MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

TRADE AND INTERNATIONAL

Trade (Anti-dumping and Countervailing Duties) Act 1988

DUMPING REVIEW

Preserved Peaches from Spain

Stage 1 Final Report

MBIE/AD/R/2021/002

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New Zealand Government

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Abbreviations and Acronyms

This report contains the following abbreviations and acronyms:

Acronym	Meaning
Act, the	The Trade (Anti-dumping and Countervailing Duties) Act 1988
AD Agreement, the	The WTO Agreement on Implementation of Article VI of the GATT 1994
chief executive	Chief executive of the Ministry of Business, Innovation and Employment
CIF	Cost, Insurance, Freight
COVID-19	Novel Coronavirus Disease 2019
Customs	New Zealand Customs Service
EBIT	Earnings Before Interest and Taxes
EC	European Commission
EU	European Union
EUR	Euro (€)
EXW	Ex Works
FIS	Free into Store
FOB	Free on Board
FY	The financial year ended or ending 30 June
GATT 1994	General Agreement on Tariffs and Trade 1994
GOS	Government of Spain
HS	Harmonised System
HWL	Heinz Wattie's Ltd
kg	Kilogram
MBIE	Ministry of Business, Innovation and Employment
Minister	the Minister of Commerce and Consumer Affairs
MT	Metric ton (tonne)
NIFOB	Non-injurious free on board
NIP	Non-injurious price
NV	Normal value
NZ	New Zealand
NZD	New Zealand Dollar(s)
POR(D)	Period of review for dumping assessment, 1 July 2020 to 30 June 2021
POR(I)	Period of review for injury assessment, 1 July 2018 to 30 June 2021 for actual injury and out to 30 June 2023 for forecast injury

Review	A full review of the imposition of anti-dumping duties on preserved peaches from Spain (also known as a "sunset review"), authorised under section 17D of the Trade (Anti-dumping and Countervailing Duties) Act 1988
ROI	Return on investment
SPAI	SPAI S.R.L.
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
TradeData	TradeData International Pty Ltd
US	United States of America
VAT	Value added tax
VFD	Value for duty
VFDE	Value for duty equivalent
WTO	World Trade Organization

1. Summary

1.1 Purpose

1. Section 17F(5) of the Trade (Anti-Dumping and Countervailing Duties) Act 1988 (the Act) requires the chief executive of the Ministry of Business Innovation and Employment (MBIE) to report the findings of full review stage 1 to the Minister of Commerce and Consumer Affairs (the Minister). This report relates to a review of anti-dumping duties on imports of preserved peaches from Spain and summarises the findings of the stage 1 full review on the matters to be determined by the Minister under section 17G of the Act.

2. Section 17G(1) of the Act requires that, within 180 days after the start of full review stage 1,[1] the Minister must determine whether continued imposition of the duties 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 duties expired or were otherwise removed or varied.

3. If the Minister makes an affirmative determination under section 17G(1) then section 17G(2) requires the Minister to determine the rate or amount of anti-dumping duty, in accordance with section 10E, that will form the basis for a full review stage 2 and direct the chief executive to immediately start full review stage 2.[2] Upon the initiation of a review, duties will remain during the review. If, following any full review stage 2, the Minister determines that the duties should continue to be imposed at the new rate, they will apply for another five years.

4. If the Minister makes a negative determination under section 17G(1), the Minister must terminate the imposition of the duties under section 17Y(1).

5. In the preparation of this Stage 1 Final Report MBIE has taken into account submissions made by interested parties on the Stage 1 Essential Facts and Conclusions Report (Stage 1 EFC Report), provided in accordance with section 17F(2). A summary of the submissions and MBIE's responses on them is included in Annex 1.

1.2 Proceedings

6. On 8 June 2021, MBIE received an application from Heinz Wattie's Ltd (HWL), the New Zealand industry,[3] for a full review of anti-dumping duties applicable to imports of preserved peaches from Spain.

7. The grounds for the application were that if the existing anti-dumping duties cease to be imposed then dumping of imports of preserved peaches from Spain would recur and cause a recurrence of material injury to the New Zealand industry.

8. On 3 August 2021, the chief executive started (initiated) a full review of the continued need for the imposition of the anti-dumping duties, pursuant to section 17D of the Act,

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[1] But not less than 30 days after written advice of the essential facts and conclusions likely to form the basis for the determinations to be made by the Minister under section 17G was given to notified parties by the chief executive under section 17F(2).

[2] The Minister must make a determination, within 90 days after the start of any full review stage 2, whether continuing to impose the anti-dumping duty is in the public interest.

[3] See discussion of the New Zealand industry below at section 2 of this report.

on the basis of positive evidence submitted by HWL justifying the need for the review. This included evidence which suggested that:

- there is a likelihood that dumping will resume if duties on preserved peaches from Spain are removed.
- material injury to the New Zealand industry caused by dumped goods imported from Spain would be likely to recur.

9. The anti-dumping duties relating to preserved peaches from Spain, in the absence of a review, would have ceased to apply from 5 August 2021, being 5 years from the date duties were previously due to expire, but were continued following the initiation of the review.[4] The existing anti-dumping duties will continue to apply pending the outcome of this review.

10. On 18 January 2022, in accordance with section 17F(2) of the Act, MBIE provided notified parties with a Stage 1 EFC Report as written advice of the essential facts and conclusions likely to form the basis for a determination to be made by the Minister under section 17G(1). Comments on the Stage 1 EFC Report have been taken into account in the preparation of this Stage 1 Final Report.

11. The full review is being carried out according to the requirements of the Act and of the World Trade Organization (WTO) Agreement on the Implementation of Article VI of GATT 1994 (the AD Agreement). Section 1A of the Act describes its purpose as being "to enable New Zealand to apply anti-dumping and countervailing duties in accordance with its obligations as a party to the WTO Agreement." Where the Act is silent, or its interpretation and that of the AD Agreement requires context, WTO dispute reports adopted by the Dispute Settlement Body and decisions of the New Zealand courts provide guidance.

Previous Proceedings

12. Countervailing duties were in place on imports of canned peaches from the European Union (EU) from January 1998 to October 2009, which covered imports from Spain.

13. Anti-dumping duties were first imposed on preserved peaches imported from Spain in August 2011, following an application from HWL. The duties were terminated with effect from 23 February 2017 after a 2016 review found that there was not likely to be a continuation or recurrence of injury following the removal of duties.

14. HWL challenged this outcome, through judicial review proceedings in the High Court of New Zealand. MBIE was directed by the High Court to reconsider its sunset review that led to the 2017 termination of the anti-dumping duties for Spanish preserved peaches.

15. MBIE's reconsideration, carried out in 2019, concluded that in the absence of anti-dumping duties, material injury to the industry was likely to recur. MBIE's conclusion differed from the earlier determination in 2016 because a broader set of data was assessed in accordance with orders from the High Court that MBIE should consider past, present and future conduct in the import of the products. Anti-dumping duties were

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[4] Section 13A of the Act specifies the period during which an anti-dumping duty applies and section 17D(4) provides for the duty to continue until either terminated or replaced with a new duty following a determination.

imposed with effect from 30 August 2019, were not backdated and were to apply for 5 years from when the previous duties were due to expire (i.e., 5 years from 4 August 2016).

16. Anti-dumping duties were imposed at the following *ad valorem* rates of duty on imports from Spanish producers:

- Alcurnia Alimentacion SL (Alcurnia): 2.5 per cent of the Customs value for duty (VFD) for 850g cans and 15.9 per cent for 2.65kg cans
- Conservas El Navarrico: free of anti-dumping duties
- Other subject goods from Spanish producers: 7.9 per cent.

1.3 Findings

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

- there is a likelihood of a recurrence of dumping of the subject goods imported from Spain by producers other than Alcurnia if the current anti-dumping duties expire or are otherwise removed or varied
- material injury to the domestic industry would be likely to recur if the duties on the subject goods expired or were otherwise removed or varied
- the continued imposition of anti-dumping duties on the subject goods for Spanish producers other than Alcurnia is necessary to offset dumping and prevent material injury to the New Zealand industry
- anti-dumping duties should be determined at the rates set out in section 5 of this report.

18. In terms of the determinations to be made by the Minister, MBIE recommends that:

- an affirmative determination under section 17G(1) of the Act should be made in respect of imports of preserved peaches from Spain by producers other than Alcurnia, and consequently a determination should be made of the rates of anti-dumping duties that will form the basis for investigation stage 2, and the chief executive should be directed to immediately start investigation stage 2 in regard to these goods.
- a negative determination under section 17G(1) of the Act should be made in respect to imports of preserved peaches from Spain by Alcurnia, and consequently, the imposition of duties in regard to these goods should be terminated.

1.4 Treatment of Information

Information Considered

19. Section 17F(3) of the Act requires that the chief executive give interested parties a reasonable opportunity to present, in writing, all evidence relevant to the investigation and, on justification being shown, to present that evidence orally.

20. Article 11.4 of the AD Agreement provides that the provisions of Article 6 regarding evidence and procedure shall apply to any review carried out under Article 11. Article 6.1 of the AD Agreement provides that all interested parties in an investigation shall be given

notice of the information which the authorities require and ample opportunity to present in writing all evidence which they consider relevant in respect of the investigation in question. Articles 6.1.1-6.1.3 set out matters relating to the use of questionnaires, while Article 6.2 provides that throughout the investigation all interested parties shall have full opportunity for the defence of their interests.

21. Article 6.6 provides that, except in circumstances provided for in paragraph 8 (refusal to cooperate), 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.

22. Article 6.14 provides that the procedures set out in Article 6 are not intended to prevent the authorities from proceeding expeditiously with regard to initiating an investigation, reaching preliminary or final determinations, whether affirmative or negative, or from applying provisional or final measures.

23. In a review, MBIE seeks and obtains information directly relevant to the proceeding, and satisfies itself as to the accuracy of the information provided. Such information includes questionnaire responses and other information from interested parties; the application and submissions from the New Zealand industry; Customs and statistical data; information from MBIE's research; and other relevant data such as exchange rates, interest rates and prices. MBIE can use verification visits and desktop verification to review the information available and assess its reliability. Interested parties can make submissions at any time during the review, including in response to interim reports or to information provided by other parties.

24. In the current review, MBIE has considered information provided in the application by HWL and in the verification process, information obtained by MBIE from its own research, past reviews and the 2019 reconsideration. MBIE requested information from other interested parties through questionnaires and other requests for information, but as indicated in section 2.4 of this Stage 1 Final Report, only limited responses were received. Consequently, undertaking the review, and having provided interested parties with reasonable opportunities to present in writing all evidence relevant to the investigation, MBIE has had to rely on the information available.

Information Available

25. Section 6 of the Act provides as follows:

> *(1) Where the chief executive is satisfied that sufficient information has not been furnished or is not available to enable the export price of goods to be ascertained under section 4, or the normal value of the 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.*
>
> *(2) For the purposes of subsection (1) the chief executive may disregard any information that the chief executive considers to be unreliable.*

26. Article 6.8 of the AD Agreement provides as follows:

> *6.8 In cases in which any 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.

27. Annex II to the AD Agreement sets out procedures to be followed regarding the request for and provision of information from interested parties. Paragraph 7 of Annex II provides:

> *If the authorities have to base their findings, including those with respect to normal value, on information from a secondary source, including the information supplied in the application for the initiation of the investigation, they should do so with special circumspection. In such cases, the authorities should, where practicable, check the information from other independent sources at their disposal, such as published price lists, official import statistics and customs returns, and from the information obtained from other interested parties during the investigation. It is clear, however, that if an interested party does not cooperate and thus relevant information is being withheld from the authorities, this situation could lead to a result which is less favourable to the party than if the party did cooperate.*

28. As noted above, only limited responses were received to MBIE's requests for information from interested parties other than HWL. Information available has therefore been used where reasonable and appropriate as detailed below in this report. MBIE's consideration of the information available in the current review is based on the relevant provisions of the Act and the AD Agreement.

Protection of Information

29. 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 under section 3F(2) 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. MBIE has made available all non-confidential information through the public file for this investigation. Any interested party has been able to request both a list of the documents on this file and copies of the documents on it.

30. 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).*

31. In seeking information from interested parties, MBIE points out that if 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.

32. For this Stage 1 Final Report, MBIE has reviewed requests for information to be treated as confidential, and 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, but to the extent possible MBIE has required parties submitting confidential information to provide non-confidential summaries.

33. 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, with tables and charts used to assist in the summarisation of the material. The domestic industry's revised non-confidential version of the application includes non-confidential summaries of some of the information provided. A response by the applicant to a request from MBIE for further information, and the domestic industry verification report which outlines information verified during the remote verification process, likewise include redactions and non-confidential summaries of some information.

34. MBIE makes available all non-confidential information via the Public File for this review. Any interested party is able to request both a list of the documents on this file and copies of the documents on it.

Verification of information

35. Article 6.6. of the AD Agreement provides: "Except in the 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."

36. On-site verifications are neither the only nor the prescribed method of verifying information under the Act or the Agreement. Article 6.7 of the AD Agreement provides for on-site visits as an option for the investigating authority to fulfil 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" [5] but there are a number of ways of proceeding with verification.[6]

37. For the current case, MBIE has not undertaken site visits to foreign producers or to the domestic producer because of the travel limitations arising from the government's response to the COVID-19 pandemic. A verification report, summarising the information provided by HWL and MBIE's assessment of it during a remote verification process conducted online with representatives of HWL, has been prepared and a non-confidential version is available on the Public File.

[5] WT/DS189/R, Panel Report, *Argentina – Ceramic Tiles*, Footnote 65.
[6] WT/DS99/R, Panel Report, *US – DRAMS*, paragraph 6.78.

1.5 Report Details

38. In this report, unless otherwise stated, years are years ending 30 June and dollar values are New Zealand dollars (NZD). Information provided by HWL included data relating to financial years to 31 December (FY) and to quarters so that data for years ended 30 June could be created. In tables, column totals may differ from individual figures because of rounding. The term VFD refers to value for duty for New Zealand Customs Service (Customs) purposes.

39. The period of review for the dumping assessment (POR(D)) is the year ended 30 June 2021, while the period of review for the injury assessment (POR(I)) is from 1 July 2018 to 30 June 2021 for actual injury and out to 30 June 2023 for forecast injury.

40. Volumes are expressed on a metric ton (MT or tonne) basis unless otherwise stated. Exports to New Zealand were invoiced in Euro (EUR), although a variety of currencies was used. The exchange rates used are those relating to specific transactions, where available, or the Customs exchange rates or the rate that MBIE considers most appropriate in the circumstances, as indicated in the text.

1.6 MBIE's approach to aspects of the review

41. MBIE carries out full reviews under the provisions of Part 6 of the Act (Review and Reassessment). Section 17C provides that the purpose of a full review is to investigate, in relation to an anti-dumping or a countervailing duty, whether (a) the 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.

42. In carrying out a full review under the Act, MBIE has regard to the provisions of Article 11.3 of the Anti-Dumping Agreement. In applying the relevant provisions of the Act and in interpreting Article 11.3, MBIE takes guidance from New Zealand legal reports, World Trade Organisation (WTO) panel and Appellate Body reports and approaches taken by other WTO member countries.

43. Article 11.3 of the AD Agreement requires that a duty be terminated 5 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" *[emphasis added*]. Some guidance regarding the interpretation of the phrase "would be likely" has been provided by the New Zealand Court of Appeal which interpreted the phrase to mean "a real and substantial risk…, a risk that might well eventuate".[7] Guidance can also be found in WTO panel and Appellate Body reports, e.g. *United States – Sunset Reviews of Anti-dumping Measures on Oil Country Tubular Goods*

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

from Argentina",[8] and *United States Anti-Dumping Duty on Dynamic Random Access Memory Semi-Conductors (DRAMS) from Korea.*[9]

44. For example, in *Oil Country Tubular Goods*, the Appellate Body stated (at paragraph 308) "[W]e agree with Argentina that, in *US – Corrosion – Resistant Steel Sunset Review,*[10] the Appellate Body equated 'likely', as it is used in Article 11.3, with 'probable'. 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." The Appellate Body also noted in *Oil Country Tubular Goods* (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*:

45. 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. In its review, 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 the year ended 30 June 2021 and for likely (notional) export prices. Export prices were derived from actual shipments to New Zealand from Spain over the POR(D). Normal values were derived from retail sales prices in Spain. MBIE's comparison of export prices and normal values shows that imports of preserved peaches from Spain in the year ended 30 June 2021, which were from the sole exporting producer Alcurnia, were not dumped and a recurrence of dumping was not likely. However, on the basis of notional export prices and notional normal values, future imports from all other Spanish producers are likely to be dumped.[11]

46. 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. 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. In this case, MBIE considers the foreseeable future to be out to 30 June 2023, which aligns with the consideration of forecasts for various injury factors.

47. 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.

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[8] Report of the Panel – United States – Sunset Reviews of Anti-Dumping Measures on Oil Country Tubular Goods from Argentina – WT/DS268/R – Circulated 16 July 2004. Report of the Appellate Body – WT/DS268/AB/R – Adopted 17 December 2004.

[9] Report of the Panel – United States – Anti-Dumping Duty on Dynamic Random Access Memory Semi-Conductors (DRAMS) of One Megabit or Above from Korea – WT/DS99/R – Adopted 19 March 1999.

[10] 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."

[11] See the discussion at section 3 below in this report for further detail.

48. MBIE has examined HWL's 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.

1.7 Submissions on the Stage 1 EFC Report

49. On 18 January 2022, in accordance with section 17F(2) of the Act, MBIE gave notified parties the Stage 1 EFC Report and invited them to make written submissions to MBIE on it.

50. Submissions were received from the Government of Spain, the European Commission and HWL.

51. The Annex to this Stage 1 Final Report includes summaries of the comments made and MBIE's responses to them. Where appropriate, the matters raised have been taken into account in the preparation of this Stage 1 Final Report.

2. Subject Goods, New Zealand Industry and Interested Parties

2.1 Subject Goods

Goods Description

52. The subject goods are described as:

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

53. Following the approach taken by MBIE in the 2011 investigation and 2016 review, the goods subject to review include:

- peaches in cans of various sizes and glass jars, with contents that include whole peaches, peach halves, regular and irregular sliced peaches
- peaches in media containing any type or amount of sugar, naturally from the peaches in water or as fruit juice, or sugar syrup, in any concentration.

54. The goods subject to review exclude some goods imported under the same tariff item as preserved peaches, namely goods such as preserved nectarines, nectarine pulp or puree, preserved peaches suspended in jelly, and preserved peaches in containers exceeding 4.0 kg. Freeze-dried fruit, pastes and purees are also excluded.

Tariff Classification

55. The subject goods are currently subject to the following classification in the New Zealand Customs Tariff. Note that this statistical key includes goods that are outside the subject goods description. The tariff classification is provided for convenience and Customs' purposes only, the written description being dispositive.

Figure 1: Tariff Classification[12]

Tariff item	Stat Key	Unit	Description	Duty %	Pref.
2008.70.09	00L	kg	Fruit, nuts and other edible parts of plants, otherwise, etc. – Peaches, including nectarines - - Other	5	Free *See Below CA Free LDC 4

*Unless otherwise indicated, AAN, AU, CN, CPT, HK, KR, LLDC, MY, Pac, PPP, SG, TH, TPA and TW rates in the Preferential Tariff are Free.

56. The subject goods from Spain attract a normal rate of duty of 5 per cent.

57. Previous tariff 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 preserved peaches since 2008.

[12] Extract from the NZ Customs Working Tariff Document, Section IV: Chapter 20: Preparations of vegetables, fruit, nuts or other parts of plants https://www.customs.govt.nz/globalassets/documents/tariff-documents/the-working-tariff-document-section-iv-1-july-2021.pdf

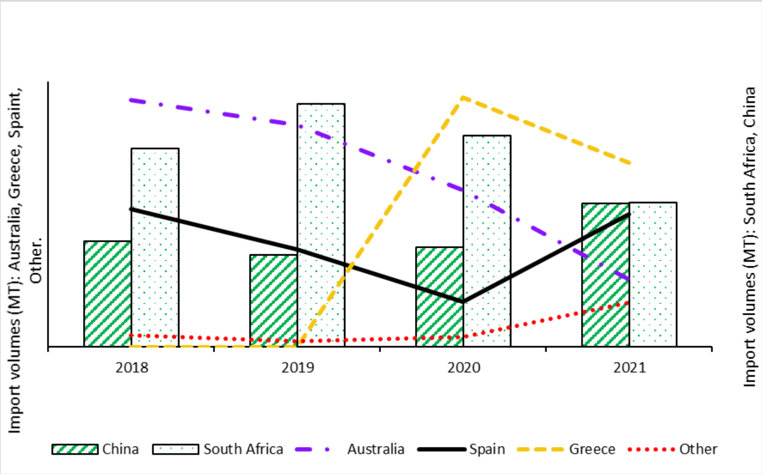
58. There are no current tariff concessions under tariff item 2008.70.09 applying to goods of the description of the subject goods.

