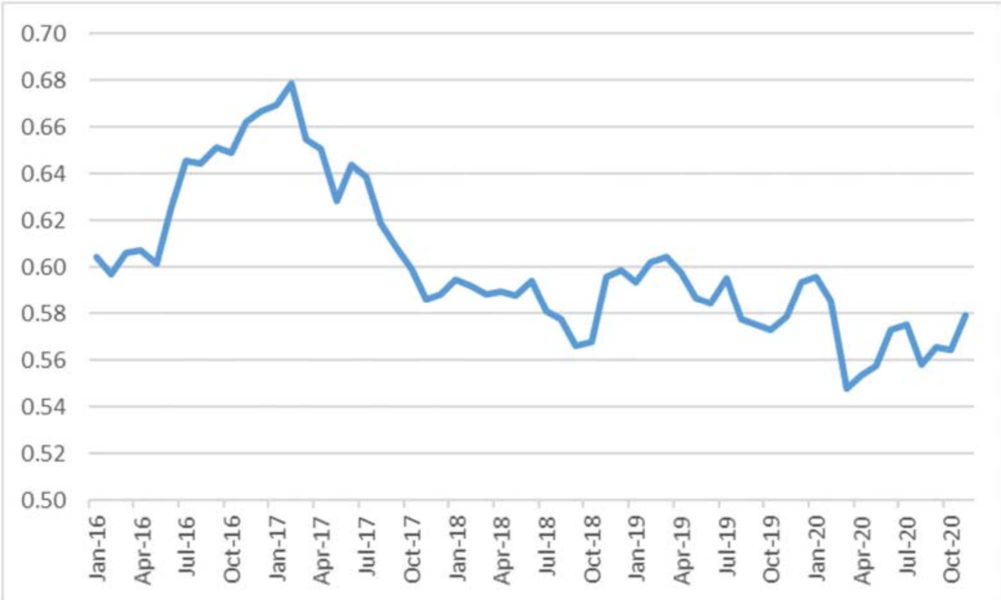
265. MBIE considers that importers have systems and relationships in place to manage any increase in imports.

Exchange rates

266. A further consideration in assessing the likelihood of an increase in import volumes of the subject goods from Greece is the movement of the NZD against the EUR, which is the currency in which imports from Greece have been mainly invoiced over the years.

267. MBIE has analysed the change in the NZD:EUR exchange rate from 2016 to 2019. Chart 5.2 below shows the change in the value of the NZD against the EUR over this period.

Figure 5.2: NZD:EUR Average monthly exchange rate



268. The information shows that there was an appreciation of the NZD against the EUR in 2016, suggesting that conditions were more favourable for importers looking to source goods from Europe, including Greece. However, since the beginning of 2017 there has been a depreciation of the NZD against the EUR to a level lower than that at the beginning of 2016. MBIE considers that this relatively small change in the value of the NZD against the EUR is unlikely to affect purchasing decisions.

Evidence from previous behaviour

269. Anti-dumping duties have been in place since 1998 on imports of canned peaches from Greece and there have been minimal imports between 2007 and 2018, which indicates that importers have ceased sourcing from Greece due to the anti-dumping duties.

270. Significant volumes of imports of canned peaches from Greece occurred in 2005 and to a lesser extent in 2006, but a large proportion of these were imports by HWL. Prior to that period, in December 2003, anti-dumping duties had been reassessed and imposed using reference price levels.

271. In the review of anti-dumping duties on canned peaches from Spain, the evidence of past import volumes indicated that when duties are removed, imports increase, and when duties are imposed, imports decrease. MBIE considers that the same would apply in the case of canned peaches from Greece.

272. MBIE observes that the highly competitive nature of the New Zealand market indicates that pricing is a key consideration for importers. Given the competitive pricing of imports from Greece in relation to New Zealand product and imports from other sources, MBIE considers that in the absence of anti-dumping duties importers will likely revert to importing significant volumes of canned peaches from Greece.

5.4.3 Conclusion on Import Volumes

273. In the presence of anti-dumping duties, import volumes have been minimal since 2006. In respect of the likely import volumes of preserved peaches from Greece, if the anti-dumping duties are not in place, MBIE concludes that:

- Likely prices for imports from Greece will hold a significant price advantage over the New Zealand industry’s prices and prices for imports from other sources.
- Greek suppliers have sufficient capacity to supply the New Zealand market and there are indications of excess supply due to United States’ import tariffs.
- There is continued ease of entry into the New Zealand market for imports of canned peaches from Greece and there are available distribution systems that could be used should imports from Greece resume in increased quantities.
- New Zealand importers have systems and relationships in place to manage any increase in imports.
- There has been a recent small depreciation of the NZD against the EUR which is unlikely to affect purchasing decisions.
- Previous behaviour, and the competitive pricing of canned peaches from Greece, indicates that in the absence of anti-dumping duties importers will likely revert to importing significant volumes of canned peaches from Greece.

5.5 Price Effects

274. Section 8(1)(b) of the Act provides that the chief executive shall examine the effect of the dumped goods on prices in New Zealand for like goods. Section 8(2) of the Act goes on to identify price undercutting, price depression and price suppression as matters the chief executive shall have regard to.

275. MBIE notes that when considering a review of anti-dumping duties that are already in place, consideration needs to be given to the likely price effects in the absence of anti-dumping duties.

5.5.1 Price Undercutting

276. The purpose of the price undercutting comparison is to establish whether or not there is price undercutting attributable to dumping. The determination that price undercutting exists is not by itself a determination of the extent of injury, that is, the margin of price undercutting is not a measure of the extent of the economic impact on the industry. Any impact is measured in terms of the factors and indices set out in section 8(2)(d) of the Act.

277. 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.

278. MBIE will normally seek to compare prices at the first point of competition in New Zealand, i.e. the first point of sale in the New Zealand market. This will normally be at the ex-factory and ex-wharf or ex-importer's store levels, to ensure that differences in distribution costs and margins do not confuse the impact of dumping.

279. For the purposes of establishing price undercutting margins, MBIE has calculated the weighted average ex-wharf prices for imports over the calendar year 2019, which were all for 3 kilogram cans exported from Australia. MBIE first calculated the weighted average of the values for duty, which MBIE took as equivalent to FOB in Australia, which were converted from AUD to NZD using exchange rates for the estimated date of each transaction from www.ofx.com.

280. MBIE added to this amount estimated costs between FOB and ex-wharf for overseas freight, insurance, clearance costs and customs duty of 5 per cent. Overseas freight and insurance was estimated using the difference between CIF and VFD of imports from Australia to New Zealand under tariff item 2008.70.09. HWL did not provide estimated clearance costs in its application, so these costs were taken from HWL's 2014 application for the review of anti-dumping duties on Greek peaches.

281. MBIE found that the ex-wharf value of Greek peaches significantly undercut the ex-factory price of HWL's Oak brand in 2019.

282. The analysis in 5.4.2 above on the price advantage of Greek imports, shows that future imports of canned peaches from Greece are likely to undercut HWL's prices significantly if imports resume in the absence of anti-dumping duties.

5.5.2 Price Depression

283. 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.

284. Price depression caused by dumping occurs when prices in a market affected by dumping are, as a result of the dumping, lower than those in the same market unaffected by dumping, and refers to reductions in prices by domestic producers in order to deal with competition from dumped goods.

285. In an investigation, price depression is usually calculated by comparing the price in a market affected by dumping to the price in the same market before the dumping occurred. In a sunset review, an assessment needs to be made of whether the removal of anti-dumping duties will likely result in price depression caused by dumping.

