



Trade (Anti-dumping and Countervailing Duties) Act 1988

Dumping Investigation

Frozen potato fries and wedges from Belgium and the Netherlands

Step 1 Final Report

MBIE/AD/I/2020/004

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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
BE	Belgium
COVID-19	Novel Coronavirus Disease 2019
Customs	New Zealand Customs Service
EC	European Commission
EFC	Essential facts and conclusions
EU	European Union
EUPPA	European Potato Processors' Association
EUR	Euro (€)
FOB	Free on Board
FY	Financial Year, year ending June in this investigation
HS	Harmonised System
IPP	Import Price Parity
KG	Kilogram
MBIE	Ministry of Business, Innovation and Employment
Minister, the	Minister of Commerce and Consumer Affairs
MT	Metric ton (tonne)
NL	Netherlands, the
NZ	New Zealand
NZD	New Zealand Dollar
PNZ	Potatoes New Zealand Inc
POI(D)	Period of Investigation (Dumping)
POI(I)	Period of Investigation (Injury)
QSR	Quick service restaurants
ROI	Return on investment
Stats NZ	Statistics New Zealand
TDI	Trade Data International
VAT	Value Added Tax
VFD	Value for Duty
WTO	World Trade Organization

1. Summary

1.1 Purpose

1. In accordance with section 10C(5) of the Trade (Anti-dumping and Countervailing Duties) Act 1988 (the Act), this Step 1 Final Report sets out the findings of the step 1 investigation into dumping of frozen potato fries and wedges from Belgium and the Netherlands, as a basis for determinations to be made by the Minister of Commerce and Consumer Affairs (the Minister) under sections 10D(1) and 11 of the Act.
2. The step 1 determination to be made under section 10D(1) is whether, in relation to the imported goods, the goods are being dumped and material injury to an industry has been or is being caused or threatened because of the dumping. This determination is to be made within 180 days of the start of the investigation, but not less than 30 days after the Step 1 EFC¹ Report provided on 19 April 2021 under section 10C(2). This means that the determination must be made by 20 May 2021 but not before 19 May 2021.
3. Where the determination under section 10D(1) is negative, then in accordance with section 10D(3) the Minister must terminate the investigation under section 11 of the Act.
4. Interested parties were invited to provide comments on any of the matters covered in the Step 1 EFC Report. The comments received have been taken into account in the preparation of this Step 1 Final Report and in finalising the recommendations to be made to the Minister on step 1 of the investigation.

1.2 Proceedings

5. On 30 August 2020, the Ministry of Business, Innovation and Employment (MBIE) accepted a properly documented application from Potatoes New Zealand Inc (PNZ) on behalf of the domestic industry, alleging that imports of frozen potato fries and wedges from Belgium and the Netherlands are being dumped and by reason thereof threatening to cause material injury to the New Zealand industry.
6. On 31 October 2020, the chief executive started (initiated) an investigation pursuant to section 10 of the Act, being satisfied that for the purpose of initiation the industry had provided sufficient evidence to support its application. This included evidence which suggested that:
 - Frozen potato fries and wedges from Belgium and the Netherlands are being dumped, and
 - A threat of material injury to the New Zealand industry was being caused by dumped goods imported from Belgium and the Netherlands.

¹ EFC – Essential facts and conclusions.

7. The investigation was carried out according to the requirements of the Act and the World Trade Organization (WTO) Agreement on the Implementation of Article VI of GATT 1974 (the AD Agreement), bearing in mind that section 1A of the Act describes its purpose as “to enable New Zealand to apply anti-dumping and countervailing duties in accordance with its obligations as a party to the WTO Agreement.”² Where the Act is silent, or its interpretation and that of the AD Agreement requires context, WTO dispute settlement findings provide guidance.
8. The investigation was initiated on 31 October 2020. In accordance with section 10B(2) of the Act, within 150 days of initiation (20 April 2021), MBIE gave interested parties written advice of the essential facts and conclusions likely to form the basis for determinations to be made by 20 May 2021 by the Minister under section 10D(1).
9. Comments on the Step 1 EFC Report have been taken into account in the preparation of this Step 1 Final Report.

1.3 Grounds for the Application

10. PNZ claimed that the alleged dumping of frozen potato fries and wedges from Belgium and the Netherlands caused a threat of material injury to the domestic industry due to the significant change of circumstances arising from the COVID-19 pandemic which has resulted in reduced demand for frozen potato products globally with increased inventories in Belgium and the Netherlands. PNZ claims that the available inventories and support being received through government intervention in Belgium and the Netherlands will reduce raw material prices and lead to increased importations into New Zealand of frozen potato products from Belgium and the Netherlands at dumped prices.
11. The injury will be caused to the industry through:
 - price undercutting
 - price depression
 - price suppression
 resulting principally in injury in relation to:
 - a decline in sales
 - a decline in profits and return on investments
 with longer term impacts of impairment of
 - a decline in output and sales
 - a decline in market share
 - a decline in profits and return on investments
 - a decline in utilisation of production capacity, and
 - adverse effects on cash flow, inventories, employment and growth.
12. In its application, PNZ requested that provisional measures be imposed.

² The Agreement establishing the World Trade Organization adopted at Marrakesh on 15 April 1994.

1.4 Legal Requirements

13. The requirements for an investigation of dumping are set out in section 10C(1) of the Act, and require the chief executive to investigate whether goods imported or intended to be imported are dumped and material injury to an industry has been or is being caused or is threatened because of the dumping.
14. If the Minister makes an affirmative determination under section 10D(1), then the Minister must determine the rate or amount of anti-dumping duty that will form the basis for investigation step 2, and direct the chief executive to immediately start investigation step 2.

Threat of injury

15. Section 8 of the Act sets out the matters that are to be considered in determining whether dumping is causing or threatening material injury. The section refers to the likelihood of increases in imports and of price depression or suppression, and to potential declines and potential negative effects on factors relating to the economic impact of dumped goods. Otherwise, there is no particular approach set out in section 8 regarding the consideration of a threat of injury. Article 3.7 of the AD Agreement sets out some factors that need to be considered in making a determination regarding a threat of injury, and these factors are included in MBIE's consideration of threat of injury.

1.5 Treatment of Information

16. 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.*
17. Section 8(3) of the Act provides:
- For the purposes of this section, the chief executive may disregard any information that the chief executive considers to be unreliable.*
18. Article 6.8 of the AD Agreement provides as follows:
- 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.*
19. 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.

20. MBIE makes available all non-confidential information via the Public File for this investigation. MBIE regularly provided parties with updates of the Public File document list, and any interested party was able to request copies of the documents on the Public File.

Questionnaires and Verification Reports

21. Information was requested from interested parties, including foreign manufacturers and importers, through questionnaires, with supplementary questionnaires being sent to foreign producers and to the New Zealand industry participants, seeking clarifications and further information. All of the foreign manufacturers responded to the questionnaires.
22. MBIE is required during the course of an investigation to satisfy itself as to the accuracy of the information supplied by interested parties upon which [its] findings are based. MBIE may satisfy itself as to the accuracy of information, including through on-site visits to verify information provided in questionnaire responses or other correspondence and to obtain further information. Alternatively, MBIE may use desktop verification or analysis, which involves considering the information provided for consistency and accuracy, checking the information against other available information and requesting further information or explanation where necessary.
23. For the current case, MBIE has not undertaken site visits to foreign producers or to domestic producers because of changing alert levels for COVID-19, travel limitations arising from the government's response to the COVID-19 pandemic, and consideration for staff welfare. COVID-19 restrictions also contributed to delays in receiving information from interested parties. Verification Reports summarising the information provided and MBIE's assessment of it, were prepared and made available on the Public File.

1.6 Report Details

24. In this report, unless otherwise stated, years are calendar years ending 31 December. Information provided by PNZ included data relating to financial years (FY), in this case years ending in June. In tables, column totals may differ from individual figures because of rounding.
25. The period of investigation for dumping (POI(D)) is the year ended June 2020 (FY2020), while the investigation of threat of injury (POI(I)) involves evaluation of data for the period from 2019 to the latest available, including estimates and projections covering periods in the future.

26. Volumes are expressed on a metric ton (MT or tonne) basis unless otherwise stated. Exports to New Zealand were mainly invoiced in Euros (EUR), although a variety of currencies were 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.

1.7 Submissions on the Step 1 EFC Report

27. On 19 April 2021, in accordance with section 10C(2) of the Act, MBIE gave notified parties the Step 1 EFC Report, and invited them to make written submissions on it. Substantive comments were received from PNZ and Lamb Weston Meijer BV (Lamb Weston), while comments supporting MBIE's findings were received from Clarebout Potatoes NV (Clarebout) and from the European Commission (EC). The Annex to this 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 Step 1 Final Report.
28. On the basis of the submissions made by Lamb Weston, MBIE considered that additional adjustments to the normal value were justified, and consequently the dumping margin was reduced to *de minimis* levels. On 5 May 2021, MBIE advised interested parties of this development and invited them to comment. PNZ sought an extension of the time available, which was granted, and lodged a submission on 9 May 2021. MBIE's comments on the PNZ submission have been included in Annex 1.

2. Subject Goods, New Zealand Industry and Interested Parties

2.1 Goods Description

29. The subject goods were originally described as “frozen potato fries and wedges falling under tariff code 2004100000”. The New Zealand industry has confirmed that the description is not intended to include the specialty cut styles of criss-cross and curly fries, fries and wedges coated with herbs and spices, and fries and wedges that are chilled or fresh.
30. In light of the clarification provided by the industry, MBIE’s assessment of dumping and injury has been on the basis of the following description of the subject goods:

Certain frozen potato fries and wedges falling under tariff code 2004100000

2.2 Tariff Classification

31. The subject goods are currently subject to the following classifications in the New Zealand Customs Tariff. Note that this statistical key includes goods that are outside the subject goods description.

Figure 1: Tariff Classification

Tariff item	Stat Key	Unit	Description	Duty %	Pref.
20.04			Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, frozen other than products of heading 20.06:		
2004.10.00	00J	kg	– Potatoes	5	Free *See Below CA Free LDC Free
*Unless otherwise indicated, AAN, AU, CN, CPT, HK, KR, LLDC, MY, Pac, SG, TH, TPA and TW rates in the Preferential Tariff are Free.					

32. The duty rate applicable to Belgium and the Netherlands is 5 per cent.

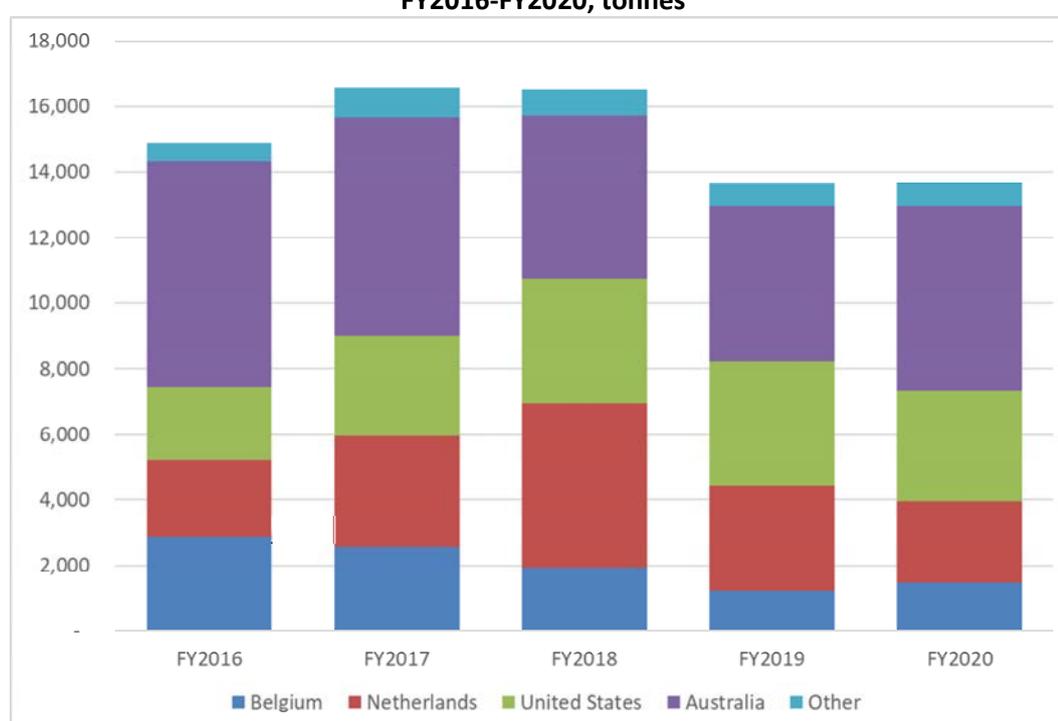
2.3 Imports of Subject Goods

33. In its application, PNZ used trade data from TradeData International (TDI) and Statistics New Zealand (Stats NZ) for comparison but based its claim of dumping and injury on data from TDI.
34. MBIE has obtained data from Customs for FY2016 to FY2020. This is the data referred to as “Customs data” in this report, unless otherwise noted. The data has been adjusted to

exclude non-subject goods where this is clear from the product descriptions. Where the product descriptions were vague, invoices from importers were used to adjust for non-subject goods. Most of the shipments to New Zealand included different products, with some being subject goods and others not.

35. The data shows that Belgium and the Netherlands are not the main source of New Zealand's imports of frozen potato fries and wedges - that has been Australia which has contributed nearly half of the annual volume of imports since FY2016.
36. The data, adjusted as noted above, shows that import shares from Belgium and the Netherlands, at 11 per cent and 18 per cent respectively in FY2020, are well above the negligibility levels noted in Article 5.8 of the AD Agreement.

**Figure 2: Imports of French fries and wedges
FY2016-FY2020, tonnes**



2.4 Like Goods

37. In order to establish the existence and extent of the New Zealand industry for the purposes of an investigation into injury, and having identified the subject goods, it is necessary to determine whether there are New Zealand producers of goods which are like those goods in all respects or have characteristics which closely resemble the subject goods.
38. 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.
39. The scope of the subject goods is defined in part 2.1 above.

40. PNZ considers that the frozen potato fries and wedges products that it produces are “like goods” to the subject goods, as required under section 3(1) of the Act.
41. The definition of like goods is also relevant to the identification of like goods to the subject goods in domestic sales in the country of export for the purposes of comparing export prices and normal values.

MBIE Consideration

42. To determine whether the goods produced in New Zealand are like goods to the subject goods, MBIE normally considers physical characteristics, production methods and technology, 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. MBIE notes that like goods do not need to be identical in all respects to the subject goods, but in the absence of identical goods need to have characteristics closely resembling the subject goods.

Physical characteristics

43. The subject goods are frozen potato fries and wedges covering the full range of cut styles and sizes, including straight cut, crinkle cut and wedges, but excluding curly and criss-cross cuts, in a range of thicknesses and lengths. The description also excludes fries and wedges with coatings containing herbs and spices.
44. MBIE has product descriptions from the foreign manufacturers and from New Zealand producers, and has reviewed any comments provided by the parties. Foreign manufacturers have claimed that the European products are superior in quality, reflecting potato growing conditions and the raw materials used as well as the manufacturing process.
45. MBIE notes that any differences in raw materials used and the quality of the end product are likely to be reflected in prices achieved. They may be subject to adjustments in normal values where appropriate, but are not differences in physical characteristics that would mean that goods produced by the New Zealand industry do not have physical characteristics that are like those of the subject goods.

Production methods and technology

46. MBIE understands that there may be some differences in production processes of frozen potato fries and wedges used in different plants, but there is no significant difference in the basic production methods used by both the New Zealand industry and foreign producers. MBIE has sighted illustrations of the production processes used by PNZ members and by foreign producers to confirm this point.

Function and usage

47. The New Zealand and imported frozen potato fries and wedges have similar functions and uses as the subject goods. The goods are sold through a variety of channels for ultimate consumption by consumers. MBIE is satisfied that the functions and usage of the domestic goods are like those for the subject goods.

Pricing Patterns

48. The goods produced by the New Zealand industry are sold in a variety of markets in direct competition with the imported goods. Major clients for both domestic and imported goods are sold through long-term contracts, with other sales on a spot basis. MBIE is satisfied that there are no particular matters relating to pricing patterns that would suggest that domestically produced goods are not like the imported subject goods.

Marketing and distribution

49. Marketing and distribution of locally-produced and imported frozen potato fries and wedges is through similar channels. Sales are made to retailers, to foodservice distributors and to quick service restaurants (QSR). Domestic producers may be required to undertake a greater degree of marketing activity than is required of exporters, with the importers having responsibility, where required, for marketing and distribution. However, these differences are not such as to lead to a conclusion that goods produced in New Zealand are not like the imported subject goods.

Substitutability and commercial interchangeability

50. Foreign producers have argued that they supply premium products with particular characteristics, compared with the “commodity” products produced in New Zealand. The New Zealand industry has argued that the imported and domestic products compete with each other and are substitutable, particularly in terms of the perceptions of the ultimate consumer. MBIE agrees that on the basis of the characteristics discussed above, the domestic goods are substitutable and commercially interchangeable with the imported subject goods.

Conclusions

51. Taking all of these considerations into account, MBIE has concluded that the goods produced by the New Zealand industry are like goods, in that they have characteristics closely resembling the subject goods.

2.5 New Zealand Industry

52. 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.

