



Trade (Anti-dumping and Countervailing Duties) Act 1988

Application for Full Review

Preserved peaches from Spain

Initiation Memorandum

MBIE/AD/R/2021/002

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INITIATION MEMORANDUM

DATE 3 August 2021

TO Matthew Molloy, Manager, Trade and International

PREPARED BY Trade Remedies Team

SUBJECT **APPLICATION FOR START OF A FULL REVIEW OF ANTI-DUMPING DUTY
UNDER THE TRADE (ANTI-DUMPING AND COUNTERVAILING DUTIES) ACT
1988**

RECOMMENDATIONS

You have been delegated authority to start full reviews under the Trade (Anti-dumping and Countervailing Duties) Act 1988 (the Act). We recommend that you:

Note that the Trade Remedies team, having assessed the application for a full review of the anti-dumping duties on imports of preserved peaches from Spain, considers that the New Zealand industry has provided positive evidence justifying the need for a full review.

Noted

Agree to start a full review of anti-dumping duties under section 17D(1) of the Act on the basis that the requirements in that section to start a full review have been met.

Agree/Disagree

Agree to sign the attached *Gazette* notice giving notice of the decision to start a full review stage 1 in accordance with section 17E of the Act, which will also be given to notified parties.

Agree/Disagree

3 August 2021
Matthew Molloy
Manager, Trade and International

1. PURPOSE

1. In this report we assess an application from Heinz Wattie's Limited (HWL) asking that the chief executive of the Ministry of Business, Innovation, and Employment (MBIE) (chief executive) start a full review under the Act to determine whether the continued imposition of anti-dumping duties on preserved peaches from Spain is necessary to offset dumping, and that material injury to the New Zealand industry would be likely to continue or recur if the duty expired or were otherwise removed or varied.
2. Section 17D(1) of the Act provides that the chief executive must start a full review after receiving an application from an interested party that includes positive evidence justifying the need for a full review.
3. We recommend that on the basis of the evidence in the application you start a full review stage 1 into anti-dumping duties on preserved peaches from Spain.
4. Details of the process and timeframes are set out in the Annex to this Memorandum.

2. APPLICATION FOR REVIEW OF ANTI-DUMPING DUTIES

5. On 8 June 2021, MBIE received an application from HWL requesting a review of anti-dumping duties on preserved peaches from Spain under section 17D of the Act. HWL claims that if the existing anti-dumping duties cease to be payable then imports of preserved peaches from Spain will cause a recurrence of dumping and material injury to the New Zealand industry.

3. LEGAL REQUIREMENTS

6. Section 17D(1) of the Act provides that the chief executive must start a full review of a duty after receiving an application from an interested party that includes positive evidence justifying the need for a full review.
7. Section 17C of the Act provides that the purpose of a full review is to investigate, in relation to an anti-dumping duty, whether the continued imposition of the duty is necessary to offset dumping, and whether material injury or threatened material injury to an industry would be likely to continue or recur if the duty expired or were otherwise removed or varied. Section 17F(1) of the Act provides that if the chief executive starts a full review then these are the matters to be investigated.
8. In assessing whether evidence provided by the industry is "positive evidence", MBIE notes that in *US – Hot-Rolled Steel*, the WTO Appellate Body stated that "the term 'positive evidence' relates, in our view, to the quality of the evidence that authorities may rely upon in making a determination." It further explained that "[t]he word 'positive' means, to us, that the evidence must be of an affirmative, objective and verifiable character, and that it must be credible."¹
9. The evidence in the application is assessed below against the legal requirements.

4. PREVIOUS PROCEEDINGS

10. Anti-dumping duties were first imposed on preserved peaches from Spain in August 2011, following an application from HWL. Since then, at the application of HWL, MBIE conducted a review of those duties in 2016. As a result of that 2016 review, duties were terminated on

¹ WTO document WT/DS184/AB/R, Appellate Body Report, *US – Hot-Rolled Steel*, para. 192.

imports of subject goods from Spain. This decision was challenged by HWL through judicial review proceedings in the High Court. The outcome was that the decision was quashed and MBIE was directed by the Court to reconsider the review.