2.2 Imports of Subject Goods

59. Figure 2 shows total imports of preserved peaches from 1 July 2018 to 30 June 2021 (the POR(I) for actual injury). South Africa and China are significant exporters of preserved peaches to New Zealand (by quantity), whilst Australia, Spain and Greece were minor suppliers during this period. Canned peaches from Greece and from one producer in South Africa are currently subject to anti-dumping duties. Anti-dumping duties on preserved peaches from China were removed in February 2018.

Figure 2: Imports of preserved peaches, 1 July 2018 to 30 June 2021 (Customs data, MT)

In order to preserve confidentiality there are no values for the Y-axes. The axes for China/South Africa on the one hand, and for Spain, Australia, Greece and other on the other hand, are at different scales



60. Imports from Spain made up less than 1 per cent of total imports 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 of total imports) do not apply to full reviews.

61. During the POR(D), imports of the subject goods from Spain included peach halves in syrup in 850g and 2.65kg cans.

62. It is relevant to note that the weights of containers are expressed in several ways. For example, the 850g cans imported from Spain represent the net weight of the contents of the can, which has a gross weight of 1kg and a drained weight of 480g, which is the weight indicated in retail advertising in Spain. For the purposes of this review, the weight value used by MBIE is the net weight, including both fruit and preserving liquid, but not including the container.

2.3 Like Goods

63. In order to establish the existence and extent of the New Zealand industry for the purposes of a review investigating 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.

64. 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.

65. The scope of the subject goods is defined in section 2.1 above.

66. HWL produces a range of styles of preserved peaches in cans, 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.

67. In previous proceedings involving imports of canned or preserved peaches, the Weight Watchers brand has been considered not to be like goods. This is because it is specifically targeted towards consumers who are on the Weight Watchers' "weight loss" programme, promoted through the Weight Watchers franchise and is sold at a different price level which is not affected by market price changes in the same way as other HWL products. MBIE has considered all the factors that determine like goods and has had no reason to change its position that Weight Watchers products are not like the subject goods. MBIE notes that HWL recently ceased production of the Weight Watchers brand although there is some remaining stock.

68. 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. To determine whether the goods produced in New Zealand are like goods to the subject goods, MBIE normally considers physical characteristics, function and usage, pricing patterns, marketing and distribution, substitutability and commercial interchangeability, and any other relevant considerations, with no one of these factors being necessarily determinative. 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.

70. In the 2019 reconsideration of the review of anti-dumping duties on preserved peaches from Spain, MBIE considered the available information about like goods produced by the New Zealand industry and compared the information with the characteristics of the imported subject goods. In that reconsideration, MBIE noted that the imported subject goods and the domestically produced goods were similar in appearance, although there was some variation in the range of styles (halves, slices and dices), the regularity of the cut and in the form of packaging. The goods imported during the POR(D) for the reconsideration were sold mostly in larger container sizes than the bulk of domestically produced goods, and were predominantly presented as halves. Furthermore, the subject goods and the domestically produced goods were not generally sold through the same outlets, although they performed the same function and had the same usage. These differences were not sufficient to allow a conclusion that HWL does not produce like goods to the subject goods.

71. The subject goods imported in the POR(D) for the current review comprise peach halves in syrup in 850g and 2.65kg cans.

72. In this review, MBIE notes that there have been no submissions from interested parties that would warrant it revisiting its 2019 consideration of like goods.

73. MBIE concludes that the preserved peaches produced in New Zealand by HWL (excluding the Weight Watchers brand), while not identical to the subject goods in all respects, have characteristics closely resembling the subject goods, and are therefore like goods to the subject goods.

2.4 Interested Parties

Legal Requirements

74. Section 3(1) of the Act identifies the parties who are to be given notice under section 3E of the Act, including:

- the Government of the country of export
- exporters and importers known by the chief executive to have an interest in the goods
- the applicant in relation to the goods.

75. Article 6.11 of the AD Agreement provides:

> *For the purposes of this Agreement, "interested parties" shall include:*
> *(i) an exporter or foreign producer or the importer of a product subject to investigation, or a trade or business association a majority of the members of which are producers, exporters or importers of such product;*
> *(ii) the government of the exporting Member; and*
> *(iii) a producer of the like product in the importing Member or a trade and business association a majority of the members of which produce the like product in the territory of the importing Member.*
> *This list shall not preclude Members from allowing domestic or foreign parties other than those mentioned above to be included as interested parties.*

76. Notice of initiation of the review was provided to the parties listed in section 3(1) of the Act.

New Zealand Industry

77. Section 3A of the Act sets out the meaning of industry:

> *For the purposes of this Act, the term industry, in relation to any goods, means—*
> *(a) the New Zealand producers of like goods; or*
> *(b) such New Zealand producers of like goods whose collective output constitutes a major proportion of the New Zealand production of like goods.*

78. The applicant, HWL, is the sole New Zealand producer of preserved peaches.

79. In its application, HWL explained that, in times of short supply it needs to import preserved peaches. Article 4.1(1) of the AD Agreement provides that when producers are themselves importers of the allegedly dumped products, the term “domestic industry” may be interpreted as referring to the rest of the producers. MBIE notes that HWL is New Zealand’s only producer of preserved peaches and is satisfied that with regard to the AD Agreement, HWL’s imports would not exclude it from consideration as the domestic industry.

80. MBIE considers that HWL continues to produce like goods and is the sole New Zealand producer of preserved peaches, and therefore remains the New Zealand industry in terms of section 3A of the Act.

81. In addition to its application, HWL responded to an RFI on 8 October (updated on 4 November).

82. A remote verification was carried out of information supplied by HWL in its application 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.

83. HWL made a submission on the Stage 1 EFC Report on 1 February 2022.

Foreign Producers

84. There was only one supplier of Spanish peaches to New Zealand during the POR(D) which MBIE identified as Alcurnia.

85. A questionnaire was sent to Alcurnia, but no reply was received. In the absence of an adequate response, Alcurnia is considered to be uncooperative.

86. An invoice for a domestic sale to a supermarket was provided by a Spanish producer through a New Zealand importer.

87. 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.

88. Questionnaires were sent to the following producers, but no responses were received:

- Conservas El Artesanas Navarrico
- Conservas y Frutas S.A.
- Pedro Guillen Gomariz SL.

89. MBIE also sent questions by email to associations representing Spanish producers, but received no replies. The associations that MBIE approached were:

- Federación Nacional de Asociaciones Transformados Vegetales Y Alimentos Procesados (FENAVAL)
- La Federación Española de Industrias de Alimentación y Bebidas (FIAB) Exterior SL.

90. MBIE did not receive any submissions on the Stage 1 EFC Report from the foreign producers.

Intermediaries

91. MBIE also invited intermediaries from the investigation and previous review to participate in the review. These intermediaries were:

- Euroaliment S.L.
- Leo's Imports & Distributors Pty Ltd
- SPAI S.R.L.

92. Only one intermediary replied, SPAI S.R.L. (SPAI), which provided comments in relation to whether it would resume exporting to New Zealand from Spain.

93. MBIE did not receive any submissions on the Stage 1 EFC Report from the intermediaries.

Importers

94. New Zealand-based importers of preserved Peaches from Spain identified from Customs data for the POR(D) were sent questionnaires. MBIE also invited importers from previous investigations and reviews, and some other importers of preserved peaches from other countries, to provide information where MBIE considered they might be able to assist the review. The importers that MBIE approached were:

- Brooke Holdings Ltd
- Foodstuffs NZ (New World, PAK'nSAVE, Four Square supermarkets and Gilmours wholesalers)
- James Crisp Ltd
- Mediterranean Foods (Wgtn) Ltd
- Mediterranean Foods South Island Ltd
- Neill, Cropper & Co Ltd
- North Canterbury Distributors (2003) Ltd
- On Trays Ltd
- Sabato Ltd
- Woolworths New Zealand Ltd (Countdown, Super Value and FreshChoice supermarkets).

95. While none of the importers who were sent questionnaires completed and returned those questionnaires, MBIE received responses to some questions from most of the importers.

96. MBIE did not receive any submissions on the Stage 1 EFC Report from the importers.

Other Interested Parties

97. The Government of Spain (GOS) is a notified and interested party. The GOS made a submission following initiation of the investigation and provided comments on the Stage 1 EFC Report.

98. The European Commission (EC) is a notified and interested party. The EC made a submission following initiation of the investigation and also submitted comments on the Stage 1 EFC Report.

99. No other interested parties have come forward or have been identified.

3. Review of Dumping

3.1 Dumping

100. Section 3 of the Act includes the following definitions:

> ***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.*

101. The dumping review determines export prices and normal values in accordance with the provisions of the Act and the AD Agreement, and makes a proper comparison between them in order to establish whether and to what extent any dumping is occurring.

102. Export prices are determined in accordance with section 4 of the Act and normal values in accordance with section 5. Where sufficient information is not available or is not provided, export prices and normal values can be determined under section 6 of the Act.

Basis for Investigation of Dumping

103. The objective of the review is to establish whether a duty is necessary to offset injurious dumping. In respect of dumping, MBIE establishes whether there is current dumping and whether dumping is likely to continue or recur, i.e. whether the export price of the goods is less, or is likely to be less, than the normal value when a fair comparison is made.

104. 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.

105. The information available to MBIE in reviewing the dumping of preserved peaches from Spain includes:

- information contained in the application and subsequent submissions made by the industry including in response to MBIE's requests for information, and from MBIE's verification of HWL's information
- information from importers
- information from an intermediary
- information from the Government of Spain and the EC
- information from previous MBIE investigations and reviews
- information from NZ Customs
- information arising from MBIE's independent research.

106. MBIE has compared weighted average export prices with normal values derived from average domestic prices. While there was a small number of export transactions during the POR(D), due to a lack of cooperation from interested parties in Spain, no information was available to weight the domestic prices or normal values.

107. To arrive at the ex-factory values for Alcurnia, the only producer exporting to New Zealand, MBIE has made adjustments from the base export and domestic prices, where appropriate and where sufficient information was available, to ensure a fair comparison between export sales of preserved peaches and sales for domestic consumption in Spain. The basis for the adjustments is set out below.

3.2 Current Dumping

3.2.1 Export Price

Legal Basis

108. Export prices are normally determined in accordance with section 4(1) of the Act, which deals with transactions where the goods imported into New Zealand have been purchased by the importer from the exporter.

109. Section 4(2) of the Act provides that where the goods are to be shipped on consignment and there is no known New Zealand purchaser or where there is no exporter's sale price or no price at which the importer, or a person not related to the importer, has purchased or agreed to purchase the goods, then the export price shall be determined in such manner as the chief executive considers appropriate, having regard to all the circumstances of the exportation.

110. Section 6 of the Act provides that if sufficient information has not been furnished or is not available to enable the export price of goods to be ascertained under section 4, then the export price shall be such amount as is determined by the chief executive having regard to all available information. The chief executive may disregard any information considered to be unreliable.

Determination of Export Price

111. The export price is usually the price paid for the goods by the importer, less costs, charges and expenses incurred in preparing the goods for shipment that are additional to such costs incurred for sales for home consumption and any other costs, charges and expenses resulting from the exportation of goods or arising after their shipment.

112. The starting point for MBIE is the documentation (usually invoices) for each shipment, which shows the price paid or payable for the goods by the purchaser. MBIE requested this information from both producers and importers in its questionnaires. It also requested documentation of other costs incurred in exportation of the goods. The base price, which is the starting point for the calculation of the export price, is the transaction price paid, whether by the importer or an intermediary.

113. Adjustments are then made to take the base price back to the ex-factory level and to ensure a fair comparison with the normal value. Adjustments to calculate an ex-factory price generally cover costs such as inland freight between the factory and the port, port charges and bank charges, and overseas freight and insurance (depending on the terms of sale). Most fair comparison adjustments are made to the normal value, but those relating to differences in the cost of credit and packaging are usually made to the full extent of the costs involved to both the export price and normal value.

114. In some cases where there is an intermediary company involved which acts as a facilitator of the sales and shipment of the goods, adjustments are made for the intermediary's commission or margin, and any other costs associated with the trade to ensure an ex-factory equivalent value is achieved.

115. MBIE normally seeks to compare the export price with the normal value at the ex-factory level, after appropriate allowances to ensure a fair comparison. The information available in this investigation has been reviewed to establish the basis for and extent of any adjustments that may be required.

116. MBIE has considered adjustments for the following:

- costs to bring values back to the ex-factory level
- additional costs of preparation for export (section 4(1)(a)(i) of the Act)
- other costs resulting from exportation (section 4(1)(a)(ii) of the Act).

117. Fair comparison adjustments are also dealt with in section 4.4 below on normal values (section 5(3) of the Act), but where it is sensible to do so, adjustments have been made to export prices.

118. MBIE is required to assess the likelihood that dumping would recur if anti-dumping duties are not in place and in the absence of sufficient information on imports, section 6 of the Act provides that all available information can be used to carry out a notional assessment of likely export prices. This includes the establishment of the likely price that will be paid by importers in terms of section 4(1) of the Act in the absence of anti-dumping duties. MBIE has taken into consideration that there were no imports from suppliers other than Alcurnia from Spain during the POR(D) and that the information available on sales from Alcurnia may not be representative of the export prices of imports from Spain in the foreseeable future. MBIE has therefore carried out an assessment to establish the notional export price to be used as a proxy in determining the likelihood of a recurrence of dumping in the absence of anti-dumping duties.

3.2.2 Export Price – Alcurnia

119. Section 4(1) of the Act requires that the export price be based on the price paid by the importer, where it is an arm's length transaction. Section 3(2) of the Act sets out the basis for when a purchase or sale of goods shall not be treated as an arm's length transaction.

120. Alcurnia did not provide a response to the manufacturer's questionnaire. MBIE has used information provided by an importer, Customs data and all other available information, including from previous investigations and reviews, to determine export prices for Alcurnia, in accordance with section 6 of the Act.

Base prices

121. MBIE was able to reconcile information on proforma invoices with Customs information, which importers are required to declare, and is therefore satisfied that it can use the amounts in Euro (EUR) shown on proforma invoices as the base prices for calculating export prices for sales to New Zealand importers. Customs data included quantities (kg), Cost, Insurance, Freight (CIF) and Value for Duty (VFD) information. MBIE has decided to use the amounts in Euro (EUR) shown on invoices as the base prices for calculating export prices for sales to New Zealand importers. For shipments to the importer which did not provide invoices, MBIE assumes that the VFD amounts in Customs data for the non-cooperating importer are prices on the same terms as the other importer, which is consistent with the way prices were treated in Customs data for the cooperating importer. MBIE has been able to make assumptions about the sizes of the cans imported from the Customs data, such as the goods description, the unit value (per kg) and the rate of anti-dumping duty paid. MBIE is not aware of the presence over the POR(D) of container sizes of Spanish peaches smaller than 850g on the New Zealand market.

Adjustments to base prices

Additional export costs

122. 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.

Overseas freight and insurance

123. Freight and insurance from Spain to New Zealand is not included in the base prices so no adjustment is needed.

Exportation costs

124. 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, a number of other adjustments can be made to export prices under section 5(3) of the Act in order to ensure a comparison at the ex-factory level.

Freight from factory to port

125. The invoiced prices do not include freight from the factory to the port of export, so no adjustment is needed.

Port handling and clearance charges

126. The base prices do not include port handling and clearance charges, so no adjustment is needed.

Cost of credit

127. Information provided by one importer on terms of payment shows that there is no need to make an adjustment for cost of credit.

Other adjustments

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

Calculation of export price – Alcurnia

129. MBIE has used the base prices to calculate separate weighted average ex-factory export prices per kg for 850g and 2.65kg cans of the subject goods exported by Alcurnia in the year ended 30 June 2021.

3.2.3 Notional Export Price

130. MBIE is also required to assess the likelihood that dumping would recur if anti-dumping duties are not in place especially where there have been limited shipments subject to the anti-dumping duties and the information available on those shipments may not be representative of export prices from Spain in the absence of anti-dumping duties. 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 authorities are 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

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

131. 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]

132. 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]

133. 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]

134. There were only three shipments of preserved peaches from Spain during the POR(D), which comprised cans of 850g and 2.65kg sizes. The total volume was minimal compared with historic exports[17] of the subject goods from Spain. MBIE is not satisfied therefore that the current export prices established on the basis of these shipments are representative of the likely export prices of preserved peaches from Spain to New Zealand, should duties not be in place.

135. 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 or **notional** export price of preserved peaches from Spain 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.

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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] Customs data shows import volumes of subject goods from Spain of 1,287MT in the calendar year 2007 and 1,132MT in 2008 under tariff item and statistical key 2008.70.09 00L. MBIE notes that most of these imports were undertaken by HWL.

Base price

136. In view of the situation described above in section 3.2.3, in order to establish a reasonable proxy for a base export price (or notional 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 Spain to non-EU member markets with broadly equivalent levels of sales to New Zealand. MBIE used export data from TradeData International Pty Ltd (TradeData) which was provided by HWL. The data MBIE used is for EU HS codes 20087061, 20087069, 20087071 and 20087079 at the Free on Board (FOB) level with values in EUR for non-EU export markets ranging from 20 to 200 MT during the POR(D), which was the range used in the 2019 reconsideration.

137. In establishing markets of a broadly equivalent size to New Zealand, MBIE notes that exports to New Zealand from Spain in the year ended 30 June 2021 totalled less than 100 MT. Since 2011, annual export volumes to New Zealand from Spain have ranged between 17 and 202 MT (calendar year). MBIE has therefore considered comparable markets to be those where exports from Spain fall within the range of 20 to 200 MT in the year ended 30 June 2021, excluding countries within the EU that form a single market with Spain. Twenty countries fall within the comparable market range in the year to 30 June 2021 data. MBIE notes that the export statistics are likely to include some non-subject goods.

138. In its application, HWL disagreed with MBIE's past approach and considered that data for exports to all countries, rather than those with export volume of 20 to 200 MT, provide a truer indication of the export price. HWL's reasons are as follows:

- the mix of different product types is not visible in the data, for example 410g and 820g cans, and therefore a larger sample is more robust and indicative of the likely export price
- there is a limited number of countries when using only data for export sales to non-EU countries with export markets for Spanish peaches in the range of 20 to 200MT
- the FOB value per kilogram varies significantly between different countries and very low prices indicates sales as joblots.

139. MBIE has considered each of these reasons and comments as follows:

- the TradeData information includes data separately for containers not exceeding one kilogram and for containers exceeding one kilogram. Statistical data are not collected by the EU, and are therefore not available to TradeData, at a level of granularity that provides for a distinction between 410g and 820g cans
- a larger sample would not be more robust and indicative of the likely export price to New Zealand as it would include sales to much larger markets than New Zealand where prices may be quite different
- MBIE considers that generally it would be expected that the price per kilogram of larger cans will be less than the price per kilogram of smaller cans. The TradeData information, which includes data separately for containers not exceeding one kilogram and for containers exceeding one kilogram, supports this view. MBIE has calculated export prices for each of these categories, which will take account to the extent possible of the differences in prices between various container sizes

- MBIE considers that it is appropriate to select sales that reflect prices to markets the size of New Zealand rather than to other markets where greater volumes may result in different prices. While it may be expected that sales in greater volumes would be reflected in lower prices, MBIE notes that the weighted average price per kg from all non-EU destinations is higher than that to markets between 20 and 200MT
- there are 20 countries in the data that MBIE has used. MBIE considers that data from this number of countries which receive export volumes of between 20 and 200MT is sufficient to establish a basis for likely export prices to New Zealand
- MBIE agrees with HWL that the FOB value per kilogram for each of these countries varies significantly. There is no apparent pattern in the data that would explain these differences, for example level of development, and no evidence to suggest that sales at very low prices are joblots nor that it would be sales at joblot prices that would be exported to New Zealand if anti-dumping duties were removed.