53. The application was lodged by PNZ on behalf of New Zealand producers of frozen potato products. PNZ represents the potato processors McCain Foods NZ Limited (McCains), Talley’s Group Limited (Talley’s), Mr Chips Limited (Mr Chips) and Makikihi Fries Limited (Makikihi Fries), who together account for 88 per cent of New Zealand production of frozen fries and wedges.
54. The four companies meet the requirements of section 3A(b) of the Act in order to constitute the industry for the purposes of the investigation.

2.6 Interested Parties

Legal Requirements

55. Section 3(1) of the Act identifies the parties who are to be given notice under section 3E of the Act, including:
- (a) the Government of the country of export
 - (b) exporters and importers known by the chief executive to have an interest in the goods
 - (c) the applicant in relation to the goods
56. 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.*
57. Notice of initiation of the investigation was provided to the parties listed in section 3(1) of the Act.

Applicant

58. The applicant was PNZ on behalf of the four New Zealand producers making up 88 per cent of New Zealand production and therefore constituting the industry for the purposes of the investigation. The New Zealand producers are McCains, Talley's, Mr Chips and Makikihi Fries.
59. In addition to the application, PNZ provided further submissions on product specifications (29 January 2021), an update to injury information (2 March 2021), and comments on submissions from other parties (2 February 2021, 16 February 2021, 16 March 2021, 5 April 2021, 12 April 2021 and 15 April 2021), and comments on injury and other matters (12 April 2021). PNZ also provided a submission on the Step 1 EFC Report.
60. MBIE sent Domestic Producer Questionnaires to each of the four companies making up the New Zealand industry. Completed responses were received, and supplementary questionnaires were sent to each company seeking additional information and clarification of the information provided. The responses to the original Domestic Producer Questionnaire were not all provided in a timely fashion, and did not provide all of the information requested. There was a similar experience with regard to the responses to the Supplementary Questionnaires.

Foreign Producers

61. MBIE has identified producers of the subject goods from Belgium and the Netherlands who exported to New Zealand during the period of investigation. The data for the tariff item

covering frozen potato products identified five suppliers from Belgium and six suppliers from the Netherlands. Following clarification of the goods actually exported, it was possible to remove exporters of non-subject goods, leaving four suppliers – one from Belgium and three from the Netherlands. The Belgian company was Clarebout, while the Dutch companies were Aviko BV (Aviko), Farm Frites International BV (Farm Frites), and Lamb Weston.

62. Questionnaires were sent to all of these companies and responses were received. Supplementary Questionnaires were sent to each company, identifying information still to be provided and seeking clarification of the responses received. Draft Verification Reports of the desktop verifications carried out for each company were provided to each of their subjects for comment, and the responses incorporated into the final versions of the Verification Reports. Non-confidential versions of these reports are available on the Public File.
63. A meeting was held with representatives of Farm Frites on 10 March 2021, which addressed matters relating to the goods to be compared, the treatment of confidential information, provisional measures, verification processes, and the timetable for the investigation. A file note of the meeting is available on the Public File.
64. A meeting was held with representatives of Lamb Weston on 28 April 2021, and addressed matters relating to adjustments to normal values. A file note of the meeting is available on the Public File.
65. Clarebout and Lamb Weston provided comments on the Step 1 EFC Report.

Importers

66. New Zealand-based importers were identified from Customs data, and invited to supply information which would identify suppliers in Belgium and the Netherlands and information which would assist in identifying imports of subject goods.
67. Questionnaires were sent to importers of goods from the Belgian and Dutch suppliers in order to obtain and confirm information relating to import shipments, and information on the operation of the New Zealand market for the subject goods. Questionnaire responses were received from importers of the subject goods as follows:
- Davis Trading Company Limited (Davis Trading)
 - General Distributors Limited/Woolworths New Zealand Limited (General Distributors)
 - Markwell New Zealand Limited/Shore Mariner Limited (Shore Mariner)
 - Service Foods Limited (Service Foods).

Other Interested Parties

68. The governments of Belgium and the Netherlands and the European Union (EU) are interested parties. Submissions were lodged by the EC on 21 December 2020 and 29 March 2021. A meeting was held with representatives of the EU and the Embassy of the Netherlands on 25 March 2021. The matters discussed included the initiation of the investigation, matters raised in the application, and the timetable for the investigation. A

file note of the meeting is available on the Public File. The EC provided a comment on the Step 1 EFC Report.

69. The European Potato Processors' Association (EUPPA) has also been treated as an interested party and lodged a submission on 27 January 2021.

3. Dumping Investigation

3.1 Dumping

70. In this investigation, MBIE has assessed whether there is current dumping within the POI(D), and has also assessed the likelihood that the dumping will continue such that it may contribute to a threat of injury that is clearly foreseen and imminent.

71. 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.*

72. The dumping investigation 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.

Basis for Investigation of Dumping

73. The information available to MBIE in investigating the dumping of frozen potato fries and wedges from Belgium and the Netherlands includes:

- information contained in PNZ's application and subsequent submissions, and from MBIE's desktop verification of information provided by PNZ and importers.
- responses to importer/exporter/manufacture questionnaires and subsequent submissions
- submissions from other parties
- information from NZ Customs
- information arising from MBIE's independent research.

74. The objective of the investigation is to establish if there is dumping, i.e. whether the export price of the goods is less than the normal value when a fair comparison is made. According to section 11(2)(a)(ii) of the Act, the evidence of dumping is insufficient if the margin of dumping is less than 2% when expressed as a percentage of the export price.

75. Since information on sales in the ordinary course of trade was available, it was not necessary to consider constructed normal values or normal values based on sales to third countries.

76. Because of the number of transactions involved, in particular for domestic sales, the comparison was made on the basis of weighted average export prices and weighted average normal values, with weighted averages established for each of the product types exported, with the total weighted averages established using the export volumes as the

basis for the weighting. All relevant transactions were included in order to ensure that the weighted averages were not affected by zeroing.³

3.2 Export Price

77. Export prices are determined in accordance with section 4 of the Act. 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.
78. 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.
79. 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.
80. 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 overseas freight and insurance (depending on the terms of sale), port and other handling charges, inland freight between the factory or warehouse and the port, credit costs, and packaging (where there are differences between packaging for export and domestic sales). 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.
81. MBIE normally seeks to compare the export price with the normal value at the ex-factory level, or an appropriate common point, 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.
82. In establishing export prices 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)
83. Fair comparison adjustments are also dealt with in part 3.3 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.

³ "Zeroing" occurs when transactions that are not dumped are assigned a value of zero in the weighting process, which skews the outcome towards a finding of dumping.

3.2.1 Belgium

84. Clarebout was the only exporter of the subject goods from Belgium during the POI(D), so all of the analysis relates to Clarebout's exports.

Base Prices

85. The base prices used were invoice prices for Clarebout's exports. MBIE was satisfied that the transactions were at arm's length. Price information was verified from invoices which identified the terms and conditions of sale; the product types, volumes and prices; payment terms; and relevant dates. Invoice data was checked against information provided by the exporters, importers and Customs data. The goods are supplied under an annual contract.

Adjustments

86. MBIE has made adjustments to base export prices, based on information provided, covering rebates, the cost of credit, certificate costs, and inland transport and handling.
87. MBIE has not made adjustments for laboratory costs, since there was no evidence provided of such costs incurred in relation to the export transactions under investigation, or whether they were different from any costs incurred in relation to domestic sales. No other adjustments were proposed by Clarebout.

Calculation of export prices

88. In calculating ex-factory export prices for export sales for Clarebout, MBIE made the adjustments outlined above to the transaction-level price information, and aggregated the results by each product type, then established a weighted average export price for all exports of the subject goods from Belgium.

3.2.2 Netherlands

89. The analysis of information available covered the three suppliers from the Netherlands – Aviko, Farm Frites, and Lamb Weston.

Base Prices

90. Base prices for each of the three exporters from the Netherlands were established on the basis of invoice information. MBIE was satisfied that the transactions were at arm's length. Price information was verified from invoices which included information on the terms and conditions of sale; the product types, volumes and prices; freight costs; payment terms; and relevant dates. Invoice data was checked against information provided by the exporters, importers and Customs data.

Adjustments

Aviko

91. MBIE has made adjustments, based on information provided, for overseas freight and insurance, inland transport, and credit costs.

92. MBIE has not made adjustments relating to storage, packaging and handling and loading, since the information available did not identify any difference between exports and domestic sales in respect to costs for these items.

Farm Frites

93. MBIE has made adjustments, based on information provided, for overseas freight, rebates, and credit costs.
94. MBIE has not made adjustments for inland transport, storage, packaging, and handling and loading costs, since the information available did not identify any effect on price comparability in respect to these items.

Lamb Weston

95. MBIE has made adjustments, based on information provided, for overseas freight and inland transport, and some rebates and other costs related to specific transactions.

Calculation of export prices

96. In calculating ex-factory export prices for export sales for each supplier, MBIE made the adjustments outlined above to the transaction-level price information, and aggregated the results by each product type, then established a weighted average export price for each exporter.

3.3 Normal Value

97. Normal values are determined in accordance with section 5 of the Act. The normal value is usually the price at which the frozen potato fries and wedges producers 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.
98. 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.
99. 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.

100. 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. Costs or expenses that relate more to the general cost of business and not to the prices of the transactions being examined are generally not grounds for adjustment. However, where the connection to the sale is established and evidence is suitable, adjustment may be allowed in certain circumstances.

3.3.1 Belgium

101. Clarebout was the only exporter of the subject goods from Belgium during the POI(D), so all of the analysis relates to Clarebout's domestic sales.

Base Prices

Like goods

102. MBIE identified like goods to the subject goods exported to New Zealand by Clarebout. Where there were no goods that were exactly the same, MBIE identified goods which have characteristics closely resembling the subject goods.

Sales in the ordinary course of trade

103. It was confirmed that the sales were at arm's length and were in sufficient quantities to provide a basis for the calculation of normal values. MBIE also checked to ensure whether it was appropriate to include any sales at a loss in establishing base prices, in accordance with the requirements of section 5(6) of the Act and Article 2.2.1 of the AD Agreement.

Level of trade

104. Domestic sales of like goods for comparison were selected to ensure that they were at the same level of trade as export sales.

Sales at the same time

105. Based on the information provided, MBIE was able to check that the sales used for comparison were made across the POI(D) so that the timing of sales did not affect the comparison of prices.

Sales Prices

106. Applying the considerations outlined above, the base prices used were gross sales prices for individual transactions set out in information provided by the exporter and checked against samples of invoices.

Adjustments

107. On the basis of information provided which demonstrated that there were differences affecting price comparability, MBIE has made adjustments for rebates, credit costs, and inland transport, and for physical differences in regard to two of the product lines compared.
108. Adjustments have not been made for insurance costs or laboratory costs because the evidence did not demonstrate that there were differences affecting price comparability. No other adjustments were claimed by Clarebout.

Normal Value calculations

109. In calculating ex-factory normal values for domestic sales for Clarebout, MBIE made the adjustments outlined above to the transaction-level price information, and aggregated the results by each product type, then established a weighted average normal value for Clarebout.

3.3.2 Netherlands

Base Prices

Like goods

110. For each Dutch supplier, MBIE identified like goods to the subject goods exported to New Zealand for which export prices were established. Where there were no goods that were exactly the same, MBIE identified goods which have characteristics closely resembling the subject goods.

Sales in the ordinary course of trade

111. It was confirmed that the sales were at arm's length and were in sufficient quantities to provide a basis for the calculation of normal values. MBIE also checked to ensure whether it was appropriate to include any sales at a loss in establishing base prices, in accordance with the requirements of section 5(6) of the Act and Article 2.2.1 of the AD Agreement.

Level of trade

112. Domestic sales of like goods for comparison were selected to ensure that they were at the same level of trade as export sales. For all of the Dutch exporters the relevant levels of trade were sales to wholesale or foodservice customers.

Sales at the same time

113. Based on the information provided, MBIE was able to check that the sales used for comparison were made across the POI(D) or the situation was such that the timing of sales did not affect the comparison of prices.

Sales Prices

114. For each of the suppliers the base prices were based on gross sales values for individual transactions, set out in information provided by the exporter and checked against samples of invoices.

Adjustments

115. On the basis of information provided demonstrating that there were differences affecting price comparability, MBIE made appropriate adjustments.

Aviko

116. On the basis of the information provided, MBIE has made adjustments to cover rebates and discounts, inland transport, and packaging tax.
117. Adjustments have not been made for differences claimed to have affected price comparability in relation to quantities (order sizes), packaging, sales and marketing expenses and physical differences, because insufficient evidence was provided demonstrating the need for such adjustments. Also, in relation to storage costs, no adjustment was made because there was no difference demonstrated between the effects on export and domestic prices.

Farm Frites

118. On the basis of the information provided, MBIE has made adjustments for rebates, inland transport and credit costs.
119. Adjustments have not been made in relation to differences claimed to have affected price comparability in relation to physical differences, selling overheads and marketing costs, because insufficient evidence was provided demonstrating the need for such adjustments or identifying the applicability of the claimed adjustment to the transactions being investigated. In relation to handling and loading costs and storage costs, no adjustment was made because there was no difference demonstrated between effects on export and domestic prices.

Lamb Weston

120. On the basis of the information provided, including information provided in response to the Step1 EFC Report, MBIE has made adjustments for rebates and discounts covered by differences in gross, invoice and net sales values; post-sales discounts and rebates, including cash discounts; quantity differences affecting order size and transport discounts; handling and loading and inland transport costs; physical differences arising from differences in quality, and the packaging tax.
121. To the extent possible, bearing in mind the need to protect confidential information, the bases for the additional adjustments relating to physical differences and post-sales discounts and rebates, are set out in the responses to the Lamb Weston comments in Annex 1 to this Step 1 Final Report.
122. Adjustments were not made for differences claimed to have affected price comparability in relation to sales and marketing overheads, because MBIE was not satisfied that the evidence could be related to prices for particular transactions; and for payment of New Zealand Customs duty, because it did not affect price comparability.

Normal Value calculations

123. In calculating ex-factory normal values for domestic sales for each Dutch supplier, MBIE made the adjustments outlined above to the transaction-level price information, and

aggregated the results by each product type, then established a weighted average export price for each of Aviko, Farm Frites and Lamb Weston. An overall weighted average for the Netherlands was then calculated.

3.4 Current Dumping Margins

124. On the basis of the analysis outlined above, MBIE has established that there are no weighted average dumping margins above *de minimis* levels, as follows:

Figure 3: Current dumping margins

	Weighted average dumping margin %
Belgium:	
Clarebout	No dumping
Country average	No dumping
Netherlands:	
Aviko	No dumping
Farm Frites	No dumping
Lamb Weston	De minimis
Country average	De minimis

3.5 Assessment of Likelihood of Future Dumping

125. In examining a threat of injury, MBIE considers whether there is evidence that imports of the subject goods are currently being dumped, and what is the likelihood of any future dumping.

Current dumping

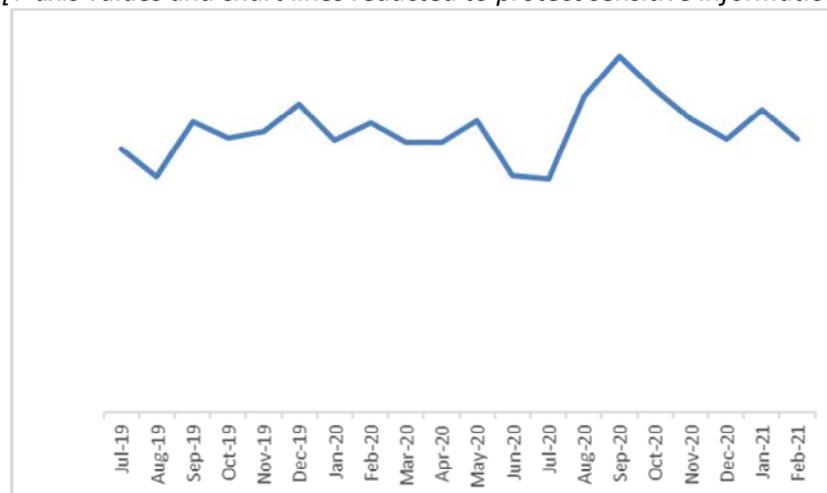
126. Parts 3.3 and 3.4 above have examined the level of current dumping by exporters to New Zealand. The outcome of the examination is that there is no dumping of subject goods from Belgium and the Netherlands at margins above *de minimis* levels.

Price evolution

127. MBIE has analysed average monthly unit values by supplier and for overall imports of subject goods for the year ended June 2020 and for the period from July 2020 to February 2021. A comparison of the overall average values for FY2020 and for July-2020 to February 2021 indicates that average unit values increased.

Figure 4: Average unit values of imports

[Y-axis values and chart lines redacted to protect sensitive information]



128. Information from suppliers in Belgium and the Netherlands indicates that there is some uncertainty about market developments in the light of the effect of COVID-19 responses, but most suppliers see increasing demand, which is expected to continue to increase once the effects of vaccination programmes on lockdown policies start to take effect. This is likely to be reflected in increased prices.
129. Price list information provided by one producer indicates that listed prices in 2021 for domestic sales were higher than in 2020. Export prices by that supplier have also been reduced in EUR terms. MBIE notes that the information available suggests that prices for domestic sales are likely to show increases for the period following FY2020, reflecting the growth in demand. It appears that export prices may have decreased, which suggests that there may be potential for dumping margins to occur for exports to New Zealand, but it is unlikely that the margins will be significant.

