

Preserved Tomatoes from Italy Non-confidential Initiation Report

Dumping and Countervailing Duties Act 1988

Dumping Application

Ministry of Economic Development

ISBN: 978-0-478-38219-8

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Abbreviations

The following abbreviations are used in this Report:

Act (the)	Dumping and Countervailing Duties Act 1988
Amendment Act (the)	Dumping and Countervailing Duties Amendment Act 1994
Agreement (the)	WTO Agreement on Implementation of Article VI of the GATT 1994
CIF	Cost, Insurance and Freight
Customs	New Zealand Customs Service
EBIT	Earnings Before Interest and Tax
EUR	Euro
FOB	Free on Board
HWL	Heinz Wattie's Limited
Ministry (the)	Ministry of Economic Development
NZD	New Zealand Dollar
VFD	Value for Duty
WTO	World Trade Organisation

1. Executive Summary

Introduction

1. On 18 July 2011 the Ministry of Economic Development (the Ministry) accepted a properly documented application for a dumping investigation from Heinz Wattie's Limited (HWL). HWL claimed that imports of preserved tomatoes from Italy are being dumped and have caused and/or are threatening to cause material injury to the New Zealand industry.

2. Pursuant to section 10 of the Dumping and Countervailing Duties Act 1988 (the Act), this report assesses the accuracy and adequacy of the evidence provided to determine whether there is sufficient evidence to justify the initiation of an investigation.

Goods Subject to the Application

3. The imported goods covered by the application are:

"Flavoured and unflavoured tomatoes (whole, chopped or crushed) in a liquid medium and packed in containers up to and including 4.0 kilograms. The following tomato products are not subject goods: pastes, purees, sauces, pasta sauces and sundried tomatoes"

Dumping

4. The Ministry is satisfied that HWL has provided sufficient evidence of dumping for the purpose of initiating an investigation. Based on the evidence provided in the application, the dumping margin is 90 percent expressed as a percentage of the export price.

Injury and Threat of Injury

5. There is evidence that import volumes of the subject goods have increased significantly in absolute terms and relative to production and consumption in New Zealand. There is also evidence that the New Zealand industry's prices have been undercut by the subject goods and that the New Zealand industry's prices have been suppressed. There is no evidence of the New Zealand industry's prices being depressed.

6. Consequent on these volume and price effects there is evidence of an adverse economic impact reflected in a significant decline in profits. There is no evidence of an adverse impact on sales volume or sales revenue. There is some evidence which indicates an adverse impact on the market share held by HWL's domestically produced products. The application contained insufficient information relating to the industry's cash flow, productivity, utilisation of production capacity, inventory, employment and wages, and ability to raise capital and investments. The Ministry notes that information on these factors will be sought from the industry during any investigation.

7. Based on available information, the Ministry does not consider that the injury suffered by HWL is likely to have been caused by factors other than the allegedly dumped imports from Italy. The Ministry is satisfied HWL has provided sufficient evidence showing that imports of the subject goods are causing material injury to the New Zealand industry for the purpose of initiating an investigation. Given the determination that there is evidence of current material injury, it was not necessary for the Ministry to assess HWL's submissions concerning threat of material injury.

Request for Provisional Measures

8. HWL is seeking the urgent imposition of provisional anti-dumping duties. Provisional measures may be applied at any time after 60 days from the date on which an investigation has been initiated in order to prevent material injury being caused during the period of investigation.

Conclusion

9. Based on the information reasonably available to HWL, the Ministry is satisfied that sufficient evidence of dumping and injury has been provided for the purpose of initiating an investigation.

Recommendation

10. This report recommends that the Chief Advisor of the Trade Rules, Remedies and Tariffs Group, acting under delegated authority from the Chief Executive, initiate an investigation to determine the existence and effect of any alleged dumping of preserved tomatoes from Italy.

2. Introduction

2.1 Application

11. On 18 July 2011 the Ministry of Economic Development (the Ministry) accepted a properly documented application from Heinz Wattie's Limited (HWL), alleging that dumped imports of preserved tomatoes from Italy are causing and/or threatening to cause material injury to the New Zealand industry.

12. In accordance with section 10 of the Dumping and Countervailing Duties Act 1988 (the Act), the Ministry's Chief Executive may initiate an investigation to determine both the existence and effect of any alleged dumping of any goods on being satisfied that sufficient evidence has been provided that the goods are being dumped and, by reason thereof, material injury to an industry has been or is being caused or is threatened.

13. The New Zealand legal case *Kerry (NZ) Ltd v Taylor*¹ determined that in order to initiate an investigation, there must be evidence beyond a mere assertion and of a nature and extent that indicate a likelihood of dumping and material injury, requiring investigation. The Court stated the application should be assessed with due scepticism, bearing in mind the commercial context, but emphasised that the assessment is one of sufficiency of evidence, not of dumping and material injury.

14. This report assesses the present application against the requirements of the Act to determine if adequate evidence has been presented to justify the initiation of an anti-dumping investigation.

Dumping is defined in sub-section 3(1) of the Act and is essentially price discrimination between markets. Dumping occurs when an exporter sells goods to New Zealand (export price) at a price less than the price charged in its domestic market (normal value). Adjustments are made to ensure that the comparison of these prices is fair.

2.2 Investigation Period

15. This report recommends that an investigation be initiated. Due to its timing it is recommended that the period used to determine claims of dumping (the period of investigation) be the year ended 31 August 2011. This period is in accordance with New Zealand's preferred period for assessing dumping of twelve months.²

16. Any final determination of whether or not goods are dumped and causing injury can be made only after a full investigation has been carried out in accordance with the Act and the World Trade Organisation (WTO) Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the Agreement).

¹ (1991) 2 PRNZ 393

² Recommendation adopted by the World Trade Organisation Committee on Anti-Dumping Practices on 5 May 2000 (G/ADP/6)

2.3 Date for Submissions

17. A selection of importers, exporters and manufacturers will be directly invited to make submissions and provide responses to questionnaires. Importers will be given 30 days, and exporters and manufacturers will be given 37 days, to respond to questionnaires.

18. All interested parties are entitled to make submissions in the investigation and it is recommended that submissions are made by no later than **2 February 2012** so that they can be considered in the Ministry's report on the essential facts and conclusions of this investigation. Submissions can be made to the Trade Rules, Remedies and Tariffs Group, Ministry of Economic Development, P O Box 1473, Wellington 6011, New Zealand, or by email at traderem@med.govt.nz.

3. Interested Parties

3.1 Basis for the Application

19. HWL claims that the alleged dumping of preserved tomatoes from Italy is causing or threatening to cause material injury through:

- price undercutting, and
- price depression and suppression;

resulting in or threatening to result in:

- a decline in output and sales;
- a decline in market share;
- a decline in profits and return on investments;
- a decline in utilisation of production capacity; and
- adverse effects upon cash flow, inventories, employment, and growth.