140. MBIE has established separate notional base prices for subject goods not exceeding 1kg and subject goods exceeding 1kg. The base prices are the weighted average FOB prices per kilogram in EUR.

Adjustments to base price

Additional export costs

141. 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.

Overseas freight and insurance

142. Freight and insurance from Spain to New Zealand is not included in the FOB base prices so no adjustment is needed.

Exportation costs

143. 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, a number of other adjustments can be made to export prices under section 5(3) of the Act in order to ensure a comparison at the ex-factory level.

Freight from factory to port

144. In its application, HWL made only one adjustment to derive an ex-factory export price. HWL applied one per cent of the FOB value to represent the expense of freight from the factory to the port of export in Spain.

145. MBIE has information from an importer that shows the actual costs of cartage to the port of export. The costs are higher than those estimated by HWL. MBIE has used these costs to make an adjustment to export prices.

Port handling and clearance charges

146. Information provided by an importer included all charges at the port of export including costs of port handling and clearance, namely terminal handling, documentation, wharf

charges, export Customs clearance fee and telex release. An adjustment was made on the basis of these costs.

Cost of credit

147. MBIE has no information on terms of payments that would apply to various Spanish producers should they resume exporting. MBIE does have information from one importer that shows there is no need to make an adjustment for cost of credit. MBIE has made no adjustment for cost of credit.

Other adjustments

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

Export price

149. From the base prices and the adjustments set out above, MBIE has calculated notional ex-factory export prices per kilogram for subject goods not exceeding one kilogram and for subject goods exceeding one kilogram. These ex-factory export prices are used as a proxy for potential shipments of preserved peaches for the purposes of the consideration of the likelihood of a recurrence of dumping.

3.3 Normal Value

150. Normal values are determined in accordance with section 5 of the Act. The normal value is usually the price at which the producers of preserved peaches sell like goods 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 Spain. Where an exporter makes no such sales, sales by other sellers of like goods in Spain can be used to establish normal values.

151. Footnote 2 to Article 2.2 of the AD Agreement 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.

152. Section 5(6) of the Act provides that where sales of the like product in the domestic market of the exporting country or sales to a third country have been made for an extended period of time and in respect of a substantial quantity of like goods at prices below the cost of production plus administrative, selling and general costs they shall be deemed to be not in the ordinary course of trade. Article 2.2.1 of the AD Agreement provides that such sales may be disregarded in determining normal value only if the authorities determine that such sales are made within an extended period of time (normally one year but in no case less than six months) in substantial quantities (not less than 20 per cent of the volume sold in transactions under consideration for the determination of the normal value) and are at prices which do not provide for the recovery of all costs within a reasonable period of time. If prices which are below per unit costs at the time of sale are above weighted average per unit costs for the period of investigation, such prices shall be considered to provide for recovery of costs within a reasonable period of time.

153. As provided in section 5(3) of the Act and Article 2.4 of the AD Agreement, export prices and normal values are to be compared at the same level of trade, normally at the ex-factory level, and in respect of sales made at as nearly as possible the same time. In making the comparison, due allowance is to be made, as appropriate, for differences which affect price comparability, including differences in conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics, and any other differences which are also demonstrated to affect price comparability.

Information Available

154. MBIE received no information from Spanish associations representing Spanish producers about canned peaches sold in Spain and only one invoice for a domestic sale to a supermarket, from a Spanish producer indirectly through a New Zealand importer. This invoice was for a date in September 2021 for 850g cans sold to a Spanish supermarket. MBIE notes that this information is for only one domestic selling price, was issued outside of the POR(D) and, due to lack of cooperation by Spanish producers, cannot be verified as a sale at arm's length in the ordinary course of trade. MBIE is therefore unable to satisfy itself that the selling price is necessarily representative of domestic sales during the POR(D).

155. The invoice information showed terms of payment that provided for payment a specified number of days after the sale and delivery terms for that sale to a particular supermarket, which indicates that a deduction would be appropriate. However, for the reasons noted above, MBIE cannot be satisfied that this one invoice is representative of all domestic sales.

156. The Spanish producer's domestic invoice showed a VAT rate of 10 per cent, confirming MBIE's understanding from previous reviews.

157. In respect of retail margins discussed below, the invoice information was to a supermarket that does not display prices online. That producer's brand of peaches are however available online from other supermarkets. MBIE has therefore been able to calculate an estimated retail margin for that particular sale which it has also taken into account when deciding on an appropriate retail margin when making adjustments under the normal value sections below. As noted above however, the sale may not be representative of sales on the domestic market for home consumption in Spain.

3.3.1 Normal Value – Alcurnia

Basis for Normal Values

158. In its application, to calculate a normal value for preserved peaches sold in the Spanish domestic market, HWL obtained an April 2021 retail selling price for an 850g can of Alcurnia preserved peaches in Spain for use as its base price. MBIE notes that the retail price used by HWL was a special price. HWL converted this price to EUR per kg and then made adjustments for VAT, the retailer's margin and freight to the supermarket, to arrive at an ex-factory selling price to compare with the ex-factory export price in its dumping calculations.

159. In addition to the retail price information provided by HWL in its application, MBIE has identified an additional online retail sales price for an 850g can of Alcurnia peaches.

Base Prices

160. In the absence of reliable and verifiable information from Alcurnia on its 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 in sales that are arm's length transactions… by other sellers of like goods."

161. MBIE has included only standard prices from Spanish supermarkets in its assessment of the accuracy and adequacy of the calculation of a normal value. MBIE has averaged the retail prices for Alcurnia peaches in 850g cans to arrive at a base price in EUR per kg.

162. There was no online information on retail prices for 2.65 kg cans. MBIE has therefore estimated a base price for these cans on the basis of the proportional difference in the prices of 850g and 2.65kg cans exported to New Zealand.

Like goods

163. The canned peaches sold by Alcurnia in the Spanish domestic market appear, from the information available, to be like in all respects to the goods exported to New Zealand.

Sufficiency of volumes

164. MBIE does not have details of Alcurnia's total sales of the subject goods, whether domestic sales or exports to other markets, but Alcurnia's website shows that most of its production consists of peaches, that it processes 30,000 tonnes of raw materials and that more than half of its turnover is exported. This indicates that a large volume of preserved peaches is sold on the domestic market in Spain. Since Alcurnia's export sales volume to New Zealand in the POR(D) was less than 100 MT, MBIE is satisfied that Alcurnia's domestic sales in Spain will constitute more than 5% of its sales to New Zealand in the POR(D).

Ordinary course of trade

Arm's length transactions

165. Section 3(2) of the Act sets out the basis for considering whether or not a purchase or sale of goods shall be treated as an arm's length transaction, including whether the price is influenced by a relationship between the buyer and seller. Section 3(4) of the Act sets out the basis for deeming whether or not a person shall be deemed to be related to another person.

166. MBIE has no information from parties or from its own research that indicates Alcurnia is related to any of the Spanish supermarkets to which it sells.

Sales at a loss

167. MBIE does not have details of Alcurnia's costs for sales to domestic customers, nor any information from parties or from its own research that indicates Alcurnia has made sales at a loss.

168. MBIE considers that Alcurnia's sales to Spanish supermarkets have been made in the ordinary course of trade.

Timing of sales

169. The comparison between export price and normal value is to cover sales made at as nearly as possible the same time.

170. The online retail sales were accessed online within the POR(D) - in April 2021 by HWL and on 24 June 2021 by MBIE. Pro-forma invoices for export sales to New Zealand were dated September and December 2020. MBIE has no information that would allow a comparison to be made at a closer time.

Adjustments

Terms and conditions of sale

Cost of credit

171. MBIE has no information on the cost of credit for domestic sales in Spain, nor does the information available indicate that there were any costs of credit incurred by Alcurnia on the export sales to New Zealand. Accordingly there is no need for an adjustment for cost of credit. MBIE notes that an adjustment for cost of credit was not made in the 2019 reconsideration. In the absence of any other information indicating that an adjustment should be made for cost of credit, no adjustment has been made.

Delivery terms

172. MBIE considers it reasonable to assume, on the basis of HWL's application, that domestic selling prices would include the cost of delivery to customers. In the absence of other information, an adjustment has been made to the base prices for the cost of delivery on a rate based on HWL's understanding of local freight charges in New Zealand.

Level of trade

173. Alcurnia's sales for both export to New Zealand and for its domestic market are to retailers, so no level of trade adjustment is necessary.

Taxation

174. The base retail prices are VAT-inclusive, so in order to ensure a proper comparison with the export prices, the tax element must be removed. 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. The base prices have been reduced accordingly.

Margins and mark-ups

175. In its application, 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. MBIE recalculated this margin, as it did in the 2019 reconsideration, using current retail prices for Wattie's brand goods and arrived at a higher margin level.

176. In the Stage 1 Final Report of the recent review of canned peaches from Greece,[18] MBIE noted that "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," which would indicate a margin higher than that proposed by HWL.

177. In the 2019 reconsideration, MBIE examined a spectrum of retail margins from a 2011 report by the Irish Food Board (Bord Bia) on entering the Spanish retail market. MBIE noted that the Bord Bia report indicated a retail margin range for the major store El Corte Inglés. Taking into account all of the information available to it, MBIE used a retail margin at the lower end of the retail margin range for El Corte Inglés. While the Bord Bia

[18] https://www.mbie.govt.nz/assets/canned-peaches-from-greece-2020-full-review-stage-1-final-report.pdf

information is dated, it is still referred to in an article in the *Journal of Business and Management Sciences*.[19]

178. MBIE located profit and loss statements online for retailers DIA, Eroski and the Mercadona Group. MBIE attempted to calculate the differences between revenue and cost of purchases, but was not able to verify the data that was included in cost of purchases. MBIE's estimates of these differences as a percentage of revenue were:

- DIA - 10.7 per cent of sales revenue for the year ended December 2020 and 15.5 percent for 2019 (for sales in Portugal and Spain)[20]
- Eroski – 26.8% of sales revenue for the year ended January 2021 and 26.4% for 2020[21]
- Mercadona - 26.5 per cent of sales revenue for the year ended December 2020.[22]

179. Without being able to verify the information, and noting that Mercadona's statement covered sales in both Portugal and Spain, MBIE is unsure whether the figures calculated accurately reflect retail margins for preserved peaches in Spain. MBIE also notes that it was unable to access financial statements for several other supermarket chains where retail margins may be different.

180. On the basis of all of the information available to it, and bearing in mind that MBIE was unable to verify information, MBIE considers that the same retail margin it used in the 2019 reconsideration is appropriate for making a deduction from the VAT-exclusive price at Spanish supermarkets.

Other adjustments

181. 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.

Normal Value Calculations

182. From the base prices and the adjustments set out above, MBIE has calculated ex-factory normal values for preserved peaches exported from Spain by Alcurnia during the POR(D). The normal values apply to 850g and 2.65kg cans as a basis for establishing the level of current dumping, and to all sizes for likely dumping.

3.3.2 Normal Value – Notional

183. For the purposes of assessing the general likelihood, beyond exports from Alcurnia, that dumping of other imports of preserved peaches from Spain would likely recur should anti-dumping duties not be in place, MBIE has sought to establish a likely normal value for likely exports from Spain to New Zealand under section 6 of the Act.

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[19] Md. Habibur Rahman, Ramón Sanguino Galván, Ascensión Barroso Martínez, 2017, Impact of Family Business on Economic Development: A Study of Spain's Family-owned Supermarkets in Journal of Business and Management Sciences, Vol. 5, No. 4, 129-138, available online at http://pubs.sciepub.com/jbms/5/4/4

[20] http://www.cnmv.es/AUDITA/2020/18983.pdf

[21] http://www.cnmv.es/AUDITA/2021/19159.pdf

[22] https://info.mercadona.es/document/en/annual-report-2020.pdf?blobheader=application/pdf.

Base Prices

184. In its application, to calculate a notional normal value for preserved peaches sold in the Spanish domestic market, HWL obtained retail selling prices in April 2021 for canned peaches in Spain for use as its base prices. HWL provided retail prices in EUR, inclusive of VAT, for the supermarkets Alcampo, Consum, Eroski, Hipercor and Supercor. HWL arranged these prices into can sizes of 410g or 820g and converted these prices to EUR per kg. 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.

185. MBIE checked the retail prices provided by HWL and researched whether prices were available from other Spanish supermarkets. MBIE found that retail prices were 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 were Froiz, Masymas, Mercadona, Pepe La Sal and Bon Preu.

186. MBIE identified two Spanish manufacturers which sell peaches online, namely Dulces y Conservas Helios S.A. and Hero España through its store La Tienda Hero. Online prices for these manufacturers are lower than prices in supermarkets for the equivalent goods but their average is higher than the average price for the wide range of like goods available from supermarkets. MBIE considers that the online sale prices of the two Spanish manufacturers are not representative of the prices of like goods sold in Spain for home consumption. MBIE has used Spanish supermarket prices to calculate an average retail price as the base price for calculating normal values.

187. In calculating an average retail price as the base price, MBIE has used only product from Spain, containing peaches in all media, the actual net weights shown on websites, standard prices rather than special prices, and has removed duplicates where brands, sizes and prices were the same.

188. In order to establish separate base prices for preserved peaches in containers not exceeding one kilogram MBIE has used a simple average retail price derived from all of the online retail price information that was available from Spanish supermarkets. There were no online retail prices available for 2.65 kg cans. MBIE has therefore estimated a notional base price per kilogram for preserved peaches using online retail price information that was available from Spanish supermarkets for sales of peaches in halves in 820-850g cans on the basis of the proportional difference between prices of 850g and 2.65kg cans exported to New Zealand during the POR(D).

189. In its response to the EFC report, HWL proposed that given the relatively low volume of exports to New Zealand over the period of review, the proportional difference between prices for can sizes greater than 1KG could be calculated on the basis of data from TradeData it supplied for exports to all markets in the absence of anti-dumping duties. However, MBIE considers the approach proposed by HWL would include a broader range of products than is covered by the subject goods as the tariff items for cans exceeding 1kg will include aseptically packaged products and products in drums (i.e. products in volumes exceeding 4kg). MBIE notes that the approach suggested by HWL would likely lead to a less accurate calculation of nominal export price for goods exceeding 1kg but less than 4kg as compared to that calculated using the prices of goods exported to New Zealand during the POR(D).

Adjustments

Terms and conditions of sale

Cost of credit

190. No adjustments were made for cost of credit due to a lack of reliable and representative information, as explained above.

Delivery terms

191. In the absence of reliable and representative information, an adjustment has been made to the base prices for the cost of delivery on a rate based on HWL's understanding of local freight charges in New Zealand.

Taxation

192. MBIE has deducted the 10 per cent VAT from VAT-inclusive supermarket prices.

Margins and mark-ups

193. MBIE has made a deduction from the VAT-exclusive price at Spanish supermarkets for the retail margin at the same percentage as calculated for Alcurnia and explained above.

Other adjustments

194. 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.

Normal Value Calculations

195. From the base prices and the adjustments set out above, MBIE has calculated notional ex-factory normal values for preserved peaches from Spain.

3.4 Findings Relating to Dumping

196. MBIE has compared the export prices with the normal values for the POR(D) and also for the notional levels established to assist in the consideration of the likelihood that dumping could continue or recur should suppliers other than Alcurnia enter or re-enter the market.

197. MBIE has found the following dumping margins:

Figure 3: Dumping Margins
Percentage of Export Price

Goods	Dumping Margin
Alcurnia (Current and Likely)	
850g	Not dumped
2.65kg	Not dumped
Other suppliers/Notional (Likely)	
Not exceeding 1kg	24.2%
Exceeding 1kg	7.6%

3.5 Likelihood of a Continuation or Recurrence of Dumping

198. MBIE has reviewed the likelihood that dumping by Spanish producers will continue or recur on the basis set out above, in the light of the information provided and verified

where possible during the review, and has applied the likelihood tests from the New Zealand and WTO dispute findings described in section 1.6 of this report. 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 probable , and that those events mean that there is a risk dumping might well continue or recur.

199. 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 anti-dumping duties
- the commercial arrangements governing the pricing of exports to New Zealand from Spain
- possible developments in the market in Spain, which could affect the normal values of the goods and their availability for export to New Zealand
- whether it is likely that future imports from the current exporting producer, Alcurnia, will likely be dumped.

200. In this review, MBIE has researched and analysed available information and data on current and likely dumping, as explained in this section, to establish the existence and extent of current and likely dumping.

3.5.1 European Commission (EC) and Government of Spain (GOS) Submissions

201. In submissions made on the Initiation Memorandum for this review, the EC stated that HWL had not provided any solid evidence in its application that there is a likelihood of continuation or recurrence of dumping. The GOS considered HWL's calculations of dumping margins were questionable because the average import price for preserved peaches from Spain is higher than the average New Zealand import price and the average export price from Spain to New Zealand is higher than Spanish export prices to other third countries. The GOS and the EC both submitted that since 2017, after the elimination of antidumping measures, Spanish export prices show an upward trend.

202. MBIE notes that it used its own information and research to cross-check and adjust the dumping calculations provided by HWL as described in the Initiation Memorandum. MBIE also notes that the comparisons used by the GOS, namely comparisons of import prices and export prices from different countries, are not indicators of dumping as the analysis of dumping involves comparing export prices to New Zealand and domestic prices in the country of export, in this case Spain, rather than with import or export prices from other countries. MBIE also observes that a trend of increasing export prices does not indicate a lack of dumping as domestic prices may also show an increasing trend.

203. In its submission on the Stage 1 EFC Report, the GOS stated that due to the insignificant volume of exports to New Zealand Spanish companies did not participate in the review. It commented that considering the low volumes of exports to New Zealand since 2012 and the period when duties were removed, it is unlikely that any analysis would indicate a likelihood of an increase in exports that could cause injury to the New Zealand industry. The GOS did not consider there was justification for the continuation of the duties.

204. The EC also submitted comments on the Stage 1 EFC Report that focussed on how MBIE established the likelihood of the recurrence of dumping and material injury. It noted that in the past the domestic industry has not experienced injury as the original investigation was based on a threat of injury and is currently not experiencing dumping or material injury. It also considered that there was no likelihood of the recurrence of dumping and material injury, the likelihood of the recurrence of material injury had not been demonstrated and that any future imports will depend on a variety of factors. The EC considered that the review should be terminated.

205. MBIE has addressed the matters raised in these comments on the Stage 1 EFC report in Annex 1.

3.5.2 Current and Likely Future Dumping Margins

206. MBIE has determined that none of the subject goods exported from Spain to New Zealand in the POR(D), limited to 850g and 2.65kg cans, were dumped.

207. MBIE notes that there was only one Spanish producer exporting to New Zealand during the POR(D) and preserved peaches were exported only in cans with net weights of 850g and 2.65kg. To assess likely future dumping margins, a notional assessment of dumping was therefore carried out to cover all other Spanish producers and retail can sizes not exceeding one kilogram and exceeding one kilogram. On a notional basis, MBIE has found that the subject goods will be dumped by a margin of 24.2 per cent for cans not exceeding one kilogram and by a margin of 7.6 per cent for cans exceeding 1 kilogram.

208. MBIE considers that dumping at the notional levels assessed is an indication that in the absence of any anti-dumping, duties dumping by Spanish producers is likely to recur.

209. Export prices for Alcurnia during the POR(D) and likely export prices for Alcurnia assessed in section 3.2.3 are higher than the normal values established for Alcurnia, however, so MBIE considers that it is likely imports from Alcurnia will not be dumped in future. MBIE also notes that sales by Alcurnia to New Zealand are into niche, specialist stores, and are sold at higher prices than notional export prices. MBIE also notes from an importer's website that it took some effort to persuade Alcurnia to sell preserved peaches to New Zealand, rather than Alcurnia seeking export markets by offering persuasive pricing, which supports MBIE's view that Alcurnia is unlikely to dump in future.[23]

3.5.3 Price Behaviour

210. There have been relatively low volumes of imports into New Zealand of preserved peaches from Spain since the year ended June 2014 (less than 100 MT). MBIE notes that since the year ended June 2014, the highest values for duty per kilogram for imports from Spain were in the June years 2020 and 2021.

211. In the POR(D), the subject goods were all exported to New Zealand in 850g and 2.65kg cans by Alcurnia, the only supplier of preserved peaches from Spain to New Zealand since the end of 2019. The exports were to importers who operate specialty food stores and who also appear to supply mainly speciality food retailers.