Export pricing arrangements

130. The bulk of exports to New Zealand are subject to contracts, with prices agreed for the period of the contract. As already noted, one Dutch supplier has reduced its EUR prices to New Zealand, to reflect exchange rate movements at a point in time.

Domestic market situation

131. As noted in relation to pricing in Europe, it is expected that in the short to medium-term there will be an increase in demand for frozen fries and wedges, while producers may have underestimated the volumes of potatoes needed. For the 2020-21 season (ending in August) potato prices were at levels negotiated at the beginning of 2020, before the outbreak of COVID-19. Contracts negotiated in early-2021 for the following season would reflect the processors' estimates of demand.
132. With regard to the availability of goods, MBIE has assessed the information available on the capacity and stocks of the Belgian and Dutch producers and the implications for increased exports to New Zealand. It is noted that the producers have not been running at full capacity, but they are managing stocks and production in response to market demand,

and there is no significant excess inventory of frozen fries and wedges that is likely to be used to drive a significant increase in exports to New Zealand.

133. The effect on the likelihood of future dumping is that increases in demand in Europe may contribute to higher prices, which suggests that normal values are likely to increase. The effect on dumping will depend on the extent of any comparative movement in export prices, but it is not likely that dumping margins will be significant or go above *de minimis* levels.

Conclusions on future dumping

134. On the basis of its review of the events that could contribute to an increase of dumping in New Zealand, MBIE concludes that it is possible that dumping could occur in the future, if domestic prices in the exporting countries increase significantly and therefore affect the level of normal values.
135. MBIE has reviewed the information available and considers that on the basis of the information available there is reasonable cause to believe that any future dumping is unlikely to be significant. MBIE notes that the margins of dumping established in the investigation show that imports from Belgium are not dumped, while imports from the Dutch exporters were not dumped or were at *de minimis* levels.

3.6 Conclusions on Dumping

136. MBIE's investigation of dumping has established that:
- the subject goods imported from Belgium are not currently dumped.
 - the subject goods imported from the Netherlands are not currently dumped or dumping margins are at *de minimis* levels, indicating insufficient evidence of dumping in that no dumping margins are greater than *de minimis*.
137. MBIE's consideration of the likelihood of future dumping is that there is a possibility that dumping could occur in the future, if domestic prices in the exporting countries increase significantly and therefore affect the level of normal values, but the level of dumping is not likely to be significant.
138. The consideration of the injurious effect of dumped imports, including the threat of material injury, is summarised in the next part of this report.

4. Injury Investigation

4.1 Legal Requirements

Basis for determinations

139. Section 8(1) of the Act provides that in determining whether or not material injury to an industry has been or is being caused or is threatened by means of the dumping of goods imported or intended to be imported into New Zealand from another country, the chief executive shall examine:

- the volume of imports of the dumped goods, and
- 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.

140. 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.

Matters the chief executive shall have regard to

141. 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.

Threat of material injury

142. Guidance on the approach to be taken in determining whether there is a threat of injury is provided by Article 3.7 of the AD Agreement, which provides that a determination of a threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the dumping would cause injury must be clearly foreseen and imminent. The Article sets out a range of factors to be considered in making a determination regarding the existence of a threat of material injury, including the likelihood of substantially increased imports, the capacity of exporters to increase production and exports, including inventories, and the prices of the dumped goods. The totality of the factors considered must lead to the conclusion that further dumped exports are imminent and that, unless protective action is taken, material injury would occur.

143. Article 3.8 of the AD Agreement provides that where injury is threatened by dumped imports, the application of anti-dumping measures shall be considered and decided with special care.

4.2 Approach to Investigation of Material Injury

144. In its examination of injury MBIE has undertaken an assessment of current and threatened injury through:
- An examination of the current situation of the industry, in terms of the factors set out in section 8 of the Act, and in light of the New Zealand industry's claim that injury caused by dumped imports is not yet occurring but is threatened.
 - An assessment of the extent to which any likely import volume increases or likely price effects could lead to potential negative effects in terms of the economic impacts of imports of any dumped goods, as described in section 8 of the Act.
 - An assessment of the evidence available in terms of the matters set out in Articles 3.7 and 3.8 of the AD Agreement regarding a determination of a threat of material injury.
 - An assessment of any other matter raised during the investigation which is relevant to the consideration of threat of injury attributable to dumped imports.
145. The assessment of current injury helps provide a baseline for examining the threat of injury.
146. The examination and assessment of the injury effects on the New Zealand industry were based on information relating to all producers where possible, but not all producers were willing or able to provide all of the information required by MBIE. Accordingly, in some areas the information available is not reliable, and MBIE is not willing to apply data relating to one company to other companies unless it is clearly relevant and appropriate.
147. The examination of these effects is undertaken in respect to all of the subject goods, despite the finding that there is insufficient evidence of dumping. The assessment of causality and the attribution of injury effects takes into account the findings relating to dumping.

Change of circumstances

148. An examination of a threat of material injury includes establishing whether there is a clearly foreseen and imminent change in circumstances which would create a situation in which the dumping would cause injury.
149. The New Zealand industry claims that the change of circumstances that is clearly foreseen and imminent and ongoing is the exceptional circumstances resulting from the COVID-19 pandemic. It is claimed that the changed circumstances have led to reduced demand, especially from the foodservices trade, for Belgian and Dutch manufacturers, leading to inventory surpluses and available capacity.
150. Exporters have suggested that the evidence negates PNZ's claim that there has been a significant change of circumstances due to COVID-19 such that there is a high likelihood of increased imports.
151. There appears to be general agreement that the COVID-19 pandemic has affected the market for the subject goods. MBIE considers that while the pandemic is an unforeseen circumstance, whether it has created a situation where dumping would cause injury needs to be considered in the context of the matters discussed below.

Cumulation

152. Article 3.3 of the AD Agreement provides:

Where imports of a product from more than one country are simultaneously subject to anti-dumping investigations, the investigating authorities may cumulatively assess the effects of such imports only if they determine that (a) the margin of dumping established in relation to the imports from each country is more than de minimis as defined in paragraph 8 of Article 5 and the volume of imports from each country is not negligible and (b) a cumulative assessment of the effects of the imports is appropriate in light of the conditions of competition between the imported products and the conditions of competition between the imported products and the like domestic product.

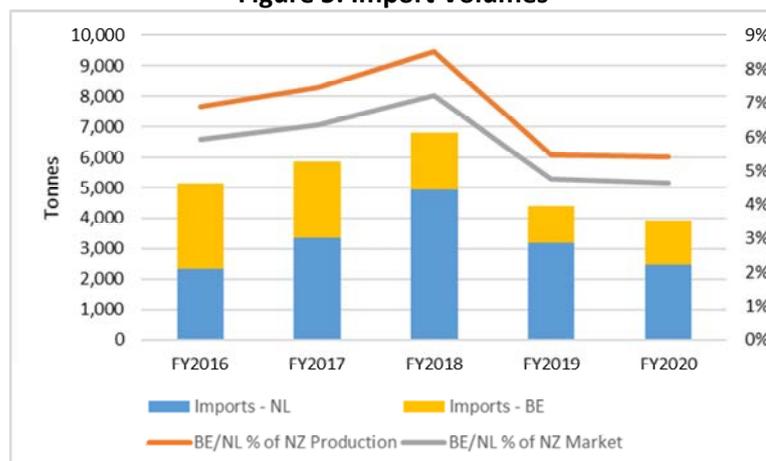
153. In its application, PNZ considered the effects of imports from Belgium and the Netherlands on a cumulated basis. MBIE's examination must take into account the conclusions reached on dumping, and in particular that there is effectively no current dumping and that any future dumping is unlikely to be significant. This means that in addressing the claims of injury being caused and threatened by dumped imports, MBIE has considered the effects of imports from Belgium and the Netherlands on a cumulated basis.

4.3 Examination of Injury

4.3.1 Import Volume Effects

154. In the examination of the volume of imports of dumped goods under section 8(1)(a) of the Act, Section 8(2)(a) 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.
155. MBIE has analysed imports of the subject goods from Belgium and the Netherlands in relation to domestic production in New Zealand and the New Zealand market.
156. The analysis shows that imports from Belgium and the Netherlands have not increased significantly in absolute terms, nor have they increased relative to production or consumption in New Zealand. In fact, the data shows that for each of these measures FY2020 recorded the lowest value of the POI(I). The decline in the volume of imports began in FY2019, preceding the COVID-19 pandemic.

Figure 5: Import Volumes



Import volumes and threat of injury

Likelihood of increased imports

157. In considering the threat of injury, MBIE has addressed the question of whether the evidence shows that imports have increased significantly into the market indicating a likelihood of substantially increased importation.
158. In its application of August 2020, PNZ claimed that there was reason to believe that in the coming months there would be increased importations of frozen potato fries and wedges from Belgium and the Netherlands at dumped prices. There were strong indications that increased imports would be shipped to New Zealand in the wake of the downturn in European markets caused by COVID-19 and an associated glut of frozen potato fries and wedges that would need to find a market to make room for the 2020 harvest. PNZ claimed that the situation was exacerbated by the ongoing provision of government support to the industry in Europe that allowed production to continue.
159. PNZ claimed that historically imports increase significantly following declining export prices, and claimed that there was evidence available that showed that export prices have collapsed over the past months to a far greater extent than previously. PNZ expected that this will lead to significant increases in exports to New Zealand.
160. In its submission of 2 February 2021, PNZ advised that it had nothing further to add to this factor as it has not claimed that there had been a significant rate of increase of dumped imports. What PNZ considered to be clear from the Farm Frites questionnaire response was that its goods are available and are intended to be imported into New Zealand.
161. PNZ has argued that the lodging of the application for a dumping investigation has had a chilling effect on imports which explains the lack of any increase since the COVID-19 lockdown period.
162. In their comments, exporters generally noted that New Zealand was not a significant or priority market for them, and this situation was unlikely to change in the foreseeable future.
163. In its questionnaire response Aviko noted that it had been exporting to New Zealand for some time, and the volumes, type of product and priority of New Zealand as a destination

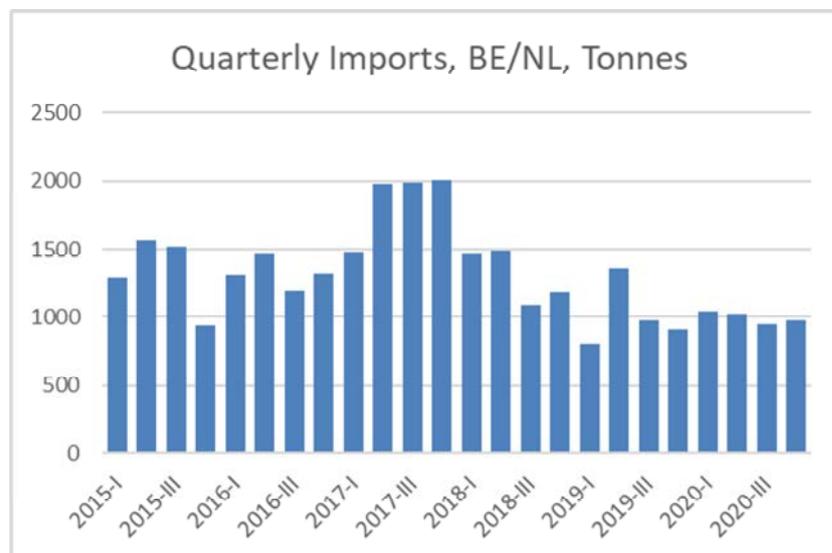
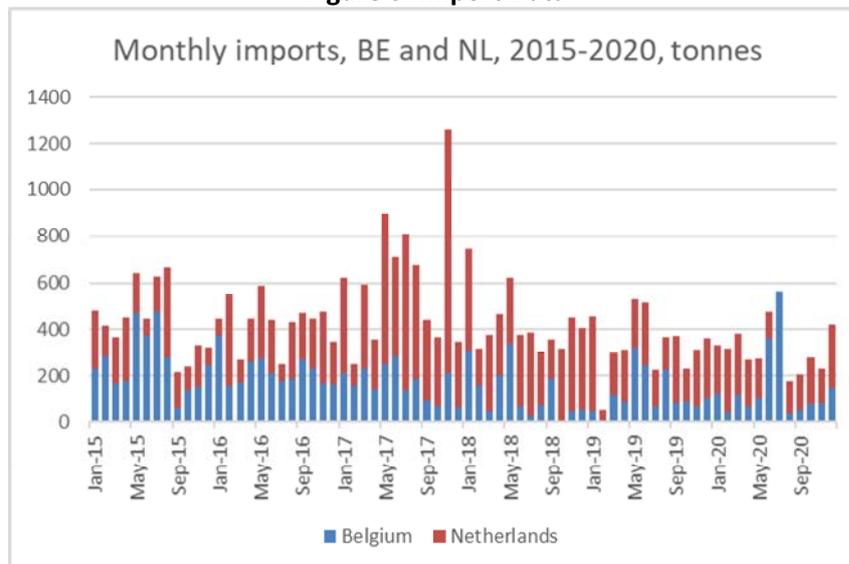
remains the same for the foreseeable future. New Zealand is a non-priority market for Aviko.

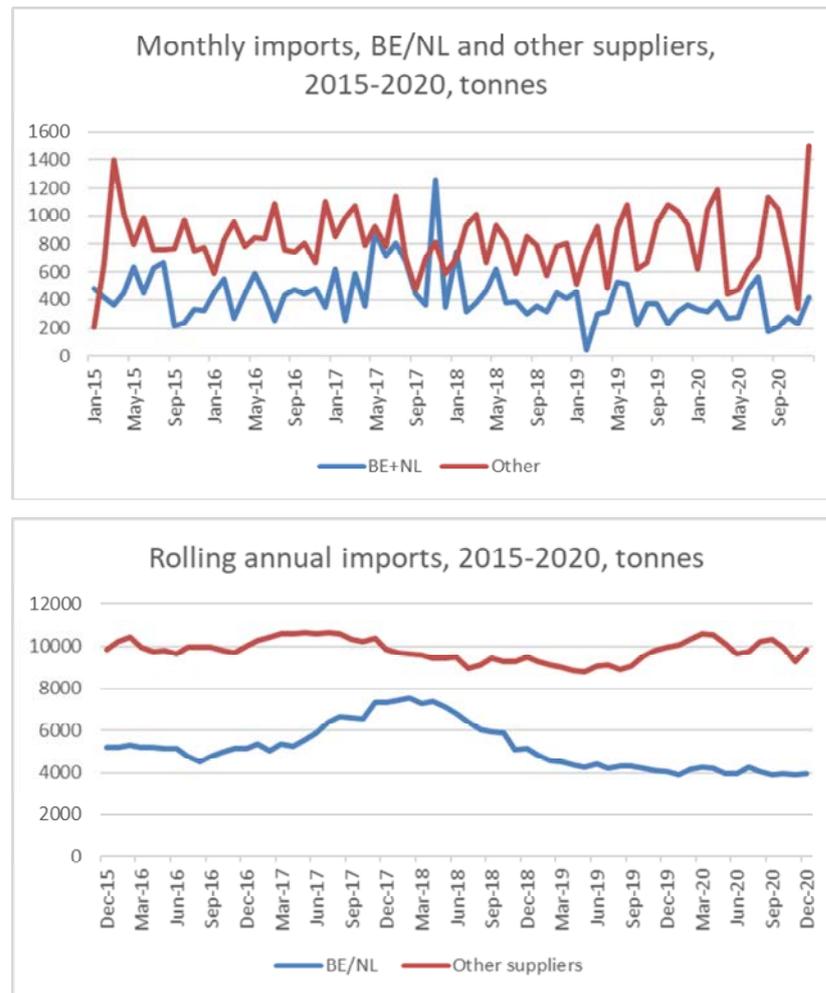
- 164. It was also pointed out that exporting to New Zealand in the current post-COVID-19 trading environment was difficult. New Zealand imports from Belgium and the Netherlands appeared to be in a long-term decline, unlike imports from Australia which were increasing, and given the market access barriers created by COVID-19 it was unlikely there would be a marked increase in the foreseeable future. The difficulties included issues relating to freight capacity and availability and the increasing costs of shipping goods to New Zealand.

MBIE Analysis

- 165. MBIE has used information from Customs data up to December 2020, and from exporters, which provides a good basis for an assessment of the likelihood of any increase in imports. The following charts show imports from Belgium and the Netherlands over the period 2015-2020.