20. In respect of threat of material injury, HWL also submitted that the volume of dumped imports from Italy is likely to increase significantly. HWL submitted that:

- the volume of imports from Italy has increased significantly;
- Italian producers have sufficient spare production capacity and inventory which can be used to supply New Zealand importers at short notice; and
- the negative price effects caused by the likely increase of imports from Italy would further undercut, depress and suppress HWL's selling prices.

21. It should be noted that the Ministry approaches investigations on the basis that injury and threat of injury are alternatives i.e., an industry is either injured or threatened with injury, but both cannot apply at the same time.

3.2 Imported Goods

22. The goods which are the subject of the application, hereinafter referred to as "subject goods", are:

"Flavoured and unflavoured tomatoes (whole, chopped or crushed) in a liquid medium and packed in containers up to and including 4.0 kilograms. The following tomato products are not subject goods: pastes, purees, sauces, pasta sauces and sundried tomatoes"

23. HWL noted that the subject goods may vary from cans to glass jars to pouches and other forms of packaging with different capacities.

24. The following table shows the Tariff Item and Statistical Key and normal tariff rate that the subject goods enter under.

Table 3.1: Tariff Classification and Rate of Duty

Number	Code	Goods	Normal Tariff
20.02		Tomatoes prepared or preserved otherwise than by vinegar or acetic acid:	
2002.10.00	00B	Tomatoes, whole or in pieces	Free

25. HWL noted that the Tariff Item and Statistical Key would likely include a broader range of goods than only the subject goods. The Ministry checked the goods descriptions contained in the Customs data and can confirm that the Tariff Item and Statistical Key includes non-subject goods e.g., bulk tomatoes, sundried tomatoes.

26. HWL also noted that two other statistical keys may include the allegedly dumped goods;

- 2002.90.01 00H Vegetable preparations; tomato juice, puree and concentrate, prepared or preserved otherwise than by vinegar or acetic acid; and
- 2002.90.09 00J Vegetable preparations; tomatoes, puree and concentrate, prepared or preserved otherwise than by vinegar or acetic acid.

27. The Ministry checked the goods descriptions contained in the Customs data and notes that the products classified under the other two statistical keys are not subject goods.

3.3 Interested Parties

New Zealand Industry

28. The application for an anti-dumping investigation was made by HWL which has stated it is the only producer in New Zealand of canned tomatoes. The Ministry has not been able to identify any other New Zealand producers of like goods.

Exporters

29. HWL advised that it imports Italian preserved tomatoes from a company which acts as the marketing arm for an Italian manufacturer named [REDACTED] HWL said it does not know any other exporters of the subject goods.

30. The Customs data shows that in the year ended 31 August 2011 there were 58 firms supplying goods originating from Italy that entered under Tariff Item and Statistical Key 2002.10.00 00B.

31. As noted in paragraph 25 above, the Tariff Item and Statistical Key under which the subject goods enter New Zealand covers a broader range of products than the subject goods. Any investigation will have to establish the extent to which the parties listed in the Customs data are exporting the goods subject to this complaint.

Importers

32. HWL identified 6 companies which it knows have imported preserved tomatoes from Italy over the past year. The Customs data shows that in the year ended 31 August 2011, 35 firms imported goods classified under Tariff Item and Statistical Key 2002.10.00 00B which originated from Italy.

Selection of Exporters

33. The Ministry is likely to restrict its analysis to a selection of exporters if an investigation is initiated due to the large number of exporters of preserved tomatoes from Italy. Article 6.10 of the Agreement states that a sample may be limited to the largest percentage of the volume of exports that can reasonably be investigated.

4. New Zealand Industry

34. 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.

“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:

4.1 Like Goods

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

36. The subject goods have been described in section 3.2 above.

Like Goods Analysis

37. Section 3 of the Act provides that like goods are goods that are either like the imported goods in all respects or have characteristics that closely resemble those goods. To determine whether the goods produced in New Zealand are like goods to the subject goods, the Ministry normally considers physical characteristics, function and usage, pricing structures, marketing and any other relevant considerations, with no one of these factors being necessarily determinative.

38. HWL provided an analysis of like goods issues in its application. HWL’s analysis and the Ministry’s comments and assessment of like goods are contained under the relevant headings below.

Physical Characteristics

39. Assessing the physical characteristics involves looking at the appearance, size and dimensions, composition of the product and the production methods and technology utilised to create it.

Types of Preserved Tomatoes

40. HWL said it produces preserved tomatoes in the form of chopped, flavoured and crushed tomatoes. HWL does not produce whole tomatoes and imports these products from Italy.

41. The subject goods include whole, chopped, flavoured and crushed tomatoes.

42. Although HWL does not produce preserved whole tomatoes, HWL considered that consumers do not perceive any real differences between the styles or cuts of preserved tomatoes (see paragraph 52 below). HWL provided market information which showed [REDACTED], which suggests that the products are substitutable.

Packaging

43. All of HWL's preserved tomatoes are packed into cans. HWL stated that the subject goods may be entering in various forms of packaging and capacities, including cans, glass jars and pouches. HWL considered that its canned tomatoes are identical to imported canned tomatoes from Italy. HWL considered that its canned tomatoes are similar to preserved tomatoes in other types of packaging.

44. The Ministry notes that dumping investigations concerning preserved peaches from China and Spain have concluded that HWL's canned peaches are a like good to imported peaches in various forms of packaging such as glass jars and plastic pottles.

45. Any investigation will need to obtain further information on the types of packaging of the imported products.

Package Sizes

46. HWL produces preserved tomatoes in 400g and 3kg can sizes according to information contained in its application.

47. The subject goods include preserved tomatoes in containers up to and including 4.0 kilograms. Based on the market research information provided in the application, the Ministry notes that there do not appear to be any imported preserved tomato products in excess of 3kg sold at the retail level in New Zealand. A significant majority of preserved tomato products sold at the retail level are in the 400g size.

48. The Ministry notes that dumping investigations concerning preserved peaches from China and Spain have concluded that HWL's canned peaches, ranging from 410 grams to 3 kilograms, were a like good to imported peaches in various packaging up to and including 4.0 kilograms.

49. Any investigation will need to obtain further information concerning the range of sizes of imported products.

Function and Usage

50. Function and usage covers consumer perceptions, expectations, and end use, which can assist in reaching conclusions regarding substitutability where relevant.

51. HWL commented that it produces preserved tomatoes for retail and food service sale in New Zealand which have the same function and application as imported preserved tomatoes.