11. Accordingly, in 2019 MBIE carried out a reconsideration of the 2016 review. That reconsideration resulted in duties being reinstated at the rates below.

Spanish Manufacturer	Ad Valorem Rates
Alcurnia Alimentacion sl	
- 850g	2.5%
- 2.65kg	15.9%
Conservas El Navarrico	No duties
Other subject goods	7.9%

5. SUBJECT GOODS

12. The goods that are alleged to be imported or intended to be imported into New Zealand are preserved peaches from Spain (subject goods). The description of the subject goods is:

Peaches in preserving liquid, in containers up to and including 4.0kg.

13. The goods are currently classified under Tariff Item 2008.70.09 and Statistical Key 00L, which classification is provided for convenience and New Zealand Customs Service purposes only, the written description being dispositive.
14. The application included evidence that the subject goods are being imported into New Zealand. MBIE has reviewed the evidence and checked it against import data provided by the New Zealand Customs Service (Customs) and is satisfied that there is positive evidence that imports of the subject goods from Spain have taken place.

6. NEW ZEALAND INDUSTRY AND LIKE GOODS

15. Section 3A of the Act provides that the term industry (i.e. the New Zealand industry), in relation to any goods, means –
- the New Zealand producers of like goods; or
 - such New Zealand producers of like goods whose collective output constitutes a major proportion of the New Zealand production of like goods.
16. Section 3(1) of the Act provides that like goods, in relation to any goods, means—
- other goods that are like those goods in all respects; or
 - in the absence of goods referred to in paragraph (a), goods which have characteristics closely resembling those goods.
17. The application provided evidence of the production of like goods by the New Zealand industry. MBIE is satisfied that HWL is the sole New Zealand producer of preserved peaches and therefore constitutes the New Zealand industry.

7. EVIDENCE OF THE NEED FOR THE CONTINUED IMPOSITION OF THE DUTY TO OFFSET DUMPING

Current dumping

18. Section 3(1) of the Act provides that 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.

Export price

19. Section 4 of the Act sets out how export price is to be determined for the purposes of the Act. In summary, section 4 provides that the export price shall be the price paid by the importer other than any additional costs, charges and expenses incurred in preparing the goods for shipment to New Zealand, and any other costs, charges and expenses arising after the shipment. The determination also differs depending on whether or not the purchase of the goods by the importer was an arm's length transaction, and whether or not the purchaser is known.

Summary of evidence provided

20. HWL has presented an export price based on data on imports from Spain sourced from Statistics NZ's (Stats NZ) Infoshare data for the year ended 31 March 2021. Using this data, HWL has established a **base price** from the average value in New Zealand dollars (NZD)/kilogram (kg), which is effectively the free on-board (FOB) value/kg. HWL converted NZD and USD to Euros (EUR) using exchange rates from www.x-rates.com.
21. MBIE notes that the import data sourced from Stats NZ may include importations of other goods such as canned nectarines (as the tariff code and statistical key does not discriminate between canned peaches, nectarines or different types and sizes of cans and containers).
22. HWL proposed an adjustment to the base price for **freight** from the factory to port of export in order to calculate an ex-factory export price. The adjustment for freight has been estimated by HWL from freight cost data. HWL considers that this adjustment of one per cent of the VFD is likely understated.

Summary of MBIE's assessment

23. For the reasons outlined above in the discussion on Stats NZ data, MBIE has assessed the accuracy and adequacy of HWL's evidence on export prices by using Customs data for the year ended 31 March 2021 as a check on the base price proposed by HWL. MBIE used descriptions in Customs data to identify subject goods only and confirmed that the **base price** used by HWL was reasonable.
24. MBIE checked the **freight** evidence provided by HWL and, based on freight rates included in the information provided by HWL, calculated a lower amount per kg for freight than that estimated by HWL. HWL confirmed its agreement with this revised amount.
25. MBIE has established an export price on the basis of Customs data and the adjustment MBIE calculated for freight. The export price is lower than that estimated by HWL.

