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**LABOUR, SCIENCE
AND ENTERPRISE**
FEBRUARY 2017



Preserved peaches from Spain

Non-confidential final report

Dumping and Countervailing Duties Act 1988
Sunset Review 2016

Non-Confidential

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Abbreviations

The following abbreviations are used in this Report:

Act (the)	Dumping and Countervailing Duties Act 1988
Anti-Dumping Agreement (the)	WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (GATT) 1994
Chief Executive	Chief Executive of the Ministry of Business, Innovation and Employment
CIF	Cost, Insurance and Freight
EBIT	Earnings Before Interest and Tax
EUR	Euros
FOB	Free on Board
HWL	Heinz Wattie's Ltd
MBIE	Ministry of Business, Innovation and Employment
NSV	Net sales value
NZCS	New Zealand Customs Service
NZD	New Zealand dollar
POR(D)	Period Of Review for Dumping – 1 July 2015 to 30 June 2016
POR(I)	Period Of Review for Injury – 1 January 2014 to 31 December 2016
VAT	Value Added Tax
VFD	Value for Duty
WTO	World Trade Organisation

CONFIDENTIALITY OF INFORMATION

In a number of instances, information in this report, including figures in the tables, is considered confidential because the release of this information would be of significant competitive advantage to a competitor or its release would otherwise have a significant adverse impact on a party.

In these instances the information been redacted or where necessary has been summarised in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. For example, in certain tables the actual figures have been replaced by percentage figures showing percentage changes from the previous period. Shading has been used to show where this occurs.

Where it has not been possible to show summaries in this manner, the information has not been susceptible of summary because to do so would unnecessarily expose the provider of the information to commercial risk.

Executive summary

Introduction

1. On 4 August 2016, the Ministry of Business, Innovation and Employment (MBIE) initiated a review of the anti-dumping duties that currently apply to imports of preserved peaches from Spain. The duties under review have been in place since August 2011 which was when the original investigation was completed.

2. The goods under review are described as:

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

3. This report considers the likelihood of a continuation or recurrence of dumping causing a continuation or recurrence of material injury, should anti-dumping duties be removed.

4. MBIE initiated the investigation following an application by Heinz Wattie's Limited (HWL). HWL is the only New Zealand producer of goods "like" those imported from Spain and therefore constitutes the New Zealand industry for the purpose of this review.

Dumping

5. There was a small number of imports of the subject goods into New Zealand over the period of review for dumping (1 July 2015 to 30 June 2016) which has enabled MBIE to establish export prices on the basis of these shipments. Limited cooperation from the Spanish producers and exporters of the subject good has meant that MBIE has established normal values for the Spanish producers having regard to all information available.

6. On the basis of the information gathered in the review, MBIE has concluded that preserved peaches originating from Spain and exported to New Zealand continue to be dumped in very small quantities. MBIE has also concluded that, should the anti-dumping duties be removed, there is likely to be a continuation of dumping although there is insufficient positive evidence to assess volumes.

Injury

7. HWL is not currently being injured due to preserved peaches imported from Spain, because of the imposition of anti-dumping duties on these imports.

8. The review of injury has focused on the likelihood of a recurrence of material injury to the domestic industry should the present anti-dumping duties be removed. MBIE has concluded that:

- While there continue to be imports into New Zealand from Spain, imports from this source have slowed down significantly since anti-dumping duties were imposed in 2011.
- In the absence of duties, imports of preserved peaches from Spain are likely to be priced below HWL's canned peaches should they resume in significant volumes.
- The information suggests that there are well-established distribution chains available in New Zealand to cope with any increase in import volumes. Furthermore, the New Zealand market does not have significant barriers to entry.

- The Spanish industry may, over longer timeframes, have the capacity and intention to resume exports into New Zealand in volumes that would be significant relative to New Zealand production and consumption (market size). However, based on the lack of positive evidence available to it MBIE is not able to conclude that it is 'likely' that the Spanish industry will resume exports to New Zealand at quantities sufficient to cause material injury to the domestic industry.

1. Proceedings

1.1 Introduction

9. The anti-dumping duties that currently apply to imports of preserved peaches from Spain have been in place since August 2011 when the original investigation was completed.

10. On 4 August 2016, the Chief Executive of MBIE initiated a review of the continued need for the imposition of the anti-dumping duties, pursuant to section 14(8) of the Dumping and Countervailing Duties Act 1988 (“the Act”), on the basis of positive evidence submitted by Heinz Wattie’s Limited (HWL) justifying the need for the review.

11. The purpose of MBIE’s review is to examine whether dumping and injury would be likely to continue or recur if the duties were removed, in accordance with Article 11 of the World Trade Organisation Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the Anti-Dumping Agreement). This Final Report includes the conclusions reached by MBIE.

1.2 Reviews

12. In terms of sections 14(9) and 14(9A) of the Act, the anti-dumping duties on preserved peaches from Spain, in the absence of a review, would have ceased to apply from 4 August 2016. The existing anti-dumping duties will continue to apply pending the outcome of this review and any reassessment that may follow it.

13. Interested parties were advised of the initiation of this review in writing and provided with the opportunity to make written submissions to MBIE.

1.3 MBIE’s approach to sunset reviews

14. MBIE carries out sunset reviews under the provisions of section 14(8) of the Act, which states as follows:

The Secretary 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 review, initiate a review of the imposition of anti-dumping duty or countervailing duty in relation to goods and shall complete that review within 180 days of its initiation.

15. In applying the provisions of Section 14(8), in the absence of any specific provisions relating to sunset reviews, MBIE has had regard to the provisions of Article 11.3 of the Anti-Dumping Agreement. In interpreting Article 11.3, MBIE takes guidance from New Zealand legal reports, World Trade Organisation (WTO) Panel reports and approaches taken by other WTO member countries.

16. Article 11.3 requires that a duty be terminated 5 years after it was imposed or last reviewed unless an investigating authority determines in a review that “... the expiry of the duty *would be likely* to lead to continuation or recurrence of dumping and injury” [emphasis added]. Some guidance regarding the interpretation of the phrase “would be likely” has been provided by the New Zealand Court of Appeal which interpreted the phrase to mean “a real and substantial risk..., a risk

that might well eventuate".¹ Guidance can also be found in WTO jurisprudence, e.g. *United States – Sunset Reviews of Anti-dumping Measures on Oil Country Tubular Goods from Argentina*,² and *United States Anti-Dumping Duty on Dynamic Random Access Memory Semi-Conductors (DRAMs) from Korea*.³

17. For example, in *Oil Country Tubular Goods*, the Appellate Body stated (at paragraph 308) "[W]e agree with Argentina that, in *US – Corrosion – Resistant Steel Sunset Review*,⁴ the Appellate Body equated 'likely', as it is used in Article 11.3, with 'probable'. We also agree with Argentina that this interpretation of 'likely' as 'probable' is authoritative in relation to injury as well, given that the term 'likely' in Article 11.3 applies equally to dumping and injury." The Appellate Body also noted in *Oil Country Tubular Goods* (at paragraph 340) that an investigating authority's likelihood determinations under Article 11.3 must be based on "positive evidence" and quoted with approval the following statement by the Appellate Body in *US – Hot Rolled Steel*:

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

18. MBIE has also referred to the approaches taken by the European Union, United States, Canada and Australia to sunset reviews.

19. MBIE notes that the consideration of whether duties should be removed does not exist in isolation but is dependent on whether the evidence shows that the expiry of duty would be likely to lead to a continuation or recurrence of dumping and injury. In determining "likelihood", MBIE considers that regard should be had to the timeframe within which an event may occur. Article 11.3 of the Anti-Dumping Agreement makes no express reference to the length of time within which a continuation or recurrence of injury has to take place.

20. Mindful of the different factors involved in each case, and taking guidance from the sources referred to above, MBIE approaches all investigations and reviews on a case-by-case basis. Based on its interpretation of the Anti-Dumping Agreement, MBIE adopts the following general principles in considering injury in sunset reviews:

- MBIE is required to establish whether the expiry of the anti-dumping duty would be likely to lead to a continuation or recurrence of dumping and injury.

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

² Report of the Panel – *United States – Sunset Reviews of Anti-Dumping Measures on Oil Country Tubular Goods from Argentina* – WT/DS268/R – Circulated 16 July 2004. Report of the Appellate Body – WT/DS268/AB/R – Adopted 17 December 2004.

