

# **Dumping Investigation**

## **Final Report**

### **Preserved Tomatoes from Italy**

**Dumping and Countervailing Duties Act 1988**

**Dumping Application**

Ministry of Economic Development

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# Table of Contents

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<b>Abbreviations .....</b>	<b>5</b>
<b>Executive Summary .....</b>	<b>7</b>
<b>1. INTRODUCTION .....</b>	<b>9</b>
1.1 Application.....	9
1.2 Consideration of Provisional Measures .....	10
1.3 Essential Facts and Conclusions.....	10
1.4 Disclosure of Information.....	10
1.5 Participation in the Investigation.....	10
1.6 Report Details.....	11
1.7 Exchange Rates .....	11
<b>2. INTERESTED PARTIES .....</b>	<b>13</b>
2.1 Exporters .....	13
2.2 Importers .....	15
<b>3. NEW ZEALAND INDUSTRY .....</b>	<b>19</b>
3.1 Imported Goods.....	19
3.2 New Zealand Produced Goods .....	20
3.3 Like Goods .....	20
3.4 The New Zealand Industry .....	25
<b>4. DUMPING ANALYSIS .....</b>	<b>27</b>
4.1 Introduction.....	27
4.2 Export Prices .....	28
4.3 Normal Values.....	39
4.4 Comparison of Export Price and Normal Value .....	54
4.5 Volume of Dumped Imports.....	56
4.6 Conclusions Relating to Dumping .....	57
<b>5. MATERIAL INJURY INVESTIGATION .....</b>	<b>59</b>
5.1 Introduction.....	59
5.2 Import Volumes .....	61
5.3 Price Effects .....	63
5.4 Economic Impact.....	82
5.5 Other Causes of Injury .....	90
5.6 Causal Link.....	95
5.7 Conclusions Relating to Historical Injury .....	97
<b>6. THREAT OF INJURY .....</b>	<b>100</b>
6.1 The Ministry's Approach to Threat of Injury Investigations.....	100
6.2 The Case for Threat of Injury .....	104
6.3 Conclusion on Threat of Injury .....	107
<b>7. OVERALL CONCLUSION ON INJURY .....</b>	<b>109</b>
<b>8. CONCLUSIONS .....</b>	<b>111</b>
<b>9. RECOMMENDATIONS.....</b>	<b>113</b>



# Abbreviations

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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 GATT 1994
AR Industrie Alimentari S.p.A	AR Industrie
Attianese	Attianese S.p.A
Baroni	Baroni Foods Ltd
Bidvest	Bidvest New Zealand Ltd
Ceres	Ceres Enterprises Ltd
Chief Executive (the)	Chief Executive of Ministry of Economic Development
CIF	Cost, Insurance and Freight
Conserve Italia	Conserve Italia Agricultural Cooperative Society
Coverimport	Coverimport Ltd
Customs	New Zealand Customs Service
Davis	Davis Trading Company Ltd
Delmaine	Delmaine Fine Foods Ltd
EBIT	Earnings Before Interest and Tax
EDI	Electronic Data Interchange
FIS	Free Into Store
FOB	Free on Board
FOBL	Foodstuffs Own Brands Ltd
HWL	Heinz Wattie's Ltd
IMCA	IMCA S.p.A
La Doria	La Doria S.p.A
Ministry (the)	Ministry of Economic Development

Moi	Moi Agencies Ltd
Neil Cropper	Neil Cropper and Company Ltd
Paddy's	Paddy's Wines Ltd
Pecos	Pecos S.p.A
Perano Enrico & Figli	Perano Enrico & Figli S.p.A
POI	Period of Investigation
Progressive	Progressive Enterprises Ltd
Quality Centre	Quality Centre Food Services Pty Ltd
Service Foods	Service Foods Ltd
SICA	SICA Conserve Srl
SKU	Stock keeping unit
SPAI	SPAI Srl
VFD	Value for Duty
WTO	World Trade Organisation

# Executive Summary

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## Introduction

1. An investigation into preserved tomatoes from Italy was initiated on 19 September 2011, following the receipt of an application for a dumping investigation from Heinz Wattie's Ltd (HWL), the sole New Zealand producer of preserved tomatoes, claiming that preserved tomatoes from Italy were being imported at dumped prices causing and threatening to cause material injury to it.

2. On 5 March 2012 the Ministry released the Essential Facts and Conclusions Report which found that 17 percent of the volume of preserved tomatoes imported from Italy during the year ended 31 August 2011 were dumped and that these goods did not cause material injury to the domestic industry.

3. Interested parties were given the opportunity to make submission on the Ministry's conclusions in the Essential Facts and Conclusions Report. The Ministry received two submissions, neither of which raised any new matters for the Ministry to consider.

## Dumping

4. Due to the large number of exporters of the subject goods over the POI, the Ministry limited its analysis to a selection of exporters that represented the largest percentage of the volume of exports that could reasonably be investigated, as permitted by Article 6.10 of the WTO Anti-Dumping Agreement.

5. The investigation has found that only 1 exporter, which represented 17 percent of the total volume of exports by those exporters selected for investigation, was dumping. Exports by the remainder of the exporters were not dumped.

6. The Ministry has concluded that:

- There is evidence of an increase in the volume of dumped imports in absolute terms and in relation to production in New Zealand. There is evidence of only a slight increase in dumped import volumes relative to consumption in New Zealand.
- There is evidence of significant price undercutting by dumped imports and evidence of significant price suppression. There is no evidence of price depression.
- There is evidence of an economic impact reflected in a significant decline in profits, a small decline in market share, a small decline in capacity utilisation in relation to chopped tomatoes and slight decline in capacity utilisation in relation to crushed tomatoes, a small increase in inventories and the deferment of investment in new plant.

- There is evidence that non-dumped imports, which constitute by far the majority of imports of preserved tomatoes into New Zealand, have been a significant cause of injury to HWL.
- The Ministry does not consider there is sufficient evidence of a causal link between the import of dumped goods and the injury to HWL, because of the likely impact of non-dumped imports on HWL.
- The Ministry does not consider there is sufficient evidence of a threat of material injury to HWL in terms of Article 3 of the Anti-Dumping Agreement.

## **Conclusion**

7. The Ministry has concluded that:

- a. 17 percent of the goods under investigation are being dumped; and
- b. material injury to an industry has not been nor is being caused nor is threatened by means of the dumping of goods imported or intended to be imported into New Zealand.



# 1. Introduction

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## 1.1 Application

8. On 20 July 2011, the Ministry of Economic Development (the Ministry) accepted a properly documented application from Heinz Wattie's Limited (HWL), alleging that preserved tomatoes from Italy were being dumped and by reason thereof causing and threatening to cause material injury to the New Zealand industry.

9. On 19 September 2011, the Chief Executive of the Ministry formally initiated an investigation pursuant to section 10 of the Dumping and Countervailing Duties Act 1988 ("the Act"), on being satisfied that sufficient evidence had been provided that:

- preserved tomatoes imported from Italy are being dumped; and
- by reason thereof material injury to the New Zealand industry has been or is being caused.

10. HWL claims that as a result of the alleged dumping, material injury is resulting from:

- price undercutting; and
- price depression and suppression,

and is resulting in:

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

11. HWL has stated that the material injury resulting from the importation of allegedly dumped preserved tomatoes has been occurring for some time, but has been more significant in the 12 months to August 2011.

12. 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, although an investigation may be required to ascertain which is applicable.

13. In accordance with section 10 of the Act, the Ministry's investigation was to determine both the existence and effect of the alleged dumping of preserved tomatoes from Italy.

## **1.2 Consideration of Provisional Measures**

14. The application from HWL requested that provisional measures be imposed for the period of investigation to prevent further injury. The basis for this request was that HWL forecast significant injury occurring in their 2012 financial year.

15. On 17 November 2011, HWL retracted its request for provisional measures and this specific part of the investigation was terminated.

## **1.3 Essential Facts and Conclusions**

16. Written advice of the essential facts and conclusions as provided for under Section 10A of the Act was released to interested parties for comment on 5 March 2012. The Ministry received two submissions which did not raise any new matters for the Ministry to consider.

## **1.4 Disclosure of Information**

17. The Ministry makes available all non-confidential information via the Public File for this investigation. Any interested party is able to request both a list of the documents on this file and copies of the documents.

18. Article 6.7 of the Anti-Dumping Agreement provides as follows:

In order to verify information provided or to obtain further details, the authorities may carry out investigations in the territory of other Members as required, provided they obtain the agreement of the firms concerned and notify the representatives of the government of the Member in question, and unless that Member objects to the investigation. The procedures described in Annex I shall apply to investigations carried out in the territory of other Members. Subject to the requirement to protect confidential information, the authorities shall make the results of any such investigations available, or shall provide disclosure thereof pursuant to paragraph 9, to the firms to which they pertain and may make such results available to the applicants.

19. Verification visits were made to AR Industrie Alimentari S.p.A, Conserve Italia Agricultural Cooperative Society and La Doria S.p.A.

20. Copies of Verification Reports were provided to the exporters visited, and non-confidential copies placed on the Public File.

## **1.5 Participation in the Investigation**

21. Article 6.8 of the Anti-Dumping Agreement provides as follows:

In cases in which any interested party refuses access to, or otherwise does not provide, necessary information within a reasonable period or significantly impedes the investigation, preliminary and final determinations, affirmative or negative, may be made on the basis of the facts available. The provisions of Annex II shall be observed in the application of this paragraph.

22. Information was requested, but not received from the following exporters: Calispa S.p.A, Pecos S.p.A, Coverimport Ltd, Attianese S.p.A, Perano Enrico & Figli S.p.A, , and I.M.C.A S.p.A. Three exporters, SPAI Srl, SICA Conserve Srl and Quality Centre Food Services Pty Ltd provided some limited information to the Ministry.

23. In view of the failure to cooperate, information relating to those exporters is based on the facts available.

## **1.6 Report Details**

24. In this report, unless otherwise stated, years are years ended 30 April and dollar values are New Zealand dollars (NZD). In tables, column totals may differ from individual figures because of rounding. The term VFD refers to value for duty for Customs purposes.

25. The period of investigation (POI) for dumping is the year ended 31 August 2011 , while the investigation of injury involves evaluation of data for the period 1 May 2009 to 30 April 2011.

26. All amounts are expressed on a per kilogram (kg) basis unless otherwise stated.

## **1.7 Exchange Rates**

27. Exports to New Zealand were invoiced in euros, so no conversion of currencies was required to calculate margins of dumping



## 2. Interested Parties

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### 2.1 Exporters

#### Selection of Exporters

28. There were 47 exporters identified in the New Zealand Customs Service (Customs) data as supplying the subject goods to New Zealand from Italy during the POI.

29. Due to the large number of exporters from Italy over the POI, the Ministry has limited its analysis to a selection of exporters that represented the largest percentage of the volume of exports that could reasonably be investigated, as permitted by Article 6.10 of the Anti-Dumping Agreement.

30. The Ministry selected exporters who represented 80 percent of the volume of imports from Italy over the POI for the tariff item and statistical key under which the subject goods are classified.

31. The following table shows the exporters and manufacturers who have been identified as exporting and/or manufacturing the subject goods and were selected for a response:

**Table 2.1: Exporters and Manufacturers**

AR Industrie Alimentari S.p.A	Attianese S.p.A
Calispa S.p.A	Conserve Italia Agricultural Cooperative Society
Coverimport Ltd	I.M.C.A S.p.A
La Doria S.p.A	Pecos S.p.A
Perano Enrico & Figli S.p.A	Quality Centre Food Services Pty Ltd
SICA Conserve Srl	SPAI Srl

32. Information was sought from all 12 companies and the following paragraphs provide a brief synopsis of the activities of these Italian manufacturers and exporters:

#### **AR Industrie Alimentari S.p.A**

33. AR Industrie Alimentari S.p.A (AR Industrie) is a manufacturer and exporter of preserved tomatoes that sells on both the domestic market and international market to supermarkets, small traders, and factories. It supplied peeled, chopped and crushed tomatoes in 400g, 800g, and 2.5kg cans to [REDACTED].