52. HWL said that the only differentiating feature among various preserved tomatoes is the product cut. However, HWL commented that product cut is not an important determining factor in determining usage as consumers will frequently substitute whole peeled, chopped, flavoured or crushed tomatoes. It is HWL's view that consumers will switch between cuts and brands if

Pricing Structures

53. Some goods are differentiated by the level at which they are priced to end users, by the costs that are built into the pricing structure or the way in which prices are set.

54. HWL said that the preserved tomatoes it produces compete at the same price point as the imported tomatoes. HWL said it has . HWL provided information which shows that preserved tomatoes from Italy are significantly undercutting HWL's selling prices (see Section 6.3 below). While this information shows a significant difference in selling prices it does not in itself indicate that the subject goods imported from Italy and like goods produced by HWL have different pricing structures. It should be noted that HWL sells two brands of preserved tomatoes in the New Zealand market, Oak and Wattie's. Due to the wide range of preserved tomato products, any investigation will need to obtain more information concerning pricing structures.

Marketing

55. Marketing considerations include: the distribution channels used; customers (both actual and targeted); branding and advertising.

56. HWL commented that the distribution channels, customers and means of advertising are similar for both the preserved tomatoes it produces and the preserved tomatoes imported from Italy.

Other

57. HWL stated that the preserved tomatoes it produces would be classified under the same Tariff Item and Statistical key as the subject goods if they were imported into New Zealand (Tariff Item and Statistical Key 2002.10.00 00B).

58. The Ministry agrees that the preserved tomatoes produced by HWL, if they were to be imported, would enter under the same Tariff Item and Statistical Key as the subject goods.

Conclusion Relating to Like Goods

59. HWL provided information regarding the subject goods and compared the characteristics of the subject goods with the canned tomatoes it domestically produces. HWL considered the physical characteristics, function and usage, pricing, marketing and tariff classification. HWL considered that its preserved tomatoes, while not like in all respects, possess characteristics that closely resemble the subject goods and are therefore like goods within the terms of the Act.

60. Should a dumping investigation be initiated, further analysis will be required as to whether HWL makes like goods to all goods within the subject goods description, and if not, how the goods description should be amended to exclude goods where HWL does not make like goods. In particular, further information is required concerning the types of packaging used for imported products and also the product size range of imported goods from Italy (HWL's products are 400 grams and 3 kilograms).

61. For the purposes of initiation of an investigation, the Ministry concludes that there is sufficient evidence that the canned tomatoes produced by HWL, while not like in all respects, have characteristics that closely resemble the subject goods and are therefore like goods to the subject goods.

4.2 New Zealand Industry Support for the Application

62. The requirements of section 10 of the Act must be met before an investigation can be initiated. This includes a requirement that an application is supported by New Zealand manufacturers representing at least 25 per cent of the production of like goods. In addition at least half of the New Zealand manufacturers (by production volume) that have provided written support for or opposition to the application must be in support of the application.

63. The application was submitted by HWL which stated it is the only producer of like goods in New Zealand. The Ministry has not been able to identify any other producers of like goods in New Zealand and therefore the Ministry is satisfied HWL has standing in terms of the Act to make an application for a dumping investigation as the sole producer of like goods in New Zealand.

5. Evidence of Dumping

64. Section 10 of the Act outlines the evidence of dumping which is required in a properly documented application for an investigation. The Ministry uses sections 4 and 5 of the Act, which set out in detail the export price and normal value information that must be examined in an investigation to establish if dumping exists, as guidance to determine whether sufficient evidence of dumping has been provided in terms of section 10 of the Act.

5.1 Export Prices

65. Export prices are determined in accordance with section 4 of the Act.

Base Price

66. HWL estimated an export price based on New Zealand import statistics sourced from Statistics New Zealand for the year ended March 2011 for the tariff item and statistical key identified in paragraph 244. HWL calculated an average free-on-board (FOB) value of 1.23 NZD per kilogram. HWL converted the FOB value at an exchange rate of 1 NZD: 0.55 EUR to calculate an FOB value of 0.67 EUR per kilogram. The Ministry checked the average Customs rate of exchange for the year ended March 2011 which was approximately the same as the rate used by HWL for the currency conversion.

67. In support of the estimated export price based on import statistics, HWL provided information relating to prices which it pays for its imports of canned whole peeled tomatoes from Italy. HWL noted that

[REDACTED]

Adjustments

68. HWL made a downward adjustment of 1 percent for inland freight. HWL did not provide any evidence to substantiate the amount of the adjustment for freight but noted that it was based on HWL's understanding of local costs.

69. To check the reasonableness of the deduction made by HWL for inland freight, the Ministry calculated the percentage that costs from ex-factory to FOB represented of the FOB price in a previous review involving a canned food product. The deduction made for these costs covered a wider range of costs than only inland freight and amounted to 2 percent of the FOB price. This indicates that the deduction made by HWL is conservative, and if a deduction was to be made for all of the likely costs between ex-factory and FOB the deduction would likely be larger and increase the dumping margin.

Export Price

70. The ex-factory export price was 0.67 EUR per kilogram.

5.2 Normal Values

71. Normal values are determined in accordance with section 5 of the Act.

Base Price

72. HWL provided information on normal values based on retail selling prices of a range of canned tomatoes in Italy which it obtained from a market research company named Euromonitor. HWL stated that the selling prices relate to June 2010, which the Ministry notes is within the 1 year period used to establish the export price above. From this information HWL calculated an average retail selling price of ██████████ EUR per kilogram for preserved tomatoes.

Adjustments

73. HWL made a downward adjustment to the retail selling price of 10 percent for value added tax (VAT). The Ministry confirmed that the current rate of VAT applying to preserved tomato products is 10 percent.

74. HWL made a downward adjustment of ██████ percent for a retailer's margin based on its knowledge of the distribution of preserved tomatoes in New Zealand. HWL noted that the estimated retailer's margin may be overstated based on recent supermarket selling prices of Italian preserved tomatoes in New Zealand which it provided in its application. In a previous review involving a canned food product, the Ministry accepted a retailer's margin of ██████ percent, which indicates that ██████ percent is a more conservative figure, as it reduces the dumping margin compared to a ██████ percent deduction. As such, the Ministry considers ██████ percent to be a reasonable deduction.

75. HWL made a downward adjustment of 1 percent for inland freight (freight from the factory to the supermarket). HWL did not provide any explanation of the basis on which the freight adjustment was made. The Ministry notes that an adjustment for inland freight is necessary as the cost of freight from the factory to the supermarket is incurred by either the supermarket if it purchased the goods at the ex-factory level, or alternatively, by the manufacturer if it sold the goods at the free-into-store level. The Ministry notes that this is a very small adjustment and is the same as the adjustment made for inland freight for the export price.