212. MBIE considers that the export prices in the POR(D), which reflected sales by one Spanish producer to niche specialty stores, will not necessarily reflect prices by Spanish producers

[23] https://www.medifoods.co.nz/30years

to importers of preserved peaches such as supermarket chains and food service distributors.

213. MBIE considers that a trend analysis over several years of low volumes of sporadic imports mainly by specialty stores will not be particularly informative.

214. The original investigation established that all imports of the subject goods from Spain during 2010 were dumped. The 2016 review found that imports of the subject goods in 2015-16 continued to be dumped. The 2019 reconsideration found that all imports of the subject goods in 2018 were dumped at significant margins.

215. Since anti-dumping duties were re-imposed, with effect from 30 August 2019, there have been imports of preserved peaches from Spain every few months. All of those imports, totalling less than 100 MT, attracted anti-dumping duties at anti-dumping duty rates that were set to remove injury but not the full margin of dumping. Most of those imports were from Alcurnia.

216. MBIE's notional export price analysis indicates that any likely imports of preserved peaches would be at lower prices than in the POR(D). While the constraints on supply of Spanish preserved peaches noted below may lead to increased prices, this price pressure will likely impact on both domestic and export sales.

217. Leaving aside imports from Alcurnia which are not dumped, and are not likely to be dumped, past experience and notional export prices all contribute to an overall assessment that there will be a future recurrence of dumping of any subject goods imported from Spain.

3.5.4 Commercial Arrangements

218. There have been relatively low volumes of exports of preserved peaches to New Zealand from Spain since 2014. In view of the limited information provided by parties in this review, MBIE assumes that, as for purchases from other suppliers such as South African producers, prices for export sales from Spain to New Zealand are usually set by negotiation.

219. While New Zealand importers have traditionally sourced preserved peaches from a number of countries, MBIE notes that anti-dumping duties apply to some imports of canned peaches from South Africa, some preserved peaches from Spain and all canned peaches from Greece. Imports of preserved peaches not subject to anti-dumping duties including those from a major supplier in South Africa, a supplier in Spain (not currently exporting) and from all suppliers in China.

220. If anti-dumping duties were not continued on preserved peaches from Spain, importers would be able to negotiate low prices with Spanish suppliers, which would mean that it is likely that dumping would recur. The extent to which import volumes of dumped goods might increase due to competitive pricing is considered in section 4.4 below.

221. Foodstuffs stated that supply of private label product is normally offered for tender, often internationally, but may be negotiated with known suppliers. Foodstuffs has no recollection of ever being offered or selling Spanish preserved peaches. Foodstuffs considers a number of factors when making purchasing decisions, including "consumer preference …, brand awareness and appeal, the quality of the goods, the relative pricing of alternate offers, whether a product provides other benefits such as innovation, and … confidence in supply arrangements."

222. Foodstuffs also referred to international supply chain issues (including reduced shipping capacity coming to New Zealand and higher international freight costs) which increases the risk of importing, which "is being reflected in purchasing decisions i.e. a preference for local supply where this is available at competitive pricing." While this may provide an incentive to source locally, MBIE considers that this would also provide an increased incentive for importers to negotiate lower prices for any imports in order to defray these increased costs.

223. Countdown noted that cost is not the only factor in selecting where it sources imports, and other factors include compliance with policies on "food safety, sustainability, responsible sourcing and human rights/modern slavery." Countdown seeks products that offer New Zealanders "best quality at the lowest prices, in a sustainable and responsible way."

224. There is no pattern indicating that prices from Spanish suppliers changed in response to the re-imposition of anti-dumping duties after the reconsideration in 2019, and this would not be expected given duties were imposed on an *ad valorem* basis rather than a reference price basis where suppliers may have an incentive to raise the price. Anti-dumping duties have been collected on the few imports of preserved peaches that occurred in the POR(D), mainly at the rate of 2.5 per cent for 850 g cans and at 15.9 per cent for some 2.65 kg cans.

225. MBIE considers that the commercial nature of tendering or price negotiations, including the need to seek competitive prices, affecting exports of the subject goods to New Zealand means that if anti-dumping duties are not continued, it is likely that dumping will recur.

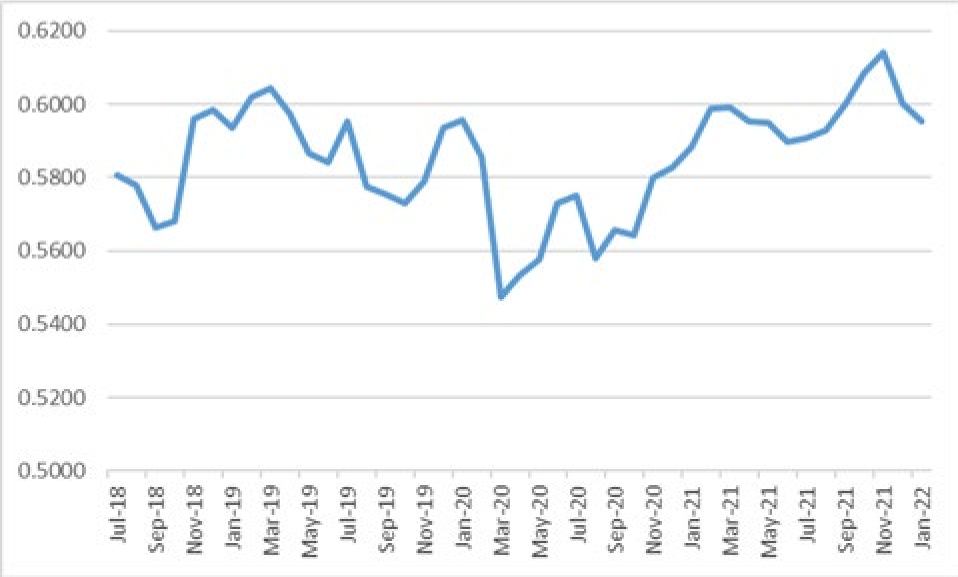
226. MBIE notes that imports from Alcurnia are not dumped and are assessed as not being likely to be dumped. Anti-dumping duties on imports from Alcurnia are not therefore necessary, removing any added incentive for importers to negotiate more competitive prices with Alcurnia.

Exchange Rates

227. A further consideration in assessing the likelihood of an increase in import volumes of the subject goods from Spain is the movement of the NZD against the currency in which exports of preserved peaches to New Zealand have been traditionally traded, namely EUR.

228. The determination of dumping can be affected by movements in exchange rates. The effect of exchange rate movements for EUR in relation to the NZD is shown in Figure 4 below. The chart shows monthly exchange rates for EUR/NZD, for July 2018 to January 2022.

Figure 4: Monthly Exchange Rates EUR-NZD (July 2018-January 2022)



229. The information shows that the NZD weakened against the EUR in the first quarter of 2020 and since then by November 2021 strengthened to a higher level than in the preceding 3 years but has since weakened again. The strengthening of the NZD against the EUR indicates that the exchange rate is currently favourable to importers looking to source goods from Europe, but the relative strength of the NZD would also allow Spanish producers to increase export prices in EUR for New Zealand importers. MBIE notes however that the rate has fluctuated over time, it had dropped back to 0.60 by early December 2021 and continued to decline in January 2022. MBIE considers that the change in the exchange rate is unlikely in itself to lead to export price increases without the influence of other factors.

3.5.5 Spanish Market

Spanish Production

230. MBIE understands that Spanish peaches are harvested in June, July and August.[24] MBIE's research shows that, while the COVID-19 pandemic had no adverse impact on peach harvesting the Spanish peach harvest declined in 2020 due to a reduction of the planted area[25] and damage from frosts[26] leading to a reduction in supply.

231. A report of 11 June 2021[27] quoted Javier Basols from the Federation of Spanish Cooperatives: "Spain's stonefruit acreage is down by 10-15 per cent, and this trend is set to continue, he said. We need to recoup consumption as this is not a good trend." In 2021, the peach yield in Spain was estimated to be similar to 2020 with canning operations having no carryover stock from the previous year. Severe weather events in 2021 damaged orchards across Southern Europe with Spanish producers expecting

[24] https://www.alcurnia.com/es/products-es/products-es-2

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

[26] http://www.fruitnet.com/eurofruit/article/185490/smallest-stonefruit-crop-in-30-years

[27] See above note 21.

shortages due to cling peaches (which are commonly used for canning) being one of the worst hit.[28]

232. The United States (US) Department of Agriculture reported in August 2021 that in the marketing year 2021/22, Spanish production of peaches was projected to decline by 6.7 per cent[29]. A commentator considered that costs [of raw materials] in Spain were likely to go up due to a peach shortage in Greece where a severe frost in the flowering season in 2021 resulted in a 60 per cent decline in supply. The commentator also stated, in respect of Spain, that exports of canned peaches "outside the EU will likely be kept to a bare minimum, as yields are only adequate enough for the EU and their industry's local canning demands."[30]

233. MBIE notes that any cost increases due to raw material shortages will likely impact prices of preserved peaches sold in the domestic and export markets, so is unlikely to affect the levels of likely dumping.

Product Availability

234. In the recent review of anti-dumping duties on canned peaches from Greece, MBIE noted that on 18 October 2019, the US imposed an additional 25 per cent import tariff on canned peaches from Europe, resulting in a total import tariff of 43 per cent. In March 2021, the Biden administration suspended this additional tariff, removing a significant constraint on exports of canned peaches to the US.[31] MBIE assumes that normal trade will have resumed and that Spanish exporters to the US will no longer be looking for additional markets for displaced preserved peaches.

235. MBIE refers to comments above about the lack of carryover stock of canned peaches and constraints on processing due to less fresh peaches being available. MBIE has no other information about the availability of preserved peaches for the Spanish or New Zealand markets that would indicate prices will change to a different extent for one market but not the other.

Domestic Prices

236. Normal values in Spain 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. Any increase in prices on the domestic market due to costs increases would be unlikely to affect the dumping margin as costs increases would likely also be recovered on export sales (subject to any contractual requirements).

237. MBIE has not been provided with information such as costing data to allow MBIE to assess whether domestic prices are likely to change, although it notes the cost and price pressures due to constraints on supply. The retail price information available indicates

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[28] https://profel-europe.eu/_library/_files/PROFEL_press_release_fruit_11_June_2021.pdf

[29] https://apps.fas.usda.gov/newgainapi/api/Report/DownloadReportByFileName?fileName=Stone%20Fruit%20Annual_Madrid_European%20Union_08-26-2021.pdf

[30] https://www.ambrosia-foods.com/canned-peach-struggles/

[31] https://www.mfa.gr/en/current-affairs/statements-speeches/ministry-of-foreign-affairs-announcement-on-the-mutual-suspension-of-tariffs-between-the-eu-and-the-us.html

that average domestic prices for preserved peaches have increased over the six months from June to December 2021 by about 6 per cent.

238. MBIE notes however that export prices also may have risen. Customs data indicates prices have increased in the past six months but not to the same extent as the average retail price in Spain, therefore the likelihood of dumping is not diminished.

Conclusions

239. MBIE's analysis indicates that if anti-dumping duties are removed dumping will likely recur, except in the case of the Spanish producer Alcurnia. MBIE considers it unlikely that there will be a recurrence of dumping from Alcurnia.

240. MBIE considers that prices to the New Zealand export market are likely to increase and prices in the Spanish domestic market are also likely to increase, but these increases would not remove likely dumping in the absence of anti-dumping duties. MBIE considers therefore that dumping of the subject goods except by Alcurnia is likely to recur in the absence of anti-dumping duties.

3.6 Conclusions on Dumping

241. MBIE has compared the export prices established in section 3.2 and the normal values established in section 3.3 and established that there was no dumping of exports during the POR(D).

242. MBIE has also established notional export prices and normal values. On the basis of the resulting dumping margins shown in Figure 3 and the matters considered above, MBIE concludes that there is a likelihood of the recurrence of dumping of the subject goods imported from Spain, except that imports from the Spanish producer Alcurnia are unlikely to be dumped.

243. The stage 1 determinations to be made by the Minister include, if an affirmative determination is made under section 17G(1), a determination of the rate or amount of anti-dumping duty that will form the basis for the stage 2 investigation.

4. Review of Injury

4.1 Legal Requirements

Basis for determinations

244. The basis for considering whether material injury or threatened material injury to an industry would be likely to continue or recur if anti-dumping duties were removed is set out in section 8(1) of the Act, which requires MBIE to examine the volume of imports of the dumped goods, the effect of the dumped goods on prices in New Zealand for like goods, and the consequent impact of the dumped goods on the relevant New Zealand industry.

245. MBIE interprets this to mean that injury is to be considered in the context of the impact on the industry arising from the volume of the allegedly dumped goods, their effect on prices, and the consequent impact on the industry. This is consistent with Article 3 of the AD Agreement (discussed further below).

Matters the chief executive shall have regard to

246. Section 8(2) of the Act 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 the matters set out in section 8(2) when determining whether or not any material injury to an industry has been or is being caused, or is being threatened. The factors and indices set out in section 8(2) of the Act, and considered under the relevant headings below, 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, or 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.

247. In addition, the chief executive must have regard to factors other than dumping which may be injuring the industry. 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.

248. 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.

249. Article 3 of the AD Agreement deals with the determination of injury. In *US — Oil Country Tubular Goods Sunset Reviews*, the Appellate Body upheld a Panel's finding that the obligations set out in Article 3 do not apply to likelihood-of-injury determinations in sunset reviews.[32] 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 Article 3 analyses necessarily relevant to the original investigation may prove to be probative, or possibly even required, 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 (i.e., in a sunset review). 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.

250. 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 agency to draw "reasoned and adequate conclusions."[33]

4.2 Previous Review

251. The last sunset review in relation to preserved peaches from Spain (the reconsideration completed in 2019) concluded in relation to material injury that if anti-dumping duties were not put in place:

- while the volume of imports of preserved peaches from Spain were low and mainly by specialist food retailers and distributors, there was likely to be a significant increase in import volumes of dumped preserved peaches from Spain
- the Spanish industry appeared to have sufficiently freely disposable capacity to substantially increase exports to New Zealand and there were no significant barriers to entry into the New Zealand peach market
- prices of dumped imports from Spain were likely to represent significant price undercutting in relation to HWL's prices, likely resulting in price depression and suppression
- the consequent economic impact of the volume and price effects would be an adverse impact on HWL's profits and profitability, return on investments, cash flow, growth and ability to raise capital and investments.

[32] WTO document WT/DS268/AB/R, paragraph 285.
[33] Ibid, paragraph 284.

4.3 Injury information submitted by HWL

252. HWL provided financial information in quarters from 1 July 2018 to 30 September 2021, and forecast out to 31 December 2023 for the purpose of the injury analysis, which allowed information to be aligned with the POR(D) and the POR(I).

253. 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.

254. In assessing the likelihood of a recurrence 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 used in assessing those effects, MBIE has used the outcome of its own calculations of price undercutting.

4.4 Import Volume Effects

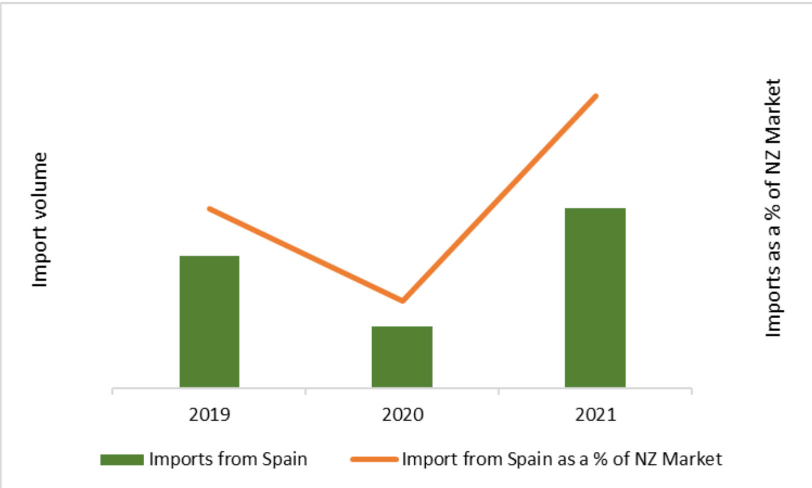
255. Section 8(2)(a) of the Act requires that the chief executive should have regard to the extent to which there has been or is likely to be a significant increase in the volume of imports of dumped goods either in absolute terms or in relation to production or consumption in New Zealand.

Import Volumes

256. As noted in section 2.1 of this report, 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.

Figure 5: Import volumes of preserved peaches from Spain (MT)
Years Ended June 2019-2021

[In order to preserve confidentiality there are no values for the Y-axes.]



257. MBIE notes that there have been low levels of imports from Spain over the years ended June 2019 to 2021. In absolute terms, compared to 2019 there was a decrease in the volume of imports of subject goods from Spain in 2020 and recovery 2021 which exceeds

the volumes imported in 2019. While the absolute volume of imports was low, there was an overall increase in the volume of imports from Spain over the three years.

258. In relation to the New Zealand market there was an overall increase in the share of imports of Spanish preserved peaches into New Zealand between 2019 and 2021 despite a decline in 2020.

Likely Import Volumes

259. 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 Spanish preserved 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 Spain
- exchange rates
- evidence from previous behaviour.

Price advantage held by imports from Spain

260. The price undercutting analysis described in section 4.5.1 below shows that, in the absence of anti-dumping duties, preserved peaches from Spain are likely to undercut HWL's prices if imports from suppliers other than Alcurnia resume. MBIE found that the estimated likely ex-wharf value per kilogram of Spanish preserved peaches significantly undercuts the ex-factory price of HWL's Oak brand.

261. The average ex-wharf value per kilogram for the POR(D) without anti-dumping duties is lowest for Greece, followed by China, South Africa, Spain and Australia. MBIE has also compared the likely ex-wharf price for Spanish preserved peaches with the weighted average ex-wharf prices in the year ended June 2021 for preserved peaches from Australia, China, Greece and South Africa. The likely ex-wharf value for preserved peaches from Spain, if anti-dumping duties do not apply to Spanish preserved peaches, is lower than ex-wharf values for preserved peaches from Australia, and South Africa, and slightly lower than for preserved peaches from Greece but not China (with anti-dumping duties applied to canned peaches from Greece and some canned peaches from South Africa).

262. MBIE concludes that, without anti-dumping duties in place, Spanish preserved peaches would hold a significant price advantage over New Zealand preserved peaches and preserved peaches from all other countries supplying the New Zealand market, except Greece and China. All imports of canned peaches from Greece are however subject to anti-dumping duties and Spanish preserved peaches without anti-dumping duties are likely to be competitive at the ex-wharf level in New Zealand with the anti-dumping duty-paid prices of Greek peaches.

Capacity and intent of the Spanish industry

263. HWL claimed that "the threat of injury exists if existing anti-dumping duties are removed due to the capacity of the Spanish canned peach industry and current global economic pressures being placed upon this industry meaning inventory and/or capacity exist to increase exports to new markets." In support of these assertions, HWL noted that:

- Spain is still a significant exporter of canned peaches, having exported over 22,000 tonnes of canned peaches in 2020. In section 3.5.5 of this Final Report MBIE highlighted that in 2020 Spain experienced a decrease in fresh peach harvest and a reduction in supply due to severe weather and a reduction in the planted area. In 2021 Spain still experienced low output due to severe weather and did not have carryover stock.
- Even relatively small volumes of dumped imports, such as 100MT to 300MT, would cause injury to the industry.
- HWL provided, as an example, a screenshot of FERBA brand Spanish canned peaches that are available for purchase online at Alibaba.com from FIAB Exterior SL at prices which HWL claimed are lower than "previously used in dumping analysis which indicates the dumping analysis may be understated based on current export prices available." At the time of writing this report, these peaches were still available on alibaba.com.[34] MBIE notes that this information does not amount to a purchase contract by a New Zealand importer, but it does indicate that the subject goods can be procured by any importer at the stated prices.
- HWL refers to the Spanish industry seeking new markets to continue to grow.
  - At the time of making its application, HWL pointed out sales in the 2020 calendar year to four markets in the export volume range of 20-200 tonnes which it considers are joblots indicating the Spanish industry has available inventory and is seeking out new markets. Those markets were Chile, the Gambia, Ecuador, and Egypt. HWL considers that these joblots were in quantities significant enough to cause material injury to the New Zealand industry.
  - HWL claims in its RFI response that beyond the 200MT market sales volume Spain is also seeking further sales, with imports to Mexico increasing significantly.
  - HWL also refers to Spanish producers looking for new opportunities and making sporadic sales to Azerbaijan, Taiwan and Vietnam. HWL considers that without anti-dumping duties New Zealand would be a new market of opportunity for Spanish producers.
- HWL claimed that the discretionary, safety stocks of inventory, for an exporting industry the size of Spain, being 65,000 tonnes would cause material injury if some of those stocks were re-directed to New Zealand in the absence of anti-dumping duties.
- HWL claimed that, based on the evidence of actual exports and availability of canned peaches from Spain provided in its application, that the same conditions exist as they did in 2010 when New Zealand importer James Crisp took advantage of the situation, importing dumped product at a very low export and corresponding import price. MBIE notes that James Crisp did have access in the past to imports from Spain at low prices.