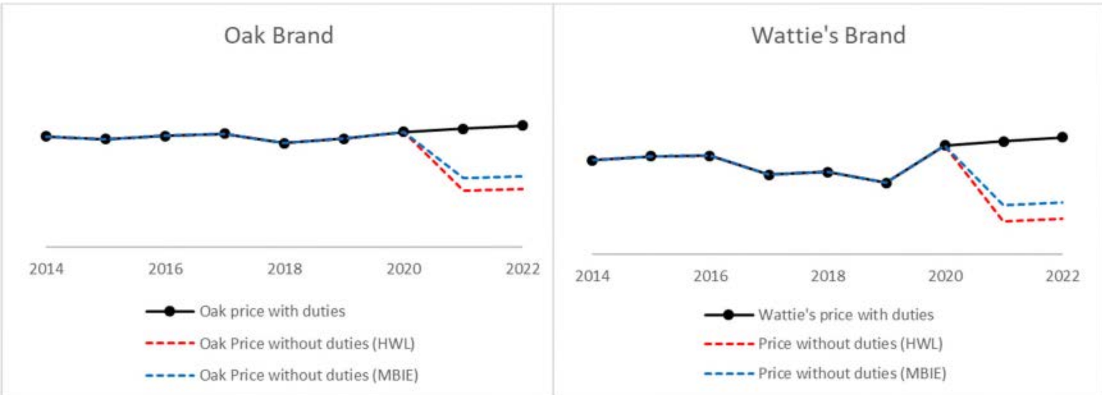
Likely impact of the removal of anti-dumping duties

286. In its application HWL set out its pricing strategy and the effect on prices for both the Wattie's and Oak brands when dumped imports enter the market. HWL argued that in the absence of anti-dumping duties importers and retailers would be able to command retail price points well below NZD 1.00 per unit, for a 410g can of preserved peaches. At this price point, HWL would face a clear and imminent threat of having to decrease wholesale prices to customers. HWL suggested that on the basis of TradeData information for the past 12 months globally, with added insurance and freight, retailers could even sell a 410g can at 79 cents and make a profit. This magnitude of price undercutting would lead to price depression.

287. MBIE has assessed the data provided by HWL but has included in the analysis the level of price undercutting it has established for Greek imports when compared with Oak brand goods. The charts below detail HWL's historical selling prices between 2014 and 2020 and its forecast selling price, in the absence of duties, for 2021 and 2022. The charts also detail what MBIE has calculated HWL's forecast selling price will likely be, in the absence of anti-dumping duties, over the 2021-2022 period.

Figure 5.3: Price Depression
(Ave price per kg)

[Y axis values withheld, X axis does not cross at 0, gridlines deleted, in order to protect the confidentiality of information where making the information available would have a significantly adverse effect on the submitter of confidential information]



288. The data shows that Oak prices were reasonably stable for 2014-2017 but declined in 2018. Prices recovered in 2019 and 2020 and are projected to remain strong in 2021 and 2022, if the anti-dumping duties continue, on the basis of current undercutting levels. Prices of Wattie's brand goods have declined since 2014-15, but increased in 2020, and are projected to remain strong, if the duties continue. Prices of both Oak and Watties brand are projected to decrease sharply, if the duties expire, based on the level of undercutting that has been projected by HWL and MBIE, although the extent of the price depression forecasted by MBIE is not as severe as that projected by HWL.

5.5.3 Price Suppression

289. 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.

290. Price suppression occurs when price increases for the domestic product that would otherwise have occurred are prevented due to dumped imports. Such price increases could be in response to increases in costs, or changes in supply or demand of a product.

291. Cost increases that are not able to be recovered by price increases will be reflected in an increased ratio of costs to sales revenue. Where cost savings have been made, the lack of any price increase will not normally be regarded as price suppression.

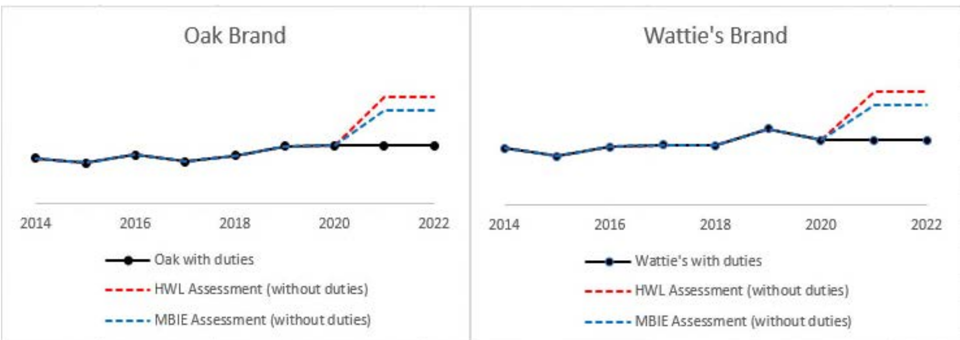
Likely impact of the removal of anti-dumping duties

292. In its application, HWL argued that the effects of dumped canned peaches from Greece would be price suppression as HWL would be unable to offset price undercutting by cost savings and price increases elsewhere. HWL suggested that the dumped imports would cause cost increases as increased market share taken by dumped imports would lead to increased processing costs per tonne that could not be recovered.

293. MBIE has assessed the data provided by HWL but has included in the analysis the level of price undercutting it has established for Greek imports compared with Oak brand goods. As noted above, MBIE has used information sourced from exporters and importers to calculate what it considers is a more accurate level of price undercutting, in the absence of anti-dumping duties, and has used this information to gauge if, and to what extent, HWL would likely suffer price suppression in the absence of anti-dumping duties.

294. The charts below detail HWL's historical production costs as a percentage of revenue between 2014 - 2020 and its forecast figures for 2021 and 2022, in the absence of duties. The charts also detail what MBIE has calculated HWL's likely production costs as a percentage of revenue to be, in the absence of anti-dumping duties, for 2021 and 2022.

Figure 5.4: Price Suppression
(Production costs as % of revenue)
[Y axis values deleted, X axis does not cross at 0, gridlines deleted, in order to protect the confidentiality of information where making the information available would have a significantly adverse effect on the submitter of confidential information]



295. The data shows that Oak costs as a proportion of revenue were reasonably stable from 2014-2020 and are projected to remain stable in 2021 and 2022, if the anti-dumping duties continue. Wattie's brand costs as a proportion of revenue increased from 2014-19, but decreased in 2020. They are projected to remain static, if the duties continue. Costs as a proportion of revenue for both Oak and Wattie's brands are projected to increase sharply, if the duties expire, based on the level of undercutting that has been projected by HWL and MBIE, although the extent of the price suppression forecasted by MBIE is not as severe as that projected by HWL. The graphs above clearly demonstrate the price suppression effect of the price undercutting in that HWL will not be able to recover increases in costs for both the Oak and Wattie's brands.

5.5.4 Conclusion on Price Effects

296. In considering the effect of the dumped goods on prices in New Zealand for like goods, MBIE has established that:

- Without anti-dumping duties in place, there would be significant price undercutting;
- In the absence of effective anti-dumping duties, prices for domestic like goods are likely to decline significantly in response to price decreases of the imported goods.
- If anti-dumping duties are not continued at levels that remove the effect of price undercutting, it is likely that there will be price suppression in that HWL will not be able to recover increases in costs.

297. MBIE's overall conclusion regarding price effects is that the continued dumping of the subject goods from Greece is likely to result in continued price undercutting, with consequent price depression and price suppression.

5.6 Economic Impact

298. 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—

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

5.6.1 Output

299. The Act requires that impacts on output be considered as an injury factor. Dumped imports can affect the industry's production volume through increased supply of goods to the market through price competition.

