MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

LABOUR, SCIENCE AND ENTERPRISE

NON- CONFIDENTIAL

Initiation of sunset review Anti-dumping duties

Preserved peaches from Spain

August 2016

NON-CONFIDENTIAL

New Zealand Government

Executive Summary

1. Heinz Wattie's Limited (HWL) is a wholly owned subsidiary. Its ultimate holding company is The Kraft Heinz Company, based in the United States. HWL submitted an application, on 6 July 2016, for the continuation of the anti-dumping duty on preserved peaches imported from Spain. HWL produces canned and preserved peaches at its Hastings plant along with a range of other processed and canned fruits and vegetables.

2. The current anti-dumping duty will expire on 4 August 2016 being five years from the date the duties were first imposed unless, at that date, the goods are subject to review. Five year reviews of anti-dumping duties are known as 'expiry' or 'sunset' reviews. If a review is initiated, the current duties remain in place pending the outcome of the review. Should the review find that the duty should remain in place, it will continue to be imposed for 5 years beginning from the day after new rates are established. Those rates will be established as a result of a reassessment of the current rates following a sunset review (if the sunset review finds that a continuation of the duties is warranted).

3. The Dumping and Countervailing Duties Act 1988 (the Act) provides that the Chief Executive shall initiate a review of the imposition of anti-dumping duty where requested to do so by an interested party that submits positive evidence justifying the need for a review.

4. The Ministry of Business, Innovation and Employment (MBIE) considers that positive evidence sufficient to justify the initiation of a review has been provided. This report therefore recommends that the General Manager, Science, Innovation and International Branch, acting under delegated authority from the Chief Executive of MBIE, initiate a review.

The Application

Background

5. New Zealand first imposed anti-dumping duties on preserved peaches from Spain in August 2011.

6. Anti-dumping duties expire five years from the date that they were last determined, or reviewed and reassessed. The domestic industry can apply for continuation of duties before they expire by providing MBIE with positive evidence justifying the need for a review. If MBIE initiates a sunset review, the duty remains in place for the duration of the review.

7. The goods subject to the review, if it is initiated, are described as:

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

8. Preserved peaches, imported from Spain, enter New Zealand under the tariff item and statistical key 2008.70.09.00L. The subject goods are not separately defined as the tariff item also includes nectarines.

9. Preserved peaches originating from Spain are subject to the normal rate of customs duty of five percent.

Sunset Reviews

10. A sunset review requires an investigation to determine whether the removal of the anti-dumping duty would likely lead to a continuation or recurrence of dumping and injury to the New Zealand industry.

11. Any interested party that requests a review of an anti-dumping duty is required by the Act to submit positive evidence to justify the need for a sunset review. [1] The Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the Anti-dumping Agreement) specifies that an application must be duly substantiated and made by or on behalf of the domestic industry with a reasonable period of time prior to the duties expiring.

12. MBIE received the application for a sunset review from HWL on 6 July 2016, which is a reasonable time before the duties expire on 4 August 2016. The application was updated with further information and resubmitted prior to 4 August 2016.

[1] The Dumping and Countervailing Duties Act 1988, section 14(8), states: "The [Chief Executive] may, on his or her own initiative, and shall, where requested to do so by an interested party that submits positive evidence justifying the need for a review, initiate a review of the imposition of anti-dumping duty… in relation to goods and shall complete that review within 180 days of its initiation."

Consideration of the information presented

13. MBIE considers that the requirement under section 14(8) of the Act for an interested party to submit “positive evidence justifying the need for a review” sets a lower threshold of information than that required under section 10(2) of the Act, which addresses evidence required to initiate new investigations.

14. This assessment is supported by the international jurisprudence on the Anti-Dumping Agreement,[2] and the WTO Agreement on Subsidies and Countervailing Measures,[3] which has evidentiary provisions that are very closely aligned with those of the Anti-Dumping Agreement.

15. MBIE considers, therefore, that while an application for the initiation of a sunset review may cover the information specified in section 10(2) of the Act, and paragraph 2 of Article 5 of the Anti-Dumping Agreement, it is not necessary that all of those matters are addressed or addressed in full for an application to constitute “positive evidence justifying the need for a review” and to be duly substantiated.