[34] https://www.alibaba.com/product-detail/PEACH-HALVES-IN-SYRUP-800-GR_1700001977938.html?spm=a2700.pc_countrysearch.main07.7.1a9a6ee4S3oIgA

264. MBIE notes that there is information indicating that the Spanish industry has experienced a decline in fresh peach production which may impact on the volume of preserved peaches produced for export market in the year ending 30 June 2022, but not necessarily in the year ending 30 June 2023. MBIE also notes the EC's submission on the EFC Report that MBIE should consider the potential impact of climate change on Spanish production in future. However, given the volume of subject goods that Spain currently exports in relation to the volume imported by the New Zealand market, lower production levels do not necessarily indicate that it does not have sufficient capacity to supply the New Zealand market. Indeed MBIE observes that the most recent significant shipment of preserved peaches from Spain to New Zealand arrived as recently as November 2021, indicating that Spanish preserved peaches are still available for export to New Zealand.

265. From the information gathered from importers MBIE notes that demand for Spanish peaches in the New Zealand is driven by buyer demand and that Spanish producers in the past have not actively sought to promote their products on the New Zealand market.

266. There were no comments from the foreign manufacturers or exporters of the subject goods regarding their views on the attractiveness of the New Zealand market for export. One former exporter of Spanish preserved peaches, SPAI, stated that exports to New Zealand depend on its customer's needs and whether that customer would re-order. The GOS commented that New Zealand ranks 34th in terms of volume for the markets for Spanish companies, accounting for a revenue of EUR57,820 which represents 0.25% of its exports to the rest of the world. This it considered indicates that New Zealand is not a priority market for Spanish exporters.

267. In the 2019 reconsideration, MBIE referred to a Russian import prohibition that was put in place in 2014 on fresh peaches and still exists until at least 31 December 2021. The resulting surplus of fresh peaches resulted in the removal of hundreds of hectares of peach orchards in Spain and a reduction of almost 10 per cent of the cultivation area. MBIE does not have evidence on whether the production capacity of the Spanish preserved peaches industry and whether capacity has increased or declined, however MBIE notes that the Russian embargo does not apply to canned peaches. HWL provided information that showed that exports of Spanish preserved peaches to Russia have been relatively insignificant since 2015 and that total exports from Spain have been relatively stable since 2011.

268. MBIE's notes that on 18 October 2019 the US imposed an additional 25 per cent import tariff on canned peaches from Spain and other specified EU member countries.[35] In March 2021, the Biden administration suspended this additional tariff, removing a significant constraint on exports of canned peaches to the US.[36] HWL notes that the data for exports of Spanish preserved peaches shows that exports to the US are sporadic which HWL considers "may indicate further that the Spanish industry has excess capacity and is seeking new markets of opportunity." Spanish export data[37] available to MBIE does not show the extent of any impact of the increase in tariff on Spanish exports to the United States. This export data does not conclusively indicate a significant shift from the

[35] https://ustr.gov/sites/default/files/files/Press/Releases/LCARevisionNotice.pdf
[36] https://www.mfa.gr/en/current-affairs/statements-speeches/ministry-of-foreign-affairs-announcement-on-the-mutual-suspension-of-tariffs-between-the-eu-and-the-us.html
[37] Export data from TradeData International Pty Ltd (TradeData) which was provided by HWL.

US market that would put pressure on Spanish producers to seek other markets, however the export data indicates that the Spanish industry remains capable of supplying volumes significant to the New Zealand market.

269. MBIE has not been provided with capacity figures for the Spanish industry. MBIE notes however that global exports from Spain for the four relevant tariff items under HS200870 have ranged between 33,785MT and 22,806 MT between the calendar years 2018 and 2020, with the highest volume in 2018. During that same period, New Zealand imported between 3,572 MT and 4,035 MT of the subject goods from various source countries including Spain. MBIE considers that Spain has the capacity to supply the subject goods to the New Zealand market despite the indicated decline in production this year.

270. While MBIE has no information from Spanish producers or their representative associations on the intent of the Spanish industry to export to New Zealand, available information indicates that the Spanish industry has capacity to supply the New Zealand market. The information gathered during the review indicates that in Spain there will be a reduction in fresh peaches, an increase in raw material prices for processors and continued uncertainty with shipping arrangements and freight costs this year. As noted by the EC, there may also be future impacts of Spanish production due to climate change. MBIE notes that, despite these factors and current anti-dumping duties impacting trade, a low level of imports of preserved peaches is still being imported from Spain into New Zealand.

Conclusion

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

272. From the available information, MBIE concludes that there is sufficient capacity for Spanish exporters to supply increased volumes of preserved peaches to New Zealand.

Ease of entry into the New Zealand market

273. 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." HWL also stated that the New Zealand market for preserved peaches is sensitive, which MBIE assumes means sensitive to price and volume changes.

274. MBIE is satisfied that the preserved 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.

275. MBIE also notes that while the applied Customs rate of duty on imports from Spain 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.

276. 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

277. In its application, HWL notes that it understands that many of the importers previously and currently involved in importing preserved peaches to New Zealand remain active. MBIE notes that all of the importers noted in section 2.4 above have websites that indicate they import food products from a range of countries.

278. HWL stated that supermarket chains are allocating more shelf space to private label products which are supplied through imports of preserved peaches into New Zealand at the expense of manufacturers' brands. It explained that supermarket chains prefer these products as they generate a higher margin in comparison to manufacturers' brands since they can procure them at competitive prices from international markets.

279. MBIE notes that importers' responses indicate that price, anti-dumping duties, quality, availability of stock, supply arrangements (including existing relationships), consumer perception, uncertainty about duties, and compliance with various food safety and responsibility requirements are the key factors influencing their choice of supplying country.

280. Any increase in imports of private label brands by supermarkets from Spain would be affected by the size of the Spanish 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.

281. Foodstuffs considers it is unlikely that the removal of anti-dumping duties would result in it importing peaches from Spain as it has existing supply arrangements and competitive sources. Countdown however noted that cost is one of the primary factors, but not the only one, in selecting where it imports from and did not offer a view on whether or not it would likely source preserved peaches from Spain if anti-dumping duties were removed.

282. One importer of canned peaches from South Africa stated it would be unlikely to consider importing preserved peaches from Spain if anti-dumping duties are removed as it already had a longstanding supply arrangement for quality peaches from South Africa. Previous importers of preserved peaches from Spain gave various indications of their intentions if anti-dumping duties are removed, ranging from not importing again from Spain to considering importing again from Spain. A current importer considered demand would not change if anti-dumping duties are removed as any savings would be offset by increased shipping and logistics costs.

283. MBIE notes the various comments of importers and considers that while it is not possible to conclude that importers will not import preserved peaches from Spain if anti-dumping duties are removed, some importers will consider importing from Spain if prices are competitive. As MBIE has noted above, if anti-dumping duties are removed from preserved peaches, the prices of preserved peaches from Spain will likely be competitive against all sources except China, which will provide an incentive for importers to consider importing from Spain.

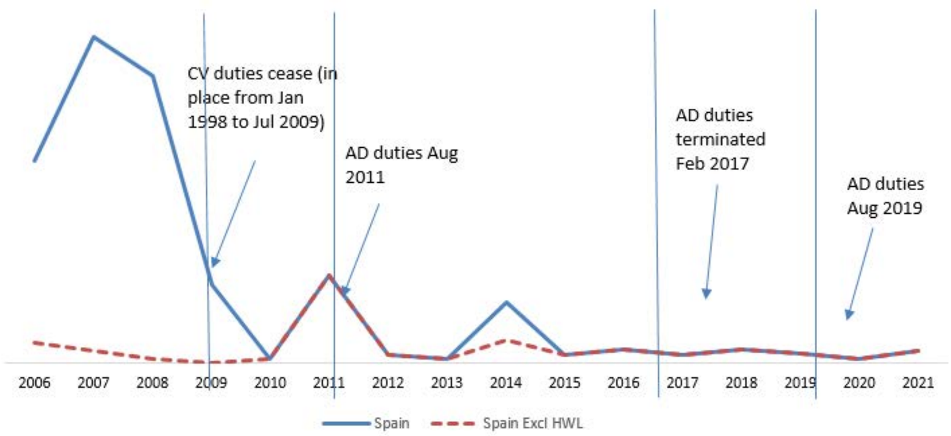
284. MBIE considers that large scale importers such as supermarket chains have the ability and means through current systems they have in place to manage any increase in the volume of imports from Spain. MBIE also notes that importers of low volume and high value preserved peaches for the niche market are largely indifferent to the presence of anti-dumping duties as long as their customers demand Spanish peaches.

Removal of duties

285. Countervailing duties were in place on imports of canned peaches from the EU from January 1998 to October 2009. Figure 6 shows that prior to 2009 most imports of peaches from Spain were by HWL. After the cessation of countervailing duties in 2009, import volumes of canned peaches from Spain continued to decline until the end of that year, but increased sharply over 2010 for a brief period until the end of 2012. This increase in imports was by parties other than HWL and led to the application for an anti-dumping investigation by HWL. Anti-dumping duties on preserved peaches were imposed in 2011. Since then, apart from an increase in imports by HWL in 2014, imports of preserved peaches from Spain have remained low. This suggests that, in the absence of countervailing or anti-dumping duties, it is likely there will be an increase in the volume of imported canned peaches from Spain.

286. MBIE notes the impact of imports of canned peaches by HWL on the overall import volumes in the period between 2007 and 2010 and between 2013 and 2015 in figure 6.

Figure 6: Impact of duties on import volumes of preserved peaches from Spain (MT) Years Ended June 2006-2021



287. As mentioned above, anti-dumping duties were first imposed on preserved peaches imported from Spain in August 2011 then terminated on 23 February 2017 after a review found that it was not likely that there would be a continuation or recurrence of injury following the removal of duties. Following the judicial review challenge referred to in section 1.4 above, anti-dumping duties were imposed again with effect from 30 August 2019. So there was an 18 month period during which importers had the opportunity to import preserved peaches from Spain without having to pay anti-dumping duties.

288. Customs data shows that during this 18-month period, the volume of imports of preserved peaches from Spain remained stable when compared to the period before the termination of duties in 2017 and after reinstatement of duties in 2019. HWL explained that this was due to the fact that importers had reliable information that HWL would appeal the termination, such that they did not adjust their import outlook until the

matter had been decided upon with certainty. Comments from one of the importers indicated that over this period, on the basis of the information received from MBIE, they perceived a greater risk in the possibility of having anti-dumping duties applied in retrospect and took a cautious approach in regard to their import sources.

289. In the 2019 reconsideration, MBIE noted that the reasons imports did not immediately increase following the removal of duties (in February 2017) were likely to be: the seasonal nature of the goods, resulting in limited availability of stocks from the 2016 Spanish crop and the timing of the 2017 Spanish harvest period, coupled with external market forces at play; and the uncertainty caused by the judicial review process around duties applicable to imports of preserved peaches from Spain.

COVID-19

290. HWL explained during the remote verification that an Australian customer had shortages due to COVID-19 related difficulties in importing from traditional sources such as South Africa, Greece, Thailand and China. HWL explained that the Australian market sourced from New Zealand as extended shipping lead times, doubling costs and unreliable supply due to the impact of COVID-19 on international supply chains gave a significant level of uncertainty. This is discussed below under 'Other Causes of Injury' in relation to exports by New Zealand producers.

291. HWL stated that some exporters and importers do not appear to be as affected by these challenges due to the higher margins that are available on product from China leading to the growth of private label products.

Conclusions on ability and intent of importers

292. There are a number of reasons why importers may not have turned to sourcing preserved peaches from Spain or made additional imports when anti-dumping duties were removed, including:

- Information made available in this review, indicates that there is at least a three-month delay between placing an order and arrival of the goods in New Zealand
- HWL commenced judicial review proceedings on 30 November 2017, 9 months after the termination of the duties. MBIE does not know when importers became aware that HWL had sought, or intended to seek judicial review.
- Importers were aware that HWL had applied for anti-dumping action against preserved and canned peaches from a number of sources and would likely be cautious about where they imported from. In respect of Spain, one importer stated that on the basis of the information received from MBIE it made its decision not to import from Spain due to the uncertainty presented by the possibility of the retrospective application of anti-dumping duties.
- An importer from another source country stated that its decision not to import from Spain was based on the existing relationships it had with its current overseas sources and competitive trade arrangements offered on the basis of this long term business relationship.

293. Importers have indicated that their choice of their source of imports is affected by the price and the total cost of procurement, hence their decision not to currently import from Spain over other sources. Of the major supermarket chains, Foodstuffs indicated it is unlikely to import preserved peaches from Spain if anti-dumping duties were removed,

Countdown did not express a view of whether it would be likely to import. Cost is however an important consideration for importers and the removal of duties would make importation from Spain attractive for some importers.

294. MBIE concludes that in the 18-month period where anti-dumping duties were removed, imports did not increase because of uncertainty about anti-dumping action and an unwillingness to change supplier relationships in that relatively short window. However, if anti-dumping duties were removed as a result of the current review, MBIE considers importers would have more certainty, unless HWL were to initiate judicial review proceedings again. MBIE considers the development of relationships with suppliers and switching source countries would be more attractive now, given likely prices of preserved peaches from Spain.

Exchange rates

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

296. MBIE has analysed the change in the NZD:EUR exchange rate from 1 July 2018 to 30 June 2021 as shown in Figure 4 above. The data shows that the NZD weakened against the EUR in the first quarter of 2020 and since then has strengthened to a higher level than in the preceding 3 years. The strengthening of the NZD against the EUR indicates that the exchange rate is currently favourable to importers looking to source goods from Europe.

Evidence from previous behaviour

297. As illustrated in Figure 6, anti-dumping duties have been in place since 4 August 2011 on imports of preserved peaches from Spain (except for the period between 2017 and 2019) and there has been a low level of imports, by importers other than HWL, between 2014 and 2021, which indicates that importers have ceased sourcing from Spain due to the anti-dumping duties. Previous behaviour during the period with no duties has been discussed above in relation to the ability and intent of importers to manage an increase in imports. MBIE notes that there were six importers over the 3-year period of review for injury and only two in the year ended June 2021.

298. MBIE notes that increased volumes of canned peaches were imported from Spain between 2010 and 2011 by parties other than HWL when the existing countervailing duties were terminated. In the period after the imposition of anti-dumping duties there was a moderate increase in import volumes between 2013 and 2014, but otherwise import volumes remained low.

299. MBIE observes that the highly competitive nature of the New Zealand market indicates that pricing and customer preferences based on their perception of quality are key considerations for importers. Given the competitive pricing as compared to other sources of canned peaches and perceived quality of imports from Spain in relation to New Zealand product and imports from other sources, MBIE considers that in the absence of anti-dumping duties importers could import increased volumes of preserved peaches from Spain.

EC and GOS Submissions

300. In response to the Initiation Memorandum for this review, the EC and GOS submitted that Spanish imports are less than one per cent of total imports and no evidence was

provided by HWL that imports would increase in the future. The EC reiterated this submission in its comments on the EFC Report. MBIE notes that the volume and percentage share of imports in a review situation may be affected by the presence of anti-dumping duties. MBIE notes that the provisions of Article 5.8 of the AD Agreement on negligible volumes of dumped imports do not apply to sunset reviews.

301. The GOS does not agree that there is a 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, noting that Spanish imports were not affected and maintained similar levels following the termination of anti-dumping duties in February 2017. The GOS does not consider that forecast inventory or capacity of Spanish producers is a reason to believe that dumping would recur and sees no evidence that there could be "a huge detour" of goods to the New Zealand market if anti-dumping duties are removed. The GOS noted that New Zealand is Spain's 34th market by volume for preserved peaches, meaning that New Zealand is not a priority market. MBIE has addressed these matters above and in Annex 1.

Conclusion on Import Volumes

302. In the presence of anti-dumping duties import volumes of preserved peaches from Spain, by parties other than HWL, have been minimal since 2006. In respect of the likely import volumes of preserved peaches from Spain, if the anti-dumping duties are not in place, MBIE concludes that:

- likely prices for imports from Spain will hold a significant price advantage over the New Zealand industry's prices and most of the prices for imports from other sources
- while there has been a recent reduction in potential production levels in Spain, Spanish suppliers still have sufficient capacity to supply the New Zealand market
- there is continued ease of entry into the New Zealand market for imports of preserved peaches from Spain and there are readily available distribution systems that could be used should imports from Spain resume in increased quantities
- New Zealand importers have the capability and relationships in place to manage any increase in imports from Spain
- there has been strengthening of the NZD against the EUR which tends to affect purchasing decisions in favour of importation
- MBIE considers that it is likely that imports from Spain would increase if the anti-dumping duties were not continued.

4.5 Price Effects

303. 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.

304. Sections 8(2)(b) and (c) of the Act require that the chief executive should 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).

305. 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. MBIE notes HWL looks to maintain Wattie's as its premium brand, with the Oak brand most likely to be in direct competition with the subject goods if anti-dumping duties were to cease.

4.5.1 Price Undercutting

306. Price undercutting refers to the extent to which the prices of the subject goods are lower than prices in New Zealand for like goods of New Zealand producers. 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.

307. Prices are compared at the point that the imported goods first compete with the goods made in New Zealand, generally at the ex-wharf level. The purpose of the price undercutting comparison is to establish whether or not there is price undercutting attributable to dumping. Price undercutting is not in itself a determinant of the existence or extent of injury, i.e. the margin or frequency of price undercutting is not a measure of the extent of the economic impact on the industry. That impact is to be measured, *inter alia*, in terms of the factors set out in section 8(2)(d) of the Act, outlined in section 5.4 of this Report.

308. For the purposes of establishing price undercutting margins, MBIE has calculated the weighted average ex-wharf prices for imports over the dumping investigation period which were 850g and 2.65kg cans. MBIE calculated the weighted average of the values for duty which was converted from EUR to NZD using exchange rates for the estimated date of each transaction from www.ofx.com. MBIE compared these import values with the weighted average HWL price for Oak brand over the dumping investigation period, less an amount for internal distribution cost to derive a weighted average ex-factory selling price for Oak. MBIE found that the ex-wharf value of actual imports of Spanish peaches did not significantly undercut the ex-factory price of HWL's Oak brand in the year ended 30 June 2021.

309. MBIE also calculated a notional ex-wharf price for imports from Spain over the dumping investigation period in the absence of anti-dumping duties, using export prices from Spain to non-EU countries. To calculate a price undercutting margin, MBIE compared this price with the weighted average ex-factory HWL price for Oak calculated above. Using this approach, MBIE found that the notional ex-wharf value of Spanish peaches significantly undercut the ex-factory price of HWL's Oak brand in the year ended 30 June 2021, indicating that there would likely be significant price undercutting in the absence of anti-dumping duties.

4.5.2 Price Depression

310. 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.

311. Price depression occurs where prices achieved by the New Zealand manufacturers are lower than those achieved in a period unaffected by allegedly dumped or subsidised goods. Price depression is not in itself a determinant of the existence or extent of injury. There must be a consequent impact on the industry, measured primarily in terms of the factors set out in section 8(2)(d) of the Act. 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.

312. HWL claims unsustainable price differences have occurred in the past when the Delish and Cinderella brands held significant market share in New Zealand. In the initial dumping investigation for Spain in 2011, the case was based on threat of material injury after MBIE had terminated countervailing duties on imports of canned peaches from the EU and HWL had observed the initial sales of the Cinderella brand imported from Spain. HWL had acted quickly, applying for an anti-dumping investigation which was initiated. Subsequently, an anti-dumping duty was put in place to remedy the threat of injury to the domestic industry resulting from increasing import volumes at dumped prices.