Figure 6: Import Data





166. The data shows that there was a spike in imports from Belgium and the Netherlands in June/July 2020, but no significant increases since then. This is particularly the case when looking at quarterly imports, which reduces the impact of clustered shipping dates, and shows no growth in imports from Belgium and the Netherlands in 2020. In fact, the sharp increases in imports have been from other sources, primarily Australia. The annualised trend shows that the overall trend for imports from Belgium and the Netherlands is a decline in imports.
167. MBIE notes that the average period between the order date and the date of importation for shipments for which details are available is 75 days, which means that imports potentially affected by the COVID-19 pandemic from the perspective of the New Zealand market would be those arriving in New Zealand from mid-June. This could explain the spike in June/July 2020 with New Zealand importers increasing their orders at the time of the New Zealand lockdown. However, imports in subsequent months have been considerably lower, and there has been no trend of increased imports from Belgium and the Netherlands.
168. In the Initiation Report MBIE summarised its analysis of claims relating to the levels and nature of any support provided by the governments of the exporting countries. The conclusion was that it would be difficult to say that there is a causal link between the aid provided to potato growers for effects arising from the COVID-19 pandemic, and the volumes and prices of exports of frozen processed potatoes. It would also be difficult to

- identify any level of benefit that would pass through to exporters of frozen potato products as a result of these programmes.
169. The Belgian and Dutch exporters have reported that they have received or are eligible for assistance from government programmes providing wage support for businesses affected by the COVID-19 pandemic, as well as general support programmes for business aimed at promoting sustainability and research and development. MBIE does not consider that the levels of support provided by these programmes is significant in terms of the effect on prices of goods sold.
170. MBIE has also assessed trends in the prices paid for potatoes by the exporters, in light of PNZ's claims that the very low free-sale prices resulting from the effects of the COVID-19 pandemic and government support for potato growers would lead to very low prices for potatoes, which would allow Belgian and Dutch exporters to reduce prices significantly for sales to the New Zealand market. The information provided by exporters, by the EUPPA and by the EC confirms that the low potato prices foreseen by PNZ have not occurred.
171. Information provided by exporters does not indicate that there has been any substantially increased importations since the application was lodged, while the information available does not suggest that this situation is likely to change over the short to mid-term. There is no evidence that government support programmes for potato growers and for business generally as a result of the COVID-19 pandemic have provided significant and specific support to exporters of frozen potato fries and wedges, nor has there been a significant drop in free-market potato prices that would allow exporters to New Zealand to reduce their prices significantly.
172. MBIE concludes that on the basis of the information available the evidence does not show that imports have increased significantly into the market, and does not indicate a likelihood of substantially increased importation in the foreseeable future attributable to the change of circumstances brought about by the COVID-19 pandemic.

Exporter capacity to support increases in imports

173. MBIE has examined whether exporters have sufficient freely disposable or an imminent or substantial increase in capacity, indicating the likelihood of substantially increased exports, taking into account the availability of other export markets to absorb any additional exports.
174. In its application, PNZ provided trade data to show the monthly evolution of export volumes, and used data on total exports by Belgium and the Netherlands to establish an estimate of a current surplus of 205,000 to 231,000 tonnes resulting from reduced demand. PNZ also claimed that other information showed a huge surplus of 1.75 million tonnes of potato raw material available as a result of the COVID-19 crisis.
175. PNZ noted that surpluses also existed within the processors' supply chains, the most likely scenario was that to manage surpluses frozen potato processors would continue processing until they had no storage capacity, resulting in very high inventories and capacity to export. The continued impact of the COVID-19 pandemic will disrupt capacity in the hospitality industry globally and demand for frozen potatoes will still be lower.

176. In its submission of 2 February 2021, PNZ provided information from *World Potato Markets*, issue 501 of 19 January 2021, which noted that EU-to-EU fry trade was still very depressed, which based on data to October 2020, noted that exports outside the EU were more or less back to where they were before the pandemic, but trade with EU countries was still way below what it was before March 2020. The continued closure and restrictions on EU restaurants mean that there has been no uplift in exports within the Union since October 2020. Exports by the 5 main EU suppliers (including Belgium and the Netherlands) in October 2020 were 16.5% less than exports in October 2019, which was the highest monthly total on record. Annual exports were down 7.8% from the previous 12-month period. Belgian exports fell by just 1.9% in the year to October, while Dutch exports fell 13.9%.
177. In its submission, PNZ noted the EC statement that the EU industry was currently working at 80-90% of normal capacity, and PNZ suggested that this indicated that freely disposable capacity was available. PNZ noted that in 2019 Belgium and the Netherlands had exported a combined 4.1 million tonnes of the subject goods, and with 10-20% capacity available this would indicate excess capacity of 410,000-820,000 tonnes. PNZ noted the reduced Belgian and Dutch exports for October 2020 compared to October 2019 reported in *World Potato Markets*, and suggested that the available capacity could decimate the New Zealand industry.
178. Exporters provided information on their capacity. This confirmed that the impact of COVID-19 has been to reduce demand and hence production, meaning that some producers have spare capacity. However, it is expected that markets will recover with an increase in global demand and a return to production at near to full capacity.
179. The exporters provided information on the volume of production and their capacity. Overall capacity utilisation for the four exporters has declined slightly from FY2018 to FY2020 to average 80%, which is not dissimilar to the overall capacity utilisation for the four New Zealand producers of 83% as reported by PNZ.
180. The exporters note that they sell to many countries, which would be more likely to be able to absorb any increases in supply than would New Zealand.

MBIE Analysis

181. MBIE notes that in total the suppliers to the New Zealand market are operating at around 80% of total capacity, but that does not necessarily mean that there is any freely disposable production capacity or that any imminent increase in production is likely to occur. In fact, production data provided by the suppliers indicates that, in total, production over the last three years has been running at 80-85% capacity, and that overall production in FY2020 was only 5.5% down on FY2019.
182. The data for October 2020 referred to by PNZ was compared with October 2019, which was the best month on record, and may not, therefore, provide a good basis for assessing the likely availability of capacity or inventories.
183. MBIE must also consider the likelihood that even if any spare production capacity was utilised, the outcome would be a significant increase in exports to priority markets for the suppliers rather than to New Zealand.

184. MBIE's analysis of the pattern of imports over a year indicates that the last four years have shown very similar patterns, with the exception of one spike in November 2017. This suggests that there is no abnormal situation arising from the COVID-19 pandemic, and also that there has been no chilling effect as a result of the dumping investigation.
185. MBIE considers that while some producers are not running at full capacity, they are managing production and stocks such that it is not likely that there will be an imminent or substantial increase in capacity of exporters to substantially increase exports, taking into account the availability of other export markets to absorb any additional exports.

The availability of inventories to support increased imports

186. MBIE has examined whether inventories of the subject goods held by exporters could support a substantial increase in exports to New Zealand.
187. PNZ's application stated that in April-May 2020 the top three global markets for Belgian and Dutch exporters absorbed 54% of the export volume the same markets procured in the same period a year before. This meant that 46% of their inventories of between 204,606 and 259,000 tonnes were without a market. Using similar reasoning, PNZ noted that the top 6 markets and top 10 markets absorbed 67% and 63% respectively of Belgian and Dutch potato products compared with the previous year.
188. PNZ claimed that there was a surplus of 1.75 million tonnes of potato raw materials for which the European industry was seeking alternative approaches to deal with, and these surpluses also exist in the processors supply chains. PNZ's view was that the most likely scenario for each supply chain to manage their surpluses will be to continue processing until they have no storage capacity, resulting in high inventories and capacity to export.
189. PNZ believes that the continued impact of the COVID-19 pandemic will disrupt capacity in the hospitality industry globally and demand for frozen potatoes will be still lower.
190. In its submission of 2 February 2021, PNZ noted that the EC agreed that it is likely that inventories have gone up, but observes that the EC was referring only to the Netherlands. PNZ analyses a chart on Netherlands processing potato usage across different years, provided by the EC, to calculate the level of the surplus in the Netherlands of around 50,000 tonnes, which PNZ suggested was a very large surplus when compared with the New Zealand market. PNZ suggested that the addition of Belgian data would show a significantly greater total surplus.
191. PNZ also notes that there is evidence that sales from Belgium and the Netherlands to other markets have increased significantly, with exports to Australia for the six months ended October 2020 being 52% higher than in 2019.
192. The exporters provided information on their stock levels and intentions. Higher stock levels for FY2020 were within normal fluctuations generally experienced in the business. Besides normal fluctuations there is also the impact of producing high-end premium products. Because of quality standards, products cannot be produced all year long, so producers must keep a buffer stock that allows them to match quality standards in delivery performance. Producers manage their stock levels on the forecast of the customer requirements, while trying to achieve this at the lowest possible cost. In the situation of

- declining demand because of COVID-19, producers have flexibility in production to manage stocks accordingly.
193. One exporter noted that the majority of its stock is destined for European markets, with only a minor part destined for exports to other countries. Stocks are normally low due to the characteristics of packaging, which is specific for each client, so stocks are not held for more than 3 weeks. No increase in stock was foreseen because of the high costs involved. It was noted that during the COVID-19 pandemic part of the foodservice demand had shifted to retail.
194. Another exporter noted that contrary to PNZ's claims, there is limited, if any, additional or unprecedented stockpiling occurring at present, and in fact, various characteristics of the post-COVID-19 trading environment are contributing to keeping inventories stable. These characteristics include a rapid global increase in sales to retail with stock moving rapidly from retailers to consumers as consumption habits change in response to COVID-19. There has also been a surprisingly healthy demand from the foodservice sector, meaning that there is no overhang of inventory in cold stores. Because potatoes are perishable, the loss of markets during the early stages of COVID-19 meant that potatoes contracted for, while paid for, were diverted to other uses such as livestock feed, and not to inventories of frozen potato products.
195. The EUPPA noted that there is no mounting inventory of the subject goods that is intended to be exported to New Zealand. It was pointed out that sales to retail have increased significantly along with healthy demand from foodservice customers. During the early stages of COVID-19 potatoes contracted for processing were diverted to stockfood and other uses and did not contribute to stocks of processed goods. Contracts are based on demand projections, and as a result of the initial lockdowns demand for the subject goods was expected to reduce, which meant that production was reduced along with demand for raw materials, rather than leading to increased stockpiles of finished product. This would not have been economically feasible or physically possible, according to the EUPPA.

MBIE Analysis

196. With regard to exports to Australia, MBIE notes that the EU-5 Fry Exports in the Appendix to *World Potato Markets*, Issue 501, show that while exports to Australia increased by 18% in the year to October 2020, compared with a year earlier, both years were significantly lower than the year ended October 2018.
197. The combined inventory level for the four exporters was 350,000 tonnes at the end of FY2020, which overall represents around 16% of production, with rates of 8% to 27% for individual exporters. The information from exporters suggests that these inventory levels have been affected to some degree by the reduction in sales attributable to the COVID-19 pandemic, but are not out of line with their usual experience. In particular, during the early part of the processing season the potatoes are of better quality so stocks are built up in order to ensure supply of the required quality later in the year.
198. MBIE does not consider that the levels of inventories held by exporters will necessarily result in substantially increased exports to New Zealand.

Conclusions regarding volume effects

199. MBIE's conclusion is that there has not been nor is there likely to be a significant increase in imports in absolute or relative terms. This means that there are no import volume effects that can be attributed to dumped subject goods, nor is there a likelihood of substantially increased importations.

4.3.2 Price Effects

200. In the examination of the effect of dumped goods on prices in New Zealand for like goods under section 8(1)(b) of the Act, 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).

Price Undercutting

201. 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. 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. 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.
202. MBIE has analysed price undercutting by establishing weighted average selling prices at the ex-works level for the New Zealand producers, using information provided by PNZ and by the companies making up the New Zealand industry. These price levels, and overall weighted average selling prices for the New Zealand industry, have been compared with the weighted average ex-wharf prices established for the Belgian and Dutch exporters on the basis of information from the Belgian and Dutch suppliers, importers and Customs data.
203. The outcome of the analysis shows that imports of the subject goods from Belgium were undercutting New Zealand producers in FY2020, but these imports were not dumped. For imports from the Netherlands, which were not dumped or the margins of dumping were at *de minimis* levels, on the basis of weighted average price levels for all Dutch imports and all New Zealand production, there was no undercutting of New Zealand sales. On the basis of comparisons of weighted average prices for individual exporters and individual New Zealand manufacturers the levels of undercutting by Dutch exporters was not significant in terms of the impact on the industry. On the basis of its analysis, MBIE concludes that the prices of imports of the subject goods do not represent significant undercutting in relation to prices for the like goods of the bulk of sales of New Zealand producers.

Price Depression

204. 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.
205. MBIE has analysed the information available to it in order to assess the extent of any price depression. Quarterly data for the volume, values and costs of sales provided by the industry were used to identify the unit values for net prices by quarter for FY2018-FY2020. Annual amounts were also calculated. On the basis of this analysis, MBIE concludes that there is no significant price depression.

Price Suppression

206. 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.
207. MBIE has analysed the information available to it in order to assess the extent of price suppression. Quarterly volume, value and cost data provided by the industry was used to assess the evolution of the proportion of costs to selling prices. This identifies the extent to which cost increases are reflected in price increases. Annual values were also calculated for each producer for which information was available, and on a total industry basis. This analysis leads MBIE to conclude that there has been no significant price suppression in the period FY2018-FY2020.

Price effects and threat of injury

208. MBIE has examined whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports.
209. In its application, PNZ used information from TDI for May 2020 to establish an ex-wharf price, converted to NZD, with freight and insurance costs added on the basis of Stats NZ trade data. On the basis of this calculation, PNZ estimated levels of average price undercutting of the New Zealand industry at 27% with a forecast level for June 2021 of 48% (amended to June 2022 in updated data). The latter figure was based on assumptions about the impact of government support on the price of raw materials, and the availability of capacity and stocks, which would contribute to significantly reduced prices of imports.
210. PNZ based its claims of price depression on the reduction of prices to the full extent of price undercutting in order to maintain market share and sales volume. For price suppression, PNZ based cost estimates on information from one producer, and calculated total costs as a percentage of the ex-warehouse price. It was claimed that NZ producers would be facing price suppression levels of 114% in 6 months' time (from mid-2020) and 161% by the end of June 2021.

211. In its submission of 2 February 2021, PNZ states that EC claims of prices declining then recovering is inconsistent with the information contained in *World Potato Markets*. PNZ also notes the reference to the chilling effect of the investigation noted by MBIE in the Initiation Report. PNZ suggested that MBIE could check this against Customs data.
212. In their questionnaire response, the exporters emphasised that:
- Their focus was on quality and in supplying what their customers required. Prices for exports to New Zealand are determined by direct negotiation with the importer.
 - Price levels of finished goods are determined by the grade level, which in turn are determined on the basis of the length of the fry, solids, the number of defects, feathering, slivers and re-fry colour.
 - Demand in New Zealand is influenced by consumer preference and choice. There is increasing demand for coated/battered products; skin on products; flavoured products; different cuts, sizes and shapes of product; and potato variety.
213. Submissions from the EU industry group and the EC noted that a sequence of events that occurred once in 2016, did not demonstrate a causal link between a fall in world export prices and an increase of import volumes into New Zealand. Similar price movements in July 2015 did not precede an increase of imports into New Zealand. The data on exports from Belgium and the Netherlands showed diversified markets, increased volumes to the main markets of 3% between 2019 and 2020, significant volume increases in important markets, and decreasing volumes to New Zealand. It was noted that COVID-19 has not affected all markets in the same manner, with varying degrees and timing of lockdowns.
214. The EC noted that PNZ's claims regarding the effect of Government support on prices was unfounded, and gave an explanation, stressing that COVID-19-related support measures were aimed at compensating potato farmers, and did not provide benefits to producers of frozen fries. The EC also noted that the decreasing trend in EU prices pre-dated COVID-19, and was due mainly to changes in the cost of raw material. The EU industry foresaw steady prices during the 2020-21 season (August to July), because potato prices were defined in contracts at the beginning of 2020, before the COVID-19 outbreak. Processors were honouring their contracts, while prices on the free market for potatoes had sunk, since demand had disappeared. Contracted volumes for the 2021-22 season were to be negotiated in the beginning of 2021. Contracted volumes will be reduced and adapted to the lower demand. Current estimates were that the potato growing area would be reduced by 15% in total and by 5% for potatoes for processing. Based on this situation, prices will remain either stable or will increase if the amount of potatoes available is less than demand. Free potato prices may recover from September 2021. The EC also pointed out that prices could increase because of the effect of plans to cut pesticide use by 50% over the next ten years. The use of an anti-sprouting agent is not authorised as of the current storage season, and alternatives are more expensive.

MBIE Analysis

215. MBIE was satisfied that the approach taken in the application was based on information reasonably available to the applicant. However, MBIE notes that PNZ did not provide for Customs duty of 5%, or wharf costs in its calculation of price undercutting, and its base

- price assessments for normal values were derived from retail prices in Belgium and the Netherlands adjusted by cost and margin elements derived from the New Zealand market. The forecasts of further price undercutting were based on assumptions about prices paid for raw potatoes that MBIE does not consider to be supported by the evidence now available.
216. With regard to the support provided to potato growers, MBIE notes that at the time of initiation it reported its conclusions that no assistance was provided to producers of frozen potato fries and wedges, and this is confirmed by the exporters and by the EC. MBIE also notes that the prices paid to potato growers by producers are based primarily on contracts, and will not reflect the free-buy prices identified by PNZ as the basis for its worst-case scenario of price undercutting.
217. MBIE's investigation of price undercutting on an overall weighted average basis suggests that given the information available, there is some price undercutting, but even where the undercutting is significant, the imports concerned are not dumped.
218. MBIE's findings on price undercutting do not indicate that imports are entering at prices that will have significant depressing or suppressing effects on domestic prices or would increase demand for further imports. In particular, the scenario envisaged by PNZ that would lead to very significant price undercutting, is not supported by the information available to MBIE.