Normal Value

76. The ex-factory normal value was 1.27 EUR per kilogram.

5.3 Comparison of Export Price and Normal Value

77. The following table compares the export prices and normal values calculated in section 4 above.

Table 5.1: Dumping Margin Calculation

Ex-factory normal value	1.27 EUR
Ex-factory export price	0.67 EUR
Dumping margin	0.60 EUR
Dumping margin as % of export price	90%

5.4 Conclusion

78. HWL has provided evidence of estimated export prices and normal values based on information that was reasonably available. The Ministry considers that the exchange rates, the export price and normal value information and relevant assumptions and adjustments have been made on a reasonable basis.

79. Based on the information contained in the application and obtained by the Ministry, the Ministry concludes that there is sufficient evidence that preserved tomatoes from Italy have been exported to New Zealand at dumped prices for the purpose of initiating an investigation.

5.5 Import Volumes

80. Article 8.5 of the Agreement requires that an application shall be rejected and an investigation shall be terminated promptly as soon as the authorities are satisfied that there is not sufficient evidence of either dumping or of injury to justify proceeding with the case. Article 5.8 further states there shall be immediate termination in cases where the authorities determine, *inter alia*, that the volume of dumped imports, actual or potential, is negligible. Article 5.8 also states that the volume of dumped imports shall normally be regarded as negligible if the volume of imports from a particular country is found to account for less than 3 percent of total imports.

81. When considering the volume of imports, the Ministry normally uses the proposed period of investigation to assess whether the import volumes are negligible.³ If an investigation is initiated the period of investigation will likely be the year ended 31 August 2011. Customs data for the tariff item and statistical key covering the subject goods for the year ended 30 April 2011 is shown in the table below. The year ended April 2011 has been used for this calculation as it aligns with HWL's financial year, but the Ministry notes that the import volume from Italy was clearly above the 3 percent negligibility threshold if the year ended August 2011 had been used.

³ Recommendation adopted by the World Trade Organisation Committee on Anti-Dumping Practices on 27 November 2002 (G/ADP/10).

**Table 5.2: Import Volumes of Preserved Tomatoes
(Year to 30 April 2011)**

	Kilograms	% of Total
Imports from Italy	10,687,222	84%
Other imports	2,074,150	16%
Total imports	12,761,372	

82. Imports from Italy made up 84 percent of total imports for the year ended 30 April 2011 and are therefore clearly above the 3 percent negligibility threshold in Article 5.8 of the Agreement.

Conclusion on Import Volumes

83. Based on the information available, the volume of imports from Italy are not negligible.

6. Evidence of Injury

84. HWL's application included information which it considered showed that dumped imports had caused material injury and also that dumped imports threatened to cause material injury. As noted in paragraph 211 above, the Ministry treats the submissions of current and threat of material injury separately. The Ministry will firstly consider whether the New Zealand industry is currently suffering material injury caused by dumped goods. The Ministry will only go on and consider the threat of injury submission where it is found that the New Zealand industry is not currently suffering material injury.

Financial information provided by HWL

85. The Ministry notes that HWL's sales of preserved tomatoes in New Zealand include both domestically produced products and imported products. HWL has provided its financial information in respect of its total preserved tomato business (domestic and imported products) and also its domestically produced tomato business. The injury analysis focuses on the performance of HWL's domestic tomatoes business. Where relevant, the Ministry has also commented on information relating to HWL's imports of the subject goods.

86. HWL provided financial information covering its financial years 2009 to 2011 (HWL's financial year ends April). The Ministry has assessed injury over HWL's financial years 2009 to 2011.

87. When determining whether the New Zealand industry has suffered material injury, the Ministry normally assesses a series of information starting from a financial year which was not affected by dumped imports through until the most recent financial year. HWL stated that its 2009 financial year was affected by dumping and that the New Zealand market has been subjected to the impact of dumped tomatoes from Italy for a long time. However, HWL noted that the injurious effects caused by dumped imports have increased significantly since 2009 and for this reason HWL considered that 2009 represented a suitable starting point for the Ministry's assessment of whether HWL has been injured by dumped imports.

6.1 Material Injury

Material Injury

88. Section 10(2) of the Act specifies the evidence of material injury that must be provided in a properly documented application before an investigation may be initiated. In addition, section 10(1) of the Act provides that before an investigation can be initiated, in addition to having a properly documented application, the Chief Executive must also be satisfied that sufficient evidence has been provided that dumped imports have caused or threaten to cause material injury to a New Zealand industry.

89. Material injury is considered for the industry as a whole or, in the absence of information from all domestic producers, in relation to those producers that constitute a major proportion of the New Zealand industry, regardless of whether an application

has been supported by all producers. Section 8 of the Act sets out in detail the matters that must be examined in any investigation to establish if material injury exists. In determining whether the evidence provided by HWL is sufficient in terms of section 10, the Ministry therefore takes guidance from the provisions of section 8 of the Act.

90. In its submission that dumped imports have caused material injury, HWL included arguments based on the performance levels which it considered it could have achieved if it did not have to compete with dumped imports from Italy i.e., counterfactual estimates of its performance in the absence of dumped imports from Italy. The Ministry's normal practice when assessing whether dumped imports have caused material injury to the New Zealand industry is to consider observable facts, that is, the New Zealand industry's actual performance during the period assessed for injury. HWL's counterfactual estimates of its performance in the absence of dumped imports have therefore not been considered in assessing whether HWL is currently suffering material injury from dumped imports.

6.2 Import Volume Effects

91. Sub-section 8(2) of the Act directs that consideration shall be given to increases in import volumes either in absolute terms or relative to the volumes manufactured and consumed in New Zealand.

92. The following table shows imports of preserved tomatoes and sales of domestically produced preserved tomatoes. The imports of preserved tomatoes relate to the Tariff Item and Statistical Key identified in paragraph 24 (note the Tariff Item and Statistical Key includes a broader range of goods than only the subject goods). Both the imports and the sales of domestically produced preserved tomatoes are for the years ended April.

Table 6.1: Import Volumes (Kilograms)

	2009	2010	2011
Imports from Italy	8,061,125	8,739,918	10,687,222
Other imports	1,588,885	2,218,249	2,074,150
Sales of NZ domestic production			
NZ market			
Change on previous year:			
Imports from Italy		678,793	1,947,304
Other imports		629,365	- 144,099
Sales of NZ domestic production			
NZ market			
Percentage change:			
Imports from Italy		8%	22%
Other imports		40%	-6%
Sales of NZ domestic production			
NZ market			
Imports from Italy as percentage of:			
Sales of NZ domestic production			
NZ market			

93. Imports from Italy increased 8 percent in 2010 and increased a further 22 percent in 2011. As a percentage of sales of NZ domestic production, imports from Italy decreased by [REDACTED] percentage points in 2010, but then increased [REDACTED] percentage points in 2011. As a percentage of the NZ market, dumped imports from Italy decreased by [REDACTED] percentage points in 2010, but then increased [REDACTED] percentage points in 2011.