Normal value

26. Section 5 of the Act sets out how normal values are to be determined for the purpose of the Act. In summary, section 5 provides that the normal value shall be the price paid for like

goods sold in the ordinary course of trade for home consumption in the country of export in sales that are arm's length transactions by the exporter or, if like goods are not so sold by the exporter, by other sellers of like goods.

Summary of evidence provided

27. HWL accessed online retail prices for preserved peaches that were available from Spanish supermarkets listed in Wikipedia. HWL provided retail prices in EUR, inclusive of VAT, for the supermarkets Alcampo, Consum, Eroski, Hipercor and Supercor. HWL listed these prices by their can size, 410g or 820g, and converted these prices to EUR per kg.
28. HWL noted that the Alcornia brand of canned peaches is sold in New Zealand and it is unaware of any other brands from Spain being sold in New Zealand. HWL has therefore used the retail price in Spain for the Alcornia brand as the **base price** for estimating a normal value for the Alcornia brand. HWL notes that it was only able to access one retail price in Spain for the Alcornia brand and that price is significantly lower than that used in the 2016 review and 2019 reconsideration.
29. HWL stated that there is **VAT** of 10 per cent, which it deducted from the VAT inclusive retail price.
30. HWL proposed the deduction of a **retail margin** based on its knowledge of the margin and distribution costs for preserved peaches sold in New Zealand. HWL provided data in support of its calculation of the retail margin.
31. HWL proposed an adjustment for **freight** to customers based on HWL's understanding of freight charges in New Zealand. HWL supported its estimate of the adjustment required for freight with a weighted average calculation of freight rates to customers in the North and South Islands of New Zealand.

Summary of MBIE's assessment

32. MBIE notes that the retail price used by HWL was a special price. MBIE has included only standard prices from Spanish supermarkets in its assessment of the accuracy and adequacy of the calculation of normal value. MBIE has averaged these retail prices to arrive at a **base price** in EUR per kg.
33. MBIE notes that in the 2016 review the Spanish Government informed MBIE that sales of preserved peaches are taxed at a rate of 10 per cent. MBIE agrees with HWL making a deduction from the VAT inclusive price to take account of this rate of **VAT**.
34. In its application for the 2016 review, HWL calculated a percentage retail margin on preserved peaches, based on its own prices to retailers and the average retail price of canned peaches which was sourced from Nielsen data. In that review, MBIE calculated an ex-factory normal value by deducting that retail margin. However in the 2019 reconsideration, using the then current retail prices, MBIE calculated a much higher **retail margin** over HWL's sales value for Wattie's brand goods, since the lower margin applied when all preserved peach retail sales are included, i.e. including imported goods not produced by HWL. In the reconsideration MBIE noted the margins identified in an Irish Bord Bia report, in particular for the major store El Corte Inglés, and taking into account all of the information available to it considered that an appropriate retail margin for the Alcornia product was at the higher percentage of the VAT-exclusive retail price than that proposed by HWL.

35. In assessing the current application, MBIE has calculated a **retail margin** by first calculating the average online retail price per kg for Wattie's brand canned peaches (in net weight sizes ranging from 400g to 820g) sold by Countdown, New World and Pak n Save and then deducting HWL's ex-store net sales value per kg in 2021 for sales of the Wattie's brand. The margin calculated by MBIE as a percentage of HWL's ex-store price for the Wattie's brand is similar to that calculated in the 2019 reconsideration. For purposes of this application, MBIE considers that this margin, which is higher than that proposed by HWL, is appropriate for making a deduction from the VAT-exclusive price at Spanish supermarkets.
36. No adjustment needs to be made for freight to customer as this cost is included in the retail margin calculated by MBIE.
37. MBIE has estimated a normal value for the assessment of current dumping in the application that is significantly lower than that estimated by HWL.