[2] World Trade Organisation Dispute Settlement Panel, *United States – Sunset Review of Anti-Dumping Duties on Corrosion-Resistant Carbon Steel Flat Products from Japan* - WT/DS244/R - 14 August 2003 (paragraph 7.27).

[3] World Trade Organisation Dispute Settlement Panel, *United States – Countervailing Duties on Certain Corrosion-Resistant Carbon Steel Flat Products from Germany* - WT/DS213/R - 3 July 2002 (paragraph 8.42).

New Zealand industry and like goods

16. Article 11.3 of the Anti-Dumping Agreement states that a request for a sunset review "must be made by or on behalf of the domestic industry". Section 3A of the Act defines the term industry to mean:

    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.

17. The Act also defines "like goods":

    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.

18. HWL has advised that it continues to produce preserved peaches which are 'like' the subject goods imported from Spain and that it remains the only New Zealand producer of preserved peaches. MBIE is not aware of any other New Zealand producer of preserved peaches. Based on the statement by HWL in its application and the evidence from the original investigation, and other investigations into like goods from other origins, MBIE considers that there is sufficient evidence to conclude that the preserved peaches produced by HWL are "like goods" to the goods subject to the duty.

19. MBIE considers that the information available constitutes sufficient evidence that there is a domestic "industry" as specified in section 3A of the Act. That industry consists solely of HWL. Therefore, HWL has standing to make the application.

Continuation or recurrence of dumping

Export Price

HWL calculation of export price

20. HWL has calculated the ex-factory price using Statistics New Zealand data for the 12 months to 30 April 2016.

21. It has divided the total value for duty (VFD) figure, in New Zealand dollars, by the import volume, to arrive at a NZ dollar VFD per kg amount. It has then taken that amount and converted it to Euros to arrive at the Free-on-Board (FOB) Euro price. Finally, it took €0.01 off the FOB Euro price to account for freight from factory to the port (see below). This enabled the applicant to derive an ex-factory export price.

22. To calculate the exchange rate, HWL has used a 12-month rolling average exchange rate sourced from New Zealand's Inland Revenue Department.

Adjustments to Export Price

23. The Act requires that adjustments be made to the export price for costs, charges and expenses incurred in preparing the goods for shipment to New Zealand that are additional to those which are generally incurred on sales in the domestic market of the country of export, and any other costs, charges and expenses resulting from the exporting of the good or arising after shipment from the country of export.

24. HWL has estimated the cost of inland freight (from the factory to the wharf in Spain) at 1 percent, based on its understanding [redacted]. HWL has not deducted any further export costs when calculating the ex-factory price. That 1 percent estimate works out to be approximately €0.01 per kg.

25. The table below shows HWL's calculation of an ex-factory export price on the basis outlined above. All of the figures in the table below are publicly available, or can be calculated from publicly available figures, except the freight to port estimate:

Table 1: HWL's calculation on export prices

Measure	Unit	Amount	Source
Volume	kgs	130,166	StatsNZ
Value for Duty (VFD)	NZD	$70,529	StatsNZ
VFD per kg	NZD	$1.85	Calculation
NZD/EUR exchange rate		0.6365	Calculation from IRD figures
VFD per kg	EUR	€1.17	Calculation
Freight to port (1%)	EUR	€0.01	HWL estimation
Ex-factory price in Spain per kg	**EUR**	€1.16	**Calculation**

MBIE's assessment of export price evidence

Base export price (VFD per kg – EUR)

26. MBIE has considered the evidence that HWL has provided on export prices in the context of the requirements of positive evidence as outlined in paragraphs 13 to 15 above.

27. HWL has calculated the base export price on publicly available information, collected from data on actual imports to New Zealand, and an exchange rate calculated from information provided by New Zealand's Inland Revenue Department. In establishing export prices, MBIE accepts average per unit prices from Statistics New Zealand import data if the product is closely aligned with the tariff item or if the imported goods on which the applicant's average VFD has been calculated can be identified in Customs New Zealand import statistics.

28. In this case, MBIE sourced detailed Customs import statistics and was able to align the import data, on which the applicant based its average VFD per kg amount, to actual imports of preserved peaches from Spain. An analysis of the Customs statistics showed that the average VFD figure calculated by the applicant was very close to the figure registered in the Customs statistics for identifiable imports of the subject good over the same time period.