300. HWL's output is dependent on the size and quality of the peach crop and its contracts with growers. HWL processes the entire raw peach crop available each year from its contracted growers.

Likely impact of the removal of anti-dumping duties

301. In light of HWL's contractual obligations its output over the next few years is unlikely to be affected by the presence of the subject goods on the market. In its forecasts of the effects of dumping, HWL has maintained output at constant levels for 2021 and 2022.

302. In the circumstances outlined, MBIE considers that output is unlikely to be a useful indicator of the likelihood of injury attributable to dumped goods.

5.6.2 Sales Volume and Revenue

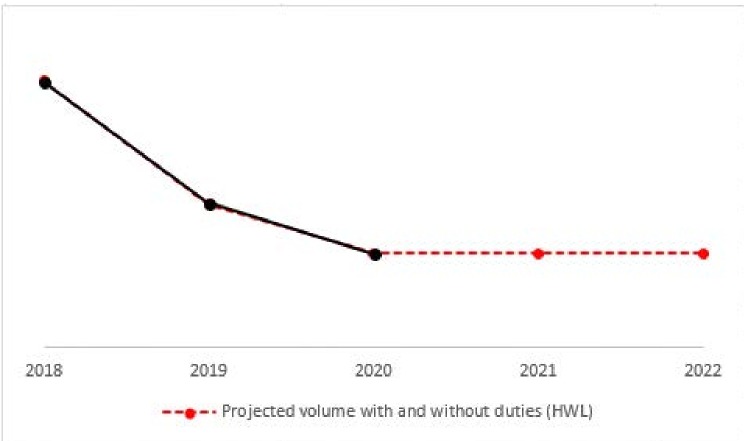
303. The Act requires that impacts on sales be considered as an injury factor. Movements in sales revenue reflect changes in volumes and prices of goods sold. Dumped imports can affect both of these factors through increased supply of goods to the market and through price competition.

Sales Volume

304. The following chart shows HWL's historical sales volumes of canned peaches from 2018 – 2020 and forecast sales volumes for 2021 and 2022 both with anti-dumping duties imposed and in the absence of anti-dumping duties. The figures exclude imports by HWL in order to reflect sales of only domestic production.

Figure 5.5: Domestic Sales Volume

[Y axis values deleted, X axis does not cross at 0, gridlines deleted, in order to protect the confidentiality of information where making the information available would have a significantly adverse effect on the submitter of confidential information]



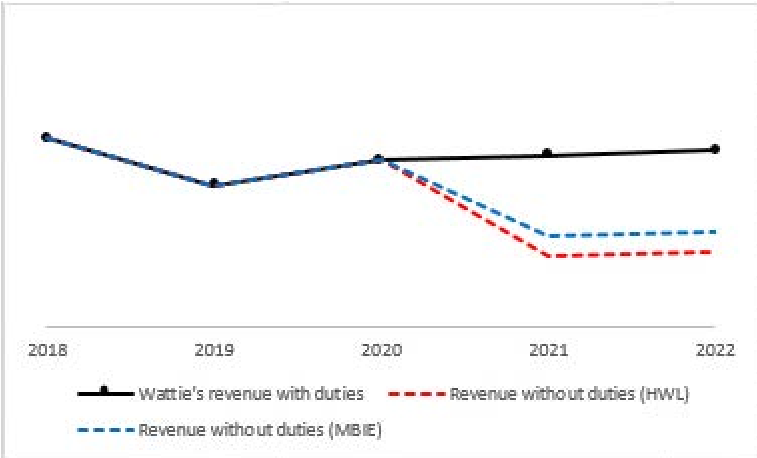
305. The data shows that sales decreased in 2019 and in 2020 but are projected to remain steady in 2021 and 2022, both if the anti-dumping duties continue, and if they are removed. This reflects HWL's application which indicates that to combat the dumped Greek imports it would have to decrease its prices in order to maintain its sales volume and market share.

Sales Revenue

306. The following chart shows HWL's historical sales volume of canned peaches from 2018-2020 and forecast sales revenue for 2021 and 2022 both with anti-dumping duties imposed and in the absence of anti-dumping duties. The figures exclude imports by HWL in order to reflect sales of domestic production.

Figure 5.6: Domestic Sales Revenue

[Y axis values deleted, X axis does not cross at 0, gridlines deleted, in order to protect the confidentiality of information where making the information available would have a significantly adverse effect on the submitter of confidential information]



307. The data shows that sales revenue decreased in 2019 but recovered in 2020 and is projected to remain steady in 2021 and 2022 if the anti-dumping duties continue. However, if the duties are removed, HWL has projected that sales revenue will decrease significantly in 2021 and remain at that lower level in 2022, which reflects HWL's application which indicates that to combat the dumped Greek imports it would have to decrease its prices.

308. The chart also details what MBIE has calculated HWL's forecast sales revenue will likely be, in the absence of anti-dumping duties, over the 2021-2022 period. MBIE has forecast that sales revenue amounts will decrease sharply, if the duties expire, based on the level of undercutting that has been projected by MBIE. The extent of the decreased sales revenue forecasted by MBIE is not as severe as that projected by HWL which reflects the lower level of projected undercutting that MBIE has calculated. MBIE has used all available information to calculate what it considers is a more accurate level of price undercutting than that calculated by HWL, in the absence of anti-dumping duties.

5.6.3 Market Share

309. The Act requires that impact on market share be considered as an injury factor. 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.

310. HWL advised in previous canned peaches' investigations and reviews that the preserved peach market in New Zealand is a mature market meaning demand is reasonably static. The market is not segmented by grade as in some overseas markets where consumers demand that the labels show the grade of the peaches. HWL cited evidence from previous investigations where it had been shown that the entry of dumped peaches into the New Zealand market had resulted in a loss of market share for HWL branded peaches. Evidence presented in the 2006 Chinese and 2011 Spanish investigations was identified, in which imports had grown to significant shares in particular customers in specific locations over a short period. The volumes involved were in the region of 100-300 tonnes.

311. The evolution of the market in recent years indicates that the size of the New Zealand market for canned and preserved peaches remains steady and that there has been no actual decline in the market share held by the New Zealand industry over the period indicated.

Likely impact of the removal of anti-dumping duties

312. While there may have been no actual decline in market share, MBIE must consider what the situation might be if anti-dumping duties are removed. In this context, HWL stated that its market share (gauged through a moving annual total – MAT) has remained relatively stable for the last four years. With duties in place, its expectations are that its market share would continue to hold if, as indicated in its application, HWL were to compete with the lower-priced imports on price. HWL did not provide any other information relating to market share other than to say that it could to some extent increase its volume market share by cutting prices. But this would not necessarily increase its value market share (and on-going would make it harder to put prices up again).

313. MBIE notes that in addition to the current full review of canned peaches from Greece, a reconsideration of the dumping of preserved peaches from Spain, a reconsideration of the dumping of preserved peaches from China and a full review of canned peaches from South Africa were recently completed. The South African review and Spanish reconsideration resulted in reassessed anti-dumping duties imposed while the Chinese reconsideration resulted in the termination of anti-dumping duties on imports from China. In this context, it is difficult to draw any definitive conclusions for market share. However, MBIE has concluded above that the removal of anti-dumping duties is not likely to see a significant decrease in domestic sales by HWL if, as indicated in its application, the company were to compete with dumped imports on price in order to maintain production volumes and sales and prevent increases in imports.

314. MBIE concludes that on the basis of its assessment of likely volumes of imports from Greece, and on its assessment of projected domestic sales volumes, it is not likely that

there will be any significant effect on HWL's market share if anti-dumping duties are not continued, at least in the foreseeable future.