### **Attianese S.p.A**

34. Attianese S.p.A (Attianese) is an Italian manufacturer which supplied preserved tomatoes to [REDACTED]. The Ministry did not receive any information from this company.

### **Calispa S.p.A**

35. Calispa S.p.A (Calispa) is an Italian manufacturer who supplied chopped tomatoes in 400g cans to [REDACTED] through [REDACTED]. This company did not supply any information to the Ministry.

### **Conserve Italia Agricultural Cooperative Society**

36. Conserve Italia Agricultural Cooperative Society (Conserve Italia) is an Italian cooperative manufacturer with 50 members. It sells both on the domestic market and internationally. Conserve Italia sold 400g cans of whole peeled and chopped preserved tomatoes to [REDACTED].

### **Coverimport Ltd**

37. Coverimport Ltd (Coverimport) is the marketing arm for [REDACTED], and is based in the United Kingdom. It arranges ordering and delivery of preserved tomatoes to [REDACTED]. Coverimport chose not to supply any information directly to the Ministry.

### **Pecos S.p.A**

38. Pecos S.p.A (Pecos) supplied 400g cans of whole peeled tomatoes to [REDACTED] through [REDACTED]. Pecos did not supply any information to the Ministry.

### **I.M.C.A S.p.A**

39. I.M.C.A S.p.A (I.M.C.A) is an Italian manufacturer operating predominantly on the international market. It exported directly to [REDACTED]. I.M.C.A manufactures whole peeled and crushed tomatoes in 400g cans. I.M.C.A did not supply any information to the Ministry.

### **La Doria S.p.A**

40. La Doria S.p.A (La Doria) is an Italian manufacturer operating on both the Italian domestic market and the international market. It exported 410g, 800g and 2.65kg cans of whole peeled, chopped and cherry tomatoes to New Zealand. [REDACTED] in 410g cans were also supplied, and La Doria supplied some variants of tomatoes with garlic, onion, herbs, basil or olives. La Doria's New Zealand customers are [REDACTED]. [REDACTED] preserved tomatoes are supplied solely to [REDACTED].

## Perano Enrico & Figli S.p.A

41. Perano Enrico & Figli S.p.A (Perano Enrico & Figli) is an Italian manufacturer which supplied preserved tomatoes to [REDACTED]. The Ministry did not receive any information from this company.

## Quality Centre Food Services Pty Ltd

42. Quality Centre Food Services Pty Ltd (Quality Centre) is an export agent for [REDACTED]. It arranges ordering and delivery of goods to [REDACTED]. This company supplied the Ministry with limited information.

## SICA Conserve Srl

43. SICA Conserve Srl (SICA) is an Italian manufacturer which sells on both domestic and international markets. SICA exports, through [REDACTED], 2.65kg cans of whole peeled and chopped tomatoes to [REDACTED]. SICA supplied limited information to the Ministry.

## SPAI Srl

44. SPAI Srl (SPAI) is an export agent based in Italy. This company operates on the international market. SPAI arranged for 400g and 2.55kg cans of whole peeled, chopped and crushed preserved tomatoes to be exported from [REDACTED]. SPAI supplied limited information to the Ministry.

## 2.2 Importers

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

**Table 2.2: Importers**

Baroni Foods Limited	Bidvest New Zealand Ltd
Ceres Enterprises Limited	Davis Trading Company Ltd
Delmaine Fine Foods Ltd	Foodstuffs (Auckland) Ltd
Foodstuffs (South Island) Ltd	Foodstuffs (Wellington) Co-Operative Society Ltd
Heinz Wattie's Ltd	Hutchinsons Ltd
Moi Agencies Ltd	Neil Cropper and Co Ltd
Paddy's Wines and Spirits Ltd	Progressive Enterprises Ltd
Service Foods Ltd	

46. A brief synopsis of the activities of the importers of preserved tomatoes from Italy is set out below.

### **Baroni Foods Limited**

47. Baroni Foods Ltd (Baroni) imported preserved tomatoes through [REDACTED] over the POI. This company informed the Ministry they were not intending to provide a response to the Ministry's Importer's Questionnaire.

### **Bidvest New Zealand Ltd**

48. Bidvest New Zealand Ltd (Bidvest) is a foodservice distributor that imported over the POI whole peeled and chopped tomatoes in 2.5 and 2.55 kg cans through [REDACTED]. Bidvest provided a good response to the Ministry's Importer's Questionnaire, including invoices relating to its purchases of preserved tomatoes over the investigation period.

### **Ceres Enterprises Limited**

49. Ceres Enterprises Ltd (Ceres) is an importer, exporter and distributor of certified organic products. Over the POI, they imported 400g cans of certified organic whole peeled, chopped and chopped with basil preserved tomatoes from [REDACTED]. Ceres provided a partial response to the Ministry's Importer's Questionnaire.

### **Davis Trading Company Ltd**

50. Davis Trading Company Ltd (Davis) is an importer and distributor. Over the POI, they imported 400g and 2.55kg cans of whole peeled and chopped preserved tomatoes from [REDACTED]. Davis provided a response to the Ministry's Importer's Questionnaire.

### **Delmaine Fine Foods Ltd**

51. Delmaine Fine Foods Ltd (Delmaine) is an importer and supplier of quality imported foods to supermarkets, wholesalers, and food service distributors. It also exports some products and supply ingredients to NZ manufacturers. Over the POI, Delmaine imported 400g cans of whole peeled, crushed, and cherry preserved tomatoes; and 2.52kg cans of diced and whole peeled tomatoes. It also imported 400g cans of flavoured tomatoes, including tomatoes with chilli, olives, capsicum, fresh basil and fresh garlic and olive oil. Delmaine imports from [REDACTED]. This company provided a response to the Importer's Questionnaire.

### **Foodstuffs Own Brands Ltd**

52. Foodstuffs Own Brands Ltd (FOBL) is jointly owned by three regional co-operatives; Foodstuffs (Auckland) Ltd, Foodstuffs (South Island) Ltd and Foodstuffs (Wellington) Co-Operative Society Ltd. The Ministry received a comprehensive submission from FOBL on behalf of all three co-operatives. The Foodstuffs group trades as a supermarket retailer under the brands New World, Pak n Save, Write Price, Four Square and On the Spot. The group also trades as wholesale food and beverage outlets under Gilmours and Toops and Trents. Over the POI, FOBL imported 400g cans of whole peeled, chopped and flavoured tomatoes, 800g cans of whole peeled and chopped, and 2.55kg cans of whole peeled, chopped and crushed



tomatoes. FOBL imported from [REDACTED].

### **Hutchinsons**

53. Hutchinsons is an importer that distributes to the foodservice industry. This company imported through [REDACTED] during the POI. It did not provide a response to the Ministry.

### **Moi Agencies Ltd**

54. Moi Agencies Ltd (Moi) imported from [REDACTED] over the POI. Moi is an importer and distributor. This company did not make provide any information to the Ministry.

### **Neil Cropper and Co Ltd**

55. Neil Cropper and Co Ltd (Neil Cropper) is an importer who distributes to both wholesalers and retailers. Over the POI, Neil Cropper imported 400g and 2.5kg cans of whole peeled and diced tomatoes. This company imports through [REDACTED]. Neil Cropper provided a response to the Ministry's Importer's Questionnaire.

### **Paddy's Wines Limited**

56. Paddy's Wines Limited (Paddy's) is an importer and wholesale distributor. Paddy's was not part of the initial selection, but asked for an opportunity to make a submission. Its suppliers were not asked to complete a questionnaire. As such, this company's information has not been used to assess injury, but has been used elsewhere in this report. Paddy's imported 400g cans of whole peeled and chopped tomatoes over the POI.

### **Progressive Enterprises Ltd**

57. Progressive Enterprises Ltd (Progressive) is a subsidiary of Woolworths Ltd. Progressive owns and operates the Woolworths, Countdown and Foodtown supermarkets. This company imported from [REDACTED] over the POI whole peeled and diced preserved tomatoes in both 400g and 800g cans; as well as 405g cans of diced tomatoes flavoured with basil, garlic and onion, basil and oregano, herbs and basil and garlic. Progressive provided a partial response to the Ministry's Importer's Questionnaire.

### **Service Foods Ltd**

58. Service Foods Ltd (Service Foods) is an importer and distributor to the food service industry, who imported from [REDACTED] over the POI. It did not provide a response to the Ministry's Importer's Questionnaire.



### 3. New Zealand Industry

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59. 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:

60. Paddy’s submitted that HWL, as the sole New Zealand producer of preserved tomatoes in New Zealand, does not constitute an ‘industry’, and that ultimately, it is a United States-owned entity. The Ministry is guided by Article 4.1 of the Anti-Dumping Agreement, which defines ‘domestic industry’ and section 3A of the Act. Neither the Agreement nor the Act prohibit investigating HWL’s allegations of dumping on the basis of the number of producers in the domestic industry nor any such producer’s foreign shareholdings.

#### 3.1 Imported Goods

61. 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.*

62. Over the POI the subject goods exported from Italy ranged between 400g and 3kg can sizes.

63. The Working Tariff of New Zealand classifies the subject goods under the following tariff classification:

**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

64. The Tariff Item and Statistical Key include a broader range of goods than only the subject goods, such as sundried tomatoes, pasta sauces, puree, and tomatoes in containers over 4.0kg. The Ministry has excluded these goods from the investigation.

### 3.2 New Zealand Produced Goods

65. 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.

66. HWL is the only New Zealand manufacturer of preserved tomatoes and sells these tomatoes under the brands Wattie's and Oak. HWL sells its Wattie's branded tomatoes in both 400g and 2.9kg can sizes, whereas its Oak brand is only sold in the 400g size. HWL sells three types of cuts: crushed, chopped and whole peeled; which come in juice and in puree. All of HWL's preserved tomato products are packaged in cans.

67. HWL produces a range of flavoured (variant) canned tomato products which contain added ingredients. The flavoured range of products includes Mexican spiced, Indian spiced, pesto, and roasted garlic, among others.

68. In New Zealand, HWL manufactures its crushed and chopped products in the 400g can size, including flavoured tomatoes. HWL imports all of its canned whole peeled tomatoes from Italy, due to manufacturing capacity constraints. HWL imports its 2.9kg chopped tomatoes from Thailand, but manufactures crushed tomatoes in the 2.9kg size. In its 2011 financial year, HWL also imported some 400g canned unflavoured chopped tomatoes from Italy to supplement its domestic production of this SKU. However, HWL's normal practice is to manufacture its total requirements of this SKU.

### 3.3 Like Goods

69. To determine whether the goods produced in New Zealand are like goods to the imported preserved tomatoes from Italy, the Ministry considers physical characteristics, function and usage, pricing structures, marketing and any other relevant considerations, with no one of these factors being necessarily

determinative. The Ministry's consideration of each of these factors is discussed below.

## **Physical Characteristics**

70. 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.

71. Preserved tomatoes come in three types of cut: crushed, chopped and whole peeled. HWL produces crushed and chopped. At the verification visit to HWL, the Ministry observed HWL's products against the imported crushed and chopped products and noted that there were no material differences in respect of observable physical characteristics.

72. Paddy's submitted that Italian tomatoes taste less acidic than the New Zealand grown tomatoes. The Ministry has compared HWL's products with the equivalent Italian imported products and noted that HWL's products taste more salty. Some of HWL's flavoured products have a stronger flavour than the equivalent imported product.

73. HWL uses lacquered cans for its tomato products, whereas the imported products use either lacquered or non-lacquered cans (dependent on supplier). HWL stated that lacquered cans provide added protection to the can from the corrosive effects of the tomatoes and any added salt.

74. FOBL submitted that there are differences in the packaging and specifications of its private label brands compared to that of HWL proprietary brands. The difference in packaging relates to the type of can, labelling and retail unit. Other differences relate to the variety of tomato crop, level of tomato solids, surrounding sauce and level of brix (sugar content).