29. On this basis, MBIE considers that HWL has provided information that is reasonably available in order to calculate the base export price per kilo in Euros.

Adjustments to export price

30. To calculate the ex-factory price in Spain, HWL made a deduction for internal freight from the factory to the port of one percent of the VFD price (€0.01). HWL notes that it made this allowance on the basis of its understanding [redacted].

31. MBIE checked the accuracy of this deduction against figures established in the 2011 original investigation into dumped imports from Spain. In the final report for that investigation, in August 2011, the Ministry of Economic Development (MED) found that most of the Spanish producers had inland freight, customs and port handling charges of [redacted] percent of the export price.

32. MBIE considers that HWL's estimate of 1 percent adjustment to the New Zealand dollar VFD (FOB) prices to account for freight from factory to port is reasonable. While there are likely to be other costs involved in the export of the goods up to the FOB point, such as port handling charges and clearance fees and the cost of credit, such costs, if relevant, would reduce the export price further, increasing any dumping margin found.

Normal Value

HWL calculation of normal value

Retail prices

33. To estimate the normal value of preserved peaches in Spain, HWL has worked from the average retail price in Spain. To generate what it considers to be an average retail price per kg, HWL sourced a sample of market prices for preserved peaches in Spain from three major supermarket chains via their online shopping websites.

34. HWL sourced supermarket prices of two products which it considered were “like goods” to the goods exported to New Zealand (in each case, 480g cans of preserved peaches in syrup) and then calculated the average price per kilogram based on this sample of six different prices.

35. HWL calculated an average price per kilogram of €3.37 based on the sample of prices mentioned above. HWL advised that, as the websites from which these samples were sourced do not include quantities, it was not possible to calculate a weighted average price.

Adjustments to the normal value

36. HWL has made three adjustments to the average retail price, derived above, to arrive at what it claims is the ex-factory domestic price per kilogram. Those costs are VAT, a retailer’s margin and freight to the customer.

37. The tax treatment must be tax neutral when comparing the normal value and the export price. The supermarket prices provided by the applicant are inclusive of VAT so a downwards adjustment must be made to the prices. HWL notes that the Spanish government collects VAT at three rates: 21% with a reduced rate of 10% for some items, including non-basic food products, and a further reduced rate of 4% for other items, including basic foodstuffs. HWL has used the non-basic food items rate of 10%.

38. HWL calculated a retailer’s margin based on a Bord Bia’s Report/Guide[4] which provides a range of Spanish retail margins of between 25 – 35 percent. HWL noted that a 25 percent margin has been used by the Ministry in previous applications. The company stated that it has limited knowledge of margins in Spain but that it expects it to be at the bottom end of the spectrum identified in the Bord Bia report as preserved peaches command a much smaller [redacted] percent retailer margin in the New Zealand market.[5] In its normal value calculations, HWL used a 25 percent retailers’ margin which it deducted from the VAT-exclusive price.

39. Finally, HWL has estimated an adjustment for internal domestic freight to the retailers’ premises at 3 percent, or €0.07, based on its knowledge [redacted]. HWL considers that freight rates in Spain will be consistent with those in New Zealand. The company also said that in New Zealand freight is [redacted].

40. The following table shows HWL’s calculation of what it considers is the adjusted (or ex-factory) normal value using the information and methodology described above.

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[4] Irish Food Board (Bord Bia) “Successfully Entering the Spanish Retail Market – An Understanding of Price Margins and Supply Chain Mechanics” (September 2010).

[5] HWL calculated a [redacted] percent retail margin, on preserved peaches, based on its own prices to retailers and the average retail price of canned peaches which was sourced from Nielsen data. Nielsen is a global company which measures consumer purchases, preferences and behaviour through panels, databases, methodologies and other technology. It gathers information from a large number of retail outlets, using a scanner-based sales and information gathering tools.