5.6.4 Profits

315. The Act requires that impacts on profits be considered as an injury factor. Dumped imports can affect gross profit and net profit via the impact on sales prices and volumes. Changes in net profit reflect changes in prices, sales volumes or costs. Dumped imports can impact on any or all of these.

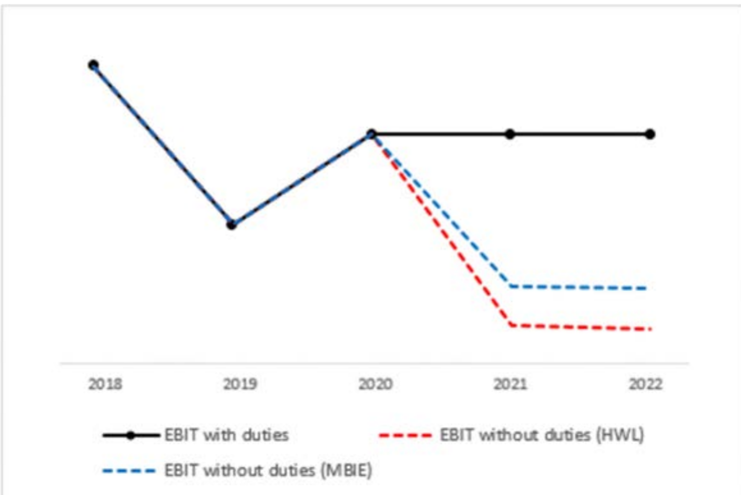
Likely impact of the removal of anti-dumping duties

316. In its application HWL noted that the forecast decrease in sales revenue, coupled with the need to incur more trade marketing activity to protect its market share, would directly impact profit. The company claimed that this loss of sales revenue, resulting from decreased prices and increased trade marketing activity, will pass to HWL's profit line and directly impact its profit. Forecasts of the impact on EBIT were provided by HWL, indicating that in the absence of anti-dumping duties there would be significant reductions in EBIT.

317. The following chart shows HWL's historical EBIT on sales of its Oak and Wattie's brands combined from 2018 – 2020 and its forecast EBIT levels for 2021 and 2022 both with anti-dumping duties imposed and in the absence of anti-dumping duties. The figures exclude imports by HWL in order to reflect EBIT levels for domestic production. MBIE has made its own assessment on EBIT levels on the basis of the price undercutting calculations that it has established through sourcing price information from the exporters and importers during the investigation.

Figure 5.7: Domestic Industry's EBIT

[Y axis values deleted, X axis does not cross at 0, gridlines deleted, in order to protect the confidentiality of information where making the information available would have a significantly adverse effect on the submitter of confidential information]



318. The data shows that EBIT decreased in 2019 but recovered in 2020 but not to the levels achieved in 2018. EBIT levels are projected to remain steady in 2021 and 2022 if the anti-

dumping duties continue. However, if the duties are removed, HWL has projected EBIT levels to decrease significantly in 2021 and 2022 which reflects HWL's application indicating that the company would have to decrease prices to combat the dumped Greek imports.

319. The chart also details what MBIE has calculated HWL's EBIT levels will likely be, in the absence of anti-dumping duties, over the 2021-2022 period. MBIE has forecast EBIT levels to decrease sharply, if the duties expire, based on the level of undercutting that has been projected by MBIE. The extent of the EBIT declines forecasted by MBIE is not as severe as that projected by HWL which reflects the lower level of projected undercutting that MBIE has calculated. MBIE has used information sourced from exporters and importers to calculate what it considers is a more accurate level of price undercutting than that calculated by HWL, in the absence of anti-dumping duties.

5.6.5 Productivity

320. The Act requires that impacts on productivity be considered as an injury factor. Productivity is the relationship between the output of goods and the input of resources used to produce them. Changes in productivity are affected by output levels and by the level of production capacity utilisation.

321. In past canned peach investigations and reviews, MBIE has concluded that HWL's productivity is not directly affected by whether anti-dumping duties are in place, or not at least in the short term. Any measure of productivity is mainly affected by the level of seasonal labour employed when the crop needs processing, so total labour costs are variable, depending on the total size of the crop, the size of the fruit, yield and factory efficiency in processing.

Likely impact of the removal of anti-dumping duties

322. In its review application, HWL noted that currently imports of preserved peaches from Greece would appear not to be having an injurious effect on HWL's productivity because anti-dumping duties are in place or because current imports fall outside the subject goods definition. HWL noted that it has commitments to contracted growers to take their crop for 2021 and 2022. The company noted that, should the anti-dumping duties be removed and the dumped import pricing be passed on to the consumer, there would be an injurious effect on the New Zealand industry and it would need to consider whether all or none of the crop would be processed.

323. MBIE considers that production volume depends on the total size of the crop, yield and finished tonnage. As this causes production volume to vary, productivity is not a particularly useful factor in this case when assessing injury caused by dumped imports.

5.6.6 Return on Investments

324. The Act requires that impacts on the return on investments be considered as an injury factor. Return on investments (ROI) measures profit against the value of the investment in a business. Movements in the ROI affect the ability of the industry to retain and attract new investment. Declines in ROI can result from a decline in profit or an increase in the

level of investment within the business. ROI is normally expressed as EBIT as a percentage of assets or shareholders' funds employed in the production of like goods.

325. HWL produces a range of seasonal and non-seasonal fruit and vegetable products that use its production plant. HWL's position in previous reviews is that it is difficult to provide any meaningful information on the return on investments that is specific to canned peaches, which take up a very small share of the total production capacity.

Likely impact of the removal of anti-dumping duties

326. HWL has indicated that the main impact on the return on investments is through the impact of the removal of anti-dumping duties on EBIT. Returns would diminish accordingly, with other flow-on effects, including for the return on investments. In the current review, HWL provided projected EBIT figures for 2021 and 2022 both with and without anti-dumping duties, to highlight its claim that there would be declines in EBIT if the duties were removed. HWL forecasts that returns on investments would diminish if anti-dumping duties are not in place in line with the company's projected declines in EBIT over 2021 and 2022.

327. MBIE concludes that, with anti-dumping duties currently in place, there is no evidence that the rate of return on investments has been adversely affected by dumped imports of Greek canned peaches over the POR(I). However, MBIE concludes that, should duties not be in place, and should there be a resumption of dumped imports, there would likely be a decline in the rate of return on investments corresponding with the decline in EBIT.

5.6.7 Utilisation of Production Capacity

328. The Act requires that impacts on utilisation of production capacity be considered as an injury factor. 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 due to increased fixed overheads per unit, and a consequent loss of profit, unless offsetting savings are found elsewhere.

329. HWL's production capacity for canned peaches is constrained by the size of the crop that its contracted orchardists can deliver.

330. In previous canned peach investigations and reviews, MBIE has taken the view that production capacity is not a useful measure of injury, given that capacity utilisation is dependent on other factors, including the quantity of raw peaches available, competition for parts of the canning line which are common to other fruit and vegetable products, and the storage life of the raw fruit.

Likely impact of the removal of anti-dumping duties

331. The impact of dumped imports on the utilisation of production capacity will depend on the extent to which increases in such imports reduce throughput in the New Zealand industry. MBIE does not consider it to be a useful measure in this case, since the level of production is dependent on factors such as the supply of raw peaches, and will be maintained at that level.

5.6.8 Factors Affecting Domestic Prices

332. The Act requires that factors affecting domestic prices are considered when assessing the economic impact of dumped goods on the industry. MBIE examines this factor in the context of its assessment of the economic impact of dumped goods on the industry.

333. In its application, HWL did not provide specific comments on this factor. In previous canned and preserved peaches investigations and reviews, HWL noted that the main influence is from retailers, since competition between retailers wanting to increase profits and gain customers was the main driver of prices. Any dumped canned peaches or indeed lower priced canned fruit would have a direct effect on prices achieved by HWL.