94. Imports from other sources increased by 40 percent in 2010, and then decreased by 6 percent in 2011. The NZ market for preserved tomatoes increased by [REDACTED] percent in 2010, and then increased a further [REDACTED] percent in 2011.

95. As noted in paragraph 25, some of the imports of preserved tomatoes in the Customs data are not subject goods. Any investigation will need to exclude, to the extent possible, any non-subject goods from the import volume figures.

Conclusion on Import Volume Effects

96. There was a significant increase of dumped imports from Italy from 2009 to 2011 in absolute terms. Dumped imports from Italy increased significantly as a percentage of sales of NZ domestic production from 2009 to 2011. There was a small increase in the market share held by dumped imports from Italy from 2009 to 2011.

6.3 Price Effects

Price Undercutting

97. Section 8(2)(b) of the Act provides that the Chief Executive shall have regard to the extent to which the prices of the dumped or subsidised goods represent significant price undercutting in relation to prices in New Zealand (at the relevant level of trade) for like goods of New Zealand producers.

98. In considering price undercutting, the Ministry will normally seek to compare prices at the ex-factory and ex-importer's store levels, to ensure that differences in distribution costs and margins do not confuse the impact of dumping.

99. HWL considered the first point of competition between domestically produced and imported subject goods to be at HWL's ex-factory level and the ex-wharf price level for the dumped imports from Italy. The Ministry considers that a comparison at this level of trade is reasonable given the majority of imports from Italy are made by New Zealand supermarkets and retailers according to the named importers in the Customs data.

Constructed Importers' Prices Based on Import Data

100. HWL provided import statistics from Statistics New Zealand for Tariff Item and Statistical Key 2002.10.00 00B. From this information, HWL calculated an average per kilogram export price over the 12 months to March 2011 of 1.23 NZD at the FOB level in Italy.

101. To estimate the ex-wharf price, upward adjustments were made for overseas freight and insurance (0.13 NZD) and customs clearance charges (0.02 NZD). The cost of overseas freight and insurance was based on the actual amounts recorded in the Customs data and the amount for customs clearance was based on HWL's own costs of importing.

102. Using these figures, the Ministry calculated an ex-wharf value of 1.38 NZD per kilogram for preserved tomatoes imported from Italy.

New Zealand Industry's Ex-factory Prices

103. HWL provided information relating to its sales values for the 2009, 2010 and 2011 financial years (years ended April). The Ministry calculated an average net sales value per kilogram for HWL's 2011 financial year. HWL stated that its selling prices are at the ex-factory level of trade.

Price Undercutting Comparison

104. The following table compares the average ex-wharf selling price of imports from Italy with HWL's average ex-factory price to assess the extent of any price undercutting. The undercutting is measured as a percentage of HWL's average selling price in the year ended April 2011.

Table 6.2: Price Undercutting (NZD per Kilogram)

HWL Ex-factory Price	
Importer's Ex-wharf Price	1.38
Amount of Undercutting	
Percentage Undercutting of HWL's Prices	

105. Table 6.2 above shows evidence of significant undercutting of HWL's average selling price by preserved tomatoes from Italy.

Price Depression

106. Section 8(2)(c) of the Act provides that the Chief Executive shall have regard to the extent to which the effect of the dumped or subsidised goods is or is likely significantly to depress prices for like goods of New Zealand producers.

107. Price depression occurs where prices achieved by the New Zealand manufacturers are lower than those achieved in a period unaffected by dumped goods.

108. HWL has provided financial information to enable the Ministry to assess whether it has suffered price depression. The following table shows HWL's average selling prices from 2009 to 2011.

**Table 6.3: Price Depression
(NZD per Kilogram)**

	2009	2010	2011
Average Selling Price	██████	██████	██████
As % of 2009		██████	██████

109. Table 6.3 shows that HWL's average selling price increased over the 3 year period. HWL's average selling price increased by ██████ percent in 2010, and increased a further ██████ percent in 2011.

Price Suppression

110. Section 8(2)(c) of the Act also provides that the Chief Executive shall have regard to the extent to which the effect of the dumped or subsidised goods is or is likely significantly to prevent price increases for those goods that otherwise would have been likely to have occurred.

111. The Ministry has compared HWL's total costs as a percentage of sales revenue from 2009 to 2011. The following table shows the resulting calculations.

**Table 6.4: Price Suppression
(NZD per Kilogram)**

	2009	2010	2011
Average Selling Price	██████	██████	██████
Total Costs	██████	██████	██████
Total Costs as % of Avg Selling Price	██████	██████	██████

112. Table 6.4 shows that total costs as a percentage of average sales revenue has increased by ██████ percentage points from 2009 to 2011.

Conclusion on Price Effects

113. Imports from Italy were significantly undercutting HWL's selling prices in its 2011 financial year.

114. HWL's selling prices have increased each year from 2009 to 2011 and the Ministry therefore concludes that there is no evidence of price depression.

115. Total costs as a percentage of sales revenue have increased each year from 2009 to 2011 and the Ministry therefore concludes that there is evidence that HWL has suffered price suppression.

116. The Ministry notes that these price effects are not of themselves a measure of injury. Injury caused to the New Zealand industry is assessed in terms of the economic impact in the following section of the report.

6.4 Economic Impact

117. Section 8 of the Act requires an assessment of the economic impact of the dumped goods on the New Zealand industry, and that relevant indicators are taken into account when considering the extent of that impact. These indicators are considered below.

Output and Sales

118. HWL provided financial information for sales volume and sales revenue from 2009 to 2011.

119. The following table provides the sales volume and sales revenue information over the injury period.

Table 6.5: Sales Volume (Kilograms) and Sales Revenue (NZD)

	2009	2010	2011
Sales Volume			
As % of 2009			
Sales Revenue			
As % of 2009			
Revenue/Kg			
As % of 2009			

120. HWL's total sales volume has fluctuated from 2009 to 2011. Compared to 2009, total sales volume increased by [redacted] percent in 2010 but then decreased by [redacted] percent in 2011. Overall, HWL's total sales volume increased slightly over the three year period.

121. HWL's total sales revenue fluctuated from 2009 to 2011. Compared to 2009, total sales revenue increased by [redacted] percent in 2010 but then decreased by [redacted] percent in 2011. Overall, HWL's total sales revenue increased by [redacted] percent over the three year period.

122. Compared to 2009, HWL's sales revenue per kilogram increased by [redacted] percent in 2010 and then increased by a further [redacted] percent in 2011.

Market Share

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

124. HWL claimed that it lost market share due to the presence of dumped imports from Italy.

125. The following table provides the market share information from 2009 to 2011. The imports of preserved tomatoes are for the year ended April for the Tariff Item

and Statistical Key identified in paragraph 24 (note the Tariff Item and Statistical Key includes a broader range of goods than only the subject goods). For the purpose of market share analysis, the Ministry has separately identified preserved tomatoes imported from Italy by HWL and New Zealand importers other than HWL. HWL's sales of domestically produced preserved tomatoes are for the years ended April.