Table 2: HWL-calculated adjusted normal value
(all amounts in Euros)

Average retail selling price per kg	€3.37
Less:	
- VAT (10%)	€0.31
- Retailers' margin (25%)	€0.61
- Freight to customer (3%)	€0.07
Ex-factory price (€/kg)	€**2.38**

MBIE's assessment of normal value evidence

Retail prices

41. HWL noted that the 'Hero Melocoton' 480g can price differs by €0.40 between El Coute Ingles and Carrefour supermarkets and considered that, because it is a like-for-like product, the price differential was likely due to a difference in retail margin or a price promotion between these two supermarkets. HWL considered that the products it chose were the closest representation of like goods in Spain with all samples chosen being 480gm canned peach halves in syrup.

42. HWL stated that the supermarket prices it provided are valid between April – July 2016. While this four month period is slightly outside the period the company used to establish export prices (April 2015 – March 2016), MBIE is satisfied that the supermarket prices relate to sales made nearly the same time as the export price information. On 8 July 2016, MBIE checked the same sample of products using the retailers' online prices. Two out of the three retailers had identical prices. The third retailer had higher prices indicating that while exact retail prices fluctuate over time, this is likely to reflect different retailers' promotions, rather than sustained price increases.

43. MBIE considers that the six different retail (supermarket) prices that HWL has quoted is a reasonable basis to estimate the average retail price per kilogram of preserved peaches in Spain.

Adjustments to the normal value

44. HWL has made three adjustments to its calculation of the average retail price, to arrive at what it argues to be the ex-factory price: VAT, retailers' margin and the internal freight cost to customer.

45. MBIE notes that the Spanish government uses a three-tier model for charging VAT: 21%, 10% and 4%. The lower two rates apply to food products, with *basic foodstuffs* being charged at the lower rate. HWL has used the *non-basic* food items rate of 10% in its calculations.

46. MBIE has been unable to source information on whether the Spanish government would consider preserved peaches as a *basic or non-basic* food item. In the 2011 original investigation into dumped imports from Spain, MBIE used the middle VAT rate at the time (then 8%). MBIE understands that Spain has increased its VAT rates across the three tiers since the 2011 investigation but that it has not changed the relevant criteria for each of those tiers.

For the purposes of initiation, MBIE is satisfied with HWL's contention that the VAT rate for preserved peaches is 10%.

47. HWL has used a rate of 25 percent for the retailers' margin, and stated that this is based on a Bord Bia's Report/Guide which provides a range of Spanish retailer margins of between 25 – 35 percent.

48. MBIE checked the accuracy of HWL's deduction for a retail margin against margins established in the 2011 investigation into dumped imports from Spain. In its application for anti-dumping duties on Spanish preserved peaches, HWL used a retailer margin of [redacted] percent to calculate the normal value. In the investigation that followed, MBIE sourced information from the Bord Bia's Report/Guide which HWL has referenced in its current application. As noted by HWL, the Bord Bia report indicates that a Spanish grocery retailers' margin for sales of branded products, inlcuding preserved peaches, would be between 25 and 35 percent. In the 2011 investigation, when calculating normal values, MBIE took a conservative approach and applied the lower end margin (25 percent).

49. MBIE notes that the Board Bia report, cited by HWL and used in its application for a continuation of duties, is dated over five years ago. However, MBIE considers it unlikely that current retail margins in Spain are significantly different than they were in 2011. In any event, it is less favourable for the applicant to use the 25 percent Spanish retail margin sourced from the 2011 investigation than the [redacted] percent New Zealand retail margin it calculated using its own prices. MBIE considers the 25 percent retail margin provided by HWL constitutes positive evidence and is sufficient for establishing an ex-factory normal value.

50. HWL has claimed 3 percent as the internal freight rate to the customer and has made a deduction based on this percentage amount to calculate the normal value. The company calculated this 3 percent figure [redacted] and considers that freight rates in Spain are consistent with those in New Zealand. For the purpose of initiating a review, MBIE considers the 3 percent freight cost provided by HWL constitutes positive evidence and is sufficient for establishing an ex-factory normal value.

Comparison of export price and normal value

51. The table below shows the comparison of export price and normal value and the resulting dumping margin, calculated by HWL:

Ex-factory export price (€/kg)	**Ex-factory normal value (€/kg)**	**Dumping margin (€/kg)**	**Dumping margin as % of export price**
€1.16	€2.38	€1.21	104%

Conclusion

52. HWL has provided reasonable evidence that preserved peaches of Spanish origin continue to be sold in New Zealand at dumped prices.