75. The Italian imported product primarily uses the Roma (elongated) tomato rather than the Plum (round) tomato that is grown in New Zealand.

76. SPAI Srl submitted that Italian tomatoes are known all over the world to be of a higher quality for texture, colour and flavour compared to tomatoes produced elsewhere, due to the environmental and climatic conditions in Italy.

77. HWL contracts four to five Hawkes Bay growers to supply tomatoes directly to it. HWL also grows a small amount of tomatoes itself. Negotiations are conducted from July through to September in regard to price and volume. The crop is ready to harvest in late February. HWL's tomato processing operation runs 24 hours a day, seven days a week for approximately seven weeks at its Hastings manufacturing plant. The tomato processing season finishes at the end of HWL's financial year (year ended 30 April), and these products are sold in the following financial year.

78. Approximately 15 to 20 percent of the total tomato crop is allocated to the production of preserved tomato products. The balance is processed into tomato paste, which is used for a variety of other tomato based products produced by HWL. HWL advised that its chopped and variant tomato production line commences as

early as possible in the season and runs at full capacity throughout the processing season.

79. Davis Trading submitted that the processes between the Italian produced preserved tomatoes and those produced by HWL are basically the same but the highly efficient farming and production lines in Italy means that run size in Italy is about 500 times greater than in New Zealand. The submissions made by Italian manufacturers indicate that the manufacturing process is essentially the same in both countries.

80. HWL manufactures tomatoes in 400g and 2.9kg can sizes. The imported products come in range of sizes, varying around 400g, 800g and 2.5-3kg can sizes. HWL does not manufacture any tomato products in the 800g can size.

81. HWL considers tomatoes packaged in pouches and jars to be fundamentally the same as those in cans; however, HWL stated that pouches are sold only in the foodservice sector and may be bigger than 4 kilograms. HWL noted that currently glass jars appear to be marketed as a more premium product. HWL noted that most of the injury to it resulted from imports of canned product.

## **Function and Usage**

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

83. HWL has claimed that there is no substantial difference in cut or medium for canned tomatoes. It noted that whole peeled tomatoes only need to be cut or crushed to be used as an ingredient in the same way as chopped or crushed products. Foodstuffs support this claim, stating there is no significant variation between end products.

84. HWL stated that preserved tomatoes are mainly used as an ingredient in meals. It stated that the flavoured range offers customers convenience, but noted that customers could also easily purchase unflavoured tomatoes and add appropriate flavourings if the price difference between flavoured and unflavoured was too large.

85. La Doria exports cherry tomatoes to New Zealand. While cherry tomatoes are a very small percentage of the total market, the Ministry has seen no evidence that shows they are not used in the same way as any other cut or type of tomato.

## **Pricing Structures**

86. 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.

87. HWL has stated that a consumer's key consideration when making a purchasing decision is price over any other factor. As such, it is important for HWL to maintain a competitive price for all its preserved tomato products. HWL's pricing is reviewed regularly, and it will react to competitor pricing in a way that best fits its goals at the time.

88. Davis and Neil Cropper submitted that, in terms of overall product costs, the most significant difference in production is economies of scale that allow Italian producers to heavily automate processing, manufacturing and logistics operations, driving production costs down. The Italian tomato industry has a long tradition and is technologically specialised in canned tomato production.

89. FOBL consider that HWL's pricing structure would include additional allowances built into its pricing matrix, such as funding for consumer marketing and trade spend on promotional discounts and co-operative spending. This is discussed in more detail later in the report.

90. A number of importers contract both volume and price at the beginning of the Italian tomato processing season (July-October). The same prices apply over a one year period. Generally, the volume is split into individual purchase orders and invoices are separately issued for each shipment or order. Davis Trading claims that their prices are world market prices.

91. Both SPAI S.r.l and its importer, ██████████, highlighted that pricing of Italian tomatoes may fluctuate due to seasonal supply variations and variation in global demand.

## Marketing

92. Marketing considerations include the distribution channels used, customers (both actual and targeted), branding and advertising.

93. HWL's whole peeled, chopped and crushed segments are priced and merchandised together on the shelf. HWL noted that the whole peeled segment is in decline as consumers trade into chopped and crushed products, which offer more convenience at no extra cost.

94. HWL's flavoured segment is still merchandised with the whole peeled, chopped and crushed, but is more likely to have its own shelf space and is priced at a slight premium to the whole peeled, chopped and crushed segments. This premium is normally in the vicinity of ██████ percent. When Wattie's branded tomatoes are promoted together, the flavoured and unflavoured products may be advertised at the same price.

95. HWL's Oak brand is priced lower than the Wattie's brand; however there is no set percentage for the difference between the two brands. This difference is based on key price points in the market.

96. HWL uses 'Food in a Minute' promotions to promote its Wattie's branded tomato products. About half of the 12 episodes which are allocated to Wattie's fruit and vegetables are given to canned tomatoes. HWL also noted that additional slots may be given to canned tomato products because they are a cooking ingredient.

97. Paddy's stated that, to a lesser extent, product placement can influence consumer's choice, and that is why companies purchase prime shelf and display locations.

98. Progressive submitted that Wattie's is seen by consumers as a premium brand, as is Delmaine. Both attract strong brand loyalty.

99. Paddy's submitted that Foodstuffs stocks a greater range of brands (including smaller or 'unknown' branded Italian tomatoes) due to the autonomy of individual owners when it comes to ranging and discounting products. The Pak N Save high volume, low priced marketing strategy means it is essential that there be a range of low cost alternatives to the premium brands.

## **Organic Tomatoes**

100. Ceres initially submitted that organic tomatoes should not be subject to any duty, as HWL does not produce a like product. The Ministry understands that Ceres is the only seller in the New Zealand market of organic preserved tomatoes. Certified organic tomatoes are a small percentage of the total preserved tomato market.

101. In response to the Essential Facts and Conclusions report, Ceres submitted that a certified organic product is materially different to a conventional product. They also submitted that while an organic product may be substituted for a conventional product, a conventional product cannot be substituted for an organic one.

102. Ceres states that New Zealand does not produce commercially grown certified organic preserved tomatoes. If New Zealand did produce organic tomatoes, Ceres submits that they would not compare to large producers around the world on a price/cost perspective.

103. Ceres' certified organic tomatoes are sold as peeled, chopped, or chopped with basil, in 400ml cans. Ceres submitted that organic products are generally priced at 10-20% more than conventional products.

104. Ceres' target market is consumers that prefer organic products; a specialist market. It distributes products through supermarkets, health food stores, organic stores and co-ops.

105. Ceres' states that they only deal with suppliers that are certified organic to worldwide standards. The European Union has regulations governing the production, control and labelling of organic products. Foods may only be marked as organic if at least 95% of their agricultural ingredients are organic.

106. In New Zealand, Ceres are certified through BioGrow. To gain organic certification, a company must comply with rules covering conversion to organic; rigorous testing of soils, composts, and product; clear records of inputs and their integrity; and protection of product from any possible contamination. Companies must also meet the standard regulatory requirements for the type of product and comply with the Fair Trading Act 1986.

## **Other**

107. HWL has noted that the preserved tomatoes it produces, if imported into New Zealand, would be classified under the same tariff item and statistical key as the preserved tomatoes imported from Italy.



### **3.4 The New Zealand Industry**

108. The Ministry has considered the information gathered about like goods produced by the New Zealand industry and has compared the information with the characteristics of the imported subject goods. The Ministry has considered the physical characteristics, function and usage, pricing, manufacturing, and marketing; as well as the specialised characteristics of organic products.

109. The subject goods and the domestically produced goods are similar in appearance, although there is some minor variation in taste, quality and packaging. There is a wider range of cuts of the imported product compared to the domestically produced product; however the Ministry considers the function remains the same for all cuts. Pricing structures are similar, as is manufacturing process. The only difference in manufacturing lies in the economies of scale able to be obtained by Italian producers. The subject goods and the domestically produced goods are marketed in a similar manner. The information available suggests that the subject goods and the domestically produced goods compete directly with each other in the New Zealand market.

110. Organic goods are similar in many respects; however organic goods are more expensive, are marketed to a different target market, and are distributed to additional sellers than conventional preserved tomatoes. Organic goods must also undergo a certification process. However, the differences in organic goods do not outweigh the similarities, and the Ministry still considers that the New Zealand industry manufactures a like good to the imported organic preserved tomatoes.

111. On the basis of the information available, the Ministry concludes that the preserved tomatoes produced in New Zealand by HWL, while not identical to the subject goods in all respects, have characteristics closely resembling the subject goods, and are therefore like goods to the subject goods.



## 4. Dumping Analysis

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112. Dumping occurs when an exporter sells preserved tomatoes to New Zealand at a price lower than it is sold for in Italy. The price preserved tomatoes are sold for in Italy is referred to as normal value. In essence dumping is price discrimination between an export and a domestic market.

### 4.1 Introduction

113. This section of the report explains the method of comparing export prices with normal values and how these prices have been established over the POI i.e. the year ended 31 August 2011, to determine whether preserved tomatoes from Italy were imported into New Zealand at dumped prices.

### Methodology

114. Over the POI there were a significant number of exporters identified as having exported preserved tomatoes to New Zealand. The Ministry has limited its examination of exporters to those exporting 80 percent of the volume of total imports by New Zealand over the POI as provided in Article 6.10 of the Anti-Dumping Agreement. The Ministry invited the selected exporters to participate in the investigation and provide a questionnaire response. The Ministry received three questionnaire responses from La Doria, Conserve Italia and AR Industrie. Limited information was received from SICA, SPAI and Quality Centre; and no information was received from Attianese, Calispa, Coverimport, Pecos., I.M.C.A. and Perano Enrico & Figli .

115. The Ministry normally undertakes the comparison of export prices and normal values on a transaction-to-transaction basis. In this case, because of the large number of transactions by each of the exporters and the large number of product types and sizes the Ministry did not consider it was feasible to undertake this comparison on a transaction-to-transaction basis and has consequently carried out this comparison on a weighted average-to-weighted average basis.

116. The use of the weighted average-to-weighted average methodology is in accordance with Article 2.4.2 of the Anti-dumping Agreement which states that the existence of margins of dumping shall normally be established on the basis of either a weighted average-to-weighted average comparison or a transaction-to-transaction comparison.

117. To ensure a fair comparison of prices, the Ministry has grouped the preserved tomatoes by categories; conventional, flavoured, cherry, and organic according to net can sizes of 400g/410g, 800g/820g and 2,650g/2,550g. For one exporter the categories were the exporter's own branded product and its private label product. The Ministry has calculated a weighted average export price and normal value of each category and then multiplied each of the different prices by the volume of exports of each group made by the exporter to New Zealand during the POI. The resulting total export value from all sizes was subtracted from the resulting total normal value from all sizes and the balance was divided by the total export price to calculate an overall dumping margin for each exporter. If the weighted average

export price was lower than the weighted average normal value for a manufacturer, the goods were considered dumped.

118. The weighted average export price and normal value for the POI have, with one exception, been compared at the ex-factory level, which is the preferred point of comparison under paragraph 4 of Article 2 of the Anti-dumping Agreement, as a comparison at this point removes any differences in downstream costs from the dumping calculation. In the case of Conserve Italia, export prices for some of its exports have been established at the exporter level which has been compared to normal values established at the ex-factory level. The reason for this is explained below.

119. To arrive at ex-factory values for each exporter, the Ministry has made a number of adjustments from the base export and domestic prices to ensure a fair comparison between sales of preserved tomatoes for domestic consumption in Italy and those exported to New Zealand.

## **Information Used**

120. The Ministry has used verified information from the contributing exporters to establish export prices and normal values. For those parties that did not participate in the investigation the Ministry has used the best available information to fill in information gaps, which is information provided by other parties. All information that has been supplied to the Ministry has been used in the preparation of this report where it can be reasonably relied upon.

121. Detailed verification reports and calculations of dumping margins have been provided to the three Italian exporters that were visited.