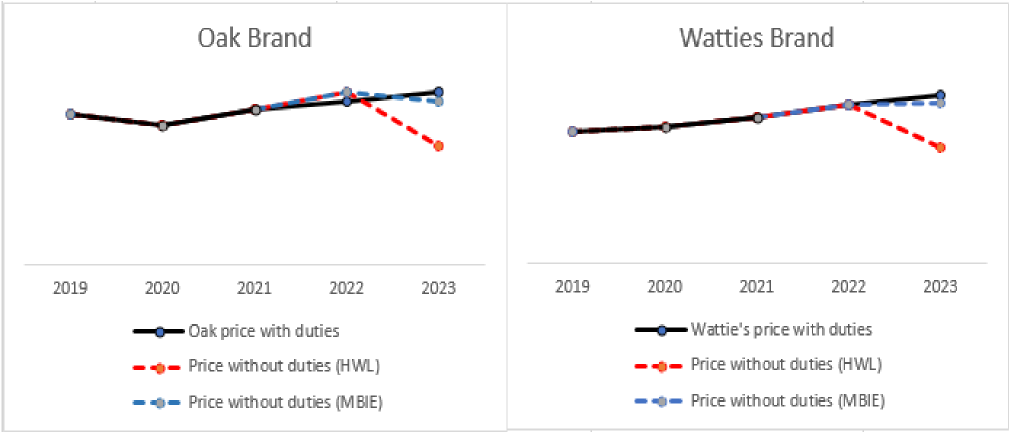
Likely impact of the removal of anti-dumping duties

313. 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 provided forecasts (without duties) for the June years 2022 and 2023. HWL considers that the full impact of cheaper, dumped imports from Spain, as a result of any removal of duties, would be felt in 2023 once importers establish their supply chains from Spanish manufacturers. HWL claims that Wattie's and Oak will need to be discounted by the level of price undercutting to the Oak brand estimated by HWL, while maintaining the Wattie's brand relative premium.

314. MBIE has assessed the data provided by HWL but has included in the analysis the level of price undercutting MBIE has established for Spanish imports when compared with Oak brand goods. The chart below details HWL's historical selling prices between 1 July 2018 and 30 June 2021 and its forecast selling price, in the absence of duties, for the years ended 30 June 2022 and 2023. The chart also details what MBIE has calculated HWL's forecast selling price will likely be, in the absence of anti-dumping duties, over the two years ending 30 June 2023.

Figure 7: Price Depression
(NZD/kg)

[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]



315. The data shows that Oak prices dropped in 2020 but recovered in 2021. Prices are projected to remain strong in 2022 and 2023 if the anti-dumping duties continue. Prices of Wattie's brand goods have steadily increased since 2019 and are projected to remain strong, if the duties continue.

316. Based on the level of price undercutting that has been projected by HWL, prices of both Oak and Wattie's brand are projected to increase in 2022 if the duties expire, and then decrease sharply in 2023. This reflects HWL's budgeted price increases for both Oak and Wattie's brands to account for recent cost increases incurred, and also that any removal of duties will fully take effect over the July 2022 – June 2023 period rather than the earlier July 2021 – June 2022 period.

317. Based on the level of undercutting that has been projected by MBIE, prices are expected to remain strong for both Oak and the Wattie's brand in 2022 reflecting the price increases forecasted by HWL to account for recent cost increases even in the face of competition from dumped imports. In 2023, in the absence of duties, prices are expected to decline for Oak but not to the extent forecast by HWL, reflecting the lower level of undercutting that has been projected by MBIE. As would be expected, any price decline would be more significant for Oak, than it would be for Wattie's, due to Oak's positioning in the market.

318. MBIE concludes that it is not likely that the discontinuation of anti-dumping duties will contribute to significant price depression.

4.5.3 Price Suppression

319. 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 goods is or is likely significantly to prevent price increases for those goods that otherwise would have been likely to have occurred.

320. Price suppression occurs when New Zealand producers are unable to increase prices, for example, to recover cost increases. Price suppression is not in itself a determinant of the existence or extent of injury. There must be a consequent impact on the industry, measured in terms of the factors set out in section 8(2)(d) of the Act.

321. 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

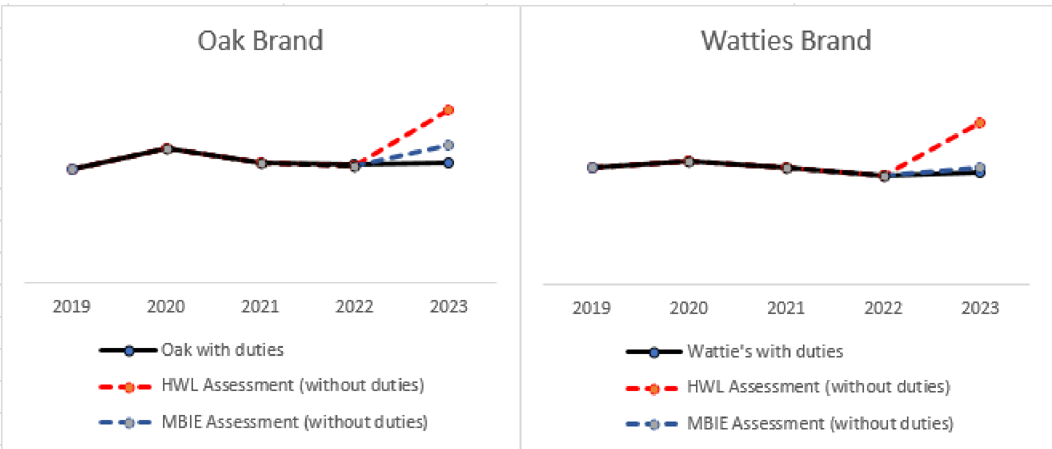
322. HWL argued that the effects of dumped preserved peaches from Spain would be price suppression as HWL would be unable to offset price undercutting by cost savings and price increases elsewhere. HWL suggested that the dumped imports would cause cost increases as increased market share taken by dumped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

323. MBIE has assessed the data provided by HWL but has included in the analysis the level of price undercutting MBIE has established for Spanish imports compared with Oak brand goods. As noted above, MBIE has calculated 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.

324. The charts below detail HWL's historical production costs as a percentage of revenue between 1 July 2018 and 30 June 2021 and its forecast figures for the years ended 30 June 2022 and 2023, 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 the years ended 30 June 2022 and 2023.

Figure 8: 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]



325. The data shows that Oak costs as a proportion of revenue increased in 2020 but decreased in 2021 and are projected to remain relatively stable in 2022 and 2023, if the anti-dumping duties continue, reflecting HWL's intention to increase prices in line with cost increases. Similarly, Wattie's brand costs as a proportion of revenue increased in 2020 and decreased in 2021 and are projected to remain relatively stable in 2022 and 2023, if the duties continue.

326. If the duties expire, costs as a percentage of sales revenue for both Oak and Wattie's brands are projected to decrease slightly in 2022 and then increase in 2023 in line with

the price decreases that have 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 charts 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 to the extent it has projected with the duties in place. The charts indicate that any price suppression would be more significant for Oak, than it would be for Wattie's, due to Oak's positioning in the market.

327. MBIE concludes that there is evidence that in the absence of anti-dumping duties HWL would likely experience price suppression.

4.5.4 Conclusion on Price Effects

328. 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 price undercutting based on a notional ex-wharf price calculated for imports from Spain over the dumping investigation period
- in the absence of anti-dumping duties, prices for domestic like goods are unlikely to be significantly depressed as a result of dumping
- if anti-dumping duties are not continued at levels that remove the effect of price undercutting, it is likely there will be price suppression in that HWL will not be able to fully recover increases in costs forecasted by the company.

329. MBIE's overall conclusion regarding price effects is that the discontinuation of anti-dumping duties on the subject goods from Spain is likely to result in price undercutting and price suppression.

330. As noted earlier, the price effects examined above are not in themselves a determinant of injury. There must be a consequent impact on the industry, in particular when measured, *inter alia*, in terms of the factors and indices set out in section 8(2)(d) of the Act. Injury caused to the New Zealand industry is assessed in terms of the economic impact in the following section of the report.

4.6 Consequent Impact

331. In the examination of the consequent impact of the dumped goods on the relevant New Zealand industry provided for in section 8(1)(c) of the Act, section 8(2)(d) sets out matters the chief executive shall have regard to.

4.6.1 Economic Impact

332. Section 8(2)(d)(i) of the Act sets out a number of factors the chief executive shall have regard to in relation to the economic impact of the dumped goods, in terms of whether there are actual or potential declines.

Output

333. 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 and through price competition.

334. Changes in output by domestic producers reflects production decisions in response to changes in the market situation, which could arise from a combination of changes in demand, from competition, or from movements in prices and costs. A decline in output can be reflected in declines in sales revenue. Output figures can reflect production for domestic sales or for other purposes.

335. In its application, HWL stated that sales closely follow production. HWL's output is dependent on the size and quality of the peach crop available each year and its contracts with growers.

Likely impact of the removal of anti-dumping duties

336. 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 its 2022 and 2023 financial years.

337. In the circumstances outlined above, and in particular because of the nature of its purchasing requirements with growers, MBIE considers that output is unlikely to be a useful indicator of the likelihood of injury attributable to dumped goods.

Sales Volume and Revenue

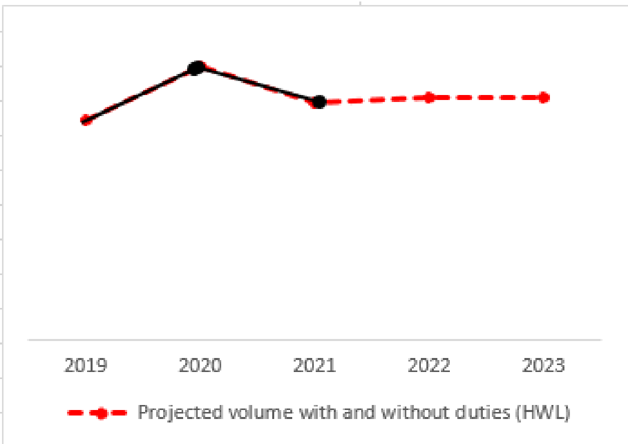
338. The Act requires that impacts on sales be considered as an injury factor. Movements in sales revenue reflect changes in volumes and prices of goods sold. Dumped imports can affect both of these factors through increased supply of goods to the market and through price competition.

Sales Volume

339. The following chart shows HWL's historical sales volumes of canned peaches from 1 July 2018 to 30 June 2021 and forecast sales volumes for the years ended 30 June 2022 and 2023 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 9: 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]



340. The data shows that sales volumes of Oak and Wattie's brands combined increased from 2019 to 2020 but decreased in 2021 to slightly above 2019 levels and are projected to remain steady in 2022 and 2023, both if the anti-dumping duties continue and if they are removed. This reflects the situation if HWL had to discount prices to maintain its sales volume and market share (a strategy HWL may employ to combat competition from dumped imports from abroad).

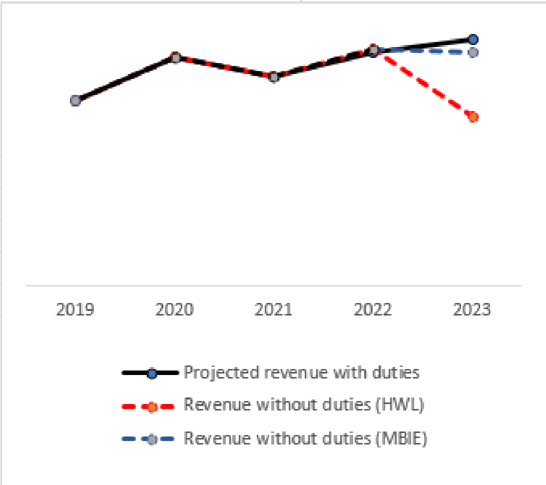
341. MBIE concludes that sales volumes would not be significantly affected by the discontinuation of anti-dumping duties.

Sales Revenue

342. The following chart shows HWL's historical sales revenue of canned peaches from 2019-2021 and forecast sales revenue for 2022 and 2023 both with anti-dumping duties imposed and in the absence of anti-dumping duties. The figures exclude imports by HWL in order to reflect revenue only from domestic sales.

Figure 10: 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]



343. The data shows that sales revenue for Oak and Wattie's brands combined increased in 2020 and then decreased in 2021 but remained above 2019 levels. Sales revenue is projected to increase steadily in 2022 and 2023 if the anti-dumping duties continue. If the duties are removed, HWL has projected that sales revenue will increase in 2022 but fall back in 2023 to levels well below 2021 levels (with duties in place). The 2022 figures reflect HWL's forecast price increases, which the company stated it would need to effect in order to match projected cost increases.

344. The graph also details what MBIE has calculated HWL's forecast sales revenue will likely be in the absence of anti-dumping duties over 2022 and 2023. Similar to HWL, MBIE has forecast that sales revenue will increase in 2022 (in line with forecast price increases) but then drop off in 2023. The extent of the 2023 decreased sales revenue projection by MBIE is not as severe as that projected by HWL, which reflects the lower level of price undercutting that has been calculated by MBIE in the absence of duties. MBIE has calculated a notional ex-wharf imported price from Spain, in the absence of anti-dumping duties, which it considers is a more accurate level of price undercutting than that calculated by HWL.

345. MBIE concludes that sales revenue would be adversely affected by the discontinuation of anti-dumping duties.

Market Share

346. Analysis of market share must consider changes in the size of the total market. A decline in the domestic industry's market share when the total market is expanding will not necessarily indicate that material injury is being caused, particularly if the domestic industry's sales are also growing, because the New Zealand industry is not entitled to a particular market share.

347. In its application, HWL referred to a loss of market share in previous investigations, namely in the 2005 investigation of preserved peaches from China where the share of the imported Delish brand grew significantly in PAK'nSAVE South Island over 4 weeks and the 2011 investigation of preserved peaches from Spain where the Cinderella brand's share grew significantly in PAK'nSAVE Wellington over 4 weeks. HWL considers that a similar effect would be likely to occur if dumped imports from Spain resumed.

348. In its application, HWL stated that it is "highly likely that if dumped imports from Spain were to be sold in New Zealand, HWL will lose market share unless it increases its consumer and trade marketing activity, thereby causing injury."

349. 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.

350. The evolution of the market in recent years indicates that the size of the New Zealand market for 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 of review. Figure 5 in section 4.4 shows that there has been an overall increase in the market share of imports from Spain over the same period.

Likely impact of the removal of anti-dumping duties

351. 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 in its application that if dumped preserved peaches from Spain return to the New Zealand market, its market share would be either taken by those dumped imports or if HWL defended its market share by increasing its trade marketing activity to compete on price, its cost base would increase.

352. HWL has 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 in particular locations. 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.

353. 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 the company competes with dumped imports on price in order to maintain production volumes and sales and prevent increases in imports.

354. MBIE concludes that on the basis of its assessment of likely import volumes of imports from Spain, 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. In the absence of anti-dumping duties, an increase in the volume of imports will likely eventually replace the market share currently held by imports from other sources including for house brands as some importers are likely to switch their sources of import, particularly given the likely competitive pricing of Spanish preserved peaches. To the extent that HWL does not participate in the house brand market, this implies that HWL's market share will remain stable but subject to pressure from home brands in supermarket sales. MBIE also notes that there are other importers who may be less inclined to change their current sources of imports to Spain, if anti-dumping duties are removed, because of their long-standing relationships with their current suppliers.

Profits

355. 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.

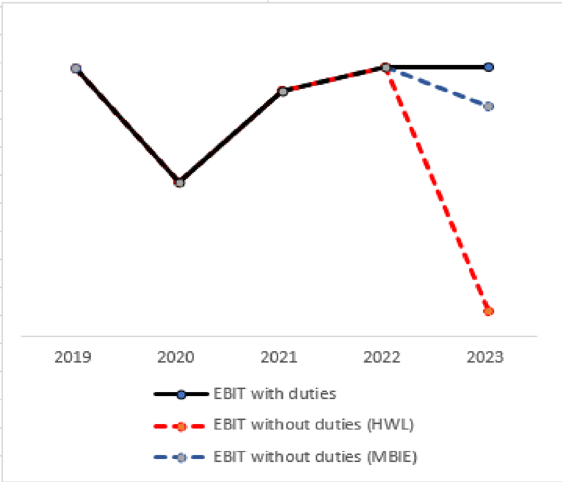
Likely impact of the removal of anti-dumping duties

356. HWL contends that if anti-dumping duties are removed it will need to incur more trade marketing activity to protect its market share which will directly impact profit. The company claims that a loss of sales revenue resulting from an increase in trade marketing activity will pass to HWL's profit line and directly impact its profit. Forecasts of the impact on Earnings Before Interest and Taxes (EBIT) were provided by HWL, indicating that in the absence of anti-dumping duties there would be significant reductions in EBIT.

357. Figure 11 (on the next page) shows HWL's historical EBIT on sales of its Oak and Wattie's brands combined from 1 July 2018 to 30 June 2021 and its forecast EBIT levels for the years ended 30 June 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. The chart also reflects MBIE's assessment of EBIT levels on the basis of price undercutting calculations established on a notional ex-wharf imported price from Spain calculated in the absence of anti-dumping duties.

Figure 11: 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]



358. The data shows that EBIT decreased significantly from 2019 to 2020 but recovered in 2021 although not to the levels achieved in 2019. In 2022, with duties in place, EBIT levels are projected to increase to 2019 levels and remain steady in 2023. If the duties are removed, HWL has projected EBIT levels to increase in 2022 reflecting HWL's forecast price increases which the company stated it would need to effect in order to match projected cost increases. However, HWL has projected that EBIT will decrease significantly in 2023, which reflects the level by which HWL would have to discount prices in order to combat prices from dumped imports.

359. The chart also details what MBIE has calculated HWL's EBIT levels will likely be, in the absence of anti-dumping duties, over the 2022-2023 period. Consistent with HWL's forecasts, MBIE has forecast EBIT levels to increase in 2022 but decrease in 2023, if the duties expire. However, the extent of MBIE's forecast 2023 EBIT decline is not as severe as that projected by HWL, which reflects the lower level of projected price undercutting that MBIE has calculated.

360. MBIE concludes that HWL's profits will be adversely affected by the discontinuation of anti-dumping duty.

Productivity

361. 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.

362. In its application, HWL stated that currently imports of preserved peaches from Spain are not adversely affecting its productivity due to anti-dumping duties and the high-end niche channels the peaches are being sold through in New Zealand. Data provided by HWL showed an upward trend in productivity levels between 2018 and 2020 and then a decline in 2021. HWL commented that as it relies on Recognised Seasonal Employee (labour (fruit picking) and back-packers (factory work), it has been adversely affected by COVID-19 restrictions on travel which resulted in a lower than expected number of staff.

It dealt with this by shutting down less critical parts of the processing facility and focusing on peaches over the harvest and processing period.

Likely impact of the removal of anti-dumping duties

363. HWL stated that imports of preserved peaches from Spain appear to not be having an injurious effect on HWL productivity due to the anti-dumping duties in place deterring importers and the current imports being sold through high end niche provenance retailers. It considers that if anti-dumping duties are removed and import volumes increase and are sold through mainstream retailers, then there will be an injurious effect which would be damaging to the New Zealand industry.

364. In previous peaches 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. Because labour size and costs are contingent on the size of the crop, yield and finished tonnage and based on HWL's purchasing requirements from growers, MBIE does not consider that productivity is a particularly useful factor in this case when assessing injury caused by dumped imports.

Return on investment (ROI)

365. The Act requires that impacts on the return on investment be considered as an injury factor. Return on investment (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 return on investment 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.

366. HWL has undertaken recent investment in its processing facility by installing a new colour sorter and peach pitters, which are used solely for processing peaches. The colour sorter will be operating from 2022. Expenditure will include the decommissioning and installation process for the new equipment, although this process has been delayed by the process of procuring the required skilled personnel from overseas and global supply chain and shipping issues. HWL notes that in the past, return on investment has not been looked at in detail due to the canned peach business sharing assets, at various stages of production, with other products and categories, which means that considering canned peach assets alone was not possible.

Likely impact of the removal of anti-dumping duties

367. HWL claims the resumption of dumped imports would have a significant adverse effect on HWL's achievable return on investment. HWL has indicated the main impact on return on investment would be through the effect of the removal of anti-dumping duties on EBIT. HWL says returns would diminish, with other flow-on effects, including for return on investment. In the current review, HWL provided projected EBIT figures for the years ended 30 June 2022 and 2023 both with and without anti-dumping duties in place, to highlight its claim that there would be declines in EBIT if the duties were removed. HWL's

forecasts indicate that return on investment would diminish in 2023 if anti-dumping duties are not in place, in line with the company's projected 2023 EBIT decline.