Dumping margins

38. HWL's estimate of the current export price and normal value, based on sales of the Alcurnia brand, indicates a dumping margin of 9 per cent.
39. MBIE's assessment of the evidence provided in the application and other available information is that there is no current dumping. However the export prices used by MBIE to assess its dumping margin may be affected by the imposition of anti-dumping duties, so, there is a need to assess the likelihood that dumping will recur if the duties are removed.

Likelihood that dumping will continue or recur

40. In assessing the evidence of whether dumping is likely to continue or recur MBIE needs to be satisfied that there is positive evidence that certain events are likely to occur, and that those events mean that dumping is likely to continue or recur.
41. 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 anti-dumping duties and the payment of anti-dumping duties;
 - the commercial arrangements governing the pricing of exports to New Zealand from Spain; and
 - possible developments in the market in Spain, which could affect the normal values of the goods and their availability for export to New Zealand.
42. In order to assess the likelihood of injury, HWL has presented notional margins of dumping, based on normal values and potential exports from Spain. This takes account of the current import environment where duties are currently in place on the subject goods.

Export price

Summary of evidence provided

43. HWL presented, for assessment of notional dumping margins, (1) an export price based on data for export volumes and value from Spain to all global markets from TradeData International Pty Ltd (TDI) for the year ended 28 February 2021, and (2) an export price

based on exports to non-EU countries from TDI data for the year ended 28 February 2021. These data show values for duty (VFD), which is effectively the free on-board (FOB) values, and volumes (kg), which were used to calculate **base prices**. HWL used HS codes 20087061, 20087069, 20087071 and 20087079.

44. HWL proposed an adjustment for **freight** to the port of export of one per cent of the VFD to derive an ex-factory **export price**.

Summary of MBIE's assessment

45. In the 2019 reconsideration of the review of anti-dumping duties on Spanish peaches, MBIE calculated a notional export price on the basis of exports from Spain falling within the range of 20-200 metric tons/tonnes (MT), excluding countries within the EU, which form a single market with Spain. This range of volumes was used because from 2011 to 2018 annual export volumes to New Zealand from Spain ranged between 17 and 202 MT. Annual export volumes from Spain to New Zealand in 2019 and 2020 were 37 and 50 MT respectively. Therefore, in assessing the accuracy and adequacy of the information provided in the current application, MBIE has assessed HWL's export price based on exports to non-EU countries of between 20 and 200 MT over the year ended 28 February 2021.
46. MBIE corrected HWL's calculations by including Norway and Switzerland, which had not been included in HWL's calculation of non-EU countries to which the range of 20-200 MT had been exported.
47. MBIE notes that HWL included in its calculations HS codes 20087061 and 20087069, which are for goods in immediate packing of a net content of greater than 1 kg. MBIE has used for its calculations only HS codes 20087071 and 20087079, which are for goods in immediate packing of a net content of less than or equal to 1 kg, in view of the fact that normal values have been calculated from retail prices for cans ranging in size from 390g to 850g net weight.
48. As explained above, for freight to the port of export MBIE calculated a lower amount per kg for freight than that estimated by HWL.
49. For purposes of assessing this application, MBIE has estimated a notional ex-factory **export price** that is lower than that estimated by HWL.

Normal value

Summary of evidence provided

50. HWL calculated an average price per kg from the retail prices from Spanish supermarkets it accessed online, as listed above. HWL used the average price as the **base price** for estimating normal values.
51. HWL then adjusted the base price to remove VAT, a retail margin and the cost of freight to customers to arrive at an estimated ex-factory normal value.

Summary of MBIE's assessment

52. MBIE has assessed the accuracy and adequacy of the evidence provided for the assessment of normal value. MBIE notes that the amount proposed is based on retail prices for preserved peaches in cans only.
53. MBIE's research found that retail prices are available from a number of Spanish supermarkets that were not included in HWL's calculation of the base price. Where suitable

information was available, MBIE has included prices from these supermarkets. The supermarkets MBIE included are Froiz, Masymas, Mercadona, Pepe La Sal and Bon Preu.