334. MBIE concludes that dumping of the subject goods would likely, in the absence of anti-dumping duties, lower domestic prices including HWL's prices.

5.6.9 Magnitude of the Margin of Dumping

335. The Act and the AD Agreement require that the impact of the magnitude of the margin of dumping be considered as an injury factor. 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.

336. For the POR(D), MBIE has found a dumping margin of 107 per cent for 3 kilogram cans, which were the only can sizes imported during that period, with a margin of price undercutting at a lower level.

Likely impact of the removal of anti-dumping duties

337. The analysis of the likelihood of a continuation or recurrence of dumping is set out in section 4.4, with the conclusion that in the absence of anti-dumping duties dumping will continue with likely dumping margins of 12 per cent for can sizes over 1 kilogram and 119 per cent for can sizes not exceeding 1 kilogram.

338. MBIE's analysis of the price effects of the dumping, set out in section 5.5, is that the continued dumping of subject goods from Greece, in the absence of anti-dumping duties, will provide a significant price advantage over the New Zealand industry's prices which will likely result in continued price undercutting, with consequent price depression and price suppression.

339. The effect of the magnitude of the margin of dumping is that it permits price undercutting of like goods produced by the domestic industry. The level of price undercutting in this case is less than the margin of dumping. Nevertheless, the magnitude of the margin of dumping contributes to the injurious effect of the dumped goods.

340. MBIE concludes that, if anti-dumping duties are removed, the magnitude of the margin of dumping will contribute to the injurious effects of the dumped goods.

5.6.10 Cash Flow

341. Cash flow is the total amount of money being transferred into and out of a business, especially as it affects liquidity, and provides an indication of the ability of producers to self-finance their activities.

342. In its application, HWL claimed that the removal of duties would have a significant adverse effect on its cash flow.

343. MBIE considers that, in the absence of anti-dumping duties, the likely adverse impact on sales revenue and EBIT outlined above is likely to have a negative effect on cash flow.

5.6.11 Inventories

344. In previous peach investigations and reviews, HWL noted that its commitments to purchase the peach crop require it to maintain a raw material inventory. In its application, HWL claimed that the removal of duties would have a significant adverse effect on its inventories, in particular lowering the value of its raw material inventory.

345. As indicated by HWL in previous cases, canning of peaches over a relatively short period once a year means that inventory is at its peak soon after production and then declines as inventory is sold down over the next 12 months.

346. MBIE considers that, because of the way HWL manages its inventory level, the amount of inventories on hand is not a good indication of injury.

5.6.12 Employment and wages

347. In its application, HWL claimed that the removal of duties would have a significant adverse effect on its employment. In previous canned peach investigations and reviews it was noted that HWL employs seasonal staff on an “as required” basis, and that year-on-year the number required depends on the volume of peaches to be processed. Employee and wage rate data provided by HWL indicate that production volume per employee and average annual wage rates have steadily increased over time.

348. In the absence of anti-dumping duties, if HWL were to decrease its prices when competing with dumped imports, as indicated in its application, in order to maintain its sales volume and market share, and given that the company processes the entire peach crop available from its contracted growers each year, MBIE considers that it is unlikely that there could be any adverse effects on employment and wages directly relating to the production of canned peaches, at least in the short term. In effect, HWL’s employment and wage level does not appear to be a good indication of injury.

5.6.13 Growth

349. In its application, HWL claimed that the removal of duties would have a significant adverse effect on growth.

350. MBIE considers that any detrimental effects on growth would be reflected in other injury indicators such as sales, EBIT and return on investment. As noted in sections 5.6 above,

MBIE considers that these factors are likely to be adversely affected if anti-dumping duties are not continued.

5.6.14 Ability to Raise Capital and Investments

351. HWL did not provide any information or comment on its ability to raise capital and investments. In the Spanish peaches reconsideration, HWL noted that its ability to raise capital and make investments was dependent on the restoration or continuation of anti-dumping duties in the various proceedings involving preserved peaches.

352. MBIE considers that the likely impact on HWL's sales, profits and return on investment, if the duties are removed, could be expected to impact on HWL's ability to raise capital and its investment in plant for processing canned peaches. At the same time, MBIE notes that HWL produces a range of seasonal and non-seasonal fruit and vegetable products that use its production plant, so it is difficult to reach any meaningful conclusion on capital requirements and investments that is specific to canned peaches, particularly since they take up a very small share of the total production capacity.

353. MBIE has reached no conclusions on these factors.

5.7 Other Causes of Injury

354. Section 8(2)(e) of the Act provides that the chief executive shall have regard to factors other than the dumped goods which have injured, or are injuring, the industry, including—

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

355. The chief executive is also required by section 8(2)(f) of the Act to have regard to the nature and extent of importations of dumped goods by New Zealand producers of like goods, including the value, quantity, frequency, and purpose of any such importation.

356. Article 3.5 of the AD Agreement provides as follows:

> *It must be demonstrated that the dumped imports are, through the effects of dumping, as set forth in paragraphs 2 and 4, causing injury within the meaning of this Agreement. The demonstration of a causal relationship between the dumped imports and the injury to the domestic industry shall be based on an examination of all relevant evidence before the authorities. The authorities shall also examine any known factors other than the dumped imports which at the same time are injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the dumped imports. Factors which may be relevant in this respect include,* inter alia*, the volume and prices of imports not sold at dumping prices, contraction in demand or changes in the patterns of consumption, trade restrictive*

practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry.

357. MBIE assesses below the information available on factors other than the dumped goods that have injured or may injure the industry.

5.7.1 Imports from other sources

358. Imports that are not dumped also have the potential to cause injury to the New Zealand industry.

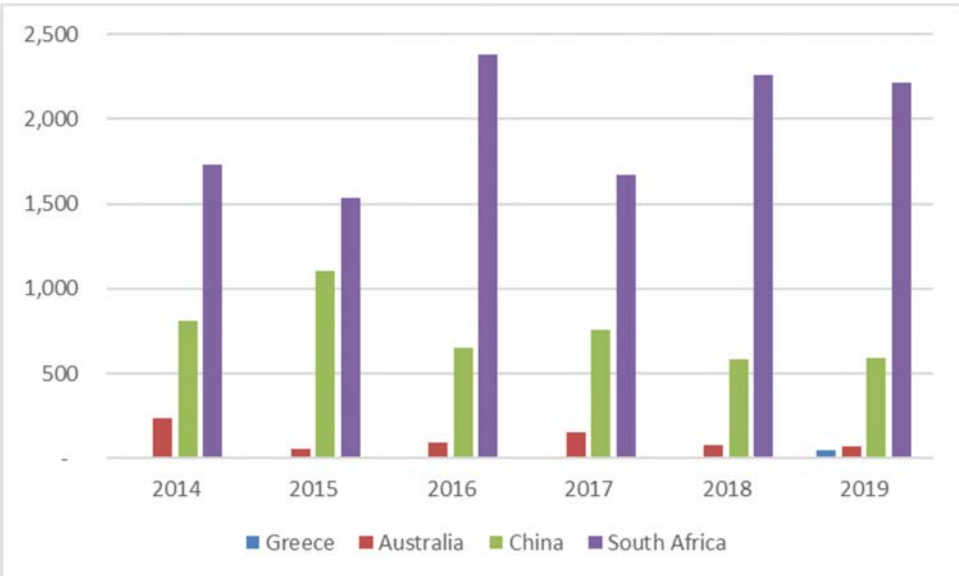
359. In its application, HWL states that it "is not aware of any material injury being caused through fairly traded competitor branded products."