Conclusion on Price Effects

219. MBIE has established that there is no significant price undercutting by dumped imports of the subject goods from the Netherlands. Where there is undercutting it cannot be attributed to dumping because there is insufficient evidence of dumping of the subject goods.
220. MBIE has concluded that there is no current or likely substantial price depression or substantial price suppression. These effects cannot, therefore, be attributed to imports of the subject goods, and do not contribute to the threat of injury.

4.3.3 Consequent Impact

221. 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.
222. The application for the investigation was based on threat of injury, so the evidence provided addressed the situation that PNZ expected to occur as a result of significantly increased imports of the subject goods at very low price levels. To the extent possible, MBIE has sought to assess the state of the industry in FY2019 and FY2020 on the basis of the injury factors set out in section 8(2)(d) of the Act to assess the effect of imports and provide a baseline for considering the threat of injury. In this context, the assessment of the threat of injury must take account of the findings that there is insufficient evidence of current dumping, and that any dumping in the foreseeable future is unlikely to be significant.

Economic Impact

223. 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.

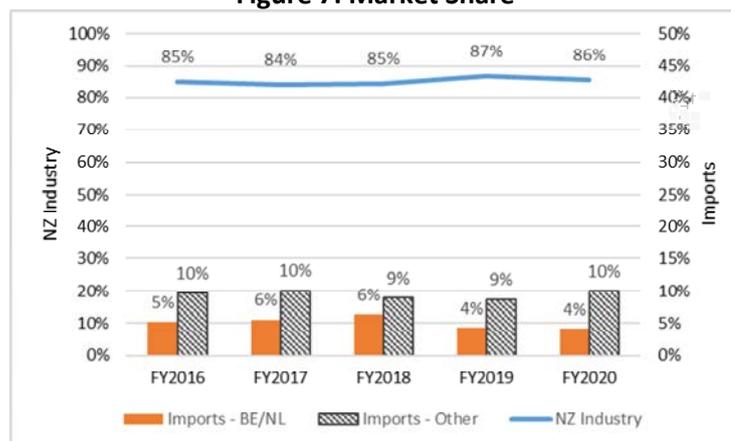
Output and Sales Revenue

224. Changes in output by domestic producers reflects production decisions in response to changes in the market situation, which could rise 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.
225. Movements in sales revenue can reflect changes in volume 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.
226. MBIE has analysed quarterly output and revenue information provided by New Zealand producers. The analysis shows that, subject to adjustment for strategic decisions, there has been no significant decline in output or sales that can be attributed to dumped imports.

Market Share

227. 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.
228. MBIE has analysed the data for market shares, based on import data and domestic production information provided by PNZ.

Figure 7: Market Share



229. The analysis shows that over the period the domestic industry has maintained its market share, while the share of imports from Belgium and the Netherlands has declined. The small decline in the domestic industry's market share in FY2020 can be attributed to the increase in imports from other sources, primarily Australia. The decline in market share held by imports from Belgium and the Netherlands predated the COVID-19 pandemic.

230. MBIE's conclusion is that the industry's market share has not declined, so it is not possible to attribute a loss of market share to imports of the subject goods.

Profits

231. Dumped imports can affect gross profit and net profit via their impact on sales prices and volumes.
232. Information on the industry's profit performance is limited because of a lack of information covering all of the New Zealand industry. Based on this limited information, MBIE's analysis of profit performance in the period FY2018-FY2020 shows that there has been an overall decline in profit over this period, but in the absence of increased imports and adverse price effects, this decline cannot be attributed to dumped imports of the subject goods.

Productivity

233. Productivity is the relationship between goods produced and the inputs required to manufacture those goods. Productivity is affected by output/sales and capacity utilisation levels.
234. MBIE has no reliable data on which to base any assessment of the impact of dumped imports of the subject goods on the productivity of the New Zealand industry.

Return on investment (ROI)

235. An analysis of return on investment measures profit against the value of the investment in a business. Changes in return on investment may impact the ability to retain current investment or 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.
236. MBIE has no reliable data on which to base any assessment of the impact of dumped imports of the subject goods on the ROI of the New Zealand industry.

Utilisation of production capacity

237. The utilisation of production capacity reflects changes in production volumes or changes in capacity. A decline in production volumes will normally lead to a higher cost per unit due to increased fixed overheads per unit. This will lead to a decrease in profit level, unless offsetting savings are found elsewhere.
238. On the basis of information provided by the New Zealand industry, MBIE has analysed whether utilisation of production capacity declined in the two years ended June 2020. The analysis shows that there was an overall decline for the industry as a whole, but this was almost entirely attributable to one company and its strategic investment decisions. If that company is excluded there was a small increase in overall capacity utilisation. In these circumstances MBIE does not consider that there has been an actual decline in utilisation of production capacity that could be attributed to imports of the subject goods.

Factors affecting domestic prices

239. 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.

240. The application noted that the New Zealand industry is unusual for a New Zealand industry in that it is unconcentrated, with five New Zealand producers operating in a highly contested market. MBIE notes that one of the New Zealand producers is a foreign-owned company which exports a significant proportion of its production and also makes a significant volume of imports.
241. Domestic sales in New Zealand are to a range of fast food operators, foodservice, wholesaler, and retailer customers. The different New Zealand producers have differing degrees of reliance on the various market segments. Some production is for own-brand goods, generally sold at retail. MBIE notes that many of the customers of the New Zealand industry are also customers for imported goods.
242. MBIE has not established any particular factors affecting domestic prices that would need to be considered, other than the price competition provided by imports.

Magnitude of the margin of dumping

243. 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 main effect of large margins of dumping is that they can potentially enable significant price undercutting, which has flow-on effects on prices achieved and volumes sold by the New Zealand industry.
244. MBIE has established that there is no dumping by three of the exporters and the dumping margin for the other exporter is at a *de minimis* level. MBIE does not consider that the margin of dumping indicates a likelihood that export prices will be reduced significantly.

Negative effects

245. Section 8(2)(d)(iv) 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 negative effects.

Cash flow

246. Reliable information on cash flow was provided by only one New Zealand producer, but once allowance is made for strategic investment decisions it cannot be concluded that dumped imports of the subject goods have contributed to any decline in cash flow.

New Zealand industry inventories

247. 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.
248. Information on inventory levels was provided by the New Zealand producers. In general, inventory is generated throughout the season, based on expected demand, and like the European producers, the plan is to process the majority of potatoes and build finished stocks, to take advantage of new season potatoes and minimise the time potatoes are in storage before being processed into frozen finished product.

249. The information provided by the New Zealand producers was on different bases so an aggregated or comparative assessment has not been possible. However, on the basis of the information available, MBIE is satisfied that there are no actual negative effects on inventories that can be attributed to dumped imports of the subject goods.

Employment

250. MBIE has assessed the information provided by the New Zealand industry on employment numbers for the period FY2018-FY2020, and notes that subject to allowance being made for strategic investment decisions, production staff numbers have been stable across the period, and there are no negative effects on employment that could be attributed to dumped imports of the subject goods.

Wages

251. Information provided by the New Zealand industry, subject to similar limitations as noted in relation to employment, indicates that total wage and salary payments increased for most of the New Zealand producers. Movements in average wage or salary income per FTE shows a similar pattern. MBIE considers that there are no negative effects on wages attributable to imports of dumped subject goods.

Growth, ability to raise capital, investments

252. New Zealand producers have advised that imports to date of the subject goods have not had actual negative effects on their growth, ability to raise capital, or their investments. They have, however, expressed concern that the increase in dumped imports predicted in the application, and the claimed consequent realisation of the threat of material injury, will have a negative effect on these factors. In light of MBIE's findings regarding the likelihood of increased imports and it is cannot be concluded that there are potential negative effects.

Conclusions on Economic Impact

253. On the basis of its analysis of actual economic effects attributable to volume and price effects of dumped imports of subject goods, MBIE concludes that for the period up to FY2020:
- There has been no significant decline in output or sales.
 - The industry's market share has not declined.
 - There has been an overall decline in profit, but this decline cannot be attributed to dumped imports of the subject goods.
 - There is no reliable data on which to base any assessment of the impact of imports of the subject goods on the productivity of the New Zealand industry.
 - There is no reliable data on which to base any assessment of the impact of imports of the subject goods on the ROI of the New Zealand industry.
 - There has been no actual decline in utilisation of production capacity that could be attributed to imports of the subject goods.
 - There are no particular factors affecting domestic prices arising from dumped imports other than price competition.

- The margins of dumping, where established, are unlikely to lead to further reductions in export prices.
- Imports of the subject goods have not contributed to any decline in cash flow.
- There are no actual negative effects on inventories that can be attributed to imports of the subject goods.
- There are no negative effects on employment that could be attributed to imports of the subject goods.
- There are no negative effects on wages attributable to imports of the subject goods.
- Imports of the subject goods have not had actual negative effects on the New Zealand industry's growth, ability to raise capital, or investments.

254. In light of the findings that there is no likelihood of substantially increased importations of dumped goods, and that there is little likelihood of substantial adverse price effects caused by dumped imports, MBIE cannot conclude that there will be potential declines or negative effects in regard to the factors noted above as a result of future dumping. The evidence does not support a finding of a threat of injury, and does not support the claims made by PNZ regarding the existence and effect of increased volumes of sales and drastically reduced prices of imports that create a threat of injury.

4.4 Other Causes of Injury

255. In the examination of whether material injury is being caused or threatened by means of the dumping of goods imported into New Zealand, Section 8(2)(e) of the Act sets out factors other than the dumped goods that may have injured the industry, and which the chief executive shall have regard to. This reflects Article 3.5 of the AD Agreement, which provides:

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.

256. MBIE's has assessed the causal link between the dumped imports and any material injury on the basis of the requirements of the Act and the AD Agreement.

4.4.1 Dumped Imports

257. MBIE has established that there has been no increase in dumped imports, there has been no significant price undercutting by dumped imports, and the domestic industry has not

experienced price depression or price suppression. Consequently, there is no current injury attributable to dumped imports. This is consistent with the New Zealand industry's position.

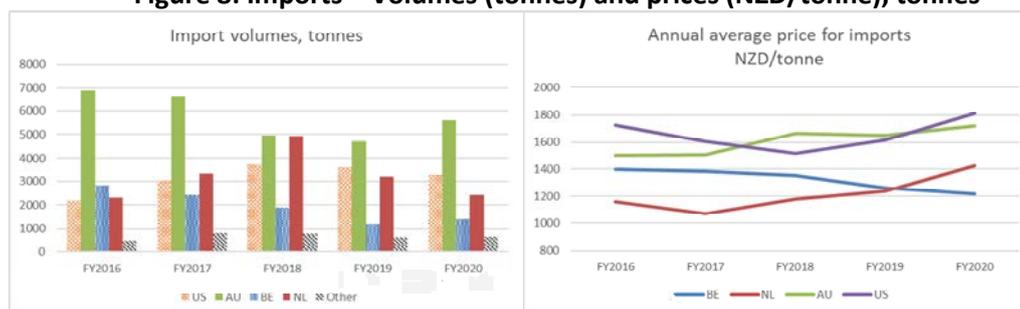
258. MBIE does not consider that there are grounds to determine that the dumping of the subject goods is threatening to cause material injury to New Zealand producers in the foreseeable future.

4.4.2 Other Causes of Injury

Other imports

259. 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.
260. Information relating to imports over the five years to June 2020 are shown in Figure 8. The first chart shows that imports from Australia and the United States have exceeded imports from the Netherlands over the last two years. The second chart shows average annual prices over the same five year period for the four main supplying countries, with prices from Australia, USA and the Netherlands increasing over the last two years, while prices from Belgium (which are not dumped) have decreased.

Figure 8: Imports – Volumes (tonnes) and prices (NZD/tonne), tonnes



Demand and Consumption

261. 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 have injured or are injuring the industry.
262. In its application PNZ noted that the New Zealand industry suffered a short term reduction in demand due to New Zealand's COVID-19 lockdown restrictions.

Trade Practices

263. 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.
264. In its application PNZ noted that the New Zealand industry is competitive and has not been subject to any investigation by the Commerce Commission. PNZ was not aware of any trade restrictive practices that might be affecting the New Zealand industry.

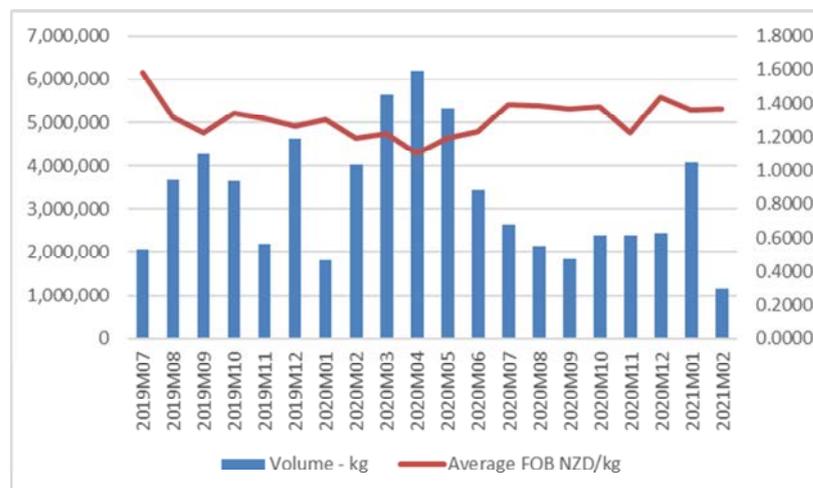
Developments in Technology

265. 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.
266. Exporters have commented that the various processing companies are distinguished by innovation, including the cuts of potatoes going beyond standard or usual fries, and also by the batters and seasonings used.

Exports of New Zealand Producers

267. 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 have injured or are injuring the industry.
268. Information on exports of all frozen potato products was provided by PNZ. The trade statistics show that there were significant exports to Australia, with other important markets in south-east Asia. The major exporter noted that its export performance had no impact on production for the domestic market, but did help lower overhead costs across the entire business.
269. MBIE notes that exports to Australia increased significantly in the early part of 2020, but dropped from June 2020, although they appear to have stabilised since then at lower levels, with average FOB values showing no declining trend.

Figure 9: Exports to Australia, kg and \$/kg FOB
(Source: Stats NZ, Infoshare)



270. MBIE concludes that changes in export performance may affect overall costs of domestic sales. This will depend on the magnitude of such changes. However in light of the conclusions reached regarding current injury, it cannot be argued that any injury arising from changes in export performance can be attributed to dumped imports of the subject goods.

Other factors

271. MBIE notes that one of the New Zealand producers has made strategic investment decisions which have had an effect on a range of the factors relating to economic

performance. This has in turn affected the industry's performance in relation to these factors.

272. Given this situation, MBIE has been careful to identify and distinguish the effects of the producer's decisions from the impact of imports. Accordingly, MBIE is satisfied that it has not attributed adverse or negative effects arising from the investment decisions to the impact of imports.

4.4.3 Imports by the New Zealand Industry

273. 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.
274. Customs data for FY2016 to FY2021 to date shows that at the beginning of the period the domestic industry was responsible for over half of the imports of frozen fries and wedges, primarily from Australia and Belgium, and since FY2018 the domestic industry has accounted for a third of all imports, primarily from Australia, with smaller quantities from the United States.
275. There were regular imports from Belgium by the industry in FY2016-FY2019, but none since then. The domestic industry has not made any imports of subject goods from Belgium or the Netherlands during the POI(I).

4.4.4 Conclusions on Causal Link

276. Section 8(1) of the Act requires that a determination that material injury to an industry is being caused or threatened by dumped imports. MBIE is satisfied that, in relation to the matters the chief executive is required to have regard to under section 8(2), it has not attributed to dumped imports any injury caused by other factors. MBIE is also satisfied that there are no other relevant matters that need to be considered under section 8(1).

4.5 Conclusions on Material Injury

277. Material injury is not defined in either the Act or the AD Agreement, but rather is the level of injury which can be demonstrated by an objective and unbiased investigating authority on the basis of an assessment of the factors set out in section 8 of the Act, and in the context of the circumstances of the industry concerned.
278. The analysis undertaken by MBIE on the current situation of the New Zealand industry confirms the statements made by PNZ and by the companies making up the industry that they are not currently experiencing injury, but does not confirm their claim that the industry is threatened with material injury by significant increases in imports of the subject goods at significantly lower prices.

Current injury

279. In particular, on the basis of its examination of the injury factors set out in section 8 of the Act, MBIE concludes that:
- Imports have not increased in absolute or relative terms, so there is no import volume effects that can be attributed to any dumping of the subject goods.

- There is some price undercutting by some imports of the subject goods, but where this is occurring to any significant degree there is no dumping, so these effects cannot be attributed to any dumping of imports of the subject goods.
- There is no substantial price depression or substantial price suppression, which means that these effects cannot be attributed to any dumping of imports of the subject goods.
- There is no evidence that any dumped imports of the subject goods are having an economic impact on the domestic industry in terms of actual declines in output, sales, market share, profits, productivity, return on investment and utilisation of production capacity.
- There is no evidence that the impact of any dumped imports of the subject goods is contributing to factors affecting domestic prices, or that the magnitude of the margin of any dumping is contributing to any economic impact on the domestic industry.
- There is no evidence that any dumping of the subject goods is having actual negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital and investments.