54. In calculating an average retail price as the **base price**, MBIE has also removed peaches of Greek origin that were included in HWL's calculation, has amended the designated can sizes to reflect the actual net weights shown on websites, has used updated information, has used standard prices rather than special prices, and has removed duplicates where brands, sizes and prices were the same.
55. MBIE has estimated a notional normal value that is significantly lower than that estimated by HWL.

Dumping margin

56. HWL's estimates of notional export prices and normal values indicate that, if anti-dumping duties are removed, there are likely to be dumping margins of 85 per cent and 97 per cent.
57. MBIE's assessment of the notional dumping margin for purposes of this application, after making the amendments described above to export prices and normal values, is 36 per cent.
58. In terms of the likelihood of dumping recurring, MBIE notes that the evidence indicates that while dumping is not currently occurring, calculations of notional levels of dumping indicate that dumping is likely to recur, although not at the levels estimated by HWL in its application.

Other matters

59. HWL provided no comment on the events listed above that MBIE needs to consider in order to determine the likelihood that dumping will continue or recur.
60. In respect of this application, MBIE is unaware at this stage of any events or other matters that are likely to affect the calculation of actual and potential export prices or normal values.

Conclusion on the evidence of dumping

61. On the basis of the information provided in the application, MBIE is satisfied that there is positive evidence of a likelihood that dumping will recur if duties do not continue.

8. EVIDENCE THAT MATERIAL INJURY WOULD BE LIKELY TO CONTINUE OR RECUR IF THE DUTY EXPIRED

62. 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. These projections are made 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). MBIE examines whether the application contains positive evidence of the likelihood of a continuation or recurrence of injury.

Matters the chief executive shall have regard to

63. Section 8(1) of the Act provides that in determining for the purposes of the Act whether or not any material injury to an industry has been or is being caused or is threatened [...] by means of the dumping [...] 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 [...] goods; and
- (b) The effect of the dumped [...] goods on prices in New Zealand for like goods; and
- (c) The consequent impact of the dumped [...] goods on the relevant New Zealand industry.

64. Section 8(2) provides that without limiting the generality of section 8(1), and without limiting the matters that the chief executive may consider, the chief executive shall have regard to a number of specific matters when determining whether or not any material injury to an industry has been or is being caused, or is being threatened.
65. MBIE has assessed the application to determine whether positive evidence has been provided in regard to the matters set out in the Act.

Import volume effects

66. 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 goods either in absolute terms or in relation to production or consumption in New Zealand.

Summary of evidence provided

67. In its application, HWL provided import data from Stats NZ for all imports under Tariff Item 2008.70.09.00. It is noted that preserved peaches coming within the subject goods are not separately identified in the Tariff of New Zealand, as the Tariff item also includes nectarines and peaches in containers outside of the description of the subject goods. This data indicates an import volume of preserved peaches from Spain of 33 MT for the year ended March 2021.
68. HWL identified that Spain is a significant global exporter of preserved peaches, and that should the duties be removed it would not take much for retailers to switch to Spain to source their preserved peaches. HWL believes that inventory will be available, and that it is a reasonable expectation that cost savings from the removal of the duty would be passed on to consumers.
69. HWL has not provided any estimates of the likely change in import volumes from Spain should the duty be removed, although it has provided forecasts of its own sales volumes from 2021 to 2023 if the duty is removed, which indicate a loss of sales volume. HWL claims that a volume in the range of 100-300 MT of additional imports would be enough to cause the price effects that it claims, based on past behaviour.