122. Paddy's submitted that HWL's application for the dumping investigation was based on inaccurate and outdated information. It provided information pertaining to its own supplier which appears to demonstrate a normal value below the export price this company pays. To assess the validity of HWL's claims, and in coming to the conclusions contained in this report, the Ministry has used the information outlined in paragraphs 120 and 121.

## **4.2 Export Prices**

### **Introduction**

123. Export prices are the prices at which the preserved tomatoes are exported from the country of export to New Zealand, that are arm's length transactions, other than costs or charges incurred in preparing the goods for shipment additional to those incurred on domestic sales and any other costs, charges and expenses resulting from the exportation of the goods or arising after their shipment from the country of export, as required by section 4 of the Act.

124. The following paragraphs provide an analysis of export prices for each of the selected exporters.

## **AR Industrie Alimentari S.p.A**

### **Introduction**

125. AR Industrie is a manufacturer and exporter of preserved tomatoes.

126. Over the POI, AR Industrie exported to New Zealand crushed, chopped and whole tomatoes in can sizes of a net weight of 400g, 820g and 2.55kg. Some sales were private label sales (brands owned or under licence by its New Zealand customers), while other sales were AR Industrie's own brands, including "Russo" and "Primavera". Over the POI it exported to New Zealand [REDACTED] kgs of preserved tomatoes at a value of € [REDACTED].

127. AR Industrie completed a manufacturer's questionnaire and a verification visit was undertaken.

### **Export Sales Distribution**

128. All exports to New Zealand are made directly by AR Industrie to its New Zealand customers. AR Industrie negotiates an annual contract with two importers relating to each year's crop. The importers then place orders throughout the year and the goods are dispatched in response to each order. AR Industrie does not negotiate an annual contract with its third New Zealand customer, who instead places its orders as required throughout the year and pays a spot price.

129. Prices to two importers are on a FOB basis in euros while sales to the other are in euros on an ex-factory basis. Invoices are sent to the New Zealand customer at the time the bill of lading is issued.

### **Base Prices**

130. The information provided by AR Industrie relating to their exports of the subject goods over the POI was taken from the invoices it issued to the New Zealand importers over the POI. Because of the time lag between the date the invoice is issued and the date the goods are imported into New Zealand this information does not correspond exactly with the imports into New Zealand over the POI, i.e. some imports in the Customs data at the beginning of the POI are not included in the information provided by AR Industrie because they were invoiced before the beginning of the POI and some shipments included by AR Industrie at the end of the POI did not enter New Zealand until after the end of the POI.

131. The Ministry has decided that export prices should be established for those shipments invoiced by AR Industrie over the POI rather than for those shipments that entered New Zealand over the POI to ensure the closest possible match with domestic sales by AR Industrie which represent sales it invoiced over the POI.

132. The base price is the invoiced price in euro at the FOB value for 820g and some 2.55kg cans, and the invoiced price in euro at the ex-factory value for 400g cans and the rest of the 2.55kg cans. The base price ranged from € [REDACTED] to € [REDACTED] per kg.

## Adjustments

### *Inland Freight, Customs Clearance Charges and Cost of Credit*

133. AR Industrie advised that transporting the goods from factory to port and various port charges are provided by separate transport and logistics companies when it sells on an FOB basis. The Ministry was only able to positively relate one of the invoice sets provided by AR Industrie to a shipment to New Zealand over the POI and has therefore based the adjustments for all shipments on the percentage that these costs represented of the FOB price for the invoice set where it could be positively related to a shipment to New Zealand. This percentage adjustment is [REDACTED] % of the FOB price and has been applied to all other shipments sold on a FOB basis.

134. An adjustment has been made for cost of providing credit over between [REDACTED] days and [REDACTED] days at an interest rate of 3.4%.

135. Based on verified information an adjustment was made for the cost of inland transport and port clearance charges of € [REDACTED] per kg and cost of credit of € [REDACTED] to € [REDACTED] per kg.

## Export Prices

136. From the base prices and adjustments outlined above, the Ministry has established a separate weighted average ex-factory export price for preserved tomatoes in 400g, 820g and 2.55kg can sizes (there was no significant difference in prices between own brand and private label sales) and from these has calculated an overall weighted average export price for AR Industrie with each of the three categories being weighted by the volume of preserved tomatoes exported to New Zealand over the POI in each category. The export prices are € [REDACTED], € [REDACTED], and € [REDACTED] per kg for 400g, 820g and 2.55kg can sizes respectively. The overall weighted average export price for AR Industrie is € [REDACTED] per kg.

## Calispa S.p.A

### Introduction

137. Calispa is a manufacturer of preserved tomatoes exported through an export agent, [REDACTED], to New Zealand. Calispa did not provide a response to the Ministry's manufacturer's questionnaire, and [REDACTED] did not provide a response to the exporter's questionnaire.

138. In the absence of sufficient information from Calispa to enable export prices to be ascertained under Section 4 of the Act, the Ministry has had regard to all available information as provided under Section 6(1) of the Act. The information considered by the Ministry was import statistics from Customs, details provided by the importer [REDACTED], and other available information.

139. Calispa exported over the POI [REDACTED] kgs of whole peeled preserved tomatoes in 400g cans to New Zealand, at an FOB value of € [REDACTED].

## **Base Prices**

140. To identify a starting point, i.e. base prices, the Ministry has used information supplied by the importer, [REDACTED]. [REDACTED] provided invoices issued by the export agent, [REDACTED]. The Ministry has cross referenced this information with information held by Customs, and found it matched closely. The importer purchases their products on a FOB basis and the Ministry has used these prices as the base prices.

141. The Ministry derived a weighted average FOB cost of €[REDACTED] per kg for Calispa as its base price.

## **Adjustments**

### ***Exporter's Margin***

142. [REDACTED] stated that [REDACTED] did include a margin in [REDACTED]'s invoice price to them. [REDACTED] estimated the margin to be [REDACTED]% of the FOB value. This same amount has been used in past investigations conducted by the Ministry involving [REDACTED]. As such, the Ministry considers [REDACTED]% to be a reasonable amount.

143. A downward adjustment of [REDACTED]% of the FOB value as an exporter's margin has been made on a line by line basis.

### ***Inland Freight and Customs Clearance Charges***

144. In the absence of information from Calispa, the Ministry has used inland freight costs from another manufacturer and exporter to estimate Calispa's freight costs. La Doria had an average freight cost of €[REDACTED] per kg, which the Ministry considers to be reasonable.

145. A downward adjustment of €[REDACTED] per kg has been made to the FOB value.

## **Export Prices**

146. From the base price and adjustments outlined above, the Ministry has calculated a weighted average ex-factory export price of €[REDACTED] per kg for the preserved tomatoes exported to New Zealand by Calispa.

## **Conserve Italia Agricultural Cooperative Society**

### **Introduction**

147. Conserve Italia is a manufacturer and exporter of preserved tomatoes and is a co-operative company.

148. Over the POI Conserve Italia exported to New Zealand diced, chopped and peeled tomatoes in 400g cans (net weight): Sales were mainly of private label product but a small volume of its own brand, Cirio, was also exported over the POI. Over the POI [REDACTED] kilograms (net weight) were shipped to New Zealand at an FOB value of €[REDACTED].

149. Conserve Italia completed a manufacturer's questionnaire and a verification visit was undertaken.

### **Export Sales Distribution**

150. All exports to New Zealand are made directly by Conserve Italia to its New Zealand customers. For the private label brands, Conserve Italia negotiates with its New Zealand customers an annual contract for quantity and price for each year's crop. Its New Zealand customers then send orders by EDI, fax or email and orders are dispatched in response to each order. Over the POI Conserve Italia also sold to one of its New Zealand customers some of its "Cirio" brand preserved tomatoes, the price of which was negotiated separately.

151. Prices are on an FOB basis in euros. Conserve Italia confirmed that the invoice price is the final price, i.e. there are no discounts or rebates subsequent to the issue of the invoice.

152. Over the POI the production of the private label product exported to New Zealand was contracted out to another Italian manufacturer, [REDACTED]. Conserve Italia [REDACTED]. Conserve Italia said this was a one-off situation and that it would normally produce the entire product for its New Zealand customers.

### **Base Prices**

153. The information provided by Conserve Italia relating to its exports of the subject goods over the POI was taken from the invoices it issued to the New Zealand importers over the POI. Because of the time lag between the date the invoice is issued and the date the goods are imported into New Zealand this information does not correspond exactly with the imports into New Zealand over the POI, i.e. some imports in the Customs data at the beginning of the POI are not included in the information provided by Conserve Italia because they were invoiced before the beginning of the POI and some shipments included by Conserve Italia at the end of the POI did not enter New Zealand until after the end of the POI.

154. The Ministry has decided that export prices should be established for those shipments invoiced by Conserve Italia over the POI rather than for those shipments that entered New Zealand over the POI to ensure the closest possible match with domestic sales by Conserve Italia which represent sales it invoiced over the POI.

155. The base price is the invoiced price in euro at the FOB value which was the price paid by the importers at arm's length transactions. The base price was between €[REDACTED] and €[REDACTED] per kg.

### **Adjustments**

#### **Inland Freight, Handling and Cost of Credit**

156. The Ministry made an adjustment for the cost of inland transport and handling costs (bill of lading fees, and terminal clearance and handling charges), and for cost



of providing credit (between [REDACTED] and [REDACTED] days at 3.65% per annum) to Conserve Italia's customers.

157. As noted above the private label preserved tomatoes exported by Conserve Italia over the POI were purchased from another Italian producer. The Ministry therefore considered whether a deduction should be made for the margin taken by Conserve Italia on this transaction to take the export price back to the ex-factory level of the producer from whom the goods were purchased. The Ministry found no evidence to suggest that the price at which Conserve Italia sold the product to its New Zealand customers was influenced by it having to purchase the product from another producer. The Ministry therefore concluded that no adjustment was needed as the price for this transaction was not different to the price charged in the normal course of trade.

158. The Ministry also considered adjustments for storage and logistic costs and picking costs, however, it was established that these costs apply equally to both export and domestic sales and therefore no adjustment was required.

159. Based on verified information an adjustment was made for the cost of inland freight of €[REDACTED] to €[REDACTED] per kg and cost of credit of €[REDACTED] to €[REDACTED] per kg.

### **Export Prices**

160. From the base prices and adjustments outlined above, the Ministry has calculated a weighted average ex-factory export price of €[REDACTED] and €[REDACTED] per kg respectively for the private label and Cirio brand product exported by Conserve Italia. The overall weighted average export price for Conserve Italia is €[REDACTED] per kg.

## **I.M.C.A. S.p.A.**

### **Introduction**

161. I.M.C.A is a manufacturer and exporter and supplies its preserved tomatoes directly to New Zealand. I.M.C.A did not complete a manufacturer's questionnaire response. I.M.C.A specialises in canned foods and operates predominantly on the international market. It manufactures products under both its own brand and customers' private labels.

162. In the absence of sufficient information from I.M.C.A to enable export prices to be ascertained under Section 4 of the Act, the Ministry has had regard to all available information as provided under Section 6(1) of the Act. The information considered by the Ministry was import statistics from Customs and other available information (none of the importers provided any substantive information).

163. I.M.C.A exported over the POI to New Zealand [REDACTED] kgs of preserved tomatoes, of an FOB value of €[REDACTED]. The Ministry understands that I.M.C.A exported both 400g cans and larger size (i.e. around 2.5kg) cans of unflavoured preserved tomatoes.

### **Base Prices**

164. To identify a starting point, i.e. base price, the Ministry has used information received from Customs.

165. From the Customs data relating to imports over the POI, the Ministry has calculated weighted average VFD prices (which is equivalent to the FOB price) of € [REDACTED] per kg and € [REDACTED] per kg for 400g and 2.5kg can sizes respectively as the base price.