³ Report of the Panel – *United States – Anti-Dumping Duty on Dynamic Random Access Memory Semi-Conductors (DRAMs) of One Megabit or Above from Korea* – WT/DS99/R – Adopted 19 March 1999.

⁴ In that case the Appellate Body stated (at paragraph 111): ". . . an affirmative likelihood determination may be made only if the evidence demonstrates that dumping would be probable if the duty were terminated – and not simply if the evidence suggests that such result might be possible or plausible."

- The test to be applied in respect of the likelihood of a continuation or recurrence of dumping and material injury is a positive one, i.e., MBIE needs to be satisfied, based on positive evidence, that certain events are likely to occur, and that those events will cause dumping and material injury to the industry to continue or recur in the absence of anti-dumping duties.
- Interpretation of the phrase "would be likely" is guided by a court judgement referring to "a real and substantial risk..., a risk that might well eventuate" and by relevant WTO jurisprudence.⁵
- In considering the likelihood of injury, MBIE may refer for guidance to provisions in the Anti-Dumping Agreement that may be helpful in assessing that likelihood. Those provisions may include, if appropriate, the factors used in Article 3.7 in assessing a threat of injury. The test to be applied, however, is not that for establishing whether there is a threat of injury.
- In considering whether removal of the duty would be likely to lead to a recurrence of dumping and injury, MBIE considers what is likely to happen in the foreseeable future. The extent to which MBIE is able to make judgements on the likelihood of events occurring in the foreseeable future will depend on the circumstances of each case and, therefore, the foreseeable future will range from the imminent to longer timeframes.
- To gauge the extent to which the removal of the anti-dumping duties will likely cause material injury to the domestic industry in the foreseeable future, MBIE generally requires the domestic industry to provide projections or forecasts of the injury it considers it will suffer as a result of the removal of the duties. MBIE will examine these projections in light of the company's past performance (with the duties in place to prevent injurious dumping) and projected future performance (both with the presence and absence of duties) in order to assist it in making a likelihood of recurrence of injury determination.

1.4 Grounds for the review

21. HWL claims that there is likely to be a recurrence of dumping, and that as a result of the dumping there is likely to be a recurrence of material injury arising from:

- an increase in volume of the dumped imports
- price undercutting, price depression and price suppression

22. HWL claims further that the above will likely result in:

- a decline in sales revenue and profits
- a decline in return on investments
- a decline in utilisation of production capacity, and
- adverse effects on cash flow, inventories, employment and growth.

⁵ *Commissioner of Police v Ombudsman* [1988] 1 NZLR 385.

1.5 Reassessment of anti-dumping duties

23. If the outcome of this review indicates that anti-dumping duties should continue to be applied, then the rate or amount of duty can be reassessed in accordance with section 14(6) of the Act.

1.6 Interested parties

1.6.1 New Zealand industry

24. The application for the review was submitted by Heinz Wattie's Limited (HWL). MBIE was satisfied in initiating the review that the application was made by or on behalf of the New Zealand industry producing like goods.

25. As set out in section 2.1 below, MBIE is satisfied in terms of section 3A of the Act that HWL is the only New Zealand producer of like goods and, therefore, that HWL constitutes the New Zealand industry for the purpose of this review.

1.6.2 Importers and exporters

Exporters

26. Table 2.1 below lists the exporters and manufacturers who have been identified from New Zealand Customs Service (NZCS) import statistics as exporting and/or manufacturing the subject goods during the review period. MBIE sought information from all parties but there was only limited responses to the request for information.

Table 2.1: Exporters and Manufacturers

Alcurnia Alimentacion SL
Conservas El Artesanas Navarrico
Euroaliment SL
Pedro Guillen Gomariz, SL
SPAI SRL

27. A brief synopsis of the activities of the Spanish manufacturers and exporters is set out below.

Alcurnia Alimentacion SL

28. Alcurnia Alimentacion SL (Alcurnia) is a Spanish manufacturer of preserved peaches (and other fruit preserves such as apricots and mandarins) selling to both the Spanish domestic market and the international market, mostly under the trade name "Alcurnia". Over the period for review of dumping (POR(D)) it made [REDACTED] shipments of preserved peach halves in 850g cans to the New Zealand importer, [REDACTED] ([REDACTED]). The company did not provide a response to MBIE's foreign manufacturer questionnaire.

Conservas El Artesanas Navarrico (Navarrico)

29. Conservas El Artesanas Navarrico (Navarrico) is a Spanish manufacturer of peaches (as well as other fruit and vegetables) selling to both the Spanish domestic market and the international

market, under the trade name "Navarrico". Its preserved peaches come in a variety of containers such as glass jars of 700g and 2.65kg and tins (cans) of 840g and 2.65kg net weight. The company exported [REDACTED] of preserved whole peaches in glass jars of 2.65kg to New Zealand over the POR(D) through the Spanish exporter/distributor, [REDACTED] ([REDACTED]), which on-sold to the New Zealand importer, [REDACTED] ([REDACTED]). Neither Navarrico nor [REDACTED] provided a response to MBIE's questionnaire.

Pedro Guillen Gomariz, SL

30. Pedro Guillen Gomariz, SL (Pedro Guillen) is a Spanish manufacturer of preserved peaches and other canned vegetables and fruits (such as apricots, pears, pineapples and mandarins) selling to both the Spanish domestic market and the international market. Over the POR(D) it made [REDACTED] preserved peach halves in syrup (840g cans) to the New Zealand importer, [REDACTED] ([REDACTED]). The company did not provide a response to MBIE's foreign manufacturer questionnaire.

SPAI SRL.

31. SPAI SRL (SPAI SRL) is an Italian import-export company which sourced [REDACTED] preserved peach halves in syrup (840g cans) from its Spanish supplier, [REDACTED], over the POR(D) which it on-sold to the New Zealand importer, [REDACTED]. The company provided an invoice and other shipping documentation for this shipment from [REDACTED] and to [REDACTED]. This documentation provided details of the type of preserved peaches it sourced from [REDACTED], its terms of trade (FOB) with both [REDACTED] and [REDACTED], the price paid (in EUR) to [REDACTED] and the price charged to [REDACTED] (in EUR).

Importers

32. The firms importing from the above exporters and manufacturers are listed in the table below:

Table 2.2: Importers

Mediterranean Group Ltd
Sabato Ltd
Neill Cropper and Co Ltd

33. A brief synopsis of the activities of the importers of preserved peaches from Spain is set out below. In many instances, the importers provided limited or no information to MBIE directly. In these cases therefore the only information available to MBIE is that supplied by exporters or that which is publicly available.

Mediterranean Group Ltd

34. Mediterranean Group Ltd (Mediterranean) imports preserved peaches direct from the Spanish producer/exporter, [REDACTED]. The company imported [REDACTED] preserved peaches during the POR(D). Mediterranean did not provide a response to MBIE's importer questionnaire.

Sabato Ltd

35. Sabato Limited (Sabato) imported [REDACTED] of preserved peaches into New Zealand during the POR(D) through the Spanish exporter/distributor, [REDACTED], which sourced the

shipments from the Spanish producer, [REDACTED]. The company provided a limited response to MBIE's importer questionnaire including details of the type of preserved peaches sourced from [REDACTED], its terms of trade (FOB), and price paid (in EUR).

Neill Cropper and Co Ltd (Neill Cropper)

36. Neill Cropper and Co Ltd (Neill Cropper) imported [REDACTED] of preserved peaches into New Zealand during the POR(D). It sourced the goods from the [REDACTED], which sourced the goods from the Spanish producer, [REDACTED]. Neill Cropper did not provide a response to MBIE's importer questionnaire but it did provide import documentation including the commercial invoice from [REDACTED] showing the price paid for the goods (in EUR).

1.6.3 Imported goods

37. The goods which are the subject of the anti-dumping duty, hereinafter referred to as preserved peaches, or "subject goods", are:

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

38. The NZCS has stated that the preserved peaches enter under tariff item and statistical key 2008.70.09.00L.

1.7 Disclosure of information

39. To meet its obligations under section 10(6)(b) of the Act, MBIE makes available all non-confidential information to any interested party through its public file system.

40. A verification visit was carried out at HWL's premises to verify the information supplied by the company in its application for a review and response to MBIE's request for further information. MBIE provided a copy of the verification report relating to the company visit to HWL and placed a non-confidential version on the public file.

41. Where information was not made available, some of the findings in this report have been made having regard to all available information, that is, on the basis of the best information available in accordance with section 6 of the Act and Article 6.8 and Annex II of the Anti-Dumping Agreement. The information that MBIE relied on is detailed in the relevant sections in this report.