Threat of material injury

280. MBIE notes that in considering factors that relate to the threat of injury under section 8(1) of the Act, and the matters set out in Article 3.7 of the AD Agreement, it has concluded that:

- The investigation of dumping has established that imports are not dumped or that any dumping is at *de minimis* levels, and that it is unlikely that any future dumping will be at significant margins of dumping.
- In light of the conclusions on dumping, potential declines or potential impacts on the injury factors examined cannot be attributed to dumped imports.
- On the basis of the information available the evidence does not show that dumped imports have increased significantly, and does not indicate a likelihood of substantially increased importation in the foreseeable future which could be attributed to the change of circumstances brought about by the COVID-19 pandemic.
- It is not likely that there will be an imminent or substantial increase in capacity of exporters to substantially increase dumped exports, taking into account the availability of other export markets to absorb any additional exports.
- MBIE's findings on price undercutting do not indicate that imports are entering at prices that will have significant depressing or suppressing effects on domestic prices or would increase demand for further imports.
- The levels of inventories held by exporters will not necessarily result in substantially increased exports to New Zealand.

281. On the basis of the totality of the evidence, MBIE's consideration of the effect of the COVID-19 pandemic on the production and trade of the subject goods leads it to conclude that there is no clearly foreseen and imminent change in circumstance which would create the situation where dumping would cause injury.

282. In particular, and in relation to the matters raised by the New Zealand industry:

- The evidence does not support the claim by the New Zealand industry that the COVID-19 pandemic has led to reduced demand, especially from the foodservice trade, for Belgian and Dutch manufacturers, leading to inventory surpluses and available capacity, such that there is a likelihood of substantially increased importation in the foreseeable future.
- The evidence does not support the claim by the New Zealand industry that government intervention in Belgium and the Netherlands has assisted potato growers so that producers of frozen potato products can take advantage of lower raw material costs, which means they can reduce prices for exports to New Zealand.
- The evidence does not support claims by the New Zealand industry that there is a glut of frozen potato products in Europe that will lead to an increase in exports to New Zealand as a result of the need to make room for the 2020 harvest and exacerbated by the ongoing provision of government support to the European industry.

283. The consequence of these conclusions is that MBIE does not consider that there are grounds to determine that dumping of the subject goods is threatening to cause material injury to the New Zealand industry. In particular, the change of circumstances which would create a situation where the dumping would cause injury is not clearly foreseen or imminent.

5. Conclusions

Conclusions on Dumping

284. MBIE has concluded that:

- The subject goods imported from Belgium are not currently dumped.
- The subject goods imported from the Netherlands are not dumped, or are currently dumped at *de minimis* margins indicating insufficient evidence of dumping in that no dumping margins are greater than *de minimis*.

285. With regard to the likelihood of future dumping, MBIE's conclusion is that it is unlikely that there will be any future dumping at significant margins.

Conclusions on Current Material Injury

286. MBIE concludes that its examination of the current situation of the New Zealand industry confirms the statements made by PNZ and by the companies making up the industry that they are not currently experiencing injury as a result of the dumping of subject goods.

Conclusions on Threat of Material Injury

287. In its consideration of the threat of injury, MBIE takes note of the requirement of Article 3.8 of the AD Agreement that with respect to cases where injury is threatened by dumped imports, the application of anti-dumping measures shall be considered and decided with special care.

288. MBIE does not consider that there are grounds to determine that dumping of the subject goods is threatening to cause material injury to the New Zealand industry. In particular, the change of circumstances which would create a situation where the dumping would cause injury is not clearly foreseen or imminent.

ANNEX: COMMENTS RECEIVED ON THE STEP 1 EFC REPORT

Comments on the Step 1 EFC Report were received from:

New Zealand industry:

PNZ

- A. PNZ responses to the Step 1 EFC Report.
- B. PNZ comments on the changes to the dumping margin found for Lamb Weston, as advised to parties by MBIE on 5 May 2021.

Foreign producers:

- C. Clarebout
- D. Lamb Weston

Other parties:

- E. European Commission

Comments	MBIE Response
A. PNZ : Comments on Step 1 EFC Report	
Summary	
A1. In its submission PNZ claimed that the Step 1 EFC Report had not been put together in a manner that achieved the statutory purpose of the Act, and in particular: <ul style="list-style-type: none"> • Lacked sufficient detail to determine what MBIE had used as a basis for its conclusions so that interested parties could provide feedback. 	MBIE’s responses below address the particular points raised by PNZ. Where appropriate, the text of the Step 1 Final Report reflects MBIE’s consideration of PNZ’s comments.

<ul style="list-style-type: none"> • Commented on the level of cooperation and timeliness of feedback by the domestic industry which showed a lack of impartiality and fairness, and had not considered PNZ’s submissions after 2 February 2021. • Relied on an analysis of the past in its analysis of threat and lacked the view of futurity required. • Lacked common sense in its analysis of dumping, which lacked common sense when a lens of commercial reality is cast across it. In particular MBIE had included sales below cost in its analysis but had not verified the sales in the greater context of the exporters’ businesses. • Failed to look at threat in its totality, including that MBIE made leaps of logic that have no commercial reality and ignores the latest, best and most relevant information available. <p>A2. PNZ claims that MBIE failed to conduct its investigation and determination in accordance with:</p> <ul style="list-style-type: none"> • The statutory purpose of the Act; • The requirements for determining whether there is a threat of material injury (which requires an emphasis on futurity); • Extraordinary circumstances presented by the Covid-19 pandemic and governments’ responses to it. 	
Sufficiency of detail	
<p>A3. PNZ considers that the EFC Report lacks sufficient detail for interested parties to comment in detail.</p> <p>A4. PNZ is concerned, in particular, that detailed information has not been provided on normal values, with references being made to</p>	<p>MBIE notes that section 10C(2) of the Act requires the chief executive, within 150 days after starting investigation step 1, to provide notified parties with the written advice of the essential facts and conclusions that are likely to form the basis for a determination to be made by the Minister under section 10D(1) of the Act. The step 1 determination to be made</p>

<p>base prices/gross sales values, constructed normal values, sales to third countries and sales made at a loss.</p>	<p>under section 10D(1), within 180 days after the start of investigation step 1, is whether, in relation to the imported goods, the goods are being dumped and material injury to an industry has been or is being caused or threatened because of the dumping.</p> <p>The Step 1 EFC Report of 19 April 2021 set out the essential facts and conclusions in relation to the investigation of dumping and material injury, including the threat of material injury, while at the same time protecting confidential information. Comments from parties were requested to be provided by 30 April 2021.</p> <p>MBIE notes that, in the Step 1 EFC Report, it provided essential facts on normal values, including base prices, and adjustments. More detailed information is contained in foreign producers’ verification reports, which parties were advised were available on 23 April (Aviko and Clarebout) and on 28 April (Lamb Weston and Farm Frites). PNZ requested copies of these Public File documents on 29 April, which were provided on the same date.</p> <p>The Step 1 EFC Report also included summaries of the investigation relating to normal values, including the basis for the comparison with export prices, base prices, and sales at a loss. In the Step 1 Final Report, MBIE has clarified that since information on sales in the ordinary course of trade was available, it was not necessary to consider constructed normal values or normal values based on sales to third countries.</p>
<p>Consideration of submissions</p>	
<p>A5. PNZ considers that it appears that MBIE has ignored a number of submissions made by PNZ and “by and large” all submissions after a 2 February submission. PNZ notes that a particular concern is that the submissions that appear to have been ignored are most relevant</p>	<p>MBIE notes that, in paragraph 55 of the Step 1 EFC Report, MBIE has referred to PNZ’s submissions on product specifications (28 January 2021), an update to injury information (2 March 2021), comments on submissions from other parties (2 February 2021, 16 February 2021, 16 March 2021 and</p>

<p>to the evolving threat of material injury, including more up to date information on surplus inventory or capacity due to significantly reduced exports from Belgium and the Netherlands.</p>	<p>5 April 2021). In the Step 1 EFC Report MBIE did not refer specifically PNZ’s submissions on Aviko and Farm Frites’ supplementary questionnaire responses (12 and 15 April respectively), or PNZ’s summary of threat of injury, key facts and attachments (12 April). MBIE confirms that it did however take these submissions into account when drafting the Step 1 EFC Report. The Step 1 Final Report reflects this.</p>
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MBIE’s investigation was limited and inflexible

<p>A6. PNZ takes issue with MBIE’s comment in the EFC Report that not all local producers “were willing or able to provide all of the information required”. PNZ refers to deficiencies in MBIE’s application form.</p>	<p>MBIE notes that it is a fact that New Zealand producers were not prepared to provide responses to all of MBIE’s questions, or indicated that they were unable to do so.</p> <p>MBIE notes that there is a difference between the information required for an application justifying the need for an investigation and the more detailed information and inquiry required during an investigation. There is no statutory requirement to provide an application form and, in any case, the alleged deficiencies in the application form provided on MBIE’s website for guidance did not result in PNZ being unable to justify to MBIE that an investigation was necessary.</p>
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MBIE impartiality

<p>A7. PNZ discusses the treatment of confidential information in response to comments from Farm Frites and the European Commission, including that the Ministry should disregard information that is not properly justified as being confidential.</p> <p>A8. PNZ considers that it is at a significant disadvantage because importers and foreign producers had significantly more time to respond to questionnaires than the New Zealand producers were</p>	<p>MBIE notes that the time given for parties to reply to questionnaires or requests for supplementary or further information depends on a number of factors:</p> <ul style="list-style-type: none"> • The date on which questionnaires are sent: <ul style="list-style-type: none"> ○ For foreign producers, the date on which questionnaires are sent depends on responses to information sheets. MBIE notes that questionnaires were sent to Clarebout and Farm Frites on 11
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<p>provided, and the late issuing of domestic producer questionnaires, leading to the late issue of supplementary questionnaires and the submission of information late in the investigation.</p> <p>A9. PNZ takes issue with MBIE’s comments in paragraph 56 of the EFC report that responses to the original Domestic Producer Questionnaire “were not all provided in a timely fashion, and did not provide all of the information requested” and that “[t]here was a similar experience with regard to the responses to the Supplementary Questionnaires” when a late response by foreign producer Aviko did not receive similar comments.</p> <p>A10. PNZ also considers that Farm Frites’ is claiming that the New Zealand producers were withholding their information and that such a claim is factually wrong.</p>	<p>November, Lamb Weston on 18 November and Aviko on 10 December. Aviko’s questionnaire response was due on 18 January and received on 19 January, so MBIE did not comment that Aviko’s response was late.</p> <ul style="list-style-type: none"> ○ For domestic producers, a questionnaire was sent and supplementary information was also requested. The application usually contains a significant amount of information, but in this case, however, MBIE needed time to formulate the questionnaires to obtain significant information from New Zealand producers. ● With regard to the amount of relevant information already provided by parties, MBIE notes that the applicant industry has already provided information in its application, whereas questionnaires to foreign producers, exporters and New Zealand importers are the first opportunities for those parties to provide information. ● Investigation and information timeframes are set out in the Act and the AD Agreement. MBIE notes that Article 6.1.1 of the AD Agreement requires that exporters or foreign producers “shall be given at least 30 days for reply” to questionnaires, and an additional week as explained in footnote 15 to the AD Agreement. There is no similar requirement in respect of information requested from domestic producers. ● Requests for extensions of time, which MBIE has to manage within investigation timeframes were agreed: <ul style="list-style-type: none"> ○ MBIE gave importers one month to respond to questionnaires, although it did consider any requests for an extension of time. ○ MBIE notes that it extended the time for New Zealand producers’ responses to original questionnaires, allowing 6 weeks in total although MBIE acknowledges that this time included the traditional summer holiday period.
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	<p>MBIE also notes that PNZ has provided information disputing Farm Frites' view that New Zealand producers may have been withholding information.</p>
<p>Desktop verification</p>	
<p>A11. PNZ considers that desktop verifications should only be used in exceptional circumstances and that “[s]imply declining to conduct verification at all is an unacceptable outcome.” PNZ considers that verification visits could have been carried out in New Zealand and that verification of foreign producers’ information could have been carried out by virtual means or by using government staff at New Zealand’s overseas embassies. PNZ states that supplementary questionnaires are a poor substitute for verification visits, especially when MBIE lacks a basic understanding of the industry. PNZ states that this approach is a significant failing in process.</p> <p>A12. PNZ considers that desktop verification adds significant complexity because questions are open to interpretation and answers may not be what MBIE is seeking. PNZ suggests that taking what has been provided as fact, and not considering the evidence in the greater context of the exporter’s business, results in a flawed dumping analysis.</p>	<p>Verification visits are not a legal requirement in the Act or in the AD Agreement. The requirement is that MBIE should be satisfied with the information it has relied upon, and acted consistently with the Act and the AD Agreement.</p> <p>MBIE decided that verification visits in New Zealand should not be undertaken due to changing alert levels for COVID-19 and consideration for staff welfare. It was not realistic to carry out physical verification visits in Belgium and the Netherlands, as PNZ appears to acknowledge.</p> <p>MBIE notes that it would be inappropriate to engage government staff from other agencies in verification visits, given that they would not have the authority required to be part of an investigating authority, and are not trained in the specialist area of trade remedies investigations.</p> <p>MBIE explained to parties that it may not be able to carry out verification visits in an introductory section of questionnaires titled “COVID-19: Responsibilities and Flexibility.”</p> <p>MBIE notes that, rather than being a substitute for verification visits, supplementary questionnaires are just one part of the verification process, which includes consideration of all relevant information, responses to all questionnaires, requests for information and clarification, and comments on draft verification reports, as well as cross-checking with other available information.</p>

	<p>MBIE notes that during the desktop verification process MBIE analysed the information it received, checked it for inconsistencies and calculation errors, and asked further questions where matters were unclear, which usually involves an iterative process. MBIE considers the information available in the context of information provided to or it or revealed through MBIE’s own research.</p>
<p>Flawed dumping analysis</p>	
<p>A13. PNZ claimed MBIE’s dumping analysis lacked any objective sense. It questioned how it could be logically concluded that the exporter with the highest export price is dumping, while the exporters with lower export prices are not dumping. PNZ claimed, that in the absence of any other explanation provided in the EFC Report, the only conclusion that could be drawn was that MBIE has made a gross error in its analysis, such as comparing export prices with export prices (not normal values). PNZ also questioned whether MBIE’s analysis can be a true indication of the actual dumping margins when one exporter can have a dumping margin of 17 percent and the other exporters have no dumping margins. PNZ stated that such a determination defies logic and the commercial reality of the frozen fries business. In support of this claim, PNZ noted that the contract price that each exporter to New Zealand pays is very similar given the nature in which those prices are set and also referred to paragraph 209 of the EFC Report where MBIE commented on the extent to which there is significant price undercutting by the exporter which was found not to be dumping.</p> <p>A14. PNZ also stated that its claim that MBIE’s dumping conclusion defies both logic and commercial reality is reinforced by an evaluation of the foreign manufacturers questionnaire responses which suggest</p>	<p>PNZ appears to be assessing the dumping margins calculated by MBIE on the basis that an exporters’ goods are priced in comparison with other exporters’ goods and with the New Zealand industry’s prices while taking no account of the normal values established in the investigation. Dumping margins are established by calculating the difference between the export prices of the goods exported to New Zealand and their normal value, which in this case is the price of equivalent goods sold on the domestic markets of Belgium and the Netherlands. PNZ has not used as a comparator the exporters’ domestic prices in Belgium and the Netherlands, when commenting on the dumping margins calculated by MBIE. Dumping margins can only be determined once export prices are compared with normal values, in this case the foreign producers’ domestic prices.</p> <p>During the investigation, MBIE was provided access to each foreign producers’ domestic prices for comparison with their export prices to New Zealand. These prices were verified and, in order to ensure transparency and correctness, MBIE provided draft verification reports to the four foreign producers and sought their comments on the matters covered and the calculations. The Step 1 EFC Report was an interim report, and the</p>

<p>that all three exporter in the Netherlands are exporting premium products to New Zealand which would be comparable in price. PNZ seem to be suggesting the fact that all three exporters from the Netherlands are exporting a comparable “premium” product indicates that their export prices should be similar and that because MBIE’s EFC report suggests this isn’t the case, MBIE’s dumping calculations must be flawed.</p>	<p>dumping margins set out were based on the information available to that point in the investigation.</p> <p>In commenting on the verification report and then on the Step 1 EFC Report, the exporter with the 17% dumping margin provided further information in support of its claims for further adjustments to be made. As set out in the section below relating to Lamb Weston’s comments on the Step 1 EFC Report, MBIE has accepted, in part, the claims made, with the result that the dumping margin of 17% has been reduced to a <i>de minimis</i> level.</p>
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Threat of material injury – statutory purpose