53. MBIE concludes that the information provided by HWL constitutes positive evidence of a likelihood of continuation of dumping into New Zealand if the current anti-dumping duties were removed.

Continuation or recurrence of material injury

Introduction

54. HWL submits that existing trade remedies in place have been effective in removing dumped imports from the market and from causing material injury to the New Zealand industry. Anti-dumping duties are in place currently for China, Spain, South Africa and Greece to prevent dumping and material injury. The majority of imports from other countries are at a significantly higher unit value for duty and do not cause injury to the New Zealand industry through dumping.

55. However, noting that the duty is based on a reference price, HWL states that the effectiveness of the duty has been eroded over time, as producers' costs have increased over time and consequently prices have increased. The company stated that because the reference price duties are confidential, it is unable to ascertain if import unit values are above or below the reference prices. However, because it is in the interests of exporters to price up to the reference price (so that importers do not incur the duty), it is expected that this has been done.

56. HWL claims that, as has been demonstrated in previous investigations conducted by MBIE, it only takes a relatively small volume (in the region of 100-300 tonnes) to have a price-depressing effect in the New Zealand market which HWL must react to, and which ultimately causes it material injury. HWL submits that MBIE needs to be mindful of this when reviewing the application.

57. In addition to the above general comments, HWL provided an analysis of, and information to support:

    (a) the likely extent of increased imports in response to the removal of the duty;

    (b) the effect on prices should the duty be removed; and

    (c) the economic impacts on the industry should the duty be removed.

HWL's forecasts on a recurrence of material injury

58. HWL provided projections for its 2017 and 2018 financial years (which end in December), for its domestic canned peach operation, on the basis of the duties remaining in place and on the basis of the duties being removed. In order to further measure the extent of the impact on the company, in the absence of anti-dumping duties, HWL also provided its actual results for its 2014 and 2015 financial years and a forecast for its full 2016 financial year.[6] The impact of the removal of the anti-dumping duties can be seen from the company's 2017 financial year onwards.

[6] HWL advised that its full year 2016 forecast figures include actual data for the first 6 months (January – June) and forecast data thereafter (July – December) and are based on the assumption that the duties will remain in place for all of that year because it will take a number of months for importers to arrange new contracts with the Spanish suppliers and to ship the product to New Zealand.

59. Using these projections, HWL analysed what it considered would be the volume, price and economic effects on the company's production of preserved peaches, if the anti-dumping duties on preserved peaches from Spain were removed. The projections show the company's sales volume, sales revenue, cost of goods sold, gross profit, selling and administration expenses and earnings before interest and tax (EBIT). These volume, price and economic effects are examined below.

Volume Effects

60. HWL submits that there are active importers and exporters that have been previously involved in exporting canned peaches from Spain to New Zealand. Further, HWL submits that these parties would be able to resume further imports of canned peaches into New Zealand should the dumping duties be removed.

61. HWL provided a United States Department of Agriculture (USDA) Gain report, from 2011, which referenced the 2010/11 Spanish canned peach production to be around 95,000 tonnes. While a more recent Gain Report was unable to be sourced, HWL did provide a recent website article[7] which noted that Spain is forecasting canned peach production to be around 92,270 tonnes.

62. In its application HWL did not provide any estimates of the likely increase in import volumes from Spain should the duty be removed. In order to provide an indication on the volumes that could be imported under a different pricing structure (i.e. if the duty was removed) HWL noted that an industry as large as the Spanish canning industry would be able to saturate the New Zealand market with discretionary stocks. The company also stated that it could be assumed that all current importers of canned peaches would move their supply to Spain.

63. The forecasts provided by HWL for its 2017 and 2018 financial years show a [redacted] tonnes from actual sales volume achieved in 2015. However, given that HWL's forecasts in the absence of the duty [redacted] attributable to imports from Spain, this forecast [redacted] sales volume [redacted] increase in import volumes should the duty be removed.

64. The [redacted] sales volume is consistent with the company's claim that it [redacted] dumped product from Spain (in the absence of duties) [redacted], thereby ensuring that the dumped goods [redacted]. This approach is reflected in the company's projections under "Price effects" below.