1.8 Report details

42. In this report, unless otherwise stated, years for evaluating injury are years ending 31 December. Dollar values are in New Zealand dollars (NZD) or Euros (EUR) unless otherwise specified. In tables, column totals may differ from individual figures due to rounding. The term VFD refers to value for duty for NZCS purposes.

43. The POR(D) is from 1 July 2015 to 30 June 2016, while the POR(I) involves an evaluation of actual data submitted by HWL for financial years 2014 and 2015 (HWL's financial year is the year to 31 December) and 2016 (based on actual data for the nine months January - September 2016 and budgeted data for the three months October-December 2016). The company also provided forecast information for 2017 and 2018, in terms of the impact on HWL's domestic operation, for the scenarios that duties remain in place and that duties are removed.

2. New Zealand industry

44. Section 3A of the Act provides the definition of “industry”:

3A. 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.

45. “Like goods” is defined in section 3 of the Act:

“Like goods”, in relation to any goods, means—

- (a) Other goods that are like those goods in all respects; or
- (b) In the absence of goods referred to in paragraph (a) of this definition, goods which have characteristics closely resembling those goods:

2.1 Like goods

46. 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, and if not, whether there are New Zealand producers of other goods which have characteristics closely resembling the subject goods.

47. The goods subject to the duty (the subject goods) are described as:

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

48. MBIE considers that peaches in mediums containing any type or amount of sugar, naturally from the peaches in water or as fruit juice, or sugar syrup, in any concentration, are covered by the goods description. In terms of the containers in which the peaches are packed (i.e. cans as opposed to plastic pottles or glass jars), MBIE notes that in a dumping investigation relating to “peaches in preserving liquid, in containers up to and including 4.0kg” from China completed in August 2006, it concluded that the canned peaches produced by HWL were a like good to the subject goods which covered all types of packaging.

49. HWL is the sole New Zealand producer of preserved peaches. HWL’s preserved peaches are mostly sold under brand names Wattie’s, Oak or Weight Watchers, of halves or slices in net weights of 410g, 820g and 3kg cans. The company sometimes manufactures private label (house brand) canned peaches. Based on a previous like goods determination, the Weight Watchers branded peaches are not considered to be like goods to the imported goods.

50. HWL has not produced any new peach products that could be considered to be like goods to the Spanish imports since 2011 (the original investigation).

51. MBIE considers that HWL continues to produce a like good and as a consequence remains the New Zealand industry in terms of section 3A of the Act.

2.2 Imports of preserved peaches

52. Table 2.1 shows total imports of preserved peaches from 1 January 2014 to 31 December 2015 and for the six month period 1 January – 30 June 2016. South Africa and China, and to a lesser extent Australia, are significant exporters of peaches to New Zealand (by quantity) – South Africa and China both have anti-dumping duties applying to their exports.

Table 2:1: Total imports of preserved peaches (kg)

	2014	2015	Jan-Jun 2016
Spain	16,898	70,493	16,874
Other	3,734,269	4,169,926	2,011,394
Total imports (kg)	3,751,167	4,240,419	2,028,268

3. Dumping Analysis

3.1 Definition of dumping

53. Dumping occurs when an exporter sells preserved peaches to New Zealand at a price lower than they are sold for in Spain. The price at which preserved peaches are sold in Spain is referred to as the normal value. In essence dumping is price discrimination between an export and a domestic market.

3.2 Purpose of review of dumping

54. A sunset review is intended to determine whether the expiry of the existing anti-dumping duties after five years would likely lead to a continuation or recurrence of dumping and injury and therefore whether there is a continued need for the imposition of anti-dumping duties. The general principles concerning MBIE's approach to sunset reviews are set out in section 1 of this report. MBIE's usual approach is to establish if preserved peaches are being dumped into New Zealand, the extent of any dumping then analyse whether there is a likelihood of a continuation or recurrence of dumping if the duties were removed.

3.3 Likelihood of continuation or recurrence of dumping

3.3.1 Introduction

55. This section of the report explains the method of comparing export prices with normal values and how these prices have been established over the POR(D), i.e. the year ended 30 June 2016, to determine whether preserved peaches from Spain are being imported into New Zealand at dumped prices.

3.3.2 Methodology/review process

56. The Anti-Dumping Agreement and the Act allow MBIE to undertake a comparison of export prices and normal values on either a weighted-average-to-weighted-average or transaction-to-transaction basis.

57. In view of the small number of export transactions during the POR(D), MBIE undertook a transaction-to-transaction analysis for each company. While the Spanish manufacturers and exporters did not provide MBIE with details of their domestic transactions, MBIE was able to select an appropriate Spanish domestic selling price which it was able to compare with each export transaction (see section 3.4 below).

58. To arrive at the ex-factory values for each manufacturer, MBIE has made a number of deductions or allowances from the base export and domestic prices, where sufficient information was available, to ensure a fair comparison between export sales of preserved peaches and sales for domestic consumption in Spain.

3.3.3 Information used

59. Three Spanish producers and two exporters were identified as supplying preserved peaches over the POR(D). These parties were requested to provide details of their shipments to New Zealand and domestic market selling prices so that MBIE could determine if their shipments to New Zealand are being dumped. There was limited cooperation from some of these firms.

60. Article 6.8 of the Anti-Dumping Agreement provides that in cases where any interested party refuses or otherwise does not provide necessary information, a determination can be made on the basis of the facts available. This provision is also mirrored in section 6(1) of the Act which provides that, in the absence of information from interested parties export prices and normal values can be determined having regard to all available information.

61. As MBIE has been provided with limited information it has determined export prices and normal values having regard to all available information which can reasonably be relied upon. MBIE has used information provided in:

- questionnaire responses (including exporters and importers)
- NZCS importation data
- previous dumping investigations concerning imports of preserved peaches
- information provided by the applicant, HWL, and
- information sourced from foreign producer websites and supermarket websites.

3.4 Export prices

62. Export prices are determined in accordance with section 4 of the Act. Export prices are the prices at which preserved peaches are exported from Spain to New Zealand, that are arm's length transactions, adjusted to allow a fair comparison with the prices of preserved peaches sold in Spain. An explanation is given below of the calculation of export prices for each of the manufacturers of preserved peaches exported from Spain to New Zealand.

3.4.1 Alcurnia Alimentacion SL

Introduction

63. Alcurnia did not provide a response to MBIE's foreign manufacturer questionnaire. Alcurnia is described on its website as a family firm that is engaged in the manufacture of quality fruit preserves, especially peaches and apricots.⁶

64. In the absence of sufficient information from Alcurnia, MBIE has had regard to all available information in calculating export prices. Alcurnia is a manufacturer and exporter and supplies its preserved peaches directly to New Zealand. Over the dumping POR(D), Alcurnia exported to New Zealand [REDACTED] of peach halves in 850g cans totalling [REDACTED] kg of subject goods.

Base prices

65. To identify a starting point, i.e. base price, MBIE used information obtained from the NZCS, as neither the Alcurnia nor the New Zealand importer, [REDACTED], provided MBIE with the necessary details including the quantity and amount paid by the importer for the goods.

⁶ <http://alcurnia.com>

66. The base price is the total FOB price divided by the total volume of the shipment to derive a unit value of € [REDACTED] per kg.

Adjustments

Inland freight, customs and port handling charges

67. MBIE has not been provided with any information on the costs, charges and expenses incurred in preparing preserved peaches for shipment to New Zealand that are additional to those incurred on sales for home consumption. HWL submitted in its application a deduction of [REDACTED] per cent of the FOB value as an estimate of the cost of inland freight. MBIE checked the reasonableness of HWL's estimation and found in previous investigations that on average the cost between FOB value and ex-factory was slightly higher at [REDACTED] per cent of the FOB value, however, the latter figure does include other costs such as customs clearance and port handling. MBIE considers it reasonable for the current investigation to apply [REDACTED] per cent of the FOB value which was used in a previous investigation as it is based on all costs and it is information that has been applied and verified.

68. A downward adjustment of € [REDACTED] per kg has been made for costs incurred in preparing preserved peaches for shipment to New Zealand.

Export prices

69. From the base price and the adjustment outlined above, MBIE has calculated an ex-factory export price of € [REDACTED] per kg for the preserved peaches exported to New Zealand by Alcornia.