**Table 6.6: Market Share
(Kilograms)**

	2009	2010	2011
Imports from Italy (all other importers)			
HWL's imports from Italy			
Total imports from Italy	8,061,125	8,739,918	10,687,222
Other imports	1,588,885	2,218,249	2,074,150
Sales of NZ domestic production			
NZ market			
Change on previous year:			
Imports from Italy (all other importers)			
HWL's imports from Italy			
Total imports from Italy		678,793	1,947,304
Other imports		629,365	- 144,099
Sales of NZ domestic production			
NZ market			
Percentage share held by:			
Imports from Italy (all other importers)			
HWL's imports from Italy			
Other imports			
Sales of NZ domestic production			

126. Table 6.6 shows that the market share held by preserved tomatoes from Italy by importers other than HWL did not change in 2010, but increased \square percentage point in 2011. The NZ market increased by \square percent in 2010 and a further \square percent in 2011.

127. Compared to 2009, imports from other sources increased significantly in 2010 resulting in an increase of market share of \square percentage points in 2010. The market share held by imports from other sources increased by \square percentage points in 2010 but then decreased by \square percentage points in 2011 (compared to 2009).

128. The table shows that the market share held by preserved tomatoes from Italy imported by HWL decreased by \square percentage points in 2010, but increased by \square percentage points in 2011. HWL advised that it imported chopped tomatoes from Italy in anticipation of increased demand. HWL also advised it had forecast an increase in sales volume in the 2011 financial year, however these increases did not eventuate and a significant proportion of the imports of chopped tomatoes were held in inventory for 2011 and are likely to be sold in the 2012 financial year. Given that a significant proportion of these chopped tomatoes were held in inventory at the end of HWL's 2011 financial year and that some imports for its 2012 financial year are included in the table, the increase in market share of HWL's imports from Italy, as well as the increase in the size of the New Zealand market, indicated in the table are likely to be overstated.

129. There was no change to HWL's market share of sales of NZ domestic production in 2010, but its market share decreased by [REDACTED] percentage points in 2011. As noted in paragraph 129 above, the percentage increase in market share of HWL's imports from Italy is likely to be overstated, and in turn, the loss of market share by HWL's sales of domestically produced like goods is also likely to be overstated.

Profits

130. Dumped imports can affect gross profit and net profit via the impact on sales prices and volumes.

131. The following table shows HWL's earnings before interest and tax (EBIT) figures from 2009 to 2011.

Table 6.7: EBIT (NZD)

	2009	2010	2011
EBIT	[REDACTED]	[REDACTED]	[REDACTED]
Change from Previous Year		[REDACTED]	[REDACTED]
EBIT per Kilogram	[REDACTED]	[REDACTED]	[REDACTED]
Change from Previous Year		[REDACTED]	[REDACTED]

132. Total EBIT decreased by [REDACTED] percent in 2010, and was followed by a further decrease of [REDACTED] percent in 2011.

133. EBIT per kilogram decreased by [REDACTED] percent in 2010, and was followed by another decrease of [REDACTED] percent in 2011.

Productivity

134. Productivity is the relationship between goods produced and the inputs required to manufacture them. Productivity is affected by output and capacity utilisation levels.

135. HWL did not make any specific submissions regarding productivity during the injury period. HWL provided its annual production volumes but did not provide the number of employees involved in the production of like goods.

136. Any investigation will need to obtain additional information regarding the number of annual staff and labour hours to fully evaluate the impact of dumped imports on productivity over the injury period.

Return on Investments

137. Return on investments measures profit against the value of the investment in a business. Changes in the return on investments may impact the ability to retain current investment or attract new investment. Declines in return on investments can result from a decline in profit or an increase in the level of investment within the business.

138. HWL has provided information regarding EBIT as a percentage of net sales value from 2009 to 2011.

139. Return on investments is normally assessed by looking at trends of EBIT as a percentage of assets or shareholders' funds. As noted in paragraph 132 above, total EBIT has decreased significantly from 2009 to 2011, but there is insufficient information from which the Ministry can make an assessment of return on investments.

140. Any investigation will need to obtain additional information regarding return on investments in relation to profits and investments relating to the production and sale in New Zealand of like goods.

Utilisation of Production Capacity

141. The utilisation of production capacity reflects changes in production volumes or changes in capacity. A decline in production volumes will lead to a higher cost per unit due to increased overhead allocation. This will lead to a decrease in profit level, unless offsetting savings are found elsewhere.

142. HWL provided its annual production volumes but did not provide information regarding its annual production capacity.

143. Any investigation will need to obtain additional information regarding HWL's production capacity to fully evaluate any impact of dumped imports on utilisation of production capacity.

Other Adverse Effects

Cash Flow

144. HWL has not provided information or forecasts regarding cash flow. It has stated that an analysis of cash flow would not add any value given the distribution of revenue and expenditure is uneven due to the seasonal nature of the preserved tomato business.

145. Any investigation will need to obtain additional information to fully evaluate any impact of dumped imports on cash flow.

Inventories

146. HWL submitted that the recent price depression and loss of market share has resulted in higher inventory levels being carried over into the 2011 processing year. HWL provided a graph in Appendix 10.7 which showed the preserved tomatoes inventory from May 2007 through to a forecast at 21 January 2012. HWL noted that the build-up of inventory also supports its submission that HWL was not able to

HWL stated that the imported price of preserved tomatoes from Italy has decreased significantly in 2011 and competitors have

passed these savings on to consumers, which has meant that HWL's forecast increase in sales did not eventuate.

147. As the build-up of HWL's inventory includes its own imports, the Ministry has not accorded any weight in its assessment of injury from 2009 to 2011 to the build-up of inventory.

148. Any investigation will need to obtain additional information to fully evaluate any impact of dumped imports of the subject goods on inventory levels.

Employment and Wages

149. HWL stated that its employment levels and expenditure have been relatively stable [REDACTED].

150. Any investigation will need to obtain additional information to fully evaluate any impact of dumped imports of the subject goods on employment and wages.

Growth, Investments, and Ability to Raise Capital

151. HWL stated that it would already have invested in capital expenditure for its tomato business but has put this investment on hold due to the impact on its operations of dumped imports from Italy.

152. HWL provided background information for the capital expenditure e.g. [REDACTED]. HWL stated that findings of any investigation will be a relevant consideration in its decision whether to invest in capital expenditure for its tomato business.

153. Any investigation will need to obtain additional information to fully evaluate any impact of dumped imports on these factors.