## Adjustments

### Inland Freight, Customs Clearance Charges and Cost of Credit

166. The Ministry has not been provided with any information on the costs, charges and expenses incurred in preparing preserved tomatoes for shipment to New Zealand by I.M.C.A. In the absence of information from I.M.C.A, the Ministry has used costs provided by La Doria.

167. The weighted average cost of freight for La Doria's unflavoured 410g cans of tomatoes is € [REDACTED] per kg, including customs clearance costs. For 2.5kg cans of tomatoes, the cost of freight including customs clearance costs is € [REDACTED] per kg. The weighted average cost of credit for both sizes is € [REDACTED] per kg.

168. A downward adjustment for the costs established above has been made to the VFD price.

## Export Prices

169. From the base price and the adjustments outlined above, the Ministry has calculated weighted average ex-factory export prices of 400g cans of unflavoured preserved tomatoes of € [REDACTED] per kg and of 2.5kg cans of unflavoured preserved tomatoes of € [REDACTED] per kg for the preserved tomatoes exported to New Zealand by I.M.C.A. The overall weighted average export price for I.M.C.A. is € [REDACTED] per kg.

## La Doria S.p.A.

### Introduction

170. La Doria is a public company that is listed on the Italian stock exchange. Seventy percent of its shareholding is held by members of the Ferrailoi family and the remaining 30 percent is publicly held.

171. It exported to New Zealand over the POI peeled and chopped tomatoes in 410g, 800g and 2.65kg cans, flavoured chopped tomatoes in 410g cans, cherry tomatoes and organic tomatoes in 410g cans. All sales to New Zealand were private label sales (brands owned or under licence by its New Zealand customers). Over the POI it exported to New Zealand [REDACTED] kgs of preserved tomatoes at an FOB value of € [REDACTED].

172. La Doria completed a manufacturer's questionnaire and a verification visit was undertaken.

## **Export Sales Distribution**

173. La Doria enters into annual contracts with its New Zealand customers to supply a set volume of preserved tomatoes (supplied at intervals during the period) according to a specific type/recipe at an agreed price per can. Negotiations on contract terms commence normally in June/July, before the picking and processing season, and are finalised in July to cover 'crop to crop'. Over the term of the contract the New Zealand customers will send a purchase order to La Doria and it arranges for the goods to be dispatched from its plant and made available at the port of export, Angri or Salerno, as per the terms of the contract. All sales of preserved tomatoes by La Doria are made on an FOB basis and are exported from Italy directly to New Zealand.

## **Base Prices**

174. Information on export sales has been taken from invoices issued by La Doria to the New Zealand importers over the POI. Because of the time lag between the date the invoice was issued and the date the goods were imported into New Zealand the Ministry has found that the information did not match Customs import data over the POI. Some imports in Customs at the beginning of the POI were not included in the information provided by La Doria because invoices were issued before the beginning of the POI and some shipments included by La Doria at the end of the POI did not enter New Zealand until after the end of the POI.

175. The Ministry decided that export prices should be established on the basis of the shipments invoiced by La Doria over the POI rather than the time the goods entered New Zealand over the POI to ensure the closest possible match with domestic sales by La Doria which represents sales it invoiced over the POI.

176. The base price is the invoiced price in euro at the FOB value which was the price paid by the importers at arm's length transactions. Base prices ranged from € [REDACTED] to € [REDACTED] per kg.

## **Adjustments**

### ***Inland Freight, Customs Clearance Charges and Cost of Credit***

177. The Ministry considered a number of adjustments. The Ministry did not make an adjustment for packaging, financing, selling and administration expenses, handling costs and credit insurance. The Ministry established that these costs were incurred on both export sales and domestic sales and therefore in accordance with section 4(1)(a)(i)(ii) of the Act, no adjustment was made.

178. The Ministry made an adjustment for the cost of transport from the manufacturing plant to the port of export, port clearance fees (terminal handling, port charges) and the cost of providing credit ([REDACTED] days at 1.7325 percent per annum) to La Doria's New Zealand customers.

179. Based on verified information an adjustment was made for the cost of inland transport and customs clearance fees of € [REDACTED] to € [REDACTED] per kg and cost of credit of € [REDACTED] to € [REDACTED] per kg.

## Export Prices

180. From the base prices and adjustments outline above, the Ministry has calculated weighted average ex-factory export prices of peeled and chopped tomatoes in 400g, 800g and 2,650g cans at €[REDACTED] per kg, €[REDACTED] per kg and €[REDACTED] per kg respectively, flavoured chopped tomatoes in 400g cans at €[REDACTED] per kg (fresh flavouring) or €[REDACTED] per kg (dried flavouring), cherry tomatoes in 410g cans at €[REDACTED] and organic tomatoes in 400g cans at €[REDACTED] per kg. The overall weighted average export price for La Doria is €[REDACTED] per kg.

## Pecos S.p.A

### Introduction

181. Pecos is a manufacturer of preserved tomatoes exported through an export agent, [REDACTED], to New Zealand. Pecos did not provide a response to the Ministry's manufacturer's questionnaire, and [REDACTED] did not provide a response to the exporter's questionnaire.

182. In the absence of sufficient information from Pecos to enable export prices to be ascertained under Section 4 of the Act, the Ministry has had regard to all available information as provided under Section 6(1) of the Act. The information considered by the Ministry was import data from Customs, details provided by the importer [REDACTED], and other available information.

183. Pecos exported over the POI [REDACTED] kgs (net weight) of chopped preserved tomatoes in 400g cans to New Zealand, at an FOB value of €[REDACTED].

### Base Prices

184. To establish base prices the Ministry has used information supplied by the importer, [REDACTED]. [REDACTED] provided invoices issued by [REDACTED]. The Ministry has cross referenced this information with information held by Customs, and found it matched closely. The importer purchases on a FOB basis and the Ministry has used these prices as the base prices.

185. The Ministry derived a weighted average FOB cost of €[REDACTED] per kg for Pecos as its base price.

### Adjustments

#### Exporter's Margin

186. [REDACTED] stated that [REDACTED] did include a margin in [REDACTED]'s invoice price to them. [REDACTED] estimated the margin to be [REDACTED]% of the FOB value. This same amount has been used in past investigations conducted by the Ministry involving [REDACTED]. As such, the Ministry considers [REDACTED]% to be a reasonable amount.

187. A downward adjustment of [REDACTED]% of the FOB value as an exporter's margin has been made on a line by line basis.

## **Inland Freight and Customs Clearance Charges**

188. In the absence of information from Pecos, the Ministry has used inland freight costs from another manufacturer and exporter to estimate Pecos' freight costs. La Doria had an average freight cost of € [REDACTED] per kg, which the Ministry considers to be reasonable.

189. A downward adjustment of € [REDACTED] per kg has been made to the FOB value.

## **Export Prices**

190. From the base price and adjustments outlined above, the Ministry has calculated a weighted average ex-factory export price of € [REDACTED] per kg for the preserved tomatoes exported to New Zealand by Pecos.

## **SICA Conserve Srl**

### **Introduction**

191. SICA completed a very limited manufacturer's questionnaire response. SICA is an Italian manufacturer which, according to its website, sells on both domestic and international markets. It did not supply any cost information.

192. In the absence of sufficient information from SICA, the Ministry has had regard to all available information in calculating export prices. SICA exports its preserved tomatoes through [REDACTED], an export agent based in Australia, to [REDACTED]. SICA exported over the POI to New Zealand [REDACTED] kgs of preserved tomatoes, at an invoiced value of € [REDACTED].

193. SICA exported 2.5kg cans of chopped tomatoes and 2.55kg cans of whole peeled tomatoes to New Zealand over the POI.

### **Base Prices**

194. The Ministry received a full response from SICA's importer, including invoices, and a partial response from its export agent, including some invoices. The Ministry cross checked the information received from the importer with that received from the export agent, as well as with Customs data. There appeared to be some information missing from the Customs data, as not all invoices could be matched to a shipment in the Customs data. However, the Ministry considers that the information received from the importer is reliable, and has used this information to establish base prices.

195. The importer stated in its questionnaire that it purchases its goods on an ex-works basis from Italy. The goods are shipped directly from Italy to New Zealand. This information was confirmed with the export agent.

196. The Ministry has established a weighted average ex-works/ex-factory base price of € [REDACTED] per kg.

## Adjustments

197. The information received from the importer also established a combined cost for freight, insurance, customs duty and port clearance. The export agent advised the Ministry that it charges a [REDACTED] % margin on the FOB cost.

198. However, these adjustments did not have to be made for the purpose of establishing dumping, as the base price is already at ex-factory.

## Export Prices

199. The weighted average ex-factory export price is € [REDACTED] per kg for the preserved tomatoes exported to New Zealand by SICA.

## SPAI Srl

### Introduction

200. SPAI is an export agent based in Italy, which operates only on the international market. Over the POI, SPAI exported preserved tomatoes produced by [REDACTED]. SPAI provided a partial response to the Ministry's exporter's questionnaire. Neither [REDACTED] provided a manufacturer's questionnaire response.

201. The Ministry does not have any information which separates shipments coming from the two manufacturers whose product SPAI exported to New Zealand. SPAI provided export invoices for its shipments to New Zealand, and this information has been used to establish an export price.

202. SPAI exported over the POI to New Zealand [REDACTED] kgs of preserved tomatoes, at an FOB value of € [REDACTED]. SPAI exported 400g cans and 2.5kg cans of both chopped and whole peeled tomatoes.

### Base Prices

203. SPAI provided evidence of goods exported to New Zealand, including invoices. The Ministry has cross referenced information provided with the information held by Customs, and that provided by the New Zealand importer. There were four shipments that did not match the Customs data, however the Ministry considers the information provided by SPAI reliable to use for the purpose of establishing an export price.

204. The importer purchases their products on a FOB basis. The Ministry has used this point as its base price. The weighted average FOB base price is € [REDACTED] per kg for 400g cans and € [REDACTED] per kg for 2.5kg cans.

## Adjustments

### Exporter's Margin

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

206. While SPAI did provide a number of costs, it did not provide its margin. There were two other export agents involved in this investigation. Only one of these export agents provided their margin. The Ministry considers the margin this export agent collects to be reasonable, and used the same cost for SPAI.

207. A downward adjustment of [REDACTED] percent of the FOB value as an exporter's margin has been made on a line by line basis.

### Inland Freight and FOB Expenses

208. SPAI specified transport costs, FOB costs, and additional shipping costs on their export invoices, as part of the total FOB price. This data had to be allocated specifically to tomatoes, as SPAI exported a number of other products in the same shipments. The Ministry made adjustments to the base price using the invoice information on a line by line basis for each shipment.

209. A weighted average downward adjustment of € [REDACTED] per kg was made to the weighted average FOB value.

### Export Prices

210. From the base price and adjustments outlined above, the Ministry has calculated a weighted average ex-factory export price of € [REDACTED] per kg for 400g cans and € [REDACTED] per kg for 2.5kg cans the preserved tomatoes exported to New Zealand by SPAI. The overall weighted average export price for SPAI is € [REDACTED] per kg.

## 4.3 Normal Values

### Introduction

211. The normal value is the price at which the Italian manufacturers sell preserved tomatoes in the domestic market in Italy. The types of sales that can be used to determine normal values are set out in section 5 of the Act, which 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 Italy. Where an exporter makes no such sales, sales by other sellers of like goods in Italy can be used to establish normal values.

212. In the absence of relevant and suitable sales in the ordinary course of trade, normal values can be constructed either: (a) 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 Italy, 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 Italian domestic market; or (b) established on the basis of selling prices to a third country.

213. Section 5(3) of the Act requires that in order to effect a fair comparison the normal value and export price shall be compared at the same level of trade, in respect of sales made at nearly the same time and with due allowance for differences that affect price comparability.

214. In any investigation, where sufficient information has not been provided by the foreign exporter, or is not available, normal values can be established under section 6(1) of the Act. For the exporters that did not provide the Ministry with any information normal values have been derived having regard to all available information.

### **Available information**

215. The Ministry received three Italian manufacturer questionnaire responses and verification visits were undertaken at all three. All three manufacturers sell preserved tomatoes on the domestic market in Italy.