3.4.2 Conservas El Artesanos Navarrico

Introduction

70. Navarrico is a Spanish manufacturer of peaches (as well as other fruit and vegetables) preserved in a variety of containers such as glass jars and cans, destined for the upper end of both the domestic and export markets. The company did not provide a response to MBIE's foreign manufacturer questionnaire.

71. In the absence of sufficient information from Navarrico, MBIE has had regard to all available information in calculating export prices. The preserved peaches produced by Navarrico are supplied to New Zealand by an exporter, [REDACTED]. Over the POR(D), there were [REDACTED] shipments totalling [REDACTED] kg of the subject goods (obtained from NZCS information).

Base prices

72. Neither Navarrico nor its Spanish exporter, [REDACTED], provided documentary evidence of the goods that it produced for supply to New Zealand. The importer, [REDACTED], provided some information (type, size, weight and price of its imports) but did not provide copies of invoices. MBIE has cross-referenced the FOB value provided by the importer with the information held by NZCS and they are the same.

73. As its base price, MBIE has used the FOB prices of the [REDACTED] shipments divided by their total volumes to derive a unit value of € [REDACTED] per kg for each shipment.

Adjustments

Exporter's margin

74. MBIE considers that the FOB price would include in part a distributor or exporter's margin and therefore a downward adjustment is required.

75. Neither Navarrico nor its exporter, [REDACTED], provided information to enable MBIE to calculate [REDACTED] margin on its sales to New Zealand. MBIE, therefore, has looked at other available information to calculate a margin. MBIE used the margin established for [REDACTED] company involved in sourcing preserved peaches from Spain and on-selling them to New Zealand over the POR(D). [REDACTED] provided MBIE with commercial invoices showing its purchase prices from its Spanish supplier and selling prices to its New Zealand importer which enabled MBIE to calculate the company's margin on these sales. MBIE considered this was a reasonable margin in the absence of information provided by [REDACTED].

76. A downward adjustment of €[REDACTED] per has been made for an exporter's margin.

Inland freight, customs and port handling charges

77. MBIE has not been provided with any information on the costs, charges and expenses incurred in preparing preserved peaches for shipment to New Zealand that are additional to those incurred on sales for home consumption. To fill in this information gap MBIE has used a cost of [REDACTED] per cent of the FOB value, which has been established in previous investigations as the average cost of inland freight, customs and port handling charges, as explained in paragraph 67 above.

78. A downward adjustment of €[REDACTED] per kg has been made for costs incurred in preparing preserved peaches for shipment to New Zealand.

Export prices

79. From the base price and adjustments outlined above, MBIE has calculated an ex-factory export price of €[REDACTED] per kg for each of the shipments of preserved peaches exported to New Zealand by Navarrico.

3.4.3 Pedro Guillen Gomariz, SL

Introduction

80. Pedro Guillen Gomariz SL (Pedro Guillen) did not provide a response to MBIE's foreign manufacturer questionnaire. Pedro Guillen is described on its website as a manufacturer of preserved peaches and other canned vegetables and fruits (such as apricots, pears, pineapples and mandarins) selling to both the Spanish domestic market and the international market.⁷

81. The preserved peaches produced by Pedro Guillen are supplied to New Zealand through the [REDACTED] which is located in [REDACTED]. [REDACTED]

⁷ <http://www.soldearchena.com>

provided an invoice and other shipping documentation for this shipment showing details of the type of preserved peaches it sourced from Pedro Guillen and its terms of trade (FOB) and price paid (in EUR) to Pedro Guillen. MBIE used this information to calculate export prices for sales by Pedro Guillen.

82. Pedro Guillen exported [REDACTED] of the subject goods to New Zealand over the POR(D) totalling [REDACTED] kg.

Base prices

83. The New Zealand importer, [REDACTED], provided shipping documentation (including an invoice) which included details regarding the type of preserved peaches imported, the terms of trade (FOB) and the value, in Euros, of the goods. The base price is the FOB price which has been divided by the total volume [REDACTED] to derive a per unit value of € [REDACTED] per kg.

Adjustments

Exporter's margin

84. The [REDACTED], provided an invoice and other shipping documentation showing details of terms of trade (FOB) and price paid (in EUR) to Pedro Guillen. It also provided similar documentation for its sale to its New Zealand importer, [REDACTED]. MBIE used this information to calculate an exporter's margin of € [REDACTED] per kg for [REDACTED]. This represented [REDACTED] per cent of the FOB value of the goods.

85. A downward adjustment of € [REDACTED] per kg has been made for an exporter's margin.

Inland freight, customs and port handling charges

86. MBIE has not been provided with any information on the costs, charges and expenses incurred in preparing preserved peaches for shipment to New Zealand that are additional to those incurred on sales for home consumption. To fill in this information gap, MBIE has used a cost of [REDACTED] per cent of the FOB value, which has been established in previous investigations as the average cost of inland freight, customs and port handling charges, as explained in paragraph 67 above.

87. A downward adjustment of € [REDACTED] per kg has been made for costs incurred in preparing preserved peaches for shipment to New Zealand.

Export prices

88. From the base price and adjustments outlined above, MBIE has calculated an ex-factory export price of € [REDACTED] per kg for [REDACTED] of preserved peaches that Pedro Guillen exported to New Zealand.

3.5 Normal values

89. Normal values are determined in accordance with section 5 of the Act. The normal value is usually the price at which foreign manufacturers of preserved peaches sell preserved peaches in their domestic market. The types of sales that can be used to determine normal values can generally be described as arm's length sales of like goods in the ordinary course of trade for home

consumption in the country of export, in this case Spain. Where an exporter makes no such sales, sales by other sellers of like goods in Spain can be used to establish normal values.

90. In the absence of relevant and suitable sales in the ordinary course of trade, normal values can be either:

(a) constructed on the basis of the sum of cost of production and, on the assumption that the goods had been sold for home consumption in the ordinary course of trade in Spain, reasonable amounts for administrative and selling costs and other costs incurred in the sale, and a rate of profit normally realised on sales of goods of the same general category in the Spanish domestic market, or

(b) established on the basis of selling prices to a third country.

91. Because the Spanish producers or exporters did not supply any information, MBIE has determined normal values under section 6(1) of the Act having regard to all available information. Details of the information used in conducting this analysis are set out below.

3.5.1 Base prices

92. In its application, HWL sourced a sample of market prices for preserved peaches in Spain from three major supermarket chains via their online shopping websites. 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) then calculated the average price per kilogram based on this sample of six different prices. HWL calculated an average price per kilogram based on the sample of prices mentioned above. HWL advised that it was not possible to calculate a weighted average price as the websites from which these samples were sourced do not include quantities.

93. Since this review was initiated, MBIE has been able to identify the Spanish producers and the particular brand and type of preserved peaches from Spain exported to New Zealand over the POR(D). For two of the three Spanish producers (Alcurnia and Pedro Guillen), this has enabled MBIE to identify and source prices for these brands from a number of retail online shopping websites in Spain. For the other Spanish producer, Navarrico, MBIE was unable to source similar information using the same approach. In the absence of information which would enable a normal value to be established for Navarrico, a normal value was not established for this company.

94. An explanation is given below of the calculation of normal values for the manufacturers and exporters that supply Spanish preserved peaches to New Zealand. The base prices have been established using the methodology described above. Adjustments (due allowances) were made to these base prices for a 10 per cent Value Added Tax (VAT) in Spain and inland freight to derive ex-factory normal values for comparison with the ex-factory export prices established for each of the producers and exporters. These adjustments are also detailed below.

3.5.2 Alcurnia Alimentacion

Introduction

95. Alcurnia did not provide a response to MBIE’s foreign manufacturer questionnaire. In the absence of information from Alcurnia, MBIE has had regard to all available information in calculating normal values.

Base prices

96. Since this review was initiated MBIE has been able to identify the particular brand and type of preserved peaches from Spain that Alcurnia exported to New Zealand over the POR(D). This has enabled MBIE to identify and source a price for this brand from a number of retail online shopping websites in Spain. The base price for an 840g can of Alcurnia peach halves in syrup is €1.62 per kg.

97. MBIE has made three adjustments to this average retail price, derived above, to arrive at an ex-factory domestic price per kilogram. Those costs are VAT, a retailer’s margin and internal freight to the customer.