6.5 Causal Link

154. Section 10(1) of the Act requires that sufficient evidence be provided that material injury is caused by the dumped goods. This does not preclude another factor(s) also being a cause of material injury. This reflects the requirements of Paragraph 2 of Article 5 of the Agreement.

155. The Ministry adopts a two-limb test to assess causality. The first limb focuses on the dumped imports, asking whether there has been material injury by applying the criteria in sub-sections 8(1) and 8(2) of the Act. This test accepts that there is an inference that where material injury occurs, it is caused by dumping.

156. The second limb examines whether there are any known factors apart from the dumped imports that are also materially injuring the industry. If other factors are identified, it must be established whether the material injury caused by other factors breaks the inferred "causal link" established under the first limb. If there is no manifest cause of material injury, apart from the dumped goods, then the inferred causal link under the first limb is confirmed.

157. For the purpose of testing whether sufficient evidence of a causal link has been provided, the Ministry takes guidance from the potential causes of material injury, other than the dumped goods, set out in sub-section 8(2) of the Act. These factors are outlined below.

6.6 Other Causes of Injury

158. Section 8(2)(e) of the Act provides that the Chief Executive shall have regard to factors other than the dumped goods which have injured, or are injuring, the industry, including—

- i. The volume and prices of goods that are not sold at dumped prices; and
- ii. Contraction in demand or changes in the patterns of consumption; and
- iii. Restrictive trade practices of, and competition between, overseas and New Zealand producers; and
- iv. Developments in technology; and
- v. Export performance and productivity of the New Zealand producers.

Volume and prices of goods that are not sold at dumped prices

159. In its application for an investigation, HWL noted that imports from Italy represented 80 percent of total imports into New Zealand and therefore considered that imports from other sources were unlikely to be a cause of injury from 2009 to 2011.

Volume of imports from other countries

160. From the Customs data, the Ministry identified the main sources of preserved tomatoes, other than Italy, are Australia and Turkey. Table 5.8 below shows the volume of imports of preserved tomatoes into New Zealand from Australia, Turkey and “all other countries” from 2009 to 2011 for the years ended April.⁴

⁴ “All other countries” include imports from the following countries: Argentina, Bulgaria, Brazil, Canada, China, Germany, Spain, Fiji, France, Great Britain, Ghana, Greece, Israel, India, Mexico, the Netherlands, Portugal, Russian Federation, Saudi Arabia, Singapore, Thailand, the United States, and South Africa.

**Table 6.8: Volume of Imports
(Kilograms)**

	2009	2010	2011
Imports from Australia	596,122	854,020	515,559
Imports from Turkey	395,413	480,607	441,220
All other countries	597,349	883,622	1,117,371
NZ market			
Percentage change on previous year:			
Imports from Australia		43%	-40%
Imports from Turkey		22%	-8%
All other countries		48%	26%
NZ market			
As a percentage of NZ market:			
Imports from Australia			
Imports from Turkey			
All other countries			

161. Imports from Australia and Turkey represent a small percentage of the total New Zealand market. From 2009 to 2011, the market share held by imports from Australia decreased by 10 percent and the market share held by imports from Turkey remained unchanged. The market share held by the combined imports from all other sources increased by 10 percent from 2009 to 2011.

Imported price of preserved tomatoes from other countries

162. Table 6.9 below compares HWL's ex-factory price against the ex-wharf price per kilogram of imported preserved tomatoes from other countries. The Ministry calculated the average per kilogram FOB value for imports from Australia, Turkey and "all other countries" from Customs data for the year ended 30 April 2011. The Ministry made upward adjustments for overseas freight, insurance and the cost of customs clearance. The costs for overseas freight and insurance were based on the actual amounts recorded in the Customs data and the amount for customs clearance was based on HWL's own costs of importing. HWL's ex-factory selling price relates to its 2011 financial year (year ended April).

Table 6.9: Price Undercutting from Other Imports (NZD)

	Australia	Turkey	All other countries
Imported Ex-Wharf Price	2.17	2.86	1.42
HWL's Selling Price			
Amount of Undercutting			
Percentage of Undercutting			

163. Table 6.9 shows that imports from Australia were significantly undercutting HWL's average selling price. The Ministry notes that non-subject goods from Australia represented 10 percent and 10 percent of total imports from Australia in 2010 and 2011 respectively. The Ministry also notes that these non-subject goods from Australia are being imported at prices which are significantly lower than the average imported price from Australia shown in Table 6.9. When considered in

context of market share and the volume of imports, it is unlikely that imports from Australia caused injury to HWL from 2009 to 2011.

164. The Ministry notes that the imported price of preserved tomatoes from Turkey did not undercut HWL's average selling price.

165. Imports from all other countries were also significantly undercutting HWL's average selling price. According to the goods description in the Customs data, there appear to be a significant amount of non-subject goods being imported from two of the main exporting countries within this group. The Ministry notes that these non-subject goods are being imported at prices which are significantly lower than the average imported price from all other countries shown in Table 6.9.

166. Based on the volume and price information above, the Ministry considers that it is unlikely that imports from countries other than Italy were a cause of injury to HWL from 2009 to 2011.

Contraction in demand or changes in the patterns of consumption

167. HWL commented that there does not appear to be any contraction in demand. HWL noted that consumers have moved towards more convenient preserved tomato products

[REDACTED]

168. The Ministry notes that

[REDACTED]

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

169. HWL noted that there may be subsidies on preserved tomatoes from Italy and provided EU regulations in support of its submission. HWL acknowledged that if subsidies exist it would be the focus of a subsidy investigation rather than a dumping investigation.

170. The Ministry considers there is insufficient information available to assess whether restrictive trade practices of, and competition between, overseas and New Zealand producers have been a cause of injury to HWL.

Developments in technology

171. HWL said it does not believe there is any evidence of a technology development relevant to the consideration of material injury. The Ministry considers that it is unlikely that developments in technology have been a cause of injury to HWL.

Export performance of the New Zealand producers

172. HWL noted it exports a small volume of canned tomatoes (less than 1 percent) to the Pacific Islands and Australia. Due to HWL's small volume of exports, the Ministry considers that HWL's export performance is unlikely to have been a cause of any injury to HWL.

Productivity of the New Zealand Producers

173. As noted in paragraph 135 above, HWL has not provided sufficient information from which HWL's productivity can be assessed. The Ministry is therefore unable to draw any conclusion on whether productivity has been a cause of injury to HWL.

Imports by the Industry

174. Section 8(2)(f) of the Act provide that the Chief Executive shall have regard to the nature and extent of importations of dumped or subsidised goods by New Zealand producers of like goods, including the value, quantity, frequency and purpose of any such importations.