360. Anti-dumping duties currently apply to imports from Greece and Spain, and some imports from South Africa.

361. MBIE used Customs data to analyse the levels of imports from the main supplying countries and other sources for all of the subject goods. Figure 2.2. above shows the import volumes from 2014-2019. The data shows that imports in order of volume were primarily from South Africa and China, with smaller volumes from Australia, and much smaller volumes from Spain and Greece.

362. Figure 5.8 charts the trends in import volumes from South Africa, China, Australia and Greece and shows that since 2014 South Africa has been the main supplier of canned peaches with its exports to New Zealand increasing overall, while exports from China and Australia have declined overall.

Figure 5.8: Import Volumes (MT)



363. As explained in section 5.4.2 above, MBIE compared the likely ex-wharf price for Greek canned peaches with the weighted average ex-wharf prices in 2019 for canned peaches from South Africa, China, Australia and Spain. MBIE noted that the average ex-wharf

value per kilogram is lowest for Greece, followed by Spain and then China and South Africa.

364. The ex-wharf values of imports from South Africa, China and Spain are all lower than the ex-factory value for Oak brand peaches produced by HWL, while the value for imports from Australia is higher.

365. MBIE notes that anti-dumping duties apply to imports of canned peaches from South Africa (except for one major exporter) and imports of preserved peaches from Spain (except for one exporter) and were applied at the full margins of dumping. MBIE has added current anti-dumping duties to the ex-wharf values to estimate landed prices for exports from South Africa and Spain.

366. MBIE's analysis shows that estimated landed ex-wharf prices per kilogram for canned peaches from China and for some imports from South Africa and Spain are significantly lower than the ex-factory price for HWL's Oak brand. MBIE notes that only 20 per cent of imports of canned peaches in 2019 were from China and one per cent from Spain.

367. MBIE considers that information on the prices and volumes of imports other than the allegedly dumped goods does not provide a basis for changing the conclusions reached in section 5 of this Stage 1 Final Report.

5.7.2 Changes in consumption and demand

368. Changes in the pattern of consumption or a reduction in demand can also be a potential cause of material injury to the New Zealand industry.

369. In its application, HWL states that there "does not appear to be any contraction in demand or changes in the patterns of consumption."

370. MBIE notes that the application for this review was received by MBIE two months after COVID-19 was declared a pandemic by the World Health Organization.[33] The forecast information provided by HWL did not therefore reflect the effects of the pandemic. MBIE's assessment has been based on the information in HWL's application for the POR(I) 1 January 2014 to 31 December 2019 for actual injury. For its assessment of forecast injury out to 31 December 2022, MBIE has made no adjustments for the effects of COVID-19. MBIE notes that while there was a nationwide lockdown in New Zealand due to COVID-19 from 25 March to 27 April and limited restrictions at some other times, essential services such as supermarkets remained open. Restaurant closures may have affected sales of some 3kg cans, but MBIE considers that over time sales of other retail size cans would not be affected.

[33] The World Health Organization characterised COVID-19 as a pandemic on 11 March 2020 https://www.who.int/emergencies/diseases/novel-coronavirus-2019/interactive-timeline?gclid=EAIaIQobChMIgoOZyq-X7QIVRDVyCh2QWgCvEAAYASAAEgJMrvD_BwE#!

371. MBIE concludes that there have been no significant changes in the pattern of consumption or demand in New Zealand that have injured or are likely to injure the domestic industry.

5.7.3 Restrictive trade practices of, and competition between, overseas and New Zealand producers

372. MBIE notes that in New Zealand competition is regulated by the Commerce Commission. MBIE is nevertheless required under section 8(2)(e)(iii) of the Act to assess restrictive trade practices of, and competition between, overseas and New Zealand producers as factors other than the dumped goods that may have injured or are injuring the industry.

373. In its application, HWL stated that it "is not aware of any further restrictive trade practices . . . currently affecting the New Zealand industry."

374. One importer of goods prior to the POR(D) stated that HWL "has almost monopolised the market in New Zealand (with local and imported peaches) so it would be impossible for small companies like ours to be able to compete in this highly competitive industry especially not having any presence in the two major supermarket chains."

375. MBIE notes that there are significant volumes of imports of canned peaches from countries such as Australia, China and Greece which ensure that the New Zealand market is not monopolised by the New Zealand industry. No information has been provided that conditions of competition in the New Zealand market between overseas producers and the New Zealand producer have changed in recent years.

376. MBIE concludes that there have been no restrictive trade practices or changes in conditions of competition between overseas producers and the New Zealand producer that have injured or are likely to injure the domestic industry.

5.7.4 Developments in technology

377. MBIE considers that developments in technology can cover advances in production technology or in product presentation.

378. HWL noted in its application that it "does not believe that there is any evidence of a technology development relevant to the consideration of material injury. HWL is of the understanding that its method of processing peaches is similar to that of other processors."

379. As noted in the recent South Africa review, MBIE is aware that there are products entering the market in plastic containers, rather than in cans, but this has been going on for some time, and does not reflect any recent significant development in technology. HWL does not have the capacity to produce peaches in plastic pottles and plastic jars.

380. MBIE has no information that would indicate there has been a significant change in technology that could contribute to or cause material injury to the domestic industry.

381. MBIE concludes that developments in technology are not a cause of injury to the domestic industry in New Zealand.

5.7.5 Export performance and productivity of New Zealand producers

382. Export performance and productivity of the New Zealand industry can be a cause of injury if its export performance is at the expense of its domestic performance.

383. HWL noted in its application that it “exports a small volume of preserved peaches to the Pacific Islands” which it considers to be negligible.

384. MBIE considers that such a small export volume would not have a negative effect on HWL’s profitability. Productivity would not be adversely affected either, as these peaches are produced at the same time as the rest of canned peach production.

385. MBIE concludes that the export performance and productivity of the New Zealand producer are not a cause of injury to the New Zealand domestic industry.

5.8 Imports by the New Zealand Industry

386. Section 8(2)(f) of the Act requires the chief executive to have regard to 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.

387. Customs data shows that HWL has not imported canned peaches from Greece since December 2007. Customs data shows that in recent years HWL has been a major importer of canned peaches from South Africa. The company imports in order to supplement its domestic production so that it is not 100 percent reliant on a successful peach crop harvest in any single year. In the 2019 review of canned peaches from South Africa, MBIE found that these imports were being dumped and had regard to their effect on prices in the assessment of injury. HWL’s imports are subject to the payment of anti-dumping duties, where required, in the same manner as other importers.

388. MBIE concludes that imports by the New Zealand industry are not a cause of injury to the New Zealand domestic industry.

5.9 Causal Link

389. In its application, HWL stated that “the causal link between dumped imports of preserved peaches and material injury has been established in the original investigation’ and that with “the availability of preserved peaches from Greece for export and the continued importation of dumped canned peaches this causal link still remains in place . . . and for the reasons set out in this application.”

390. MBIE considers that the demonstration of a causal relationship between dumped imports and any current or likely injury must be based on an examination of all relevant evidence and any known factors other than the dumped imports which are causing injury, or are likely to cause injury to the domestic industry. Any injury, or likely continuation or recurrence of injury, caused by factors other than dumping must not be attributed to the dumped imports.

391. The assessment of the injury factors in this section includes discussion of the causal relationships of allegedly dumped imports on volume and price effects and their

consequent impact on the domestic industry, as assessed by MBIE during the review. In section 5.7 above, MBIE has also assessed other possible causes of injury as set out in section 8(2)(e) of the Act and concluded that any injury attributable to those factors is not being attributed to dumping.