Price Effects

Price undercutting

65. HWL provided information to show that it is experiencing [redacted] percent price undercutting on its Wattie's brand, and [redacted] percent on its Oak brand, when these prices are compared to current prices of imports from Spain. HWL stated that this margin of undercutting is

[7] "Canned peach prices rise of higher demand" Foodnews Agribusiness Intelligence (June 2016).

significant and that it could be significantly higher given that, should the anti-dumping duties be removed, it is in the interests of importers to pass on lower prices to consumers.

66. HWL has calculated price undercutting amounts based on a comparison on its 2015 Net Sales Value (NSV) figure (or net price) less freight to the customer, with the ex-wharf price of the Spanish imports. This is the level of trade which HWL considers the imported and the domestically-produced product first compete with each other in New Zealand.

67. To calculate an estimated ex-wharf price of imports of canned peaches from Spain, HWL has used the New Zealand dollar VFD (FOB) average per unit price that it based its dumping calculations on. This information was sourced from Statistics New Zealand data for the 12 months to 30 April 2016.

68. HWL has then added amounts for ocean freight and insurance based on the difference between the CIF and FOB values recorded in statistical data relating to imports from Spain, over the April 2015 – March 2016 period, under the tariff item and statistical key under which the subject goods are classified. HWL also added an amount for customs clearance, customs duty and devanning costs to derive an ex-wharf cost.

69. The table below shows the price undercutting amounts (in New Zealand dollars), for its Wattie's and Oak brands, based on the figures and methodology explained above:

Brand	HWL's net sales value/kg	Ex-wharf cost of imports from Spain per kg	Undercutting (per kg)	Undercutting as % of HWL's price
Wattie's	[redacted]	2.16	[redacted]	[redacted]%
Oak	[redacted]	2.16	[redacted]	[redacted]%

MBIE's assessment of the price undercutting evidence

70. MBIE checked HWL's calculation of the VFD (FOB) and CIF figures against Customs import data. As noted above, an analysis of the Customs statistics showed that the average VFD figure calculated by the applicant was very close to the figure registered in the Customs statistics for identifiable importations of the subject good over the same time period. Also, these same imports provided a reasonable basis on which to estimate sea freight and insurance costs and MBIE checked the applicant's calculation of ocean freight and insurance amounts against Customs import data to confirm their accuracy.

71. In the last review the Ministry undertook of dumped imports of preserved or canned peaches from abroad, it concluded that the relevant level of trade was ex-wharf (for imports by supermarkets) and ex-store (for imports by distributors). In respect of imports of Spanish preserved peaches, MBIE considers it is likely that a large share of imports will be made by supermarkets and, therefore, it is reasonable that the ex-wharf level of trade is used to assess the extent of any likely price undercutting for the purpose of this application.

72. HWL has provided price undercutting amounts on the basis of current import prices from Spain. The company is unable to ascertain if import prices from Spain are above or below the reference price anti-dumping duties because these prices are confidential. However, HWL noted that it is in the best interests of exporters to price up to the reference prices and that it

expects that this has been done. HWL also stated that, if the duties were removed, importers could pass on lower prices to consumers thereby increasing the price undercutting margin.

73. MBIE checked the current import prices of Spanish peaches from Customs statistics against the confidential reference prices in place. This showed that some of the shipments identified by MBIE as subject goods were priced [redacted]. [redacted]. MBIE considers it reasonable to conclude that the removal of the anti-dumping duties would likely result in lower import prices thereby increasing the extent of any current price undercutting.

Price depression

74. HWL's premium brand is the Wattie's brand, while Oak is [redacted]. HWL stated that that it [redacted], and that it [redacted]. HWL submits that the Wattie's price can only be maintained if [redacted] paying the Wattie's price.

75. HWL submits that in previous cases of dumping, it lost market share [redacted] and prices were forced downward.

76. HWL notes that the dumped prices that it has identified would allow retailers to command retail price points close to NZD1.00 per 410g can of preserved peaches. HWL states that retailers have historically used this price as a loss leader to drive foot traffic in-store. HWL submits that if dumped preserved peaches could be traded at this price point in the New Zealand market, then it would face clear and immediate threats of having to decrease wholesale prices to customers.