Adjustments

VAT

98. The tax treatment must be tax neutral when comparing the normal value and the export price. The base price, identified in the paragraph above, is VAT inclusive so a downwards adjustment must be made to the price. MBIE notes that the Spanish government uses a three-tier model for charging VAT: 21 per cent, 10 per cent and 4 per cent. The lower two rates apply to food products, with basic foodstuffs being charged at the lower rate. The Spanish Government informed MBIE that preserved peaches are taxed at a rate of 10 per cent.⁸ MBIE has reduced the base price by a 10 per cent VAT.

Retail Margin

99. In its application HWL calculated a retailer’s margin based on a Bord Bia’s report which provides a range of Spanish retail margins of between 25 – 35 per cent.⁹ HWL noted that MBIE has used a 25 per cent margin in previous applications. HWL 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] per cent retailer margin in the New Zealand market.

100. The Bord Bia report referenced by HWL in its application was sourced by MBIE in the 2011 investigation into imports of preserved peaches from Spain. At that time, MBIE considered the report had been compiled from credible sources and its findings, where applicable, could be applied to establish normal values together with other information provided in the 2011 investigations. For the purpose of the current review, MBIE was unable to source a more recent report providing information of a similar nature.

101. In its review application, HWL calculated a [REDACTED] per cent 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.

⁸ Email from Spanish embassy in New Zealand to MBIE (11 August 2016).

⁹ Irish Food Board (Bord Bia) “Successfully Entering the Spanish Retail Market – An Understanding of Price Margins and Supply Chain Mechanics” (September 2010).

102. MBIE has calculated an ex-factory normal value using a [REDACTED] per cent retailer’s margin.

Inland freight

103. Under normal circumstances, if a manufacturer’s terms of trade on the domestic market are made on an into-store basis, a downward adjustment is made regarding inland transport costs incurred.

104. Bord Bia’s report states that some retailers require goods to be transported by the manufacturers to their distribution depots and others may request ex-works prices and collect the order themselves if it results in a lower price. In MBIE’s opinion, this implies that if a manufacturer does sell its goods on a free-into store basis it would incur extra costs that it factors into its selling price.

105. MBIE does not, however, hold sufficient information to provide for an allowance on inland freight for Alcornia. In the absence of such information no adjustment has been made for the cost of freight.

Other

106. No other information has been submitted regarding costs specific to domestic sales only that would be relevant in order to effect a fair comparison with export price. Therefore no other adjustments have been made.

Normal values

107. From the base price and adjustments outlined above, MBIE has calculated an ex-factory normal value of € [REDACTED] per kg for Alcornia.

3.5.3 Conservas El Artesanos Navaricco

Introduction

108. Navaricco did not provide a response to MBIE’s manufacturer questionnaire. MBIE was unable to source an appropriate retail price from an online shopping website in Spain in the manner that it was able to do for the other two Spanish producers. In the absence of information which would enable a normal value to be established for Navaricco, a normal value was not established for this company.

Pedro Guillen Gomariz, SL

Introduction

109. Pedro Guillen did not provide a response to MBIE’s foreign manufacturer questionnaire. In the absence of information from Pedro Guillen, MBIE has had regard to all available information in calculating normal values.

Base prices

110. Since this review was initiated, MBIE has been able to identify the particular brand and type of preserved peaches from Spain that Pedro Guillen exported to New Zealand over the POR(D). This has enabled MBIE to identify and source a price for this brand from a number of retail online

shopping websites in Spain. The base price for an 840g can of Sol de Archena peach halves in syrup is €1.69 per kg.

111. MBIE has made three adjustments to this average retail price, derived above, to arrive at an ex-factory domestic price per kilogram. Those costs are VAT, a retailer’s margin and inland freight to the customer.

Adjustments

VAT

112. The base price, identified in the paragraph above, is VAT inclusive so a downwards adjustment must be made to the price. MBIE has reduced the base price by a 10 per cent value added tax (VAT) for *non-basic* food items.

Retailer’s margin

113. MBIE has calculated an ex-factory normal value using a [REDACTED] per cent retailer’s margin based on the approach outlined in paragraphs 99 to 102 above.

Inland freight

114. Under normal circumstances, if a manufacturer’s terms of trade on the domestic market are made on an into-store basis, a downward adjustment is made regarding inland transport costs incurred. MBIE does not, however, hold sufficient information to provide for an allowance on inland freight for Pedro Guillen. In the absence of such information no adjustment has been made for the cost of freight.

Other

115. No other information has been submitted regarding costs specific to domestic sales only that would be relevant in order to effect a fair comparison with export price. Therefore no other adjustments have been made.

Normal values

116. From the base price and adjustments outlined above, MBIE has calculated an ex-factory normal value of € [REDACTED] per kg for Pedro Guillen.

3.6 Comparison of export price and normal value

117. The following table show a comparison of the export prices with the normal values and the dumping margins for the two Spanish producers for which dumping margins were established.

**Table 3.3: Dumping margins
(EUR per kg)**

	Alcurnia	Pedro Guillen
Export price	€ [REDACTED]	€ [REDACTED]
Normal value	€ [REDACTED]	€ [REDACTED]
Dumping margin	€ [REDACTED]	€ [REDACTED]
Dumping margin as % of export price	21%	34%

3.7 Likelihood of continuation or recurrence of dumping

3.7.1 Introduction

118. MBIE’s approach to sunset reviews is recorded in section 1.3 above. In considering the likelihood of a continuation or recurrence of dumping, MBIE has applied the general principles set out in that section of the final report.

119. The shipments of the subject goods over the POR(D), for which dumping margins were able to be established, were dumped by different margins. According to Article 11.3 of the Anti-Dumping Agreement, the review must also focus on the likelihood of a continuation or recurrence of dumping should the anti-dumping duties be allowed to expire.

3.7.2 Likelihood of continuation of dumping

120. Based on current prices and available evidence, MBIE considers it likely that preserved peaches originating from Spain will continue to be dumped should the duties be removed although there is insufficient positive evidence to assess volumes. This is because the analysis above shows that Spanish origin goods continue to be dumped, with the duties in place, and any movement in export prices resulting from the removal of duties is likely to be a downward one.

3.7.3 EC submission on likelihood of continuation of dumping

121. The EC submitted that MBIE assessed dumping on very limited quantities exported from Spain to New Zealand during the POR(D).¹⁰ According to the EC, such low volumes are not representative and do not allow objective conclusions with regard to a recurrence of dumping. Furthermore, the reference price anti-dumping duties currently imposed on Spanish imports will have influenced export prices to New Zealand.

3.7.4 MBIE’s response to EC’s submission

122. When establishing if dumping was continuing, MBIE took into account both the volume of imports from Spain and the fact that the current anti-dumping duties are based on reference prices.

123. While import volumes are likely to have been influenced by the current duties in place, MBIE considers that volumes are sufficient enough to establish whether or not the goods continue to be

¹⁰ Submission by European Commission on MBIE’s Interim Report (29 November 2016).

dumped. In terms of the anti-dumping duties being set as reference prices, MBIE considers that export prices would have increased rather than decreased, as a result of the reference prices, thereby lessening the dumping margins determined. This is because the Spanish exporters would be inclined to increase their prices to New Zealand, to above the reference prices, to (legitimately) avoid the payment of anti-dumping duties.

124. The EC did not reference any WTO jurisprudence in support of its claim. MBIE did not uncover any WTO jurisprudence which would shed some light on whether its approach to establishing if dumping was continuing, was reasonable.

125. In original investigations, exporters are often found to have made only one or two shipments to New Zealand over the POR(D) but MBIE's approach (consistent with Article 2 of the WTO Anti-dumping Agreement) has been to establish if these shipments have been dumped and, if so, calculate dumping margins for these exporters. MBIE's approach in the current review is consistent with this approach even accounting for the reference prices in place.

126. In respect of the reference prices in place, MBIE notes that some imports are still collecting anti-dumping duty which indicates that the reference price duties in place have not influenced the price of these imports. On the basis of the above considerations, MBIE considers it was warranted in using current export prices to New Zealand to establish if dumping was continuing. This exercise concluded that dumping was continuing, which further strengthens the findings that dumping is likely to continue if the duties were removed.

3.8 Conclusions relating to dumping

127. Since anti-dumping duties were imposed on Spanish imports of preserved peaches, in 2011, there continue to be some imports from Spain, including over the POR(D). This has enabled MBIE to calculate dumping margins bearing in mind that, in reaching its conclusions, MBIE has regard to all available information in accordance with section 6 of the Act and Article 6.8 of the Anti-Dumping Agreement. In undertaking this exercise, MBIE has determined that there is a likelihood of a continuation of dumping should the duties expire, although there is insufficient positive evidence to assess volumes.