216. The following paragraphs discuss normal values of each of the selected exporters.

## **AR Industrie Alimentari S.p.A**

### **Introduction**

217. AR Industrie is an export oriented operation and it has only one significant domestic customer, Lidl Italia S.r.l, which is the Italian arm of a large Europe-wide supermarket chain. AR Industrie negotiates an annual contract with Lidl Italia covering both quantity and price in relation to each year's tomato crop. The price is a delivered price into Lidl Italia's warehouses. Orders are placed throughout the year as required by Lidl Italia through a company called "██████████" which arranges supply from producers across all of Europe. ██████████ charge a commission of ██████% for this service.

218. AR Industrie sells preserved tomatoes to other producers and a few other small customers. Invoices are issued at the time the goods are dispatched.

219. Over the POI, AR Industrie sold on the Italian domestic market ██████████ kgs of chopped and whole peeled tomatoes to Lidl Italia with an FIS value of € ██████████ and ██████████ kgs of chopped and whole peeled tomatoes to other customers with an FIS value of € ██████████. Domestic sales of preserved tomatoes equivalent to those exported to New Zealand are well in excess of the 5% threshold referred to in footnote 2 of the Anti-Dumping Agreement and are considered to be of sufficient quantity for the determination of normal value.

220. AR Industrie confirmed that it has no corporate affiliations with Lidl Italia or any of its other domestic customers and that all sales to its domestic customers are in the ordinary course of trade and in arm's length transactions. There is no evidence that indicates sales are not in the ordinary course and are not at arm's length. The



Ministry therefore considers AR Industrie's sales on the Italian domestic market over the POI can be used to establish normal values.

### **Base prices**

221. Base prices have been established on the basis of information provided by AR Industrie. The base price per kg is the total value in euros divided by the total kgs over the POI. A weighted average FIS base price has been established for 400g, 820g and 2.55kg can sizes of € [REDACTED], € [REDACTED] and € [REDACTED] per kg respectively.

### **Adjustments**

#### ***Level of Trade***

222. In order to allow a fair comparison the normal value is to be compared to the export price at the same level of trade. AR Industrie said that that level of trade is not a relevant consideration in setting the prices of either its domestic or export sales. The Ministry does not consider any adjustment is required for differences in level of trade.

#### ***Taxation***

223. All prices used are exclusive of VAT and therefore no adjustment for taxation is required.

#### ***Delivery to Customer***

224. AR Industrie provided a calculation of its average delivery costs but the Ministry was not able to satisfactorily verify this cost. However, when this cost was compared to the verified costs of another producer, the cost was similar to, but lower than, the costs of the other producer. The Ministry therefore considered the cost calculated by AR Industrie is reasonable and could be used to make an adjustment.

225. On the basis of the foregoing considerations, a deduction has been made for freight to customer at the amount calculated by AR Industrie of € [REDACTED] per kilogram.

#### ***Promotional Activity***

226. AR Industrie also provided information of a cost for "promotional activity" of € [REDACTED] per kilogram. AR Industrie said it has an agreement with Lidl Italia to pay towards the costs of promotional activity and that this cost was effectively a discount or rebate. AR Industrie did not made any claims that it incurs a promotional activity cost on its sales to customers other than Lidl Italia.

227. It was, however, unclear to what extent the promotional activity related to preserved tomatoes. The Ministry notes that the 400g cans of preserved tomatoes sold to Lidl Italia are a private label product and the evidence in this investigation has been that private label sales do not require brand support by the producer. Because of the foregoing, The Ministry has not made a deduction for promotional activity.

### **Commission**

228. As noted in paragraph 217 above, [REDACTED] charge a [REDACTED]% commission for sales to Lidl Italia. AR Industrie provided evidence of this cost and said that for some of its sales to customers other than Lidl Italia it also incurred a [REDACTED]% commission. AR Industrie did not, however, provide any evidence to substantiate this claim.

229. A deduction has been made for sales to Lidl Italia at [REDACTED]% of the delivered price, which equates to € [REDACTED] per kg. No deduction has been made in respect of sales to other customers.

### **Handling**

230. AR Industrie also included a cost for personalised cartons and for a “truck cargo system on pallet” of € [REDACTED] per kilogram. No evidence was provided to substantiate this cost. The Ministry considers this cost would apply equally to both export and domestic sales and because of this and the lack of any evidence to substantiate this cost, no deduction has been made.

### **Physical Differences**

231. AR Industrie provided evidence of a physical difference between the 400g cans exported to New Zealand and those sold to Lidl Italia. This difference related to the additional cost of an easy open (tear top) can sold on the Italian domestic market and the standard can exported to New Zealand (which requires opening with a can opener).

232. An adjustment has been made for the 400g cans to reduce the base price for the difference in the cost of the cans at € [REDACTED] per kilogram. No adjustment for physical differences has been made for other can sizes.

### **Cost of Credit**

233. AR Industrie provided credit to its domestic customers at an average of [REDACTED] days over the POI. An adjustment has been made for cost of credit at [REDACTED] days using an interest rate of 3.4% referred to in paragraph 134 above.

### **Normal values**

234. From the base prices and adjustments outlined above, the Ministry has calculated weighted average ex-factory normal values for preserved tomatoes in 400g, 820g and 2550g cans at € [REDACTED] per kg, € [REDACTED] per kg and € [REDACTED] per kg respectively. The overall weighted average normal for AR Industrie is € [REDACTED] per kg.

## Calispa S.p.A

### Introduction

235. Neither [REDACTED], nor Calispa responded to the Ministry's exporter's or manufacturer's questionnaires. In the absence of this information, the Ministry has had regard to all available information.

236. In accordance with Section 5 of the Act, in the absence of information from either [REDACTED] or Calispa the Ministry has considered domestic pricing information from other Italian sellers of like goods. In terms of footnote 2 of the Anti-Dumping Agreement sales of like product on the domestic market are normally of a sufficient quantity for determining normal value if they exceed 5 percent of export sales.

237. The Ministry considers that sales by La Doria should be used to establish normal values. La Doria focuses on the sale of private label product and sells to a wide range of customers on the Italian domestic market. La Doria's sales volume on the domestic market is greater than the sales of Calispa to New Zealand. The Ministry considers La Doria's domestic selling prices to be made in the ordinary course of trade and at arm's length. The Ministry considers that it may use La Doria's domestic pricing information to establish normal values for Calispa.

238. There is no information to suggest that La Doria's domestic sales are not at the same level of trade as [REDACTED]'s export sales to New Zealand, and the pricing information relates to the period under investigation. The selling price used is that for sales to retailers of private label unflavoured tomatoes in 410g cans, which is the same as those exported by [REDACTED], as substantiated by the importer. La Doria's information has been verified and the Ministry considers it reliable for use in establishing normal values for Calispa.

### Base prices

239. The Ministry has used La Doria's domestic selling price of 410g cans of unflavoured preserved tomatoes to establish a normal value for Calispa.

240. The base price is La Doria's into store weighted average selling price for 410g cans of unflavoured preserved tomatoes of €[REDACTED] per kg.

### Adjustments

241. As discussed in the section for La Doria, the Ministry made a number of adjustments to La Doria's base price. Downward adjustments were made for delivery of €[REDACTED] per kg, and cost of credit of €[REDACTED] per kg, and an upward adjustment was made for the difference in the cost of the can of €[REDACTED] per kg.

242. The Ministry has no other information regarding costs specific to domestic sales that would be relevant in order to effect a fair comparison with export price, and therefore no other adjustments have been made.

## **Taxation**

243. All prices used are exclusive of VAT and therefore no adjustment for taxation is required.

## **Normal values**

244. The Ministry has based Calispa's normal value on domestic sale information of another seller of like goods, La Doria. The Ministry has used as its base price La Doria's domestic into store selling price of an equivalent type of product to that exported to New Zealand. From this value the Ministry has made downward adjustments for delivery, and cost of credit and an upward adjustment for physical differences. No other adjustments have been made.

245. The weighted average ex-factory normal value for Calispa is € [REDACTED] per kg.

## **Conserve Italia Agricultural Cooperative Society**

### **Introduction**

246. Conserve Italia sells a wide range of preserved tomato products on the Italian domestic market to all the main supermarket chains. Its main focus is the sale of its own label product, but it also sells private label product to its customers who require this type of product. Conserve Italia also sells preserved tomatoes in smaller volumes to the food service sector, to wholesalers and to other producers. Conserve Italia confirmed that it has no corporate affiliations with any of its domestic customers and that all sales to its domestic customers are in the ordinary course of trade and in arm's length transactions. The Ministry was satisfied that Conserve Italia's sales on the Italian domestic market are in the ordinary course of trade in arm's length transactions over the POI and can be used to establish normal values.

247. Conserve Italia enters into an annual contract with the supermarket chains and thereafter supplies product in response to orders throughout the year at the contracted price. Prices for other customers are negotiated on an order-by-order basis.

248. Over the POI, Conserve Italia sold on the Italian domestic market [REDACTED] kgs of chopped and whole peeled tomatoes of its own brands in 400g cans to supermarkets at an FIS value of € [REDACTED] and [REDACTED] kgs of chopped and whole peeled tomatoes of private label 400g cans to supermarkets at an FIS value of € [REDACTED]. Sales of preserved tomatoes equivalent to those exported to New Zealand are well in excess of the 5% threshold referred to in footnote 2 of the Anti-Dumping Agreement and are considered to be of sufficient quantity for the determination of normal values.

### **Base prices**

249. Base prices have been established on the basis of information extracted from Conserve Italia's accounting information system. Conserve Italia provided details, including volume and value, of all of its sales over the POI on the Italian domestic

market of preserved tomatoes in 400g cans with own brand and private label sales separated.

250. For own brand product, base prices have been established on the basis of the net amount invoiced by Conserve Italia at the retail level of trade for all sales on the Italian domestic market of 400g cans over the POI. For private label product, base prices have been established on the basis of the net amount invoiced by Conserve Italia for all sales on the Italian domestic market of 400g private label cans over the POI (all such sales are considered to be effectively at the retail level).

251. The base price per kg is the total value in euro divided by the total kgs over the POI. A base price has been established separately for private label and own brand preserved tomatoes. Base prices are €[REDACTED] per kg for private label and €[REDACTED] per kg for own brand.

## **Adjustments**

### **Level of trade**

252. Conserve Italia considers that its own brand sales to retailers are most closely aligned to the level of trade at which it sells to its New Zealand customers. As noted in paragraph 250 above, base prices for own brand sales have been established on the basis of relevant sales at the retail level of trade. Conserve Italia also said that its private label sales on the Italian domestic market are at the same level of trade as its private label sales to its New Zealand customers. As also noted in paragraph 250 above, base prices for private label sales have been established on the basis of all Conserve Italia's relevant sales of private label product.

253. The Ministry does not consider any adjustment is required for differences in level of trade.

### **Taxation**

254. All prices used are exclusive of VAT and therefore no adjustment for taxation is required.

### **Delivery to customer**

255. Conserve Italia sells on a delivered or FIS basis. Conserve Italia had calculated a cost for each sale over the POI for "transport", which included freight to customer and warehousing costs and the cost of compiling a pallet load. Conserve Italia said that its transport cost is not exact because products other than preserved tomatoes are also delivered to its customers and the costs are average costs derived from its cost accounting system.

256. Conserve Italia could not, however, explain satisfactorily exactly how this cost was calculated or provide documentary evidence or evidence from its accounting system to substantiate the amounts it had deducted for this cost in its spread sheets. Because of the lack of satisfactory evidence to substantiate the cost of freight to domestic customers, the Ministry has considered verified information provided on the delivery costs to domestic customers by another Italian producer, whose average cost of inland freight over the POI was €[REDACTED] per kilogram. In addition, the

information from the other producer does not include warehousing and the cost of compiling a pallet load, which the Ministry considers would apply equally to export sales. The information provided by the other producer is considered to be more accurate and reliable than that provided by Conserve Italia.