77. MBIE notes that the forecasts provided by HWL for the 2017 and 2018 financial years show a significant decrease in average prices [redacted] compared with actual prices achieved in 2015, which is consistent with the estimated level of price undercutting.

Price suppression

78. HWL claims that the effects of dumped preserved peaches from Spain returning to the New Zealand market would also mean that price suppression would exist. HWL would be unable to offset the significant undercutting by means of cost savings and price increases elsewhere. In fact, the company claims that the opposite effect would occur with its unit cost base increasing due to market share being taken by dumped imports of preserved peaches from Spain, causing costs per tonne to increase.

79. HWL also noted that it has [redacted] with the orchardists who supply HWL and is therefore [redacted].

80. As noted above, HWL provided forecast tables for its 2017 and 2018 fiscal years, which outline sales volume, List Sales Price, Net Sales Price, direct cost of goods sold, gross profit and EBIT (net profit), broken down by each of the two major brands that HWL sells under (Wattie's and Oak). These forecast tables are provided with two scenarios: the first with the assumption that the duty is removed, and the other with the assumption that the duty is maintained. The

forecast scenario with the duties removed shows a significant depression of prices for the 2017 and 2018 financial years compared with the actual price achieved for the 2015 financial year.

81. HWL further submits that if it incurred injury to the extent that it claims it would, in the event that the duties are removed, then it would [redacted]. HWL further states that this would affect [redacted].

Economic Effects

Sales Revenue and Volume

82. HWL has referred to its forecasts for the 2017 and 2018 financial years which show a significant reduction in sales revenue [redacted] should the duties be removed. HWL said that these forecasts are based on its forecast sales volume for its financial year 2016 year and assuming that it would as a minimum have to [redacted] of dumped imports [redacted] while at the same time [redacted].

83. As noted above under price depression, MBIE considers that the price depression is consistent with the estimated price undercutting. MBIE also notes that the sales volume forecast for the 2017 and 2018 financial years is [redacted] which is consistent with HWL's claim that it will [redacted], if the duties are removed, [redacted].

84. HWL's forecasts show both a reduction in sales revenue [redacted] and a significant reduction in total net sales revenue for the 2017 and 2018 financial years, should the duties be removed.

Market Share

85. HWL stated that historically, when dumped product has entered the New Zealand market, it has lost market share due to downward pressure on prices. In the present case, HWL submits that it would be expected that, in the event of the anti-dumping duties lapsing and in light of the price point retailers could achieve, the preserved peach market could grow as new consumers enter the market. Alternatively, existing consumers could switch brands causing the company to lose market share.

86. Under the above scenario, HWL stated that it would aim [redacted]. It submits that it would do so by [redacted] although it would eventually lose market share, [redacted], while the market grows.

Profit

87. HWL submits that lower prices as argued above, will lead to lower profits, particularly through increasing [redacted]. Further HWL submits that those lower forecasted profits would make it [redacted]. They would result in [redacted], for example [redacted]. HWL further notes that if [redacted], the associated supporting horticultural industry would suffer [redacted]

[redacted]. The company stated that it is the sole customer for the peach varieties that the orchardists grow as they are developed for use in processing and are less suitable as a fresh market peach.

88. HWL notes that the loss that it has forecasted is understated, due to unclear expectations from retailers about how HWL would be expected to protect its position in the market. For example, retailers [redacted]. According to HWL, at the import price level calculated, it could be expected that retailers would [redacted].

89. MBIE accepts the difficulty in estimating likely events, as HWL outlines. However, it notes that the company's profit forecasts have been based on its forecast price depression and sales revenue and volume figures and are clearly consistent with its claim that it will [redacted], if the duties are removed, in order to [redacted]. The 2017 and 2018 forecasts provided by HWL clearly show material reductions in gross and net profit per kilogram and in absolute profit figures, should the duties be removed.

Return on investment

90. HWL submits that lowering profits in a market with dumped goods will result in [redacted] and a consumer backlash in regards to preserved peaches. HWL submitted that the consumer backlash would extend to some consumers switching to other brands in other product categories under the Wattie's brand. These consumers would perceive HWL to [redacted] and this would have a negative impact across all categories in which HWL markets the Wattie's brand.