4. Injury investigation

4.1 The 2011 investigation

128. The 2011 dumping investigation into preserved peaches from Spain found a threat of material injury, based on findings that:

- there had been a recent significant increase in imports of dumped goods from Spain indicating the likelihood of imminent, substantial increases in imports
- there was evidence that Spanish exporters had sufficient freely disposable capacity and inventories to supply preserved peaches to New Zealand indicating the likelihood of substantially increased dumped imports into New Zealand, in the near future
- there were significant levels of current price undercutting indicating that preserved peaches from Spain were entering New Zealand at prices that would have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports
- there were few barriers to entry for an importer of preserved peaches in the New Zealand market and New Zealand importers and retailers had the existing distribution systems in place to facilitate the importation of significantly increased volumes of preserved peaches from Spain into New Zealand
- further dumped exports were imminent and that, unless protective action was taken, material injury attributable to dumped imports would occur to the New Zealand industry in terms of a decline in sales revenue, a decline in profits and profitability, a decline in return on investments and an adverse impact on growth.

129. On the basis of the above considerations, MBIE concluded that anti-dumping duties were warranted in order to prevent material injury to the New Zealand industry due to dumped imports from Spain.

4.2 MBIE's consideration of injury in a review

130. MBIE's approach to sunset reviews is recorded in section 1.3 above. In considering injury in a review, MBIE examines whether the removal of the duties would be likely to lead to the continuation or recurrence of material injury to the domestic industry. In considering the likelihood of a continuation or recurrence of injury, MBIE has applied the general principles set out in section 1.3 above.

131. MBIE carries out its injury analysis for reviews on the basis of section 8 of the Act and Article 11 of the Anti-Dumping Agreement. MBIE interprets these provisions to mean that the likelihood of a continuation or recurrence of injury is to be considered in the context of the likely impact on the industry, arising from the likely volume of the dumped goods and their likely effect on prices.

4.3 Injury information submitted by Heinz Wattie's Limited (HWL)

132. MBIE is satisfied that HWL is the only New Zealand producer of like goods, and therefore HWL constitutes the New Zealand industry for the purpose of this investigation.

133. HWL provided financial information for the purpose of the injury analysis. The information provided is in line with HWL's financial year, which is a calendar year. HWL provided historical

information for 2014, 2015 and 2016 (actual data to September 2016 and budgeted data to the end of December 2016). The company also provided forecast information for 2017 and 2018 for the scenarios that duties remain in place and that duties are removed.

134. The information provided by HWL includes details of production, revenue, cost of production, gross profit (contribution margin), fixed costs (including selling and administration costs), and earnings before interest and tax (EBIT).

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

136. MBIE’s evaluation of both the historical and forecast injury information provided by HWL is set out below.

4.4 Import volumes

137. Section 8(2)(a) of the Act provides that the Chief Executive shall have regard to the extent to which there has been or is likely to be a significant increase in the volume of imports of dumped or subsidised goods either in absolute terms or in relation to production or consumption in New Zealand.

138. Table 4.1 shows import volumes of preserved peaches into New Zealand from 1 January 2014 to 31 December 2015, which is in line with HWL’s financial year, and for the first six months of 2016 (the last six months of the POR(D)). The figures have been sourced from NZCS data that covers the goods imported into New Zealand under the tariff item and statistical key 2008.70.09 00L. South Africa and China, and to a lesser extent Australia, are significant exporters of preserved peaches to New Zealand.

**Table 4:1: Import volumes (kg)
(years ended December)**

	2014	2015	Jan-June 2016
Spain	16,898	70,493	16,874
Other	3,734,269	4,169,926	2,011,394
Total imports	3,751,167	4,240,419	2,028,268
Sales by HWL		112%	n/a
New Zealand market		112%	n/a

139. The table above shows that there was a large increase in import volumes from Spain in 2015. However, this increase was from a reasonably small base (in 2014). HWL’s sales have been at a reasonably static level over the period (if the Jan-June 2016 figures are extrapolated to a full year). The change in the total New Zealand market size therefore reflects a small increase in import volumes from all sources and an increase in domestic sales.

140. While there continue to be imports into New Zealand from Spain, imports from this source have slowed down significantly since anti-dumping duties were imposed in 2011.

4.5 MBIE’s assessment of likely import volume should duties be removed

141. HWL claims that initial imports from Spain at the end of 2017 are likely to be made by small brands in the market such as [REDACTED] and on-sold to [REDACTED] supermarkets – the implication being that they would not import a significant volume. Volumes would become significant in 2018 as more importers are able to switch their source of supply.

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

- the price advantage (in the absence of duties) which such imports may hold;
- the capacity and intent of the Spanish preserved peach industry to substantially increase its exports to New Zealand;
- the ease of entry into the New Zealand market;
- the ability of importers to handle a significant increase in imports from Spain;
- the ease of distribution of goods within New Zealand; and
- exchange rates.

4.5.1 Previous import volumes from Spain

143. Prior to the imposition of anti-dumping duties in August 2011, there had been a significant increase in import volumes of preserved peaches from Spain. Import volumes from Spain have reduced following the imposition of the anti-dumping duties, which indicates that the anti-dumping duties had an effect at the time of their imposition.

144. While current quantities are small they indicate that there are still supply lines available for the import of preserved peaches from Spain. Recent imports from Spain have been made at prices which would likely, in the absence of anti-dumping duties, undercut HWL’s price.

4.5.2 Price advantage held by the imported products

145. HWL claims that preserved peaches from Spain would be the cheapest import option if duties were to be removed.

146. HWL claims that, if the duties are removed, initially it will be small brands, such as [REDACTED], that will buy from Spain and on-sell to [REDACTED] supermarkets. HWL has claimed this situation will force [REDACTED] its prices to remain competitive. HWL claimed that private label buyers will be in the same situation of having to decrease prices to match the imported product, although these brands would be able to make arrangements for the new season (in late 2017).

147. The price advantage analysis below shows that preserved peaches from Spain are likely to undercut HWL’s prices if imports resume, in the absence of anti-dumping duty.

148. To assess whether preserved peaches from Spain would hold a price advantage over preserved peaches from other sources, if the anti-dumping duties were removed, MBIE has used NZCS data to calculate a CIF price for the three main sources, other than Spain, including Customs duty and anti-dumping duty where appropriate. Anti-dumping duties are currently in place on canned and preserved peaches from South Africa, China and Greece and the ex-wharf prices for

these countries include anti-dumping duties. MBIE used information provided by HWL for port clearance costs to bring prices to an ex-wharf level of trade. HWL used its own imports of canned produce (including canned fruit) to calculate a figure per carton for port clearance costs, which MBIE has converted to a per kilogram cost.

149. Because New Zealand imports from Spain are subject to a reference or benchmark price anti-dumping duty, MBIE calculated a likely Spanish import price, in the absence of anti-dumping duties, using export pricing for Spanish preserved peaches obtained from the Trade Map database.¹¹ The export prices were in respect of Spain's exports of preserved peaches to all countries. This information is only available at the 6-digit level and may include goods that are not subject goods but is the best information available and is considered reasonable for the purpose of the exercise. MBIE added Customs duty of 5 per cent and overseas freight and insurance (sourced from NZCS data) and clearance charges (based on HWL's information) to derive a likely price of preserved peaches from Spain, in the absence of anti-dumping duties.

150. The four largest sources of supply for preserved peaches to New Zealand are South Africa, China, Australia and Spain. The ex-wharf prices for South Africa, China and Australia, calculated on the basis set out above, are shown in the table below, along with an estimated ex-wharf price for preserved peaches from Spain and HWL's ex-factory price.

Table 4.2: Likely price advantage held by imports from Spain (NZD)

Country ¹²	Ex-wharf price per kilogram	HWL ex-factory price	% undercutting
Spain	██████████	██████████	██████%
China	██████████	██████████	██████%
South Africa	██████████	██████████	██████%
Australia	██████████	██████████	nil

151. The figures in the table above show that imports from Spain, China, South Africa and Australia are undercutting HWL's prices by between nil and 40 percent. Spain (in the absence of anti-dumping duties) would undercut prices of other imports, and HWL's prices. This suggests that, if the anti-dumping duties were to be removed from Spanish preserved peaches, these goods would likely to hold a price advantage over imports from all other sources.