392. MBIE concludes that the dumped imports from Greece are likely to cause a recurrence of material injury to HWL.

5.10 Conclusions on the Continuation or Recurrence of Injury

393. In relation to the likelihood of a recurrence of material injury should anti-dumping duties expire, and in the order of the matters to be examined as set out in section 8 of the Act, MBIE concludes that:

- Previous behaviour, and the competitive pricing of canned peaches from Greece, indicates that in the absence of anti-dumping duties importers will likely revert to importing significant volumes of canned peaches from Greece.
- Continued dumping of subject goods from Greece is likely to result in continued price undercutting, with consequent price depression and price suppression.
- Consequent upon the likely price effects and if duties are not continued:
  - output is unlikely to be a useful indicator of the likelihood of injury attributable to dumped goods
  - there is likely to be a reduction in sales revenue but not sales volume.
  - it is unlikely that there will be a significant effect on HWL’s market share if anti-dumping duties are not continued, at least in the foreseeable future.
  - EBIT is likely to decline
  - any effect on productivity, return on investments and growth will be the outcome of other effects that can be attributed to the recurrence of dumping and injury
  - utilisation of production capacity is unlikely decline.
- The magnitude of the margin of dumping will likely contribute to the injurious effect of the dumped goods.
- Potential negative effects on cash flow and growth will likely arise from the impact on sales revenue and profits.
- Inventories, employment and wages, and ability to raise capital and investments are not relevant injury factors, at least in that MBIE has been unable to reach any meaningful conclusions on these factors.

394. MBIE has reviewed other causes of injury and is satisfied that the likelihood of injury arising from other causes has not been attributed to the dumped goods.

On the basis of the above considerations, MBIE concludes that if the anti-dumping duties expire, dumped imports of canned peaches from Greece are likely to result in the recurrence of material injury to the domestic industry.

6. Rate or Amount of Anti-dumping Duty

6.1 Legal Basis

395. Section 17G(2)(a) of the Act requires that, if the Minister makes an affirmative determination under section 17G(1) of the Act that the continued imposition of anti-dumping duty is necessary to offset dumping and that material injury to an industry would be likely to continue or recur if the duty expired or were otherwise removed or varied, then the Minister must determine the rate or amount of anti-dumping duty, in accordance with section 10E of the Act, that will form the basis for full review stage 2.

396. Section 10E of the Act provides as follows:

(1) The Minister may, in respect of dumped or subsidised goods,—

(a) determine different rates or amounts of duty for named exporters:

(b) determine a residual rate or amount of duty for all other exporters from the same country as a named exporter.

(2) The Minister must, in determining the rate or amount of the duty, have regard to—

(a) the desirability of ensuring that the rate or amount is not greater than is necessary to—

(i) prevent the material injury or a recurrence of the material injury; or

(ii) remove the threat of material injury to an industry; or

(iii) prevent the material retardation to the establishment of an industry; and

(b) New Zealand's obligations as a party to the WTO Agreement.

(3) The rate or amount must not exceed,—

(a) in the case of dumped goods, the difference between the export price of the goods and their normal value; and

(b) in the case of subsidised goods, the amount of the subsidy on the goods.

397. In this part of the Stage 1 Final Report, MBIE outlines the conclusions reached on the proposed form and rate of anti-dumping duties.

6.2 Dumping and Injury

398. MBIE has established that there is dumping of exports of canned peaches from Greece, that dumping is likely to continue and that the removal of anti-dumping duties will likely lead to a recurrence of material injury. MBIE has therefore concluded that the continued imposition of anti-dumping duties is necessary.

6.3 Form of Anti-dumping Duty

399. An anti-dumping duty may take one of three main forms:

- *ad valorem* duty rate
- a specific duty
- reference prices.

Ad valorem duty rates

400. An *ad valorem* duty is a duty based on the margin of dumping or the margin of injury (if the margin of injury is less than the margin of dumping), and is expressed as a percentage of the VFD of the goods.

401. *Ad valorem* duty rates can usually be provided to all parties, and therefore are transparent. They are also convenient to apply and are unlikely to be substantially affected by exchange rate movements.

402. *Ad valorem* rates of duty can be evaded if invoice values of goods subject to duty are manipulated, particularly if imported in conjunction with similar goods which are not subject to anti-dumping duties. In the review of anti-dumping duties on canned peaches from South Africa, MBIE considered that the likelihood of invoice manipulation was low for the subject goods, and has no reason to change this view in regard to canned peaches from Greece. MBIE notes that Customs duty applies to canned peaches and any similar canned food products exported from Greece, so any manipulation of values would likely constitute fraud and the potential for prosecution is a strong disincentive against invoice manipulation.

Specific Duties

403. A specific duty is a set amount per unit of product based on the monetary value of a margin of dumping. It has the advantages of being convenient to apply, impossible to evade by incorrectly stating the value for duty, and clearly indicates to the importer the amount of duty payable.

404. However, a specific duty can operate effectively only when prices and exchange rates are consistent and stable, otherwise duty amounts could be collected that are either greater than or less than required to remove either injury or dumping.

405. MBIE considers that specific duty amounts are not the best way of applying duties in the circumstances of the current case, because there is a history of exchange rate changes, and prices may change due to pressures on supply and demand.

Reference prices

406. A reference price approach imposes duty based on the difference between the transaction price and a benchmark price. Where the transaction price is lower than the benchmark price, the amount of the difference is the duty payable. A reference price can be based on either a domestic price (in the exporting country), or the New Zealand domestic industry's non-injurious price (a lesser duty).

407. Reference price duties have the advantage of clearly signalling to particular exporters and importers what non-dumped or non-injurious prices are. Additionally they are collected only when goods are priced below the reference price. Therefore, duty is only collected to the extent necessary to remove either injury or dumping.

408. Reference prices are most suitable when dealing with movements in export price and exchange rates (if expressed in the currency of the normal value). A Normal Value (Value

for Duty Equivalent) (NV(VFDE)) is set in the currency of the normal value, but Non-Injurious FOBs (NIFOBs) are expressed in the currency of the importing country.

409. Reference prices usually remain confidential to parties other than the particular importer due to the use of confidential information in their calculation. NIFOB amounts may be released to the domestic industry because they are based on the domestic industry's unsuppressed selling prices in the absence of price undercutting.

410. Reference prices are particularly useful for dealing with situations where a lesser duty is applicable, that is, a duty set at less than the margin of dumping but at a level that would still not be injurious to the industry.

411. The reference prices approach does however have several disadvantages. It is claimed that duties are more easily evaded than other forms of duty, by overstating the VFD of the goods. They are set at a fixed level based on a snapshot of prices and costs, which usually changes over time and becomes less accurate. While significant changes which may occur over time in prices and exchange rates can be addressed by a reassessment of reference prices, the duties may not be functioning effectively for some time before the duties are reassessed.

412. Reference prices may also be less transparent, as they may be set using confidential information from the domestic industry or exporters which require the amounts to be suppressed as confidential.

413. MBIE considers that reference prices are not the best way of applying duties in the circumstances of the current case because prices may change over time and the reference price approach is not transparent.

Preferred form of duty

414. MBIE notes that the purpose of the anti-dumping duty is to remove likely injury to the New Zealand industry and is not to prevent trade in canned peaches from Greece. In the case of this review, any reassessed duties will apply to all suppliers from Greece, as MBIE was unable to identify current specific Greek suppliers to New Zealand. The existence of a transparent duty will allow potential suppliers from Greece to assess opportunities and whether to apply for new shipper reassessments, and will allow New Zealand importers to accurately assess the costs of any importations.

415. In the circumstances of this case, and to provide transparency, MBIE considers that an anti-dumping duty should be applied in the form of an *ad valorem* rate of duty as applied to the VFD on importation.