Productivity

91. HWL outlines that it is [redacted], and outlines the cost of processing that crop. The company claims that if dumped product reentered the market, it would need to consider whether [redacted]. HWL stated that it would need to consider if such a loss [redacted] could be mitigated through [redacted].

Utilisation of Production Capacity

92. HWL submits that its production capacity is constrained by the crop that orchardists can deliver. The company claims that, if anti-dumping duties are removed and material injury does occur, [redacted]. This may [redacted]. Once the orchardists remove their peach trees they are permanently gone and the lag of five years to create a peach crop of would mean [redacted].

Other economic effects

93. HWL stated that it undertakes significant consumer and trade marketing activities in order to maintain market share and protect the price levels of its product. The company asserts that, should dumped product reappear in the New Zealand market, it would need to either increase

its consumer and trade marketing activities to maintain volumes and market share, or [redacted]. Either way, the company would incur injury.

94. HWL asserts that the loss of volume, sales revenue and profits from the return of dumped imports to the New Zealand market would also have significant adverse effects upon HWL's achievable return on investments, cash flow, inventories, employment and growth. HWL did not quantify these effects but did note that it would [redacted].

Causal Link

95. HWL states that a causal link was established in the original investigation and that subsequent reviews of anti-dumping duties on imports from other sources had found that the removal of the duty would result in material injury to the New Zealand industry. Further, HWL submitted that with the availability of canned peaches from Spain for export this causal link still remains in place, as was determined in the original investigation.

96. HWL also stated that it is not aware of any material injury being caused through fairly traded branded product. The company also stated that there do not appear to be any other factors causing injury to the domestic industry such as a contraction in demand, changes in the pattern of consumption, developments in technology or its own export performance.

Conclusion on injury

97. HWL has provided reasonable evidence of the current import price to New Zealand of canned peaches from Spain and information to reasonably conclude that, if the anti-dumping duties were removed, the imported goods would enter New Zealand at lower prices. The information shows that the imported price of canned peaches from Spain, in the absence of duties, would be able to undercut HWL's average selling price leading to price depression and price suppression.

98. HWL has made reasonable assumptions that these price effects would have an adverse effect on its profits, return on investments, utilisation of production capacity, cash flow, inventories, employment and growth. The extent to which these price effects would adversely impact on HWL will depend on the extent to which the company is forced to [redacted] to compete with the lower-priced imports. In any event, MBIE considers that the information provided by HWL constitutes positive evidence of a likely recurrence of material injury if anti-dumping duties were removed, sufficient to justify the initiation of a review.

99. MBIE notes that material injury can only be assessed in relation to the New Zealand industry which produces goods that are "like" the goods to which the duty applies. As outlined above under "New Zealand industry and like goods", this is that part of HWL's operation which produces preserved peaches for sale on the New Zealand domestic market. The impact of the removal of the duty on the growers who supply HWL with peaches, and on other parts of HWL's seasonal production, cannot therefore be taken into account in any injury assessment or in any decision to impose or continue the imposition of anti-dumping duties.

Conclusion

100. In order for a review to be initiated, the Act requires a request by an interested party that submits positive evidence justifying the need for a review. The Anti-Dumping Agreement requires that a duly substantiated request must be made by or on behalf of the domestic industry within a reasonable period of time prior to the expiry of the anti-dumping duties, and that the expiry would likely lead to a continuation or recurrence of dumping and injury.

101. MBIE is satisfied that an application has been made within a reasonable period of time prior to the expiry of the duties and that it contains positive evidence sufficient to justify the initiation of a review.

Recommendation

102. It is recommended, in accordance with the section 14(8) of the Act and acting under delegated authority, that you:

    a. Formally initiate a review of the imposition of the anti-dumping duty on preserved peaches from Spain; and

    b. Sign the attached notice of the initiation of the review for publication in the *New Zealand Gazette.*

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Trade and Regulatory Co-operation

Mike Andrews
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Trade and Regulatory Co-operation

Agreed/ Not Agreed

Peter Crabtree
General Manager
Science, Innovation and International Branch