Summary of MBIE's assessment

70. In order to assess the accuracy and adequacy of the information provided, MBIE has analysed imports on the basis of Customs data. MBIE notes that Spain is not currently contributing a significant portion of supply to the New Zealand preserved peach market. Duties were collected on all imports of subject goods from Spain in the calendar year 2020.
71. During the review, MBIE will need to consider the extent to which Spanish exporters would likely increase their supply to New Zealand in the absence of anti-dumping duties.
72. MBIE is satisfied that the application includes positive evidence to indicate that, should anti-dumping duties be terminated, there is the likelihood of significant import volumes recurring

based on the behaviour of parties following changes in duties in past investigations and reviews of the same goods.

Price Effects

73. Sections 8(2)(b) and (c) of the Act provide that the chief executive shall have regard to the extent to which prices of the dumped 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, and 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 been likely to have occurred (price suppression).

Summary of evidence provided

74. HWL provided its calculation for likely **price undercutting** in the absence of duties. HWL has calculated the ex-wharf import price for preserved peaches from Spain. It has then compared this to its own ex-warehouse net sales value per kg. This is the level of trade which HWL considers the imported and domestically produced products first compete with each other in New Zealand. HWL calculated the resulting level of price undercutting by imports from Spain both with and without duties in place.
75. HWL provided information on likely **price depression** in the absence of duties. HWL has referenced past instances of dumped imports resulting in a loss of volume and market share for HWL products and that its prices for premium products were forced down. HWL considers that a similar effect is likely to occur if the anti-dumping duties on preserved peaches from Spain are removed.
76. HWL claimed that **price suppression** will occur as a result of not being able to offset price undercutting by cost saving. It claims that its costs would likely increase if it either loses its market share or has to defend its market share by increasing trade marketing activity.

Summary of MBIE's assessment

77. MBIE has identified from Customs data that all imports of subject goods from Spain in calendar year 2020 were subject to duties. MBIE considers that the export price used by HWL is indicative of the level of price undercutting in the absence of anti-dumping duties.
78. MBIE considers that there is positive evidence to indicate that it is likely that **price undercutting** will recur if the current anti-dumping duties are removed. MBIE's assessment of price undercutting with and without duties is similar to the level of price undercutting provided by HWL.
79. MBIE notes that HWL's forecast figures show that HWL's contribution margin and gross profit per unit are forecast to decline significantly in the absence of anti-dumping duties.
80. MBIE considers that HWL has provided positive evidence of a likely recurrence of **price depression** in the absence of the anti-dumping duties, as this will be tied to price undercutting.
81. MBIE also considers that HWL has provided positive evidence that if the anti-dumping duty is removed it will face a recurrence of **price suppression**, which will be tied to price depression.

Economic impact of dumping

82. Section 8(2)(d) of the Act provides that the chief executive shall have regard to the economic impact of the dumped goods on the industry (consequent impact), including—
- i. actual and potential decline in output, sales, market share, profits, productivity, return on investments, and utilisation of production capacity; and
 - ii. factors affecting domestic prices; and
 - iii. the magnitude of the margin of dumping; and
 - iv. actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investments.

Summary of evidence provided

83. HWL relied on the experience of past investigations and dumping of preserved peaches to show that it is likely to lose **market share** if duties are removed.
84. HWL provided information on projected **sales and output** upon the assumption that if duties are removed, imports of preserved peaches from Spain will increase and HWL will have to increase its trade marketing to compete with depressed prices.
85. HWL provided **profit** projections based on the need to compete with depressed prices by increasing trade marketing. These projections show that HWL's earnings before interest and taxation (EBIT) will decline significantly in 2022 and 2021 compared to 2021 in the absence of duties. This same decline does not occur in its projections with duties in place.
86. HWL provided information on the impact of the removal of duties on **productivity**. It acknowledged that there is no current injury to its productivity caused by dumping as anti-dumping duties are currently in place. However, it notes that if the duties do not continue, this will affect its productivity.
87. HWL provided information on its **return on investments**, particularly amounts spent on plant and processing equipment.
88. HWL noted that its **production capacity** is constrained by the size of the peach crop from year to year but will be adversely affected by the removal of anti-dumping duties.
89. HWL considers that it will have significant adverse effects on its achievable **cash flow, inventories, employment and growth**, should the anti-dumping duties cease to apply, due to the loss of volume, sales revenue and profits from the return of the dumped imports.