368. MBIE concludes that, with anti-dumping duties currently in place, there is no evidence that the rate of return on investment has been adversely affected by dumped imports of Spanish preserved peaches over the POR(I) (actual). 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 2023 rate of return on investment corresponding with the decline in EBIT for 2023 (i.e. for the POR(I)(forecast)).

Utilisation of production capacity

369. 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.

370. HWL's production capacity for canned peaches is constrained by the size of the crop that its contracted orchardists can deliver. All fruit is supplied and processed in the first quarter of each year. HWL notes that there are current constraints on seasonal labour availability, which led to some peaches not being harvested in early 2021. HWL provided its theoretical capacity in the absence of such constraints.

Likely impact of the removal of anti-dumping duties

371. 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. In the present case, MBIE does not consider production capacity utilisation rate to be a useful injury measure, since the level of production is dependent on other factors including the quantity of raw peaches available and HWL's purchasing requirements from growers.

4.6.2 Factors affecting domestic prices

372. Section 8(2)(d)(ii) of the Act lists this matter as one of the various factors and indices which the chief executive must have regard to when assessing the economic impact of dumped goods on the industry. MBIE examines this factor in the context of the economic impact of dumped goods on the industry.

373. HWL said that prices are affected by HWL's own behaviour, the behaviour of importers and the behaviour of retailers, but that the main influence comes from the retailers. Competition between retailers wanting to make a profit (Countdown, New World, PAK'nSAVE etc.) is the main driver of prices. Any dumped peaches or lower priced preserved fruit that competes with canned peaches would have a direct effect on prices. HWL noted that it will need to revise its prices upwards to account for significant budgeted cost increases and to adjust for accumulated manufacturing cost increases, including raw material peach costs which have increased in 2020 and 2021.

4.6.3 Magnitude of the margin of dumping

374. Section 8(2)(d)(iii) of the Act refers to the magnitude of the margin of dumping as a factor the chief executive is to have regard to. 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 which has flow-on effects on prices achieved and volumes sold by the New Zealand industry.

375. MBIE has found that the subject goods exported from Spain to New Zealand in the POR(D), limited to 850g and 2.65kg cans, from Alcurnia were not dumped. MBIE has also found that subject goods imported from Spain by Alcurnia are not likely to be dumped in future. However, on a notional basis, MBIE has found that the subject goods imported from Spain by other suppliers, in the absence of anti-dumping duty, will be dumped by a margin of 24.2 per cent for cans not exceeding one kilogram and by a margin of 7.6 per cent for cans exceeding 1 kilogram.

376. 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 the margin of dumping in this case is greater than the price undercutting thereby indicating that the magnitude of the margin of dumping has contributed to the injurious effect of the dumped goods.

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

4.6.4 Negative Effects

378. Section 8(2)(d)(iv) of the Act refers to the actual and potential negative effects on a range of identified factors as matters that the chief executive is to have regard to in relation to the impact on the industry of dumped goods.

Cash flow

379. 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.

380. HWL considers that cash flow broken down to the level of peaches is not meaningful as it is managed at a corporate level in HWL and in its parent company H J Heinz Company (New Zealand) Limited. A major feature of this is the seasonal nature of the cash flow for peaches which means that expenditure and revenue are very uneven in relation to production and sales. HWL has not claimed any adverse effect on cash flow in this review and noted that because of the above reasons, cash flow has not been considered a good indicator of injury in past reviews.

381. MBIE considers that, if anti-dumping duties are discontinued then any potential adverse impact on sales revenue and EBIT, as outlined above, is likely to have negative effects on cash flow.

Inventories

382. Increasing inventories at the end of a financial period can be a sign of injury, bearing in mind the context of the normal conditions and practices of the industry concerned.

383. HWL noted that year-on-year, it is unknown what will precisely happen in terms of seasonal variability and adverse events, for example unforeseen late frosts, although peach crops have become more stable in recent years. In previous peach investigations and reviews, HWL noted that its commitments to purchase raw peaches from growers require it to maintain a raw material inventory and that the removal of duties would have

a significant adverse effect on its inventories, in particular lowering the value of its raw material inventory.

384. In previous cases, and observed by MBIE in this review, 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.

385. MBIE considers that, because of the way HWL manages its inventory level, the amount of inventory on hand is not a good indication of current injury. MBIE does however note that HWL is particularly exposed to injury from dumped imports shortly after yearly production when inventory levels are high and where any lowering of its prices would have a particularly significant adverse effect if inventories are to be maintained for longer periods.

Employment and wages

386. In previous 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. In its RFI Response, HWL noted that the colour sorter, which is expected to be operating from 2022, is intended to reduce seasonal labour requirements, and produce more consistent product quality.

387. Employee and wage rate data show that average annual wage rates have steadily increased over time. Employee numbers have also increased over the last few years but declined in 2021 to 2018 levels, which MBIE assumes is due to the lack of availability of seasonal workers. In its reply to the RFI, HWL stated that present throughputs are constrained by seasonal labour availability. HWL noted that employment numbers, wages and hourly rates are all applicable to quarter one of each calendar year as this is when canned peaches are produced.

388. MBIE considers that if anti-dumping duties are removed it is unlikely that there would be any adverse effects on employment and wages directly relating to the production of canned peaches, at least in the short term. Employee numbers and wages are contingent on production volumes. Even in the absence of anti-dumping duties, HWL's application indicates it would continue to process contracted peach crops from growers. On this basis MBIE does not consider that employee numbers and wages are particularly useful factors, at least in the foreseeable future, when assessing injury caused by dumping.

Growth

389. HWL claims that the removal of duties would have a significant adverse effect on growth. The company noted that processing the peach crop was an important part of its business and any significant decline would affect its production including its fixed costs.

390. MBIE concludes that, if anti-dumping duties are discontinued then any potential adverse impact on sales revenue, EBIT and return on investment, as outlined above, is likely to have a negative effect on growth.

Ability to raise capital and to make investments

391. In the 2019 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.

392. In its application, HWL noted that it views the industry positively and continues to invest in its canned peach processing operation, referring in particular to the recent installation of a new colour sorter and replacement of its peach pitters with new equipment. HWL has invested in its canned peach operations to develop its commitment to the industry should it continue not to be injuriously affected by dumped imports. HWL considers that these investments reflect "the level playing field" the existing remedy has created. HWL also referred to investment in crop supply and upgrading its manufacturing plant after the 2022 production season. HWL also stated that the impact of the removal of anti-dumping duties would result in reduced investment in ancillary services such as engineers, transport companies, and the packaging industry.

393. MBIE considers that any likely impact on HWL's sales, profits and return on investment, if the duties are discontinued, 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 small share of the total production capacity.

4.6.5 Conclusions on Economic Impact

394. MBIE is satisfied that there is a reasonable basis to reach conclusions that:

- Consequent upon the likely price effects and if anti-dumping duties are not continued:
  - there is likely to be a reduction in sales revenue but not sales volume
  - there is unlikely to be a significant effect on HWL's market share, at least in the foreseeable future, depending on whether or not HWL decides to defend its market share;
  - EBIT and return on investment are likely to decline if the company looks to match the lower priced, dumped imports from Spain;
  - output and utilisation of production capacity are not useful indicators of the likelihood of injury attributable to dumped goods in the foreseeable future, particularly due to the quantity of raw peaches available and the company's purchasing requirements with growers;
  - productivity, inventories, employment and wages are not particularly useful factors in this case when assessing injury caused by dumped imports.
- The magnitude of the margin of dumping will likely contribute to the injurious effects of the dumped goods.
- Potential negative effects on cash flow and growth will likely arise from the impact on sales revenue, return on investments and profits.
- It is difficult to reach any meaningful conclusion on capital requirements and investments that is specific to canned peaches.

4.7 Other Causes of Injury

395. In the examination of whether material injury would be likely to continue or recur if the anti-dumping duties were discontinued, 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

396. 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.

397. 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.*

398. MBIE has assessed the causal relationship between potential dumped imports and any potential material injury on the basis of the requirements of the Act and the AD Agreement.

Dumped Imports

399. As described in the preceding sections of this report, MBIE has examined the information available concerning the volume and price effects of allegedly dumped imports and the consequent impact on the domestic industry, including the extent and nature of any such effects and the causal relationship with the continuation or recurrence of dumping of imports of preserved peaches from Spain.

Other Imports

400. Section 8(2)(e)(i) of the Act refers to the volume and prices of goods that are not dumped as factors other than the dumped goods that may have injured or are injuring the industry.

401. In its application, HWL states that it “is not aware of any material injury being caused through fairly traded competitor branded products.” In its RFI Response, HWL noted that the canned peach market is open to new entrants and stated that it faces competition from several countries but mainly China and South Africa whence private label canned peaches are imported. HWL noted that “retailers are increasingly opening up shelf space

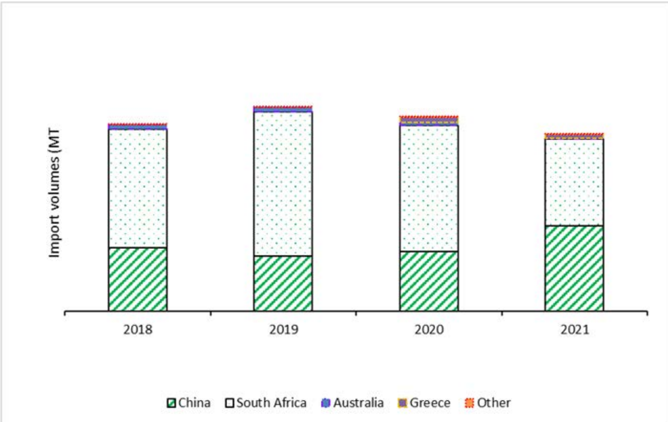
for their private label at expense of manufacturers brands." HWL also explained that its main competition is from imported private label canned peaches and fruit snacks in pottles or puree pouches.

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

403. MBIE used Customs data to analyse the levels of imports from the main supplying countries and other sources for all of the subject goods. Customs data shows the import volumes from 1 July 2018 to 30 June 2021. The data shows that imports in order of volume were primarily from South Africa and China, with smaller volumes from Australia, and Greece and all other countries combined.

404. Figure 12 shows that since 2018 imports from South Africa have declined while imports from China have increased. Although in small volumes compared to China and South Africa, imports from Australia have declined and imports from Greece and the rest of the world combined showed a slight growth trend over the same period.

Figure 12: Import Volumes (MT)



405. As explained in section 4.4. above, MBIE noted that the average ex-wharf value per kilogram for the POR(D) without anti-dumping duties is lowest for Greece, followed by China, South Africa, Spain and Australia. On a notional basis, in the absence of anti-dumping duties on preserved peaches from Spain, imports of preserved peaches from Spain are likely to have an ex-wharf value that is slightly less than imports from Greece with anti-dumping duties, less than South Africa and far less than Australia.

406. MBIE notes that anti-dumping duties apply to imports of canned peaches from Greece and South Africa (except for one major exporter). Anti-dumping duties on South African canned peaches were applied at the full margin of dumping and those on canned peaches from Greece were applied at a level to remove injury but not all of the dumping. MBIE has added current anti-dumping duties to the ex-wharf values to estimate landed prices for exports from Greece and South Africa.

407. The ex-wharf values of imports from South Africa, China, Greece 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.

408. MBIE's analysis shows that estimated landed ex-wharf prices per kilogram for preserved peaches from Spain with anti-dumping duties in place are significantly lower than the ex-factory price for HWL's Oak brand. If anti-dumping duties are removed from preserved peaches from Spain, Spanish preserved peaches exported to New Zealand are likely to be

priced higher than preserved peaches from China and slightly lower than preserved peaches from Greece. MBIE notes that 47 per cent of New Zealand imports of preserved peaches in the year ended June 2021 were from China and only 2 per cent from Greece.

409. MBIE is satisfied that any injury arising from the prices and volumes of imports of goods other than the dumped goods has not been attributed to dumping.

Changes in demand and patterns of consumption

410. Section 8(2)(e)(ii) of the Act refers to contraction in demand or changes in the patterns of consumption as factors other than the dumped goods that may cause injury to the industry.

Demand

411. While price may be a factor affecting demand for preserved peaches, other factors affecting demand include seasonality, convenience, and prolonged life in periods of panic buying due to the COVID-19 pandemic. HWL noted there was an increase in demand in 2020 due to panic buying prior to the COVID-19 nationwide lockdown in New Zealand in late March/early April. However, this was only a short-term effect and since then the market has fluctuated, driven by further regional lockdowns and resulting shopping behaviour and international shipping issues, which can lead to out of stock situations for imported goods, driving the demand for locally produced fruit.

412. MBIE confirms that during the POR(I) (actual) there were lockdowns or restrictions in New Zealand, or parts of New Zealand, due to COVID-19. Lockdowns at Alert Level 4[38] have occurred from 25 March to 27 April 2020, 17 August to 31 August 2021 (Northland until 2 September and Auckland until 21 September 2021), and there have also been some restrictions at other times.

413. HWL provided sales data for the New Zealand market that showed increased sales in March 2020 and August/September 2021 due to Alert Level 4 lockdowns in New Zealand, but not at Alert Level 3 restrictions. Increased sales also occur at the same point each year due to seasonality. MBIE notes that essential services such as supermarkets remained open during the lockdowns and that restaurant closures may have affected sales of some 3kg cans, but that over time sales of other retail size cans would not be affected.

414. In a January 2018 report, Euromonitor International stated that "[m]etal food cans are set to continue to decline globally over 2016-2021, challenged by consumers shifting away from canned to chilled and frozen food."[39] However by May 2020, a Euromonitor consultant reportedly said that metal food cans unit volume sales are set to grow through 2024 due to COVID-19 resulting in perceived uncertainty over food supplies and stockpiling of canned food.[40]

415. HWL noted there had been a recent decrease in demand for canned fruit in general, led by a decline in ambient fruit demand. The company explained that it has factored in a contraction in growth in the industry to reflect a decline in demand which it attributes to changes in consumption patterns. MBIE's research indicates that there is some consumer

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[38] https://covid19.govt.nz/alert-levels-and-updates/about-the-alert-system/
[39] https://www.euromonitor.com/global-metal-food-cans-challenges-and-opportunities/report
[40] https://www.cantechonline.com/blog/25324/demand-for-canned-food-is-here-to-stay/

concern that canned fruit may not be as nutritious as fresh fruit, although this is disputed. There also appears to be a gradual trend away from the use of high fructose corn syrup.[41] In its RFI Response, HWL noted that the canned peaches produced in Spain are "extremely similar" to the canned peaches HWL produces, except for differences limited to factors such as an easy open end as opposed to a fixed can end.

Patterns of consumption

416. HWL submitted that Alcurnia's imports and subsequent sales on the NZ market do not cause material injury to HWL currently due to their distribution being through premium niche retailers. While HWL considers that arguably anti-dumping duties should not apply to these goods, it would be concerned if these goods were sold in the same channels as HWL's product. HWL observes that there have been some low volume sales of such product through the same retail channels that HWL sells through.

417. MBIE accepts that the distribution of imports from Alcurnia through specialty retailers is unlikely to contribute to injury to HWL. As outlined above in section 3, MBIE has assessed that there is and will be no dumping of Alcurnia peaches.

418. MBIE concludes that, while consumer preferences may be changing gradually, there have been no significant changes in the pattern of consumption or demand in New Zealand. MBIE is satisfied that any injury arising from this factor has not been attributed to dumping.

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

419. 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.

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

421. One party referred to the Commerce Commission's consideration of competition. MBIE assumes this reference is to the Commerce Commission's current study[42] into "whether competition in the grocery sector is working well, and if not, what can be done to improve it." The Commerce Commission has preliminarily found that competition is not working well for consumers in the retail grocery sector. If competition was more effective, retailers would face stronger pressures to deliver the right prices, quality and range to satisfy a diverse range of consumer preferences. The Commerce Commission is required to publish its final report on the study by 8 March 2022. MBIE notes that the Commerce Commission's preliminary findings did not refer to the impact of anti-dumping action on competition. There is also no evidence brought to MBIE's attention that suppliers of preserved peaches to New Zealand's two supermarket chains would experience different treatment depending on whether goods are produced in New Zealand or imported.

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[41] https://produceprocessing.net/article/canning-industry-focused-on-drawing-new-customers/
[42] https://comcom.govt.nz/about-us/our-role/competition-studies/market-study-into-retail-grocery-sector

422. MBIE notes that there are significant volumes of imports of preserved peaches available from countries such as Australia, China and South Africa, which ensures 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.

423. HWL noted that it continues to have concerns that the EU canned peach industry is receiving assistance under the European Commission's (EC) agricultural subsidy programme, even though the programme continues to undergo reform under its common agricultural policy. MBIE notes that HWL has not lodged an application for a subsidy investigation.

424. MBIE is satisfied that any injury arising from restrictive trade practices or changes in conditions of competition between overseas producers and the New Zealand producer has not been attributed to dumping.

Developments in Technology

425. Section 8(2)(e)(iv) of the Act refers to developments in technology as factors other than the dumped goods that may have injured or are injuring the industry.

426. HWL noted in its application that it didn't believe there is any evidence of a technology development relevant to the consideration of material injury and that it understands its method of processing peaches is similar to that of other processors. HWL clarified in its RFI response, that while the basic canning process is unchanged, there have been some technological advances in processing to improve efficiency and reduce risks, such as colour sorters and more advanced pitters. HWL has recently invested in newer equipment that is based on better technology that will help improve product quality.

427. 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. HWL continues to produce peaches in cans and has no plans to change this.

428. 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.

429. MBIE is satisfied that any injury arising from developments in technology have not been attributed to dumping.

Exports of New Zealand Producers

430. Section 8(2)(e)(v) of the Act refers to the export performance and productivity of the New Zealand producers as factors other than the dumped goods that may cause injury to the industry.

431. HWL has historically exported a small volume of preserved peaches to the Pacific Islands and also exported canned peaches to Australia over the POR(I). The Australian exports were partly attributed to the challenges the Australian market was facing as importations of canned peaches from other sources were affected by shipping delays and significant increases in costs, especially shipping costs. HWL stated that it "had excess stock and the advantage of reliability and price stability in supplying the Australian market."

432. MBIE considers that such a relatively small export volume, at the prices achieved, would not have had 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 HWL's canned peach production.

433. 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.

Imports by the New Zealand Industry

434. 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 importation.

435. HWL did not import any preserved peaches from Spain during the period considered for dumping (1 July 2020 to 30 June 2021). HWL stated that in times of short supply it needs to import preserved peaches, which may be subject to trade remedies, although more recently it has moved away from importing from Spain to supplement its Oak brand due to demand. HWL preserved peach imports, apart from country of origin declarations, are labelled the same as the New Zealand products and are sold at the same regular price. The sale of these products in the New Zealand market protects the market share, shelf space and consumer goodwill for New Zealand preserved peaches in a time of shortage which, the company claims, does not cause injury to HWL. All of HWL's imports of preserved peaches are in cans and it no longer imports preserved peaches in pottles.

436. HWL noted that, based on its investment in the New Zealand peach growing industry, it expects a reliable annual supply of raw peaches which will reduce the need to import. Effectively its involvement in peach growing gives it the ability to balance supply with its processing requirements, its import position will be to supplement any shortfall though the imports may not be to the same level as the previous years. It further indicated that there are still factors that remain outside of it control.

437. Customs data shows that HWL has not imported preserved peaches from Spain since 2013. Prior to its importations from Spain in 2013, HWL had not imported preserved peaches from Spain since 2008.

438. HWL stated that it used to import preserved peaches in pottles from China in order to complement its product range but that it no longer does so. Customs data shows that in recent years HWL has been a major importer of canned peaches from South Africa confirming the company's claim that it imports in order to supplement its domestic production so that it is not totally reliant on a successful peach crop harvest in any single year, given crop supply variation caused by natural events such as adverse weather conditions impacting on crop volume. HWL's imports are subject to the payment of anti-dumping duties in the same manner as other importers' imports of these goods.

439. MBIE notes that the volumes of imports of preserved peaches by HWL have declined significantly each year from the year ended 30 June 2019 to the year ended 30 June 2021. HWL explained that over this period HWL had progressively better production seasons. However, HWL noted that there has been an unexpected uplift in domestic demand recently (induced by the lockdown in the second half of 2021), and that it expects a further uplift in demand in December 2021. In keeping with its reactionary import strategy, the company stated that it will likely need to fulfil this shortfall by importing to supplement the Oak brand.