4.5.3 Capacity and Intent of the Spanish industry

Capacity of the Spanish industry

152. HWL provided MBIE with a United States Department of Agriculture (USDA) GAIN report for Spain, produced in 2011, which indicates that the canned peach industry in Spain produces around

¹¹ Trade Map is an online database which provides import and export statistics for over 220 countries and territories and 5300 products of the Harmonized System. The monthly, quarterly and yearly trade flows are available from the most aggregated level to the tariff line level.

¹² The ex-wharf prices for South Africa and China include anti-dumping duty at rates the importers were actually charged as recorded in NZCS data.

95,000 tonnes per annum. A search has not uncovered a more recent version relating to Spain, however, HWL also provided an article from Foodnews (dated June 2016) which states that the 2016 Spanish canned peach production will be in the region of 92,000 tonnes.

153. HWL claims that an industry of this size would be able to saturate the New Zealand market of approximately 5,600 tonnes with its discretionary stocks. The capacity of the Spanish industry is about 90,000 tonnes – HWL claims that ██████████ tonnes would be enough to cause it material injury.

154. The 2011 GAIN report notes that the canned peach sector has experienced significant consolidation in the past decade and that some traditional companies have been pushed out of business. The GAIN report refers to the fact that Spain is the second largest European Union (EU) exporter, after Greece, but that most of the trade occurs within the EU. However, the report also notes that all of the EU markets can be easily serviced by competition from within the EU as well as from other world exporters, including increasingly tough competitors like China. The main export markets outside of the EU are the Middle East and Switzerland. MBIE notes that the GAIN report is dated 2011 which casts doubt on its relevance and reliability to a decision which needs to be made at the present time.

155. MBIE uncovered a more recent (2013) paper on peach production in Spain.¹³ The paper notes that Spain is now the second largest peach producer and the largest exporter of peaches among the EU countries. The 2013 report also notes that Spain is the only EU country where peach production (destined for both fresh consumption and canning) has increased constantly over the last two decades (due mainly to the lower costs of production compared to other EU countries). However, the 2013 report also notes that domestic consumption in Spain is decreasing which, along with the fact that production is increasing, may indicate an increasing supply of stock available for export.

156. The EC submitted that the New Zealand industry’s application for a continuation of anti-dumping duties does not consider the spare capacity of the Spanish market to supply New Zealand.¹⁴ The EC provided a later submission in which it claimed that, based on certain statistics in a 2016 report, the saturation of the New Zealand market by Spanish exporters was not as likely as alleged in MBIE’s interim report.¹⁵

157. MBIE considers that the New Zealand industry’s application for a continuation of anti-dumping duties did include information, reasonably available to it, on the production capacity of the Spanish peach canning industry and the propensity of production to be exported to New Zealand. MBIE considered this information was sufficient for the purpose of initiating a review into the continued need for anti-dumping duties on preserved peaches from Spain. Once the review was initiated, MBIE sourced further and more recent information which enabled it to make an interim conclusion on the Spanish peach canning industry’s disposable capacity to export abroad (including to New Zealand). That interim conclusion was based on the balance of the information gathered at that stage of the review and found that the Spanish preserved peach industry had the capacity to resume

¹³ Peach Production in Spain: Current Situation and Trends, From Production to Consumption, *Institut de Recerca I Tecnologia Agroalimentaries*, Spain.

¹⁴ Submission by European Commission, dated 29 November 2016.

¹⁵ Submission by European Commission on MBIE’s Interim Report (29 November 2016).

exports of preserved peaches to New Zealand that would be significant relative to New Zealand production and consumption (market size).

158. Following the release of the interim report, the EC provided a 2016 report¹⁶ which references reduced production figures and increased prices in Spain for canned peaches. The EC claimed that these figures indicate that the saturation of the New Zealand market by Spanish imports is not as likely as alleged in MBIE’s interim report.

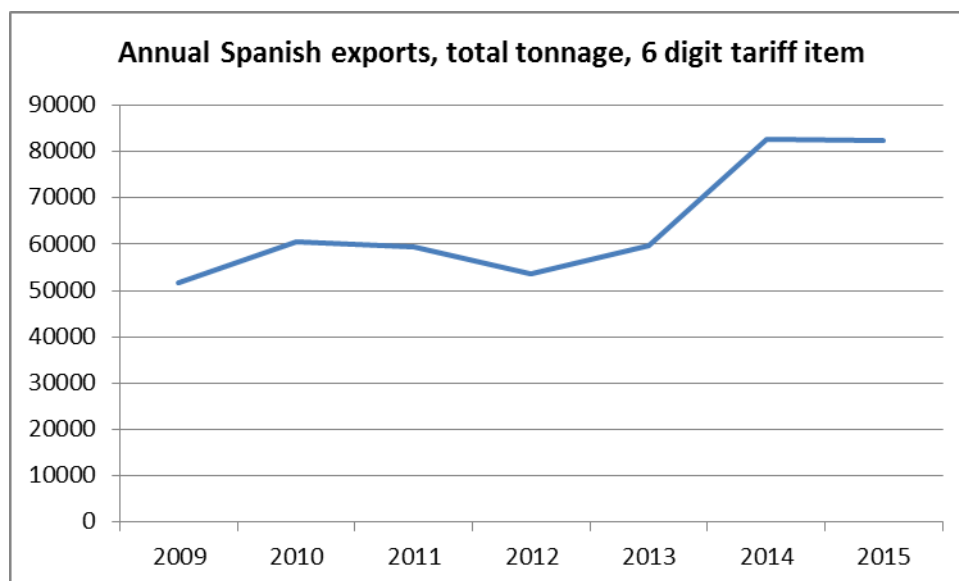
159. MBIE has used the totality of the information sourced in the review to attempt to gauge the Spanish peach canning industry’s disposable capacity to export abroad (including to New Zealand). Production, consumption and export volume and pricing figures will fluctuate on a year-to-year basis meaning that such an exercise is inherently difficult. However, some information is not in dispute. For example, the information clearly shows that Spain is now the second largest peach producer among the EU countries (behind Greece) and the largest exporter of peaches. Information sourced on the Spanish industry’s export volume of canned peaches shows that around 50,000 tonnes were exported in 2011. Recent information (at the six-digit tariff level) shows that this volume has increased to upwards of 80,000 tonnes in recent years.

Export Intention of the Spanish industry

160. No Spanish producer provided details of their intentions regarding exporting to New Zealand although one exporter of Spanish peaches stated that it had no plans for any further exports to New Zealand. In any event, it is likely that the Spanish producers’ intentions to supply New Zealand will largely be driven by the desire of New Zealand importers to source from Spain and the extent to which there is disposable production in Spain to supply New Zealand after the traditional markets have been serviced.

161. MBIE sourced information on recent export volumes of preserved peaches from Spain. The extent to which export volumes of preserved peaches from Spain have been increasing since 2009 is shown in the graph below. MBIE sourced this export data from the Trade Map data base referred to previously in this report. The graph below shows annual exports from Spain to all destinations, at the six-digit tariff level covering preserved peaches. The graph shows that since the original investigation in 2011, the Spanish industry has increased its exports from around 60,000 tonnes in 2011, to around 82,000 tonnes in 2015.

¹⁶ Exporting Canned Fruit and Vegetables to Europe, *Centre for the Promotion of Imports from Developing Countries* (CBI).



162. Following the release of the interim report, the EC provided a submission addressing the likelihood of the Spanish industry exporting significant volumes to New Zealand.¹⁷ The EC submitted that the saturation of the New Zealand market by Spanish exporters is not likely because production is decreasing in all the main production regions in the EU, including Spain, and the EU is the largest consumer of canned fruit and vegetables world-wide. To support its claim, the EC pointed to a number of statistical indicators identified in a 2016 report produced by a Netherlands agency which promotes imports from developing countries.¹⁸ In particular, the EC pointed to the following details contained in the report:

- demand for canned peaches (in the EU) is expected to be stable in 2016.
- canned peach production is lower in all main production regions, including in Spain.
- canned peach prices in Spain are 5 percent higher in 2016 than in 2015.

163. MBIE also sourced a USDA Foreign Agricultural Service (September 2016) report titled “Fresh Peaches and Cherries: World Markets and Trade” which highlighted the decreased production in Spain. The Report noted in respect of fresh peaches/nectarines that EU production is projected to fall 217,000 tons as unfavourable weather lowered yields in top producers Spain and Italy.