Summary of MBIE's assessment

90. MBIE accepts that, with anti-dumping duties in place, imports of preserved peaches from Spain are not currently having an injurious effect on HWL's productivity, and considers it a reasonable assumption for purposes of the application that if duties were removed and dumped goods were imported, it could result in a reduction of HWL's market share, sale and output and profits, which would have flow on effects for employment, production capacity and return on investments.

Factors other than dumping that cause injury

91. Section 8(2)(e) of the Act provides that the chief executive shall have regard to factors other than the dumped goods that have injured, or are injuring, the industry, including—
- i. the volume and prices of goods that are not sold at dumped prices; and
 - ii. contraction in demand or changes in the patterns of consumption; and

- iii. restrictive trade practices of, and competition between, overseas and New Zealand producers; and
- iv. developments in technology; and
- v. the export performance and productivity of the New Zealand producers:

Summary of evidence provided

92. HWL did not make reference to any other factors affecting domestic prices.

Summary of MBIE's assessment

93. MBIE notes that HWL "is not aware of any material injury being caused through fairly traded competitor branded products."

Imports of the dumped goods by the New Zealand industry

94. Section 8(2)(f) of the Act provides that the chief executive shall 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 importations.

Summary of evidence provided

95. HWL has noted that it has not imported any subject goods from Spain recently.

Summary of MBIE's assessment

96. MBIE has identified imports by HWL from Customs data, and can confirm that there have been no recent imports of the subject goods by HWL.

Any other matters

97. As well as the matters the chief executive shall have regard to in section 8(2) of the Act, the chief executive must also consider any other matters raised in the application that may be relevant to the consideration of the likelihood that material injury would be likely to continue or recur if the duty expired, or were otherwise removed or varied.

Summary of evidence provided

98. HWL has not identified any other matters that should be considered by MBIE.

Summary of MBIE's assessment

99. MBIE notes that the COVID-19 pandemic is likely to have had a significant effect on production, shipment, markets and purchases, as well as on the level of imports.

Conclusion on the evidence of injury

100. On the basis of its analysis, MBIE's conclusion is that HWL has provided positive evidence that material injury to an industry would be likely to recur if the duties expire or are otherwise removed or varied.

9. CONCLUSIONS

101. MBIE's overall conclusion is that on the basis of the information provided in the application, and MBIE's assessment of the accuracy and adequacy of that information, there is positive evidence justifying the need for a full review, and in accordance with section 17D(1) of the Act a full review of the duties should be started.

ANNEX: REVIEW PROCEDURES

Review stages

Full Review

- A1. 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

- A2. 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

- A3. 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.
- A4. 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.

Time frames

- A5. A full review is carried out in accordance with the provisions of sections 17C to 17K of the Act.
- A6. The time frames for a review as provided for in the Act are as follows:

<i>Statutory Timeframe</i>	<i>Action</i>
Initiation Date: 3 August 2021	
Stage 1 Essential Facts and Conclusions (EFC) Report. Within 150 days after the start of the stage 1 full review (section 17F(2)).	MBIE must give notified parties written advice of the essential facts and conclusions likely to form the basis for a determination to be made by the Minister at the end of the stage 1 full review.
Stage 1 Final Report. Within 180 days after the start of the stage 1 full review, but not less than 30 days after the written advice is given by MBIE under	The Minister must make a determination on whether continued imposition of the duty is necessary to offset dumping, and whether material injury or threatened material injury to an industry would be likely to continue or recur if

section 17F(2) (section 17G(1))	the duty expired or were otherwise removed or varied. If the Minister makes an affirmative determination, then the Minister must determine the rate or amount of duty that will form the basis for the full review stage 2, and direct the chief executive to immediately start the full review stage 2. If the Minister makes a negative determination, the Minister must terminate the imposition of the duty under section 17Y(1) of the Act..
Stage 2 Preliminary Findings Report. Within 60 days after the start of the stage 2 investigation (section 17I(1)).	MBIE must give notified parties written advice of the preliminary findings likely to form the basis for a determination to be made by the Minister at the end of the stage 2 investigation
Stage 2 Final Report. Within 90 days after the start of the stage 2 investigation, but not less than 30 days after the written advice is given by MBIE under section 17I(1) (section 17J(1))	The Minister must determine whether continuing to impose the duty is in the public interest.