257. On the basis of the foregoing considerations, a deduction has been made for freight to customer of € [REDACTED] per kilogram.

### ***End of Year Bonuses***

258. Conserve Italia pays bonuses to its domestic customers at the end of the financial year, which are effectively rebates or discounts. These payments are provided for in the annual supply contracts with its customers and relate largely to its own brand sales. Conserve Italia provided information, which showed the amount of this bonus in relation to all relevant sales over the POI.

259. A deduction has been made on the basis of verified information for the end of year bonuses on the basis of the amount shown in the normal value spread sheets provided by Conserve Italia. On a weighted average basis the amount of the adjustment was € [REDACTED] and € [REDACTED] per kg for own brand and private label product respectively.

### ***Agent's Commissions***

260. Conserve Italia also submitted that an adjustment should be made for agent's commissions and provided details of the amounts paid over the POI. Conserve Italia was not able to provide satisfactory evidence to substantiate this adjustment, so no deduction has been made. The Ministry notes that the amount of these deductions is negligible.

### ***Handling***

261. Conserve Italia also submitted a deduction should be made for handling. Conserve Italia said this related to the cost of loading preserved tomatoes onto trucks for delivery to its domestic customers. The Ministry considers this cost would apply equally to both export and domestic sales and therefore no deduction has been made.

### ***Physical Differences***

262. Conserve Italia advised there is a difference between the cans in which the private label exports to New Zealand were packed and those in which sales on the Italian domestic market were packed. The cans exported to New Zealand over the POI had a standard cap (which requires opening with a can opener) and an unlined inner, while the equivalent cans sold on the domestic market had an easy open cap (a tear-top) and a white lacquered inner. The private label tomatoes exported to New Zealand also had [REDACTED] than the equivalent product sold on the Italian domestic market. In addition, there is a difference in the packaging whereby the cans for the Italian domestic market are sold in clusters of 2 – 3 cans whereas the New Zealand product is packed as a single un-clustered can.

263. An adjustment has been made to reduce the normal value of the private label product by the amount of the difference in the cost of the cans, their content and their packaging at € [REDACTED] per kilogram.

### **Cost of Credit**

264. Conserve Italia provides credit terms to its domestic retail customers, at an average of [REDACTED] days over the POI. An adjustment has been made using the interest rate of 3.65% referred to above under export price at [REDACTED] days on all relevant sales.

### **Normal values**

265. From the base prices and adjustments outlined above, the Ministry has calculated weighted average ex-factory normal values of own brand and private label preserved tomatoes at € [REDACTED] per kg and € [REDACTED] per kg respectively. The overall weighted average normal value for Conserve Italia is € [REDACTED] per kg.

## **La Doria S.p.A**

### **Introduction**

266. La Doria enters into annual contracts with its domestic customers, the same as with its export customers. Its domestic focus is on private label sales and it only sells on the domestic market conventional preserved tomatoes (no added flavouring), cherry tomatoes, and organic tomatoes.

267. Over the POI, La Doria sold on the Italian domestic market [REDACTED] kgs of chopped and whole peeled tomatoes, cherry tomatoes and organic tomatoes in 410g cans, [REDACTED] kgs of chopped or whole peeled tomatoes in 800g cans and [REDACTED] kgs of chopped and whole peeled tomatoes in 2.65kg cans at FIS values of € [REDACTED], € [REDACTED] and € [REDACTED] respectively. Domestic sales of preserved tomatoes equivalent to those exported to New Zealand are well in excess of the 5% threshold referred to in footnote 2 of the Anti-Dumping Agreement and are considered to be of sufficient quantity for the determination of normal value

268. La Doria stated it did not have any affiliation or financial interest in any of its domestic customers. La Doria said its domestic sales are normal business transactions that are made at arm's length. The Ministry was satisfied that La Doria's sales on the Italian domestic market were in the ordinary course of trade in arm's length transactions over the POI and can be used to establish normal values.

### **Base prices**

269. Base prices have been established on the basis of information provided by La Doria. La Doria provided total sales volume in kgs and value in euros, over the POI, of private label sales of like goods to retailers. The financial information has been separated according to the size of the cans (410g, 800g, 2,650g) and by the type/recipe (conventional preserved tomatoes, flavoured preserved tomatoes, cherry tomatoes and organic preserved tomatoes).

270. The base price per kg is the total value in euro divided by the total kgs over the POI. A base price has been established for preserved tomatoes in cans of 410g, 800g and 2.65kg (with each size separated into unflavoured, flavoured with fresh flavouring, flavoured with dried flavouring), cherry tomatoes in cans of 410g and organic preserved tomatoes in cans of 410g. Base prices range from € [REDACTED] to € [REDACTED] per kg.

## **Adjustments**

### ***Levels of trade***

271. La Doria stated that it does not distinguish or price differently between levels of trade. It considers that sales to New Zealand customers are at the same level of trade whether they are a retailer or importer/distributor. La Doria provided domestic sales information on sales to retailers similar to those in New Zealand. The Ministry did not consider due allowance was required and therefore no adjustment has been made.

### ***Taxation***

272. All prices used are exclusive of VAT and therefore no adjustment for taxation is required.

### ***Physical Differences***

#### *Type of Can*

273. La Doria provided information showing that the 410g and 800g cans exported to NZ were easy open cans with a coated inner whereas the equivalent cans sold on the Italian domestic market were standard unlined cans. The Ministry established from verified information that the difference in the cost of materials was € [REDACTED] per kg. The Ministry has therefore made an upwards adjustment at this amount for the difference in the cost of canning materials for 410g and 800g cans.

#### *Recipe (flavourings)*

274. La Doria advised that it does not sell on the domestic market flavoured preserved tomatoes. The Ministry has therefore made an adjustment for the cost of the flavourings, based on verified information, with a separate adjustment being made for dried ingredients and fresh ingredients.

275. The Ministry made an upwards adjustment of € [REDACTED] per kg (fresh) and € [REDACTED] per kg (dried).

### ***Delivery charges***

276. La Doria's domestic sales are made on a delivered basis. La Doria uses an independent company to deliver its goods and deliveries are made throughout Italy. On the basis of verified information the Ministry has made an adjustment for delivery charges of [REDACTED] percent of the delivered price which equates to € [REDACTED] to € [REDACTED] per kg.



### **Cost of credit**

277. La Doria provided credit to its domestic customers at an average of [REDACTED] days over the POI. La Doria provided information showing that the relevant interest rate over the POI was 1.7325 percent. The Ministry has made an adjustment for the cost of credit on this basis of € [REDACTED] to € [REDACTED] per kg.

### **Normal values**

278. From the base prices and adjustments outlined above, the Ministry has calculated weighted average ex-factory normal values of unflavoured peeled and chopped tomatoes in 410g, 800g and 2,650g cans at € [REDACTED] per kg, € [REDACTED] per kg and € [REDACTED] per kg respectively, fresh and dried flavoured chopped tomatoes in 400g cans at € [REDACTED] per kg and € [REDACTED] per kg respectively, cherry tomatoes in 410g cans at € [REDACTED] and organic tomatoes in 410g cans at € [REDACTED] per kg. The overall weighted average normal value for La Doria is € [REDACTED] per kg.

## **I.M.C.A. S.p.A.**

### **Introduction**

279. I.M.C.A did not respond to the Ministry's manufacturer's questionnaire. In the absence of this information, the Ministry has had regard to all available information.

280. In accordance with Section 5 of the Act, in the absence of information from I.M.C.A the Ministry has considered domestic pricing information from other Italian sellers of like goods. In terms of footnote 2 of the Anti-Dumping Agreement sales of like product on the domestic market is a sufficient quantity for determining normal value if they exceed 5 percent of export sales.

281. One of I.M.C.A's importers provided a response to the importer's questionnaire, which showed that I.M.C.A exported 400g cans of chopped tomatoes. The Ministry has found the other importer is a food service company, and on that basis has assumed it imported larger can sizes. On the basis of the information available, the Ministry considers that sales by La Doria of 410g cans and 2.65kg cans of unflavoured preserved tomatoes should be used to establish normal values.

282. La Doria's sales volume on the domestic market is greater than the sales of I.M.C.A to New Zealand. The Ministry considers La Doria's domestic selling prices to be made in the ordinary course of trade and at arm's length. The Ministry considers that it may use La Doria's domestic pricing information to establish normal values for I.M.C.A.

283. There is no information to suggest that La Doria's domestic sales are not at the same level of trade as I.M.C.A's export sales to New Zealand, and the pricing information relates to the period under investigation. The selling prices used are those for unflavoured tomatoes in 410g cans and in 2.65kg cans. La Doria's information has been verified and the Ministry considers it reliable to use to establish normal values for I.M.C.A.

## Base prices

284. The Ministry has used La Doria's domestic selling price of 410g cans and 2.65kg cans of unflavoured preserved tomatoes to establish normal values for I.M.C.A.

285. The base prices are La Doria's into store weighted average selling prices for 410g cans of unflavoured preserved tomatoes of € [REDACTED] per kg and for 2.65kg cans of unflavoured preserved tomatoes of € [REDACTED] per kg.

## Adjustments

286. As discussed above, the Ministry made a number of adjustments to La Doria's base price. For both can sizes, downward adjustments were made for delivery of € [REDACTED] or € [REDACTED] per kg, and cost of credit of € [REDACTED] per kg. For the 410g can size, an upward adjustment was made for the difference in the cost of the can of € [REDACTED] per kg.

287. The Ministry has no other information regarding costs specific to domestic sales that would be relevant in order to effect a fair comparison with export price, and therefore no other adjustments have been made.

## Taxation

288. All prices used are exclusive of VAT and therefore no adjustment for taxation is required.

## Normal values

289. The Ministry has based I.M.C.A.'s normal value on domestic sales information of another seller of like goods, La Doria. The Ministry has used as its base price La Doria's domestic into store selling price of equivalent types of products to that exported to New Zealand. From these values the Ministry has made downward adjustments for delivery and cost of credit, and an upward adjustment for the cost of the can. No other adjustments have been made.

290. From the base prices and adjustments outlined above, the Ministry has calculated weighted average ex-factory normal values of 410g and 2.65kg cans of unflavoured preserved tomatoes of € [REDACTED] per kg and € [REDACTED] per kg respectively. The overall weighted average normal value for I.M.C.A. is € [REDACTED] per kg.

## Pecos S.p.A

### Introduction

291. Neither [REDACTED], nor Pecos responded to the Ministry's exporter's or manufacturer's questionnaires. In the absence of this information, the Ministry has had regard to all available information.

292. In accordance with Section 5 of the Act, in the absence of information from either [REDACTED] or Pecos the Ministry has considered domestic pricing information from other Italian sellers of like goods. In terms of footnote 2 of the Anti-

Dumping Agreement sales of like product on the domestic market are normally of a sufficient quantity for determining normal value if they exceed 5 percent of export sales.

293. The Ministry considers that sales by La Doria should be used to establish normal values. La Doria focuses on the sale of private label product and sells to a wide range of customers on the Italian domestic market. La Doria's sales volume on the domestic market is greater than the sales of Pecos to New Zealand. The Ministry considers La Doria's domestic selling prices to be made in the ordinary course of trade and at arm's length. The Ministry considers that it may use La Doria's domestic pricing information to establish normal values for Pecos.

294. There is no information to suggest that La Doria's domestic sales are not at the same level of trade as [REDACTED]'s export sales to New Zealand, and the pricing information relates to the period under investigation. The selling price used is that for sales to retailers of private label unflavoured tomatoes in 410g cans, which is the same as those exported by [REDACTED], as substantiated by the importer. La Doria's information has been verified and the Ministry considers it reliable for use in establishing normal values for Pecos.

### **Base prices**

295. The Ministry has used La Doria's domestic selling price of 410g cans of unflavoured preserved tomatoes to establish a normal value for Pecos.

296. The base price is La Doria's into store weighted average selling price for 410g cans of unflavoured preserved tomatoes of € [REDACTED] per kg.