<p>A15. PNZ claims that MBIE has failed to properly consider the statutory purpose of the Trade (Anti-Dumping and Countervailing Duties) Act 1988 (Act). Part 1 of the Act states that “The purpose of the Act is to enable New Zealand to apply anti-dumping and countervailing duties in accordance with its obligations as a party to the World Trade Organisation (WTO) Agreement.”</p> <p>A16. According to PNZ, New Zealand’s trade remedies system must have regard for the position of domestic industries when faced by unfair trade conditions created from outside borders.</p> <p>A17. In support of its claim, PNZ further referred to the words of the then Minister of Commerce and Consumer Affairs when introducing the 2017 amemdments to the Act. The Minister stated that “<i>Dumping and countervailing duties are legitimate trade instruments that are part of an international set of rules necessary to facilitate fair and honest trade between World Trade Organization members. The dumping and countervailing duties agreements provide member States with legitimate trade instruments to level the playing field and</i></p>	<p>A purpose clause in legislation can guide the interpretation of the legislation. Section 1A of the Act provides that the purpose of the Act is to enable New Zealand to apply anti-dumping duties and countervailing duties in accordance with its obligations as a party to the WTO Agreement, and states that the purpose of anti-dumping and countervailing duties is to prevent material injury or the threat of material injury to an industry due to dumped or subsidised goods being imported into New Zealand.</p> <p>MBIE undertakes investigations in accordance with the provisions of the Act and the AD Agreement, with guidance provided by trade dispute findings of the WTO Appellate Body and dispute panels where relevant and appropriate. This was clearly indicated throughout the Step 1 EFC Report. The Act permits the New Zealand Government to apply anti-dumping duties in accordance with its international obligations where the conditions for the imposition of such duties are met.</p>
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<p><i>to provide remedies against dumped or subsidised goods. It is important that New Zealand maintains an effective trade remedies regime so that our domestic industries have confidence in the international trading system.”</i></p>	
<p>Threat of material injury – future perspective</p>	
<p>A18. PNZ claimed that MBIE did not place emphasis on futurity when assessing if a threat of material injury exists. In other words, even though the investigation process has taken several months, the foreseeable and imminent change in circumstances still exists today, and the threat of material injury remains extant. In support of its claim, PNZ noted that significant parts of the report are backward-looking in focus. PNZ referenced several paragraphs in the report where it claimed MBIE’s analysis was backward-looking rather than forward-looking in focus.</p>	<p>MBIE has examined the paragraphs of the Step 1 EFC Report referenced by PNZ where it considers MBIE’s analysis is backward looking rather than forward-looking in focus. MBIE notes that a number of the selected references relate to the consideration of the extent to which dumping is causing current injury, but the injury analysis as a whole goes wider. MBIE considers the likelihood of potential declines and impacts on the relevant injury factors which section 8 of the Act requires to be examined, as well as the matters relating to a threat of injury as set out in Article 3.7 of the AD Agreement.</p> <p>Article 3.7 of the AD Agreement clearly provides for the need to examine past behaviour or practice in order to make a finding on a future event. Article 3.7 provides that, in assessing if a threat of injury exists, certain factors should be considered by the authorities. These factors include (i) whether there has been a significant rate of increase of dumped imports indicating the likelihood of substantially increased importations (ii) whether there is sufficient freely disposable, or an imminent, substantial increase in capacity of the exporters, indicating the likelihood of substantially increased duped exports to the importing members market; (iii) whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports.</p>

	<p>MBIE considers that in examining a past occurrence or happening, in order to make a finding on a future occurrence, it has acted consistently with its obligations under the Act and the AD Agreement.</p> <p>The Step 1 Final Report includes text that seeks to clarify this matter.</p>
<p>Threat of material injury – COVID-19 as an extraordinary circumstance</p>	
<p>A19. PNZ considers that MBIE’s investigative process and the EFC Report “pay scant regard to the enormity of the threat to New Zealand producers of frozen potato products that the pandemic – and governmental responses to it – represent.”</p> <p>A20. PNZ considers that MBIE failed to modify and expand its investigative process and criteria when dealing with a threat of material injury claim which arose out of the extraordinary circumstances of the COVID 19 pandemic. PNZ compares MBIE’s trade remedies response with the responses of other government agencies, such as the Commerce Commission, and suggests that MBIE adopt a similar flexible approach in its complementary trade remedies role, to ensure New Zealand industry does not suffer threat of further injury that is clearly foreseeable and imminent as a result of dumping. PNZ states that “the Act does not allow for flexibility in appropriate cases of unexpected disaster.”</p> <p>A21. PNZ considers that MBIE’s analysis should not be limited to simply scrutinising import volumes, exporter capacity and inventories. PNZ refers to a number of factors as indicative of the types of information MBIE could consider, such as the trend in negative cash flow or plans to cease or reduce operations.</p>	<p>MBIE notes that the Act requires it to consider material injury or the threat of material injury, because of the dumping.</p> <p>MBIE notes that its trade remedies function must comply with the Act, and with New Zealand’s international obligations under the AD Agreement. Anti-dumping action may only be taken following an investigation and if certain conditions are met.</p> <p>MBIE took account of all matters presented to it and revealed through its own research. At any time, PNZ or other parties could, and in some cases did, raise matters that they considered relevant to the investigation, which MBIE considered. MBIE considered future economic impacts, which it has made clear in the Step 1 Final Report.</p>

Threat of material injury – change in circumstance

A22. PNZ referenced WTO dispute settlement findings to support its view that the “change in circumstances” referred to in Article 3.7 of the AD Agreement need not be substantially increased importation of the allegedly dumped goods. PNZ claims that MBIE appears to have focused solely on the likelihood of “substantially increased importation in the foreseeable future which could be attributed to the change in circumstances brought about by the Covid-19 pandemic”.

MBIE agrees that substantially increased importations is identified in footnote 10 to Article 3.7 of the AD Agreement as a non-exclusive example of the change in circumstances which could create a clearly foreseen and imminent situation in which dumping would cause injury. In the Step 1 EFC Report, MBIE examined this factor as it was raised by the applicant and it was considered by MBIE to be an important factor in the threat of injury determination. MBIE also examined the other factors set out in Article 3.7, including whether the Belgian and Dutch exporters have sufficient freely disposable capacity or an imminent substantial increase in capacity; the availability of inventories held by the exporters which could support a substantial increase in exports to New Zealand; and whether the imports were holding a price advantage over the domestically-produced goods. It is these factors which permit and support a finding regarding the likelihood of future events.

In addition, MBIE examined other factors in making its threat of injury determination. These factors included whether the imports were currently being dumped and if the dumping was likely to continue; the effect of the COVID-19 pandemic on the production and demand for the subject goods in Belgium and the Netherlands; whether government intervention in Belgium and the Netherlands has assisted potato growers so that producers of frozen potato products can reduce prices for exports to New Zealand; and whether there is a glut of frozen potato products in Europe that will lead to an increase in exports to New Zealand as a result of the need to make room for the 2020 harvest.

It was open to any party to raise other factors that would need to be considered.

	<p>The factors MBIE considered enabled it to conclude that there is no threat of injury in the foreseeable future from dumped imports of the subject goods from Belgium and the Netherlands.</p>
<p>Threat of material injury – totality of evidence</p>	
<p>A23. PNZ referenced Article 3.7 of the AD Agreement and noted that the WTO’s Appellate Body has stated that an injury determination under Article 3.7 is to be based on the totality of the evidence. PNZ claims that MBIE failed to consider the totality of the threat which the industries in Belgium and the Netherlands represent. In particular:</p> <ul style="list-style-type: none"> • MBIE analysed and accepted without proper verification visits, responses from four exporters who comprise around 50% of the total industry and only one exporter for Belgium with a significantly different business model to other exporters of frozen fries in that country. PNZ claim that, on the basis of the figures presented in MBIE’s EFC report, MBIE has failed to evaluate the total industry in Belgium and the Netherlands. • PNZ’s core argument in terms of threat of injury has been the total available capacity and inventories. These need to be looked at in their totality, but the Ministry has only addressed each separately in the Report; • MBIE has made no reference to updated information provided by PNZ after 2 February indicating inventory surpluses in the Netherlands and Belgium leading to a real and imminent threat of material injury. In particular, PNZ stated that it has identified an additional New Zealand distributor which appears to be sourcing from Farm Frites indicating an intent to export higher volumes as well as providing marketing support, which appears 	<p>Section 4.3 of the Step 1 EFC Report (Examination of Injury) detailed MBIE’s injury analysis and the basis of its findings, particularly in respect of the threat of injury that dumped imports from Belgium and the Netherlands represent. In that section MBIE examined a number of factors including those highlighted by PNZ (i.e. total available capacity and inventory levels). MBIE does not accept PNZ’s claim that MBIE only addressed these factors separately, rather than in their totality.</p> <p>MBIE was unable to undertake verification visits to the Belgian and Dutch producers for the reasons explained above. This was explained in the Step 1 EFC Report, including the methods used by MBIE to verify the foreign producers’ information.</p> <p>While the foreign producers included in the investigation do not comprise the totality of Dutch and Belgian producers of the subject goods, MBIE considers that they represent a large enough proportion of domestic production in these countries for the information sourced from them to be a reliable indication of the situation facing the industry in its totality. It is also relevant that only the foreign manufacturers investigated were exporting to New Zealand in the POI(I) so it was not possible to address questionnaires to Belgian or Dutch producers that were not parties to the investigation.</p> <p>MBIE does not accept PNZ’s claim that MBIE addressed total available capacity and inventories separately in the Step 1 EFC Report and not in</p>

<p>to be at odds with what Farm Frites stated in its questionnaires;</p>	<p>their totality. At paragraph 274 of the Step 1 EFC Report, MBIE clearly concludes that as a consequence of its conclusions (including those on both the total available capacity and inventories), there are no grounds to determine that the dumping of the subject goods is threatening to cause material injury to the New Zealand industry.</p> <p>In an investigation, MBIE will receive and gather information on a number of issues and from a variety of sources. If a particular issue raised by an interested party in an investigation is not specifically addressed in a report, this does not mean that MBIE has not considered it or has disregarded it.</p> <p>A report must be materially accurate, based on relevant information and in general terms provide the reasons for its conclusions. A report is required to generally deal with the important matters raised and to act consistently with New Zealand’s obligations, and its findings should be based on material that logically shows the existence of facts consistent with its findings. A report is not required to engage on every detail raised by an interested party, and must be considered as a whole.</p> <p>MBIE has taken into account the information provided by PNZ on the submission by Farm Frites.</p>
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Threat of material injury – consideration of evidence

<p>A24. PNZ considers that MBIE has not discussed in the EFC Report statements that were referred to by PNZ in its submission of 12 April, which it considers go to MBIE’s assessment of the continued threat of material injury and what is likely to happen in the future. In particular, PNZ refers to:</p>	<p>MBIE notes that, in the Step 1 EFC Report, MBIE does not discuss all information provided by interested parties and generally confines itself to relevant essential facts and conclusions.</p> <p>MBIE notes that Royal Cosun’s 2019 annual report was published on 19 March 2020 at a time of great uncertainty when COVID-19 had just broken out in Europe. In that context, Royal Cosun stated that it was difficult to predict what impact the outbreak might have and considered that it could</p>
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<ul style="list-style-type: none"> • The 2019 annual report of Aviko’s parent company, Royal Cosun, commenting about potential significant consequences for its business. • Lamb Weston’s report for Fiscal Third Quarter 2021 notes that its European joint venture’s current shipments (at 85% of fourth quarter fiscal 2019 levels) “... may soften during the remainder of fiscal 2021 Fourth Quarter as governments across parts of Europe have reimposed stricter social controls to curb another resurgence of Covid” and that “Covid-19 continues to significantly disrupt our manufacturing and distribution operations across our entire supply chain network, which resulted in higher costs.” <p>A25. PNZ considers that MBIE has failed to acknowledge the ongoing and evolving circumstances and threat posed by Covid-19, including that Belgium and the Netherlands are still responding to the pandemic. PNZ also notes that Lamb Weston has no expectation of a quick return to pre-COVID conditions.</p>	<p>have significant consequences for its sales volumes and profitability in 2020. MBIE considers that this is early speculation about the impact of COVID-19 disruptions.</p> <p>MBIE notes that Lamb Weston’s report for Fiscal Third Quarter 2021 was published on 7 April 2021. The report refers to matters MBIE has taken account of, for example weaker and uncertain demand in Europe and disruption of manufacturing and distribution. The increasing costs incurred by Lamb Weston and the need to recover these costs may indicate that prices of fries in both domestic and export markets could increase.</p> <p>MBIE is aware of the uncertainty due to COVID-19 disruptions and of a range of changes processors have made in response, including managing production and distribution.</p>
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Threat of material injury - MBIE’s analysis of past, present and future injury

<p>A26. PNZ notes that section 10C(1)(b) of the Act requires MBIE to investigate whether “material injury to an industry has been and is being caused or is threatened” and that this requires a consideration of past, present and threatened injury.</p> <p>A27. PNZ considers that MBIE appears to have focused solely on the likelihood of “substantially increased importation in the foreseeable future which could be attributed to the change in circumstances brought about by the Covid-19 pandemic,” rather than factors other than substantially increased importation.</p>	<p>MBIE notes that it has analysed whether material injury to an industry has been and is being caused or is threatened. References to MBIE’s considerations were included in the Step 1 EFC Report.</p> <p>MBIE noted, at paragraph 135 of the Step 1 EFC Report, that “[t]he change in circumstances which would create a situation in which the dumping would cause injury must be clearly foreseen and imminent.” At the same time, MBIE referred to the guidance provided by Article 3.7 of the AD Agreement, which includes a range of factors to be considered in making a determination regarding the existence of a threat of material injury. These</p>
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<p>A28. PNZ considers that, in addressing the question of whether the evidence shows that dumped imports have increased significantly into the market indicating a likelihood of substantially increased importation, MBIE “does not pay sufficient attention to the threat of injury from further imports, focusing instead on the question of how substantial an increase is likely to be.”</p>	<p>factors include the likelihood of substantially increased imports, the capacity of exporters to increase production and exports, including inventories, and the prices of the dumped goods.</p> <p>MBIE addressed all of these factors in section 4.3 of the EFC Report, not just the matter of the likelihood of substantially increased imports.</p> <p>MBIE notes that it took into account a number of factors when considering future imports and the likelihood of increased imports. Not only did MBIE examine import volumes to assess whether there was a trend indicating a likelihood of substantially increased importation, but also exporter capacity, the availability of inventories and whether price effects would likely increase demand for further imports.</p>
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B. PNZ: Comments on the changes to the dumping margin found for Lamb Weston

Summary

<p>A29. PNZ noted the advice provided by MBIE regarding the changes to the findings on the level of dumping for Lamb Weston. PNZ suggested that for MBIE to make adjustments to the normal value post release of the interim findings in the magnitude of 15% plus of their previously ascertained normal value puts into question the integrity of the interim report, the investigation and MBIE themselves.</p> <p>A30. PNZ notes that MBIE and Lamb Weston had at least four occasions through the investigation process to clarify subject goods and any rebates and discounts that needed to be applied. At each of those steps MBIE was satisfied that all rebates and discounts had been taken into account, and MBIE had also satisfied itself that the comparison of subject goods was justified.</p>	<p>MBIE thoroughly rejects claims that the changes made to the level of dumping set out in the Step 1 EFC Report raise questions about the integrity of that report, the investigation or MBIE itself.</p> <p>Amendments to a Step 1 Final Report following comments on the Step 1 EFC Report are not uncommon and in no way put into question the integrity of the Step 1 EFC Report or the investigation.</p> <p>In the last dumping investigation undertaken by MBIE (Galvanised Wire from China and Indonesia), the dumping margin for a Chinese exporter was amended as a result of comments made on the Step 1 EFC Report for that investigation, so that the dumping margin for the exporter was <i>de minimis</i>, which had consequences for the “All Others” rate for imports from China, and also meant that the investigation in respect to that exporter was</p>
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<p>A31. PNZ notes that the meeting between MBIE and Lamb Weston happened post the release of the the EFC Report, well after day 150, which did not give interested parties reasonable opportunity to comment and once again highlights the failings of good process in this investigation.</p> <p>A32. PNZ’s comments on specific matters addressed the impact the decision made by MBIE has on the wider analysis for other exporters.</p>	<p>terminated. This did not change the overall outcome of the investigation which was that imports of the subject goods from other Chinese exporters were dumped and causing injury.</p> <p>Following the receipt of submissions on the Step 1 EFC Report, and before finalising the Step 1 Final Report for submission to the Minister, MBIE advised parties that as a result of information received from Lamb Weston the dumping margin had been reduced to <i>de minimis</i> levels and gave a summary of the reasons. Parties were given an opportunity to comment, which PNZ has taken up.</p> <p>MBIE provides all opportunities for parties to submit information and comments as required by the Act and the AD Agreement. In doing so it notes that Article 6.14 of the AD Agreement states that the procedures regarding the making available of information and receiving submissions are not intended to prevent the authorities from proceeding expeditiously with regard to reaching final determinations.</p> <p>As noted at paragraph 80 in the recent judgment on the New Zealand Steel judicial review action, “MBIE was not acting judicially. The exercise was inquisitorial not an adversarial contest between parties.” It is inevitable that parties will not have access to the confidential information used by MBIE in its analysis.</p>
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Physical differences