164. HWL claims there continue to be ‘opportunistic’ importers/distributors in the New Zealand market who are using the same business model they used in 2009 (prior to the original Spanish investigation), when sourcing significant volumes of cheap imports from Spain. HWL claims the situation which occurred in 2009, when countervailing duties on imports of canned peaches from the EU were terminated, is an example of what will happen if the anti-dumping duties on Spanish imports expired. In 2009, soon after the countervailing duties on imports from the EU were terminated, independent importers took advantage of the non-imposition of countervailing duties

¹⁷ Submission by European Commission, dated 29 November 2016.

¹⁸ Exporting Canned Fruit and Vegetables to Europe, *Centre for the Promotion of Imports from Developing Countries* (CBI).

on imports of preserved peaches from Spain and began importing significant volumes at very low prices. It was this fact that resulted in MBIE conducting a dumping investigation into those imports and imposing duties as a result.

165. MBIE has been unable to source positive evidence that would support a conclusion that a similar situation would occur if the current Spanish anti-dumping duties were removed as what happened in 2009 when countervailing duties were removed. As noted elsewhere in this report, the use of dated information and scenarios casts doubt on its relevance and reliability to a decision which needs to be made at the present time.

Conclusion

166. Capacity and intent to export to New Zealand are interdependent. For example, if the Spanish industry has discretionary stock then the removal of the New Zealand duties which made the industry competitive in this market may lead to a conclusion that it will intend to resume exports, and if the discretionary stock is large enough then the volumes could be significant relative to New Zealand production and consumption. On the other hand, if the Spanish industry had limited discretionary stock then it may make decisions based on the relative merits of the New Zealand verses other markets.

167. HWL claims that the Spanish industry has a large discretionary stock, whereas the EU argues that it does not have sufficient discretionary capacity to flood the New Zealand market and based on supply and demand projections this situation is not likely to change in the future. The additional evidence that MBIE has sourced does not conclusively support either claim. Given the size of the Spanish industry relative to the size of the New Zealand market MBIE considers that the Spanish industry may, over longer timeframes, have the capacity and intention to resume exports into New Zealand in volumes that would be significant relative to New Zealand production and consumption (market size) i.e. they either have significant discretionary stock or New Zealand offers a better market than alternative markets.

4.5.4 The ease of entry into the New Zealand market

168. MBIE has in the past considered the preserved peach market highly competitive. HWL does not have any exclusive customers, and the market is always open to new sources of supply. MBIE has concluded in previous investigations and reviews concerning canned peaches that barriers to entry to the New Zealand market are extremely low, for reasons such as the ability of house brand customers to terminate contracts and switch suppliers at short notice, the lack of contractual agreements between supermarkets and suppliers and the ability of brokers to source the subject goods from anywhere in the world to take advantage of market opportunities. MBIE has found no reason to change its previous conclusion.

4.5.5 The ability of importers to handle a significant increase in imports and the ease of distribution

169. HWL claims that small brands, such as [REDACTED], will source from Spain if anti-dumping duties are removed, and on-sell these products to [REDACTED] supermarkets. These brands tend to not be locked into contracts, so it would be easy for them to move to a cheap source of supply.

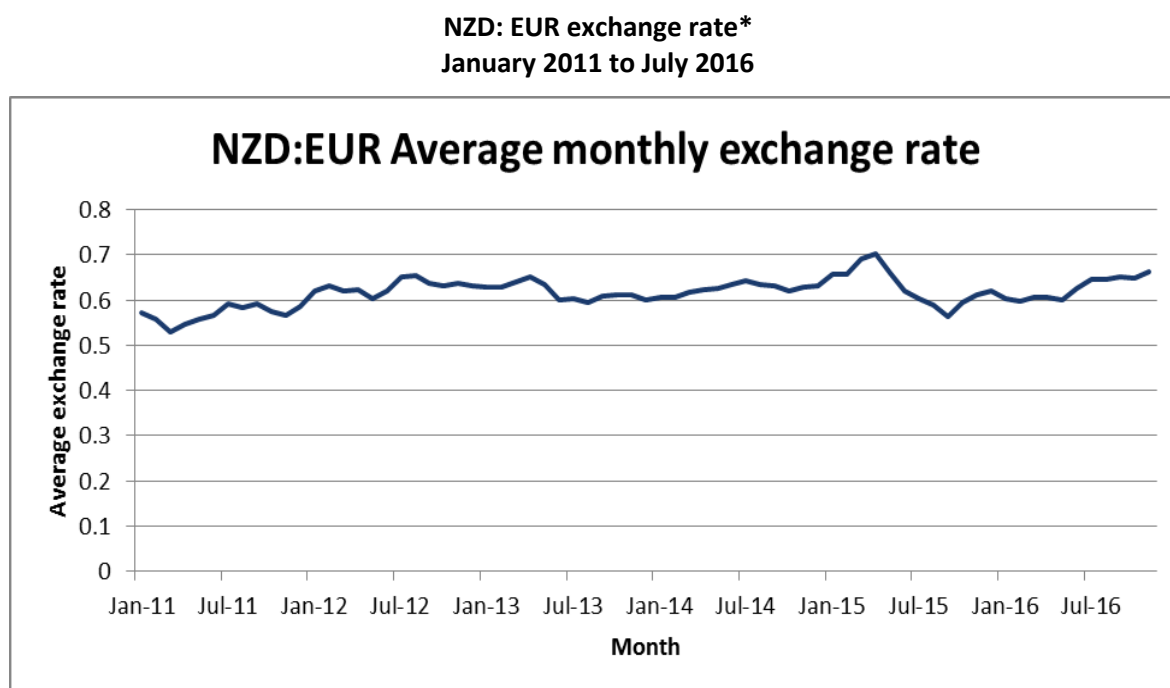
170. New Zealand has well developed distribution channels for canned peaches, giving widespread access to the New Zealand market.

171. MBIE has consistently found in other canned and preserved peach reviews and investigations that the New Zealand market is easy to access, as are its distribution systems. There do not appear to be any changes to the market that would change these conclusions.

4.5.6 Exchange rates

172. A further consideration in assessing of the likelihood of an increase in import volumes of preserved peaches from Spain, in the absence of anti-dumping duties, is the movement of the NZD against the EUR. In most cases, shipments from Spain are invoiced in EUR.

173. MBIE has analysed the change in the NZD:EUR exchange rate from 2011 (the time of the original investigation) to 2016. The graph below shows the change in the value of the NZD against the EUR over this period.



* www.x-rates.com

174. The information shows that there has been a small appreciation of the NZD against the EUR since 2011, suggesting that conditions are currently more favourable for importers looking to source goods from Europe, including Spain.

4.5.7 Conclusions

175. MBIE has considered a range of factors to determine whether it is likely that that the Spanish industry will resume exports to New Zealand at quantities sufficient to cause material injury to the domestic industry if the anti-dumping duties are removed.

176. MBIE has taken into account the generally favourable market conditions in New Zealand (ease of entry, exchange rates, and distribution channels) as well as the capacity and intent of the Spanish industry to export to New Zealand. MBIE considers that the determining factors are the capacity and intent to export.

177. Capacity and intent to export to New Zealand are interdependent. For example, if the Spanish industry has discretionary stock then the removal of the New Zealand duties which made

the industry competitive in this market may lead to a conclusion that it will intend to resume exports, and if the discretionary stock is large enough then the volumes could be significant relative to New Zealand production and consumption. On the other hand, if the Spanish industry had limited discretionary stock then it may make decisions based on the relative merits of the New Zealand verses other markets.

178. However, the established evidential test is that this outcome must be ‘likely’. As noted in section 1.3 of this report, the Appellate Body equated ‘likely’, as it is used in Article 11.3 of the Anti-dumping Agreement, with ‘probable’. Also, the New Zealand Court of Appeal has interpreted the phrase to mean ‘a real and substantial risk..., a risk that might well eventuate’. The Appellate Body also noted that any “likelihood” determination under Article 11.3 must be based on positive evidence.

179. Based on the lack of positive evidence available to it MBIE is not able to conclude that it is likely that the Spanish industry will resume exports to New Zealand at quantities sufficient to cause material injury to the domestic industry.

4.6 Price effects and Economic Impact

180. Based on the lack of positive evidence available to it, MBIE was unable to conclude that the Spanish industry will resume exports of dumped product to New Zealand at volumes sufficient to cause material injury to the New Zealand industry, if the duties are removed. MBIE, therefore, does not consider it is necessary to consider the price effects and consequential economic impact on the industry that would normally be examined in a review.

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23 February 2017