6.4 Previous Imposition of Duties

416. Anti-dumping duties have been imposed on canned peaches imported from Greece as follows:

- 1998 – threshold NV(VFDE) amounts for named suppliers, a rate of duty of 0 percent ad valorem for a supplier that was not dumping, and an *ad valorem* rate of 17 per cent for other suppliers.

- 2003 – For a named supplier, confidential threshold NIFOB or NV(VFDE) amounts, and for other exporters an ad valorem rate of 23 per cent, capped so as not to exceed reference prices.
- 2009 – confidential threshold NIFOB or (NV(VFDE)) amounts of EUR 1.88 (410g), EUR 1.66 (820g) and EUR 1.53 (3kg).
- 2015 - a confidential threshold NIFOB amount and an alternative NV(VFDE) amount of EUR 1.68.

417. During 2019, anti-dumping duties were collected on the basis of the amount by which VFDs were below the NIFOB amounts. Because of the low value of the imports in 2019, the anti-dumping duties collected were equivalent to *ad valorem* rates in the range of 158 to 180 per cent.

6.5 Proposed Rates or Amounts of Anti-dumping Duties

418. MBIE has considered whether a duty at less than the margin of dumping should apply, by:

- first calculating a non-injurious free-on-board amount (NIFOB) based on the domestic industry's non-injurious price (NIP)
- secondly, calculating a normal value (value for duty equivalent) (NV(VFDE)); and
- comparing the NIFOB to the NV(VFDE) – a NIFOB lower than the NV(VFDE) indicates that a lesser duty should apply.

419. The NIFOB amount was calculated by deducting from the ex-factory NIP for Oak canned peaches the costs incurred between FOB and the ex-wharf level, including Customs duty of 5 per cent. The ex-wharf level was used as the starting point because that is the level of trade at which the subject goods first compete with the New Zealand industry's like goods.

420. The NV(VFDE) amount was calculated by adding to the ex-factory normal value in EUR all known costs incurred by the Greek supplier up to the FOB level. The NV(VFDE) amount therefore represents a non-dumped price at the FOB level. MBIE calculated an NV(VFDE) amount of EUR 1.91, which is higher than the EUR 1.68 calculated by MBIE in 2015.

421. As noted when calculating the export price, MBIE had no information on port handling and clearance costs or the cost of credit to allow such costs to be added to the FOB.

422. MBIE converted the NV(VFDE) from EUR to NZD using the average exchange rate for 2019 from www.ofx.com

423. To determine whether a lesser duty should apply, MBIE compared the NIFOB amount with the NV(VFDE) amount. The NIFOB amount was less than the NV(VFDE) amount which indicates that a duty at less than the margin of dumping should apply.

424. The percentage duty was calculated by deducting the notional export price adjusted to the FOB level (converted into NZD) from the NIFOB amount and calculating the difference as a percentage of the FOB export price.

425. The NIFOB, NV(VFDE) and lesser duty *ad valorem* rate of duty calculations are shown in the **Confidential Attachment**.

426. The recommended *ad valorem* rate of duty is 34 per cent.

7. Conclusions

427. On the basis of the information available, MBIE's conclusions on the matters it is required to investigate in a full review stage 1 are:

- that the continued imposition of anti-dumping duties on the subject goods is necessary to offset dumping,
- that material injury to an industry would be likely to recur if the duty on the subject goods expired or were otherwise removed or varied, and
- that an *ad valorem* duty of 34 per cent should be determined as the rate of anti-dumping duty to apply to the subject goods imported from Greece, being the rate of duty that is not greater than is necessary to prevent a recurrence of material injury.

Trade and International

Annex 1: Comments Received on the Stage 1 EFC Report

Comments on the EFC Report were only received from the Government of Greece.

A. Government of Greece	MBIE's comments
A1 Relatively Low Volume of Exports to New Zealand	
The Greek Trade Office in Sydney noted that Greek exports of canned peaches to New Zealand had a share of 1.6% of total New Zealand imports of similar products in the calendar year 2019. The Greek Trade Office noted that according to Article 2.2 of the AD Agreement, antidumping tariffs should not be imposed on exports of Greek canned peaches to New Zealand given that these exports do not exceed 5 per cent of total imports of canned peaches to New Zealand. The Greek Trade Office referred to data it had provided on exports of canned peaches from Greece which it hoped would help clarify the issue and prompt MBIE to reconsider the anti-dumping tariff imposed by New Zealand on Greek exports. The Greek Trade Office, at the time of finalising this report, had not responded to a request from MBIE to clarify whether it intended to refer to Article 2.2, or rather Article 5.8 which states that the "the volume of dumped imports shall normally be regarded as a negligible if the volume of dumped imports from a particular country is found to account for less than 3 per cent of imports of the like product in the importing Member . . . ."	MBIE referred in section 2.2 of the EFC Report to imports from Greece making up 1.6 per cent of total imports of the subject goods in the POR(D). Article 2.2 of the AD Agreement, in footnote 2 to that Article, provides that sales of the like product destined for consumption in the domestic market of the exporting country shall normally be considered a sufficient quantity for the determination of the normal value if such sales constitute 5 per cent or more of the sales of the product under consideration to the importing Member, provided that a lower ratio should be acceptable where the evidence demonstrates that domestic sales at such lower ratio are nonetheless of sufficient magnitude to provide for a proper comparison. MBIE noted in section 4.2.3 of the EFC Report that sales in Greece for home consumption, even if the equivalent of only 1 per cent of Greek exports was sold domestically (namely 2,600 MT) would be far greater than 5 per cent of sales to New Zealand, which totalled only 47 MT in 2019. Article 2.2 does not, as suggested by the Greek Trade Office, require that anti-dumping duties should not be imposed on imports of Greek canned peaches to New Zealand if the exports do not exceed 5 per cent of total New Zealand imports of canned peaches. The relevance of Article 2.2 is in establishing if there are sufficient sales of the like product in the exporting country to allow for a comparison with export prices in accordance with Article 2.1. If that is not the case, then the investigating authority may construct normal values or use sales to third countries. The provision relating to termination of an investigation when imports are

	negligible relates to Article 5.8 of the AD Agreement, which does not apply to reviews. MBIE finds support for this view in *US – Corrosion-Resistant Steel Sunset Review*, cited in paragraph 147 of this Report, where the Panel considers the provisions of Article 11.3 of the AD Agreement, which relate to sunset reviews. The Panel stated that "[o]n its face, Article 11.3 does not mention, either explicitly or by way of reference, any negligibility standard that applies to the likelihood of continuation or recurrence of injury determinations in sunset reviews. Nor does the immediate context of Article 11.3 yield a different result. . . . Although paragraphs 4 and 5 of Article 11 contain several cross-references to other articles of the AD Agreement, no such cross-reference has been made to Articles 3.3 or 5.8."[34] The Act does not provide for any negligibility assessment as part of a review either, and indeed it would not be appropriate to apply the negligibility exclusion for reviews because the volume of dumped imports assessed when duties are already imposed does not indicate what those volumes will be if the duties are removed. MBIE considers that the submission by the Greek Trade Office in Sydney provides no reasons to change the conclusions in this Final Report.

[34] WTO Panel Report, WT/DS244/R, *US – Corrosion-Resistant Steel Sunset Review*, para 7.95, page 28.

CONFIDENTIAL ATTACHMENT

The information in this Confidential Attachment is derived from commercial-in-confidence information from Customs and from other sources. The information is confidential because making the information available would have a significantly adverse effect on the parties to whom the information relates, and in some cases is subject to an obligation to maintain confidentiality. This Stage 1 Final Report provides a summary of this confidential information to the extent that information is capable of summary.