<p>A33. PNZ noted that following feedback from Lamb Weston on the draft Verification Report that the premium range should be excluded, but MBIE did not conclude that they should be. MBIE’s conclusions relating to the production of like goods to the subject goods are noted, and some differences such as salt brining and pointed out</p>	<p>In identifying the goods produced by Lamb Weston which were like the subject goods, MBIE had included product lines identified as premium grade compared with the regular grade exported. As a result of the submissions from Lamb Weston, MBIE accepted that there were physical differences affecting three premium product lines used in the comparison</p>
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<p>that the type of cut is a more significant difference, and expressed surprise that the EFC did not actually include analysis at this level for each exporter given it is the obvious physical difference across frozen fries.</p> <p>A34. PNZ suggested that the removal of the Lamb Weston premium range from the normal value analysis, or adjusting for price differences, sets the precedent for other exporters. This meant that MBIE should ensure that for Aviko and Farm Frites only premium products should be included in the dumping analysis since this is what they state they export to New Zealand.</p> <p>A35. PNZ also points out that the fact that the analysis of sales below cost indicates that products other than premium have been included in their analysis.</p> <p>A36. PNZ cites extracts from various public file documents regarding the products to be compared, and queries whether MBIE has verified information to establish whether sales have been made at below cost, which in PNZ’s view significantly invalidates the integrity of the verification.</p>	<p>because there were no domestic sales of regular product lines. Adjustments were made for the costs of these physical differences. Adjustments for physical differences were also made for goods from Clarebout, but not from Aviko or Farm Frites because the information provided did not demonstrate the need for such adjustments.</p> <p>The product line comparisons were based on specific cuts and sizes so there was no need to make any further adjustments. As explained in paragraph 115 of the Step 1 EFC Report, in calculating ex-factory normal values for domestic sales for each Dutch supplier, MBIE made the adjustments to the transaction-level price information, and aggregated the results by each product type, then established a weighted average export price for each of Aviko, Farm Frites and Lamb Weston. An overall weighted average for the Netherlands was then calculated.</p> <p>MBIE assessed sales at a loss in relation to each domestic transaction, and as noted in paragraph 104 of the Step 1 EFC Report, any sales at a loss were taken into account in establishing base prices in accordance with the requirements of Article 2.2.1 of the AD Agreement.</p>
<p>Post-sales discounts and rebates</p>	
<p>A37. PNZ notes that the file note of the meeting between MBIE and Lamb Weston records MBIE’s comment that there had been some contradictions in the information provided. PNZ is “stunned” that MBIE accepted further data without verification and considered it was not acceptable to allow such information with new rebates once dumping had been found.</p>	<p>MBIE agrees that it took several iterations to clarify the information required from Lamb Weston, but it was satisfied that on the basis of the totality of the information provided it could reach the conclusions that it now has. On this basis, and in terms of Article 6.6. of the AD Agreement, MBIE was satisfied with the accuracy of the information supplied. As also noted in the recent judgment, at paragraph 84, “I conclude that no standard of proof was imposed on MBIE beyond the requirement it be</p>

<p>A38. PNZ queried why Lamb Weston had made a power point presentation on how the rebate system worked in relation to an individual retail customer.</p> <p>A39. PNZ notes the provision of additional spreadsheet information and queries how MBIE satisfied that it has verified this information to a standard as required by the Act. Lamb Weston has had ample opportunity to provide the information on the adjustments.</p> <p>A40. PNZ questioned why MBIE accepted new base prices following the meeting on 28 April 2021, given its apparent scepticism recorded in the note of the meeting. This new information was not properly verified so how could it be included as new evidence, and it did not stand up to the standards required.</p> <p>A41. PNZ then raises the question of whether post-sales rebates came into effect in light of the downturn in sales due to pandemic lockdowns. PNZ also asks if the rebate is being counted twice, given that prices had declined over the year, suggesting increased costs of sales which may have been the effect of post-sales rebates and discounts. PNZ also claims that MBIE has not verified that the sample of invoices is representative of the total revenue per volume for that exporter on the domestic market for that product type.</p> <p>A42. PNZ also claims that there may have been an unfair adjustment made to the export price that would also apply to domestic sales in regard to “special costs” identified by Lamb Weston. PNZ suggests that these costs have been included in the export price in order to inflate it.</p> <p>A43. Additional matters raised by PNZ included the purchase of the product exported to New Zealand by Lamb Weston from Lamb Weston Meijer, which is not acknowledged in the EFC report with no adjustment made for sales that are not at arm’s length or MBIE has</p>	<p>satisfied on the information it relied upon and acted consistently with the SCM Agreement and the domestic legislation.” MBIE has done this.</p> <p>MBIE did not take account of any material provided by Lamb Weston relating to sales to retail customers.</p> <p>MBIE did not accept new base price lists following the meeting of 28 April 2021 with Lamb Weston. Lamb Weston provided additional information on each of the thousands of domestic transactions involved which related to the provision of rebates.</p> <p>The price lists referred to were related to Lamb Weston’s claims regarding quality differences, but were not used by MBIE as the basis for the physical difference adjustment, and were not relevant to the adjustments for post-sales discounts and rebates. The reference to the existence of price lists in the meeting note was not made by MBIE, and related to whether or not there was coverage of goods like the exported goods (Regular fries) in the domestic price lists.</p> <p>The post-sales rebates have not been counted twice. The normal values are based on a spreadsheet of all relevant domestic sales for the whole of FY2020. Section 5(3)(b) of the Act requires that the comparison of export price and normal value should be in respect of sales made at as nearly as possible the same time – both export sales and domestic sales were made throughout the year.</p> <p>The sample invoices were used to check that the amounts contained in the spreadsheet matched invoice amounts, and these were also checked against sales ledger entries.</p>
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<p>missed an internal transfer margin between Lamb Weston and Lamb Weston Meijer.</p> <p>A44. PNZ also refers to the extreme seasonality in price movement across the year for Lamb Weston and queries whether MBIE has analysed other exporter’s prices. PNZ suggests that the extreme price fluctuations would indicate that Lamb Weston is trying to provide a unique sample of domestic prices to ensure a nil dumping margin.</p>	<p>The adjustment made to the export price for “special costs” did not inflate the export price since they were deductions from the base price, making the export price lower.</p> <p>The invoices and sales to both export and domestic customers were from Lamb Weston Meijer, as clearly shown on the invoices themselves. There was no need to make any additional adjustments.</p> <p>MBIE has analysed the seasonality of prices of other exporters, and has found a similar pattern to that of Lamb Weston. As noted, the domestic values were based on information relating to thousands of transactions, not to a few sample invoices.</p>
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Reasonable opportunity to respond

<p>A45. PNZ points to the requirement in section 10C(2) of the Act to give parties written advice of the essential facts and conclusions that are likely to form the basis for a determination by the Minister, and goes on to say that section 10D(3) “then” requires the chief executive to give interested parties a reasonable opportunity to present in writing all evidence relevant to the investigation, and on justification being shown to present the evidence orally, and on request by an interested party to meet with other parties with adverse interests so that they can present opposing views.</p> <p>A46. It is suggested by PNZ that the process was not fair in that Lamb Weston had a call with MBIE, and the note of the meeting was prepared by Lamb Weston. MBIE should be required under the OIA to urgently prepare and provide its own record of that meeting, since provision of a file note prepared on behalf of a party does not satisfy MBIE’s disclosure obligations to PNZ and other parties. Also PNZ queried when and why that meeting was arranged, what its</p>	<p>The requirement set out in section 10C(3) of the Act does not apply only to the 30 day period following the release of the essential facts and conclusions under section 10C(2). Rather, the provision applies the requirements of Articles 6.1 and 6.2 of the AD Agreement. However, all of the provisions of Article 6 are not intended to prevent the authorities from reaching their determinations expeditiously.</p> <p>MBIE provided Public File versions of all relevant documents as soon as it could, and in the case of the revised conclusions arising from Lamb Weston’s submissions on the Step 1 EFC Report, made that information available to parties and invited comments. The two extra days provided to PNZ to make submissions on the revised conclusions was appropriate, taking into account the statutory timeframes for the investigation and was an adequate amount of time for further submissions considering the nature and extent of the changes from the Step 1 EFC Report.</p>
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<p>justification was, why that justification was accepted by MBIE, and where the power point slides are. It was also significant that a Vice President of Lamb Weston outlined the company’s surprise and concern at MBIE’s findings and the potential damage to Lamb Weston’s reputation. PNZ suggested that MBIE had assisted Lamb Weston in tailoring its final submission.</p> <p>A47. PNZ points out that the direct consequence of Lamb Weston’s submissions, which were presented two days after its call with MBIE, was MBIE’s agreement to adjustments which fundamentally changed its assessment of the dumping margin to de minimis and consequently changed its overall conclusions from one of dumping but no threat of material injury to one of no dumping and no threat. PNZ suggests that MBIE’s claim that it did not consider the changes in Lamb Weston’s dumping margin as a significant change is not an answer and illustrates a cavalier approach to process.</p> <p>A48. PNZ claims that MBIE’s “unequivocal” finding in the EFC Report that Lamb Weston had a dumping margin of 17% and is likely to continue to dump, should not have been reversed without PNZ being given a reasonable opportunity to prepare and present its opposing view. PNZ did not have an opportunity to request a meeting with other interested parties and would have done so, claiming that the chief executive would have been obliged to allow PNZ to meet and present opposing views.</p> <p>A49. PNZ notes the recently released High Court judgment in the New Zealand Steel case which stated that before a final determination is made the authority must inform all interested parties of the essential facts under consideration in sufficient time for the parties to defend their interests. This did not happen here. Lamb Weston met with MBIE, prepared the note of the meeting, and MBIE</p>	<p>The circulation of the Step 1 EFC Report, the receipt of comments on it, and the resolution of concerns raised about it is precisely why the Step 1 EFC Report is prepared and given to parties. Discussions with Lamb Weston to address its issues and the amendments included in the Step 1 Final Report, is entirely appropriate and consistent with the purpose of the Act and the AD Agreement, and any allegation of irregularity or a lack of impartiality on MBIE’s part is thoroughly rejected.</p> <p>The note of the meeting prepared by Lamb Weston included matters that MBIE identified as requiring inclusion. The relevant exchange of emails can be provided on the Public File.</p> <p>The extent of any party’s embarrassment or other emotion arising from MBIE’s reports and investigations is not something taken into account by MBIE in managing the investigation or reaching its conclusions. The revised dumping margin for Lamb Weston did not change MBIE’s overall conclusion that dumping was not causing a threat of injury. The finding of a margin of 17% in the Step 1 EFC Report was not “unequivocal” – it was made clear in that report that the numbers were based on information available to MBIE. As noted above, MBIE’s investigations are inquisitorial and not adversarial, and PNZ has not been denied fair process.</p>
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effectively agreed the adjustments without PNZ being allowed any time to respond and defend its interests.	
C. Clarebout	
A50. The comments, lodged by Van Bael and Bellis on behalf of Clarebout, noted and welcomed the findings in the Step 1 EFC Report.	MBIE has noted the comments.
D. Lamb Weston	
Summary	
<p>A51. In its comments on the Step 1 EFC Report Lamb Weston set out its view that the weighted average dumping margin found for Lamb Weston was based on significant errors and oversights. Lamb Weston considered that MBIE needed to adjust the weighted average normal values to account for three fundamental differences between domestic and export sales. These differences relate to product quality, rebates and discounts, and sales and marketing costs. Lamb Weston provided detailed arguments and evidence to support its contentions.</p> <p>A52. Lamb Weston acknowledged the findings in the Step 1 EFC Report that imports from Belgium and the Netherlands presented no threat of material injury to the New Zealand market.</p>	<p>There were no errors or oversights by MBIE. The Step 1 EFC Report noted that its findings relating to dumping were based on the information provided. Following the release of the Step 1 EFC Report, MBIE received further information and clarification from Lamb Weston relating to adjustments to normal values. In the absence of adequate information from Lamb Weston MBIE had been unable to make the adjustments sought.</p> <p>MBIE has addressed the matters raised by Lamb Weston regarding additional adjustments to the normal value, with the extent of any changes indicated below. Not all of the proposals have been accepted, but the outcome is that the weighted average dumping margin now established is virtually nil, and certainly at a <i>de minimis</i> level.</p> <p>This Step 1 Final Report reflects the revised conclusions regarding dumping by Lamb Weston.</p>

Adjustments for differences in quality	
<p>A53. Lamb Weston claimed that there are significant differences in product quality between some of the categories of exported goods and the compared goods sold domestically, because in the domestic market Regular and Freeze Chilled fries sell at a significant price discount compared with Private Reserve fries.</p> <p>A54. Lamb Weston provided an explanation for the differences in quality:</p> <ul style="list-style-type: none"> • Private Reserve (PR) Fries use higher specification raw materials with superior fry length and fewer defects, as well as an additional production process to enhance flavour. • Freeze Chilled (FC) Fries are cooked harder and longer to provide flexible storage for customers. • Regular (RR) Fries yield fewer serves per kilogram of potato, and have more defects. <p>A55. Lamb Weston noted that in the market, at the customer level, it actively markets PR fries, but does not push FC fries or RR fries.</p> <p>A56. Lamb Weston provided information on the standard differentials between PR, FC and RR fries for four of the compared product lines, and argued that the differentials provided a basis for adjustments for differences in quality on the basis of those differentials.</p>	<p>MBIE’s view is that quality differences are essentially a reflection of differences in physical characteristic, and this view is confirmed by the information provided by Lamb Weston.</p> <p>On the basis of the information provided by Lamb Weston, MBIE has removed a PR product line from one of the comparisons, since there were sufficient domestic sales of the similar RR product to allow a comparison with export sales.</p> <p>MBIE does not consider that simply comparing prices for the different categories of fries will provide a good basis for an adjustment to reflect differences in prices for export sales, because the prices also include an element for profit, and that does not provide a demonstrated basis for an adjustment.</p> <p>In calculating the level for physical difference adjustments for the three product lines to be compared, MBIE has calculated the differences in costs of goods sold plus SGA expenses, and applied the difference as the level of adjustment.</p>
Adjustments for additional rebate and discount programmes	
<p>A57. Lamb Weston has requested that further adjustments be made for post-sales discounts and rebates, that are additional to those already provided by MBIE. These further discounts and rebates, are discrete and apply cumulatively.</p>	<p>Adjustments for post-sales discounts and rebates can be made when the evidence provided supports the claims made.</p> <p>Lamb Weston provided details of the payments made under the three areas identified, including samples of translated agreements with major customers concerning the rebate programmes available. Lamb Weston</p>

<p>A58. Lamb Weston provided transaction level information on the level of discounts and rebates, and also provided samples of post-sales and rebate agreements with major wholesale customers. Lamb Weston considered that the agreements include discrete bonuses, promotional contributions and rebates.</p>	<p>identified the percentages of gross prices represented by the total amounts of discounts and rebates provided.</p> <p>MBIE has accepted the rationale for the adjustments proposed, but with the following amendments:</p> <ul style="list-style-type: none"> • The adjustment rates proposed by Lamb Weston were based on all sales, but since sales to retailers have been excluded from the normal value calculation, MBIE has used sales to wholesalers as the basis for the adjustment rates. This has resulted in a reduction in the rates claimed by Lamb Weston. • Certain discounts referenced in the rebate sample agreements have been excluded by MBIE, on the grounds that the discounts concerned appear to be covered in the other areas of post-sales discounts and rebates, and any further discount would be a duplication.
<p>Adjustments for differences in sales and marketing expenditure</p>	
<p>A59. Lamb Weston claimed that an adjustment should be made to reflect its selling and marketing expenses, since this expenditure was not required for export sales. The expenditure included the costs of sales and marketing employees and their operating budgets.</p> <p>A60. Lamb Weston provided details of sales and marketing expenditure incurred as SG&A costs, with the total cost expressed as a percentage of total sales. It was proposed that an adjustment should be made at this rate.</p>	<p>MBIE generally considers that costs or expenses that relate more to the general cost of business and not to the prices of the transactions being examined are not grounds for adjustment. However, where the connection to the sale is established and evidence is suitable, adjustment may be allowed in certain circumstances.</p> <p>MBIE has reviewed the information provided by Lamb Weston, which relates to overhead expenses involved in selling and marketing and, unlike the post-sales discounts and rebates for which an adjustment has been made, cannot be related to particular transactions. Accordingly, MBIE does not consider that any adjustments should be made to cover selling and marketing overheads. This is consistent with the approach taken with regard to other exporters in this investigation.</p>

Injury	
<p>A61. Lamb Weston noted and agreed with MBIE’s findings with regard to material injury and threat of material injury, but wished to emphasize two matters it had raised in its Foreign Manufacturer Questionnaire response:</p> <ul style="list-style-type: none"> • Because of the current difficulties of shipping product to New Zealand, it has been difficult to get product into New Zealand and it is an insignificant market for Lamb Weston. • While Lamb Weston will continue to respond to opportunities in New Zealand, the preference for domestic suppliers in that market remains a commercial reality, along with the barriers to access created by COVID-19. <p>A62. Lamb Weston was also concerned about MBIE’s comments relating to price undercutting and the suggestion that its domestic prices in the Netherlands were high. The prices which would result from the adjustments proposed by Lamb Weston did not support this view.</p>	<p>MBIE has noted Lamb Weston’s comments on the findings regarding material injury and threat of material injury. The comments Lamb Weston made in its questionnaire response helped inform MBIE’s conclusions regarding the likelihood of increased imports and the effect of stocks.</p> <p>MBIE also notes Lamb Weston’s comments regarding domestic prices in the Netherlands.</p> <p>The text of this Step 1 Final Report reflects the revised findings regarding normal values.</p>
E. European Commission	
<p>A63. The European Commission recalled that the AD Agreement requires that investigations of threat of injury should be considered and decided with special care. The EC noted MBIE’s finding and trusted that the investigation would be terminated without imposition of measures in compliance with New Zealand’s WTO obligations.</p>	<p>MBIE has noted the comments.</p>