Management of information

Submission of Information

- A7. In stage 1 of a full review, MBIE will seek information from interested parties through questionnaires provided to foreign producers, exporters and importers. In addition, MBIE will accept information or submissions provided by interested parties at any time during the review, subject to any deadlines which might be applicable.
- A8. With regard to responses to questionnaires, MBIE normally provides deadlines of 30 days for New Zealand-based respondents, and 37 days for respondents based offshore.
- A9. 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.
- A10. 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.

Verification of information

- A11. Article 6.7 and Annex I of the AD Agreement provide for investigating authorities to carry out investigations in the territory of other Members in order to verify information provided or to obtain further details.
- A12. MBIE notes that while it normally undertakes onsite verification visits, it may not be able to carry out such visits during this review due to the COVID-19 global health crisis, governmental travel restrictions and the need to protect the health of its staff and the staff of interested parties.
- A13. While onsite verification may not be able to be carried out, MBIE may use other methods such as desktop verification, remote verification by videoconferencing, additional requests for information and cross-checking with other available information to satisfy itself of the accuracy of information. MBIE will advise each interested party of its approach, according to their particular circumstances.

Protection of Information

- A14. 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).*

- A15. 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 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.
- A16. 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.

Public File

- A17. MBIE makes available all non-confidential information via the public file for this review. Any interested party can request both a list of the documents on this file and copies of the documents on it.

Period of investigation

- A18. The period of review for assessing current dumping (POR(D)) is 1 July 2020 to 30 June 2021. 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.
- A19. The period of review for assessing current injury (POR(I)) is 1 July 2018 to 30 June 2021 and out to 30 June 2023 for forecasting injury.

Review details

- A20. For this review, unless otherwise stated, years are calendar years. All volumes are expressed on a metric ton/tonne (MT) basis unless otherwise stated. Unless otherwise stated dollar values are New Zealand dollars (NZD). 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. In figures, column totals may differ from individual figures due to rounding.

Interested parties

- A21. Interested parties are those parties who have an interest in the review and may provide information to defend their interests.
- A22. 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.

New Zealand Industry

- A23. The New Zealand industry making the application for the continuation of anti-dumping duties has been established as HWL.

Spain’s producers

- A24. MBIE has identified the following Spanish producers, taking into account both current exports and engagement in previous proceedings:
- a. Alcornia Alimentacion SL;
 - b. Conservas El Artesanas Navarrico;
 - c. Conservas y Frutas SA; and
 - d. Pedro Guillen Gomariz SL.

Importers

- A25. MBIE has identified current importers as well as importers involved in previous proceedings, as:
- a. Sabato Limited;
 - b. Mediterranean Foods South Island Limited;

- c. Mediterranean Foods (Wellington) Limited;
- d. James Crisp Limited;
- e. Neill Cropper and Co Limited;
- f. North Canterbury Distributors (2003) Limited; and
- g. On-Trays Limited.

Intermediaries

- A26. MBIE has identified intermediaries involved in trade in the subject goods or involved in previous proceedings, as:
- a. Euroaliment SL;
 - b. Leo's Imports and Distributors Limited; and
 - c. SPAI SRL.

Other parties

- A27. Other notified parties include:
- a. The Government of Spain;
 - b. The European Commission;
 - c. FENEVAL (Federacion Nacional de Asociaciones de Transformados Vegetales y Alimentos Procesado); and
 - d. FIAB Exterior SL.