440. MBIE is satisfied that any injury from imports by the New Zealand industry has not been attributed to dumping.

Other matters

441. There may be other factors, other than imports of the subject goods, which could be affecting the performance of the domestic industry, including the impact of the COVID-19 pandemic.

COVID-19

442. MBIE has referred in this report to the impact of COVID-19 on sales due to lockdowns and panic buying, which HWL considers to be a short-term effect. MBIE has also noted that a shortage of seasonal labour from overseas resulted in a failure to harvest some of the peach crop in 2021. HWL noted that this led to lower levels of productivity and output. HWL noted that this volume can be replaced by imports if required and is therefore non-injurious. MBIE notes that HWL is not experiencing current injury from Spanish preserved peaches.

443. HWL has indicated that some input costs are increasing, but notes that Spanish producers will be exposed to the same input costs. MBIE also notes that shipping delays and increased maritime freight costs are impacting on the costs of imported goods. HWL stated that some exporters and importers do not appear to be as affected by these challenges due to the higher margins that are available on product from China leading to the growth of private label products.

Conclusions on other injury factors

444. 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.

445. The assessment of the injury factors in this section includes discussion of the causal relationships of dumped imports and volume and price effects and their consequent impact on the domestic industry, as assessed by MBIE during the review. In this report, 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.

446. With regard to the other causes of injury identified in the Act, MBIE is satisfied that injury caused by any other factors has not been attributed to dumped imports and that there is sufficient evidence that future dumped imports from Spain are likely to cause a recurrence of material injury to HWL.

4.8 Conclusion on the Continuation or Recurrence of Injury

447. In relation to the likelihood of a recurrence of material injury should anti-dumping duties expire, MBIE concludes that:

- Previous behaviour, and the competitive pricing of preserved peaches from Spain, indicates that in the absence of anti-dumping duties, imports of preserved peaches from Spain will likely increase in volumes.

- A recurrence of dumping of subject goods from Spain is likely to result in continued price undercutting, with consequent price suppression.
- Consequent upon the likely price effects and if duties are not continued:
    - there is likely to be a reduction in sales revenue but not sales volume
    - there is unlikely to be a significant effect on HWL's market share, at least in the foreseeable future, depending on whether or not HWL decides to defend its market share
    - EBIT and return on investment are likely to decline if the company looks to match the lower priced, dumped imports from Spain
    - output and utilisation of production capacity are unlikely to be useful indicators of the likelihood of injury attributable to dumped goods in the foreseeable future, particularly due to the quantity of raw peaches available and the company's purchasing requirements with growers
    - productivity, inventories, employment and wages are not particularly useful factors in this case when assessing injury caused by dumped imports.
- The magnitude of the margin of dumping will likely contribute to the injurious effects of the dumped goods.
- Potential negative effects on cash flow and growth will likely arise from the impact on sales revenue, return on investments and profits.
- It is difficult to reach any meaningful conclusion on capital requirements and investment that is specific to canned peaches.

448. 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.

449. On the basis of the above considerations, MBIE concludes that if the anti-dumping duties expire, dumped imports of preserved peaches from Spain by suppliers other than Alcurnia are likely to resume and result in the recurrence of material injury to the domestic industry.

5. Rate or Amount of Anti-dumping Duty

5.1 Legal Basis

450. 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.

451. 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.*

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

5.2 Dumping and Injury

453. MBIE has established that there is a likelihood of a recurrence of dumping of exports of preserved peaches from Spain by producers other than Alcurnia, and that the discontinuation 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.

5.3 Form of Anti-dumping Duty

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

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

Ad valorem duty rates

455. 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.

456. 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.

457. 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 reviews of anti-dumping duties on canned peaches from South Africa and Greece, 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 preserved peaches from Spain. MBIE notes that Customs duties apply to preserved peaches and any similar canned food products exported from Spain, so any manipulation of values would likely constitute fraud and the potential for prosecution is a strong disincentive against invoice manipulation.

Specific Duties

458. 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.

459. 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.

460. 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

461. 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).

462. 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.

463. 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.

464. 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.

465. 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.

466. 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 can change significantly over time and become 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.

467. 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.

468. 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

469. MBIE notes that the purpose of the anti-dumping duty is to remove injurious dumping to the New Zealand industry and is not to prevent trade in preserved peaches from Spain. In the case of this review, any reassessed duties will apply to all suppliers from Spain (noting that no anti-dumping duty shall apply to Alcurnia), as MBIE was unable to identify current specific Spanish suppliers to New Zealand other than Alcurnia. The existence of a transparent duty will allow potential suppliers from Spain 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.

470. 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 applied to the VFD on importation.

5.4 Previous Imposition of Duties

471. Anti-dumping duties have been imposed on preserved peaches imported from Spain as follows:

- 2011 – threshold NIFOB amounts for named suppliers, and an *"all others"* rate for other suppliers.
- 2017 – duties were terminated but reconsidered in 2019 after a judicial review.
- 2019 (Currently) – For named suppliers, *ad valorem* rates apply – i.e. no anti-dumping duty for one specified Spanish producer (Conservas El Navarrico), and for Alcurnia Alimentacion SL (Alcurnia) a 2.5 per cent duty for 850g cans and a 15.9 per cent duty for 2.65kg cans. An *ad valorem* rate of 7.9 per cent applies to all other Spanish producers. Duties were to apply for 5 years from when the previous duties were due to expire (4 August 2016).

5.5 Proposed Rates or Amounts of Anti-dumping Duties

472. 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) for product not exceeding 1kg and for product exceeding 1kg based on the domestic industry's non-injurious price (NIP) for the same general product categories
- secondly, calculating a normal value (value for duty equivalent) (NV(VFDE)) for the two product categories
- comparing the NIFOBs to the NV(VFDE)s for the two product categories – a NIFOB lower than the NV(VFDE) indicates that a lesser duty should apply.

473. The NIFOB amounts were calculated by deducting from the ex-factory NIP for Oak canned peaches the costs incurred between the FOB level in Spain and the ex-wharf level, including sea freight and insurance, New Zealand port charges and a 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.

474. The NV(VFDE) amounts were calculated by adding to the notional ex-factory normal values in EUR all known costs incurred by the Spanish supplier up to the FOB level in Spain. The NV(VFDE) amounts therefore represent the likely non-dumped prices at the FOB level. MBIE then converted the NV(VFDE) amounts from EUR to NZD using the average exchange rate over the POI(D) from www.ofx.com.

475. For one of the two product categories (i.e. not exceeding 1kg) the NIFOB amount calculated by MBIE was lower than the NV(VFDE) (when converted into New Zealand dollars) suggesting that a duty rate at less than the margin of dumping should apply (i.e. the lesser duty rule). For the other product category (i.e. exceeding 1kg) the NIFOB calculated by MBIE was higher than the NV(VFDE) amount (when converted into New Zealand dollars), indicating a duty at the full extent of the dumping should apply.

476. For the product category = *not exceeding 1kg*, the percentage duty rate 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 notional export price. For the product category = *exceeding 1kg*, the percentage duty rate proposed is the dumping margin determined in section 3 of this report (i.e. 7.1 percent).

477. The recommended *ad valorem* rates of duty are:

Figure 13: Anti-dumping duty rates
Percentage of Export Price

Producers / Exporters	Goods	Duty
All suppliers other than excluded suppliers	Subject goods not exceeding 1kg	7.2%
All suppliers other than excluded suppliers	Subject goods exceeding 1kg	7.1%
EXCLUDED suppliers	Alcurnia Alimentacion SL	

6. Conclusions

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

- there is a likelihood of a recurrence of dumping of the subject goods imported from Spain by suppliers other than Alcurnia if the current anti-dumping duties expire or are otherwise removed or varied
- material injury to the domestic industry would be likely to recur if the duties on the subject goods expired or were otherwise removed or varied
- the continued imposition of anti-dumping duties on the subject goods for Spanish producers other than Alcurnia is necessary to offset dumping and prevent material injury to the New Zealand industry
- anti-dumping duties should be determined at the rates set out in section 5 of this report.

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Annex 1: Comments Received on the Stage 1 EFC Report

Comments on the EFC Report were received from the GOS, the EC and HWL

A. Government of Spain (GOS)	**MBIE's comments**
A1 Low Volume of Exports to New Zealand	
The GOS stated that Spanish exports of preserved peaches under 5kg had been non-existent since 2012 and especially in the period 2017 – 2019 which the GOS noted is the period prior to the reconsideration of measures ordered by the New Zealand High Court, during which there were no anti-dumping duties in place. The GOS submitted the fact that there was no increase in import volumes from Spain over this two-year period when duties were not in place indicates that it cannot possibly be established that there is going to be an increase in import volumes that could cause material injury to the local industry if the duties were terminated permanently.	In section 4.4 of this report MBIE has recorded, in chart form, past import volumes of preserved peaches (2019-21), and addresses in detail the likely import volumes if anti-dumping duties are discontinued. This analysis covered the price advantage (in the absence of duties) which such imports would likely hold, the capacity and intent of the Spanish preserved 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 Spain, exchange rates and evidence from previous behaviour. In the EFC Report and in section 4.4 of this report MBIE noted the reasons why imports did not increase following the removal of duties in 2017. MBIE has concluded that, in the 18-month period where anti-dumping duties were removed, imports did not increase because of uncertainty about anti-dumping action and an unwillingness to change supplier relationships in that relatively short window. MBIE considers that if duties were removed as a result of this review, importers would have more certainty and the development of relationships with suppliers and switching source countries would be more attractive given likely prices of preserved peaches from Spain. On the basis of its analysis, MBIE is satisfied that the non-application

	of anti-dumping duties would likely lead to continuation or recurrence of dumping and injury or threatened injury.
B. European Commission (EC)	**MBIE's comments**
B1 Likelihood of recurrence of dumping	
The EC noted that MBIE had concluded that the sole exporting producer of preserved peaches from Spain, Alcurnia, was not dumping during the POR(D), nor is it likely to dump should the duties expire. Nevertheless, MBIE had concluded in the EFC Report that there will be a future recurrence of dumping of any subject goods imported from Spain, other than from Alcurnia. In the absence of any other subject goods from Spain presently being imported into New Zealand, the EC considers that MBIE had supported this argument for a future recurrence of dumping by reference to imports in the original investigation in 2011. The EU argued that the situation established ten years ago may no longer be true and that it can hardly be used as a basis for the current conclusions. The EC noted that Eurostat data showed that export prices from Spain had fluctuated between 2012 and 2016, had increased overall over the last ten years and by 18 index points since 2018, and are likely to continue growing in the immediate term. The EC considers that this indicates that MBIE's forecasts are highly speculative and cannot give any reliable indication of future export price behaviour, including that dumping will continue simply based on conclusions from the 2011 dumping investigation. The EC referred MBIE to the Panel decision in *US – Corrosion-Resistant Steel* sunset review which underlined the importance of the need for a sufficient	In section 3 of this report MBIE has found that there was no dumping from Spain over the POR(D) but, with anti-dumping duties in place, the point of a review is to determine the likelihood of the removal of duties leading to a recurrence of dumping and necessarily includes an assessment of that likelihood on the basis of known information. In respect of the EC's claim that the situation established ten years ago cannot be used as the basis for MBIE's current conclusions and that the pattern of export prices from Spain indicates that MBIE's forecasts are highly speculative, MBIE refers to section 3.2.3 of the EFC Report and this report where a notional export price, in the absence of anti-dumping duty, was calculated based on export data from TradeData International Pty Ltd (TradeData). The EFC Report and this report detail the export data and method which MBIE used to calculate notional export prices and why it chose certain export pricing over other export pricing. Evidence of previous price behaviour was only one of the elements that MBIE considered in section 3.5 of the EFC Report and in this report when assessing the likelihood of a recurrence of dumping. Even when assessing that particular element, MBIE noted in both the EFC Report and this report, that "past experience <u>and</u> notional export prices all <u>contribute</u> to an overall assessment that there will be a future recurrence of dumping of any subject goods from Spain" [emphases added]. MBIE is satisfied that it has used the appropriate pricing information in undertaking its analysis and that the test

factual basis and positive evidence upon which to base any likelihood determination.	required under the Act that the non-application of anti-dumping duties would likely lead to continuation or recurrence of dumping, has been met . This is reflected in the relevant sections of this report and MBIE has been guided by the relevant findings in the WTO disputes referred to by the EC, and by New Zealand case law. MBIE also notes that the EC has made no mention of the likelihood of increased normal values in Spain which may offset any increased export prices claimed by the EC. MBIE dealt with the likelihood of increased normal values (i.e. domestic selling prices in Spain) at section 3.5 of the EFC Report. MBIE found that the retail price information available indicates that average domestic prices for preserved peaches have increased over the six months (from June to December 2021) to a greater extent than available export prices, therefore not diminishing the likelihood of dumping.
The EC noted that exports from Spain remained negligible between 2017 and 2019 after duties had been terminated. The EC considered that, while uncertainty caused by the judicial review process might have played a role [in imports from Spain not increasing], MBIE found that "demand for Spanish peaches in the New Zealand is driven by buyer demand and that Spanish producers in the past have not actively sought to promote their products on the New Zealand market."	In the EFC Report and in section 4.4 of this report, MBIE noted the reasons why imports did not increase following the removal of duties in 2017. This is discussed in detail above in this Annex under MBIE's response to the GOS's submission on this point. Although the EC placed its discussion on low volumes of imports under the heading "Likelihood of recurrence of dumping" in its submission, MBIE considers this discussion is more appropriately addressed under "Likely recurrence of material injury". MBIE discussed import volume effects, including likely import volumes, in section 4.4 of the EFC Report. In particular, MBIE considered and commented on several factors in the EFC Report when assessing the likelihood of increased import volumes if anti-

	dumping duties were removed, including buyer and supplier likely behaviour and the impact of climate change on production. On matters impacting on buyer and supplier behaviour, MBIE considered available information on the likely price advantage of Spanish imports, the capacity of Spanish suppliers, ease of entry into the New Zealand market, importers' capability and relationships, and exchange rates.
The EC also provided a number of reasons why it considered it would be difficult to claim the supply of preserved peaches would drastically change in the near future. These included the fact that Spain's top markets are the EU, the US and the UK and that, despite the increased use of modern agricultural techniques and methods, future yield will be impacted by climate change and adverse weather conditions.	On the effects of climate change, MBIE considered that, given the volume of subject goods that Spain currently exports in relation to the volume imported by the New Zealand market, lower production levels do not necessarily indicate that Spain does not have sufficient capacity to supply the New Zealand market and observed that a recent shipment indicates that Spanish preserved peaches are still available for export to New Zealand. Taking account of all of the factors considered by MBIE, as explained in section 4.4 of the EFC Report, MBIE concluded, as set out in section 4.4 of this report, that it is likely that imports from Spain would increase if the anti-dumping duties were not continued. In respect of the likelihood of a recurrence of dumping, MBIE concluded at section 3.5 of the EFC Report, and in this report, after taking into account submissions from the EC and the GOS, that there is a likelihood of a recurrence of dumping from Spain (excluding exports from Alcurnia) if the duties are removed. MBIE is satisfied that it has used the appropriate information in undertaking its analysis and that the test required under the Act and the AD Agreement, that the discontinuation of anti-dumping duties would likely lead to continuation or recurrence of dumping, has been met. This is reflected in the relevant sections of this report and MBIE has been

	guided by the relevant findings in the WTO disputes referred to by the EC, and by New Zealand case law.
B2 Likelihood of recurrence of material injury	
The EC noted that because the original measures, imposed in 2011, were based on threat of material injury, the New Zealand industry has never actually experienced material injury from Spanish imports. Furthermore, the EC considers that there is no evidence that the domestic industry will experience material injury because it has used trade defence measures against various countries for the past 20 years and has therefore been shielded from any competition.	The EC comments might be taken to suggest a view that where anti-dumping duties are imposed on the basis of a threat of injury, there can be no subsequent sunset review of the need for the continuation of the duties or, at least, that no such review can reach a finding that duties need to continue to be imposed. Such a position would clearly not be consistent with the Act or the AD Agreement. MBIE notes that the issue addressed in a sunset review is whether the non-application of anti-dumping duties would be likely to lead to continuation or recurrence of dumping and injury or threatened injury. As noted in Footnote 9 to Article 3 of the AD Agreement: *Under this Agreement the term "injury" shall, unless otherwise specified, be taken to mean material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of such an industry and shall be interpreted in accordance with the provisions of this Article.*
The EC referred MBIE to the Panel decision in *EC and certain member States – Large Civil Aircraft* which it considered supported its claim that the New Zealand industry would not incur material injury if the duties were removed. In particular, the EC noted the Panel's conclusion that the domestic industry in that case would not be vulnerable to injury caused by subsidised imports in the near future. The EC claimed that the present case is a very similar situation to the above-mentioned Panel case, namely that the domestic industry is in a comfortable position as confirmed by HWL itself in media articles.	MBIE notes that one media article referred to in the EC submission relating to the position of the domestic industry references the overall performance of HWL, which does not necessarily relate to HWL's performance in peach production. The other article refers to a $20m capital investment, but this relates to HWL's petfood manufacturing operations. HWL's investments relating to peach production have been taken into consideration in this review.

The EC also referred to the Panel decision in *US – Corrosion-Resistant Steel* to support its view that where the authorities determine that there is no likelihood of a continuation or recurrence of dumping or injury, the duty must be terminated. The EC claims that, if the anti-dumping duties are removed, rather than experiencing material injury, HWL would be exposed to normal international competition after more than 20 years of protection.	MBIE notes that the EC submission included a statement that MBIE had found there is no dumping and it is unlikely that dumping would recur. MBIE acknowledges that for one particular Spanish producer, Alcurnia, it found that there was no dumping nor a likelihood of a recurrence of dumping. However, MBIE found that there was a likelihood of a recurrence of injurious dumping by Spanish producers other than Alcurnia. MBIE refers to section 4 of the EFC Report where it examined in detail (and section 4.8 where it set out conclusions on) the likelihood of a recurrence of material injury to the domestic industry, in the absence of anti-dumping duties. MBIE is satisfied that it has used the appropriate information in undertaking its analysis and that the test required under the Act and the AD Agreement, that the non-application of anti-dumping duties would likely lead to a recurrence of injury to an industry, has been met. This is reflected in the relevant sections of this report and MBIE has been guided by the relevant findings in the WTO disputes.
C. New Zealand industry (Heinz Wattie's)	**MBIE's comments**
C1 Adjustment to can sizes to calculate an export price	
HWL noted that MBIE's calculation of export prices adjusted for can sizes greater than 1KG on the basis of the proportional difference between prices of 850g and 2.65kg cans exported to New Zealand during the POR(D). Given the relatively low volume of exports to New Zealand over the period of review HWL submits it would be more appropriate to adjust using the TradeData information supplied for exports to all markets in the absence of anti-dumping duties.	The approach proposed by HWL would include a broader range of products than is covered by the subject goods as the tariff items for cans exceeding 1kg will include aseptically packaged products and products in drums (i.e. products in volumes exceeding 4kg). MBIE notes that the approach suggested by HWL would likely lead to a less accurate calculation of nominal export price for goods exceeding 1kg but less than 4kg as compared to that calculated using the prices of goods exported to New Zealand during the POR(D).

HWL claimed that MBIE needs to clarify why there is a difference in the 22,000MT figure (noted at paragraph 262 of the EFC Report) and the 65,000MT figure (used elsewhere throughout the EFC Report). HWL believes the two figures currently contradict each other.	The 22,000MT figure relates to the volume of preserved peaches exported from Spain in 2020. While this figure includes products outside the subject goods description (noted by HWL), it was used by HWL to show that Spain remains a significant exporter of canned peaches. On the other hand, the 65,000MT figure relates to the volume of discretionary stocks of inventory which isn't necessarily held for export only.
HWL noted that, given the very little time that has elapsed since a reconsideration of the current duties was completed in 2019, no significant change to MBIE's conclusions could reasonably be expected unless during the intervening period there had been major changes to factors relevant to export supply or New Zealand industry, or both. HWL concluded by noting that the EFC Report revealed no evidence of there having been any such change and, therefore, it follows that the *Final Report – Stage 1* should reach the same conclusions.	MBIE noted the comments made by HWL.