175. HWL considered that its imports do not cause injury to its domestic operation because it only imports to supplement domestic production. HWL noted that its imports, apart from country of origin declarations, are labelled and sold at the same regular price as the domestically produced goods. HWL stated that its sales of the imported products protects the market share and shelf space of preserved tomatoes and does not cause injury to HWL. HWL further noted that it markets the entire range of tomato products available to protect its shelf space for customers and consumer goodwill through providing a relevant product range of preserved tomatoes.

176. HWL imports all of its canned whole peeled tomatoes from Italy. HWL also imported some canned chopped tomatoes from Italy in its 2011 financial year. The following table contains HWL's imports from 2009 to 2011.

**Table 6.10: HWL's Imports from Italy (Kilograms)
(Years ended June)**

	2009	2010	2011
HWL's Imports from Italy	100%	85%	115%
As a % of 2009		85%	115%

177. The figures in the table show that HWL's imports from Italy decreased by 15 percent in 2010 (as a percentage of 2009). HWL's imports from Italy increased significantly by 15 percent in 2011 (as a percentage of 2009). As noted in paragraph 128 above, the market share held by HWL's imports from Italy decreased by 15 percentage points in 2010, and then increased by 15 percentage points in 2011. The Ministry also noted in paragraph 128 above that a significant proportion of HWL's imported chopped tomatoes were not sold in its 2011 financial year and the market share increase in 2011 is therefore likely to be overstated.

178. HWL explained that it decided to import additional chopped tomatoes in the 2011 financial year in anticipation of increased demand. HWL had forecast

increased sales volume in the 2011 financial year but this did not eventuate, leaving HWL with carry over inventory for the 2012 financial year. HWL stated that it was committed to take a further order of [REDACTED] tonnes of chopped tomatoes for 2012 financial year, but was able to get out of some of its other commitments for other shipments for the 2012 financial year.

179. HWL sources all of its whole peeled tomatoes from Italy, and HWL stated that its imports of whole peeled tomatoes have been [REDACTED]

180. HWL also explained that it has recently changed its inventory management policy. Previously, HWL focused on [REDACTED]

HWL has now changed this process [REDACTED]

The Ministry notes that [REDACTED]

181. While HWL's imports from Italy are likely to have increased inventory levels and cost of holding inventory, the Ministry does not consider that HWL's imports are a cause of material injury.

Conclusion on Other Causes of Injury

182. Based on the available information, there is insufficient evidence that material injury has been caused to HWL by other factors from 2009 to 2011. Any investigation will need to consider these factors in more detail, including any evidence provided by parties other than HWL.

6.7 Conclusions Relating to Injury

Volume Effects

183. Import data shows import volumes of preserved tomatoes from Italy increased significantly in absolute terms and also as a percentage of sales of New Zealand domestic production from 2009 to 2011. There was also a slight increase in imports of preserved tomatoes from Italy relative to total consumption in NZ from 2009 to 2011.

Price Effects

184. HWL has provided evidence of the effects of the imports of the subject goods on its selling prices. The information shows that preserved tomatoes imported from Italy significantly undercut HWL's selling prices in 2011. It is also evident that HWL

has experienced price suppression from 2009 to 2011. There is no evidence of price depression from 2009 to 2011.

Economic Impact

185. The evidence provided shows HWL's sales volume of domestically produced goods increased slightly from 2009 to 2011. HWL also achieved a small increase in total sales revenue from 2009 to 2011. HWL's sales revenue per kilogram increased each year from 2009 to 2011, but not to the extent where cost increases during the same period could be recovered.

186. The evidence provided shows HWL's total EBIT and EBIT per kilogram decreased significantly from 2009 to 2011.

187. The evidence shows HWL's sales of domestically produced products lost market share from 2009 to 2011. The Ministry notes that the market share held by HWL's imports from Italy increased over the same period. The Ministry also notes that the loss of market share by HWL's domestically produced products may be overstated given that a significant proportion of HWL's imports of chopped tomatoes were not sold in its 2011 financial year.

Other Adverse Effects

188. HWL did not provide any information on productivity or its production capacity, although it noted that there was a build-up of inventory. As the build-up of HWL's inventory includes imports, the Ministry has not accorded any weight in its assessment of injury from 2009 to 2011 to the build-up of inventory. HWL also recently changed its inventory policy [REDACTED]

189. HWL stated that it would have invested in capital expenditure for its tomato business, but has put this on hold due to the negative impacts from dumped imports from Italy.

190. HWL did not provide information on cash flow, and there was insufficient information to assess return on investments. There was also insufficient information on employment and wages.

Conclusion on Causal Link

191. HWL has provided sufficient evidence that the subject goods from Italy are dumped and that it has suffered material injury from 2009 to 2011 due to price undercutting by the imported goods. Imports from Australia and "all other sources" (countries other than Italy, Australia and Turkey) appear to be significantly undercutting HWL's selling prices. The volume of imports of subject goods from these sources is significantly smaller than the volume of imports from Italy. Furthermore, the average imported prices of products from Australia and "all other sources" (as shown in Table 6.9 above) are affected by the lower prices of non-subject goods from these countries, and the margin of price undercutting is likely to be overstated. The Ministry concludes that there is insufficient evidence of other

causes of injury to break the inferred link between the subject goods and the material injury suffered by HWL.

192. While any investigation will need to establish whether there is a causal link between dumping and material injury, the Ministry considers that there is sufficient evidence of a causal link between the dumping of the subject goods and the material injury suffered by the New Zealand industry for the purpose of initiation.

Overall Conclusion on Injury

193. Mindful of the test set out in *Kerry (NZ) Ltd v Taylor*,⁵ the Ministry is satisfied that HWL has provided sufficient evidence of material injury to warrant the initiation of an investigation.

6.8 Threat of Material Injury

194. As noted in paragraph 84 above, the Ministry will only go on and consider the threat of injury submission where the Ministry concludes that the New Zealand industry is not currently suffering material injury. Given the Ministry has concluded that dumped imports from Italy have caused material to HWL, the Ministry has not assessed the information provided by HWL in respect of the threat of material injury from dumped imports from Italy.

⁵ (1991) 2 PRNZ 393

7. Conclusions and Recommendation

195. On the basis of the information available and for the purposes of initiating an investigation, the Ministry concludes that:

- a. sufficient evidence has been provided that shows preserved tomatoes from Italy are being dumped;
- b. sufficient evidence has been provided that shows the New Zealand industry is currently suffering material injury; and
- c. sufficient evidence has been provided that shows the imports of preserved tomatoes from Italy are the cause of material injury.

8. Recommendations

196. Based on the above conclusions, the Ministry recommends that the Chief Advisor, Trade Rules, Remedies and Tariffs Group, acting under delegated authority from the Chief Executive, initiate a dumping investigation into preserved tomatoes from Italy.

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Investigating Team
Trade Remedies Group

Agree/Not Agree

Robin Hill
Chief Advisor
Trade Rules, Remedies and Tariffs Group
Competition, Trade and Investment Branch