### **Adjustments**

297. As discussed in the section for La Doria, the Ministry made a number of adjustments to La Doria's base price. Downward adjustments were made for delivery of € [REDACTED] per kg, and cost of credit of € [REDACTED] per kg, and an upward adjustment was made for the difference in the cost of the can of € [REDACTED] per kg.

298. The Ministry has no other information regarding costs specific to domestic sales that would be relevant in order to effect a fair comparison with export price, and therefore no other adjustments have been made.

### **Taxation**

299. All prices used are exclusive of VAT and therefore no adjustment for taxation is required.

### **Normal values**

300. The Ministry has based Pecos' normal value on domestic sale information of another seller of like goods, La Doria. The Ministry has used as its base price La Doria's domestic into store selling price of an equivalent type of product to that exported to New Zealand. From this value the Ministry has made downward adjustments for delivery, and cost of credit and an upward adjustment for physical differences. No other adjustments have been made.

301. The weighted average ex-factory normal value on sales by Pecos is € [REDACTED] per kg.

### **SICA Conserve Srl**

302. SICA's response to the Ministry's manufacturer's questionnaire did not include cost information. In the absence of this information, the Ministry has had regard to all available information.

303. In accordance with Section 5 of the Act, in the absence of information from SICA the Ministry has considered domestic pricing information from other Italian sellers of like goods. In terms of footnote 2 of the Anti-Dumping Agreement sales of like product on the domestic market are normally of sufficient quantity for determining normal value if they exceed 5 percent of export sales.

304. The Ministry did receive a response from SICA's importer, which indicated that SICA exported over the POI 2.5kg cans of unflavoured chopped tomatoes to New Zealand. On the basis of the information available, the Ministry considers that sales by La Doria should be used to establish normal values.

305. La Doria's sales volume on the domestic market is greater than the sales of SICA to New Zealand. The Ministry considers La Doria's domestic selling prices to be made in the ordinary course of trade and at arm's length. The Ministry considers that it may use La Doria's domestic pricing information to establish normal values for SICA.

306. There is no information to suggest that La Doria's domestic sales are not at the same level of trade as SICA's export sales to New Zealand, and the pricing information relates to the period under investigation. The selling price used is that for unflavoured preserved tomatoes in 2.65kg cans. La Doria's information has been verified and the Ministry considers it reliable to use to establish normal values for SICA.

### **Base prices**

307. The Ministry has used La Doria's domestic selling price of private label preserved tomatoes to establish normal value for SICA.

308. The base price is La Doria's into store weighted average selling price for 2.65kg cans of unflavoured preserved tomatoes of € [REDACTED] per kg.

### **Adjustments**

309. As discussed above, the Ministry made a number of adjustments to La Doria's base price. Downward adjustments were made for delivery of € [REDACTED] per kg, and cost of credit of € [REDACTED] per kg.

310. The Ministry has no other information regarding costs specific to domestic sales that would be relevant in order to effect a fair comparison with export price, and therefore no other adjustments have been made.

### **Taxation**

311. All prices used are exclusive of VAT and therefore no adjustment for taxation is required.

### **Normal values**

312. The Ministry has based SICA's normal value on domestic sale information of another seller of like goods, La Doria. The Ministry has used as its base price La Doria's domestic into store selling price of an equivalent type of product to that exported to New Zealand. From this value the Ministry has made downward adjustments for delivery and cost of credit. No other adjustments have been made.

313. The weighted average ex-factory normal value on sales by SICA is € [REDACTED] per kg.

### **SPAI Srl**

314. SPAI did respond to the Ministry's exporter's questionnaire and indicated that it does not sell on the domestic Italian market. The Ministry did not receive a response from either of SPAI's manufacturers, [REDACTED]. In the absence of this information, the Ministry has had regard to all available information.

315. In accordance with Section 5 of the Act, in the absence of domestic selling information from SPAI, the Ministry has considered domestic pricing information from other Italian sellers of like goods. In terms of footnote 2 of the Anti-Dumping Agreement sales of like product on the domestic market are normally of sufficient quantity for determining normal value if they exceed 5 percent of export sales.

316. SPAI exported 2.5kg and 400g cans of unflavoured preserved tomatoes over the POI. On the basis of the information available, the Ministry considers that sales by La Doria should be used to establish normal values.

317. La Doria's sales volume on the domestic market is greater than the sales of SPAI to New Zealand. The Ministry considers La Doria's domestic selling prices to be made in the ordinary course of trade and at arm's length. The Ministry considers that it may use La Doria's domestic pricing information to establish normal values for SPAI.

318. There is no information to suggest that La Doria's domestic sales are not at the same level of trade as SPAI's export sales to New Zealand, and the pricing information relates to the period under investigation. The selling price used is that for 2.65kg and 410g cans of unflavoured preserved tomatoes. La Doria's information has been verified and the Ministry considers it reliable to use to establish normal values for SPAI.

### **Base prices**

319. The Ministry has used La Doria's domestic selling price of private label preserved tomatoes to establish normal value for SPAI.

320. The base prices are La Doria's into store weighted average selling prices for 2.65kg and 410g cans of unflavoured preserved tomatoes of € [REDACTED] and € [REDACTED] per kg respectively.

### **Adjustments**

321. As discussed above, the Ministry made a number of adjustments to La Doria's base price. Downward adjustments were made for delivery of € [REDACTED] (for 2.65kg cans) and € [REDACTED] (for 410g cans) per kg, and cost of credit of € [REDACTED] per kg, and for sales of 410g cans an upward adjustment was made for the difference in the cost of the can of € [REDACTED] per kg.

322. The Ministry has no other information regarding costs specific to domestic sales that would be relevant in order to effect a fair comparison with export price, and therefore no other adjustments have been made.

### **Taxation**

323. All prices used are exclusive of VAT and therefore no adjustment for taxation is required.

### **Normal values**

324. The Ministry has based SPAI's normal value on domestic sale information of another seller of like goods, La Doria. The Ministry has used as its base price La Doria's domestic into store selling price of equivalent types of product to that exported to New Zealand. From this value the Ministry has made downward adjustments for delivery and cost of credit, and an upward adjustment for the cost of the can. No other adjustments have been made.

325. The weighted average ex-factory normal value on sales by SPAI is € [REDACTED] per kg for 2.65kg cans and € [REDACTED] per kg for 410g cans. The overall weighted average normal value for SPAI is € [REDACTED] per kg.

## **4.4 Comparison of Export Price and Normal Value**

326. The Ministry has calculated a weighted average dumping margin for each Italian manufacturer/exporter as described in paragraph 115 above. The following table shows the weighted average export prices and normal values and dumping margins for each exporter.

**Table 4.1: Comparison of Export Price and Normal Value  
(1 September 2010 – 31 August 2011)**

Manufacturer/Exporter	Weighted Average Export Price	Weighted Average Normal Value	Dumping Margin	Dumping Margin as % of Export Price
AR Industrie Alimentari SpA				-11%
SPAI Srl				-18%
Calispa SpA				-22%
Conserve Italia Soc Coop				13%
IMCA SpA				-27%
La Doria SpA				-12%
Pecos SpA				-21%
SICA Conserve Srl				-25%

327. The table below shows the volume of dumped and non-dumped imports for the year ended 31 August 2011. For those Italian manufacturers/exporters which provided a response to the questionnaire, their volumes have been based on their export volumes during the POI. For those Italian manufacturers/exporters which did not provide a questionnaire response, their volumes are based on the import volumes recorded in the Customs data for the year ended 31 August 2011. Import volumes from other Italian exporters and imports from other countries are based on the import volumes recorded in the Customs data for the year ended 31 August 2011.

**Table 4.2: Dumped and Non-dumped Import Volumes  
(1 September 2010 – 31 August 2011)**

Manufacturer/Exporter	Volume of Dumped Imports (kgs)	Volume of Non-dumped Imports (kgs)
AR Industrie Alimentari SpA		
SPAI Srl		
Calispa SpA		
Conserve Italia Soc Coop		
IMCA SpA		
La Doria SpA		

Pecos SpA		
SICA Conserve Srl		
Import volume from Selected Italian Exporters		
% Dumped/Not Dumped*	17%	83%
Import volume from Other Italian Exporters		
Total Imports from Italy		
Import volume from Other Countries		
Total Volume of Imports		
Dumped Imports as % of Total Imports		16%

\* These percentages have been applied to Italian exporters outside of the selection to calculate the volume of dumped imports from these exporters.

328. Due to the significant number of Italian exporters identified by the Ministry at the beginning of the investigation, the Ministry selected the exporters which accounted for approximately 80% of imports during the POI for questionnaire responses. The rationale for taking a selection or sample is to keep the number of exporters and producers for whom a dumping margin must be determined to a manageable level.

329. To proceed to determine a dumping margin for those exporters not selected for investigation would defeat the purpose of selecting exporters for investigation. The Ministry is satisfied that the approach it has adopted is consistent with the rationale of using a sample or selection as provided for under the Anti-Dumping Agreement.

## 4.5 Volume of Dumped Imports

330. Section 11(1) of the Act provides that where the Minister is satisfied in respect of some or all of the goods under investigation, that there is insufficient evidence of dumping or injury to justify proceeding with the investigation then it shall be terminated. Section 11(2) of the Act provides that evidence of dumping shall be regarded as insufficient if the volume of imports of dumped goods, expressed as a percentage of total imports of like goods into New Zealand is negligible, having regard to New Zealand obligations as a party to the WTO Agreement.

331. Article 5.8 of the Anti-Dumping Agreement provides that volumes of dumped imports are negligible if they are less than 3 percent of total imports of like goods, unless countries which individually account for less than three percent of imports of like goods collectively account for more than seven percent of imports of like goods.

332. The Ministry has found that the volume of dumped imports during the POI made up 16 percent of total imports of like goods, which is more than negligible in terms of Article 5.8 of the Anti-Dumping Agreement. The Ministry concludes that the volume of dumped imports is not negligible.



## **4.6 Conclusions Relating to Dumping**

333. Dumping margins as a percentage of export prices range from -27 percent (undumped) to 13 percent (dumped). The dumping margin of Conserve Italia Soc Coop is more than de minimis in terms of Paragraph 8 of Article 5 of the Anti-Dumping Agreement. No dumping was found for AR Industrie Alimentari SpA, Attainese SpA, Perano Enrico & Figli SpA, Calispa SpA, I.M.C.A SpA, La Doria SpA, Pecos SpA and SICA Conserve Srl.



## 5. Material Injury Investigation

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### 5.1 Introduction

334. The basis for considering material injury is set out in section 8(1) of the Act:

8. Material injury to industry—(1) In determining for the purposes of this Act whether or not any material injury to an industry has been or is being caused or is threatened or whether or not the establishment of an industry has been or is being materially retarded by means of the dumping or subsidisation of goods imported or intended to be imported into New Zealand from another country, the [Chief Executive] shall examine—

- (a) The volume of imports of the dumped or subsidised goods; and
- (b) The effect of the dumped or subsidised goods on prices in New Zealand for like goods; and
- (c) The consequent impact of the dumped or subsidised goods on the relevant New Zealand industry.

335. The Ministry interprets this to mean that injury is to be considered in the context of the impact on the industry arising from the volume of the dumped goods and their effect on prices. This is consistent with Article 3 of the WTO Anti-Dumping Agreement.

336. The Act goes on to set out a number of factors and indices which the Chief Executive shall have regard to, although noting that this is without limitation as to the matters the Chief Executive may consider. These factors and indices include:

- the extent to which there has been or is likely to be a significant increase in the volume of dumped goods, either in absolute terms or relative to production or consumption;
- the extent to which the prices of dumped goods represent significant price undercutting in relation to prices in New Zealand;
- the extent to which the effect of the dumped goods is or is likely significantly to depress prices for like goods of New Zealand producers or significantly to prevent price increases for those goods that otherwise would have occurred;
- the economic impact of the dumped goods on the industry, including actual or potential decline in output, sales, market share, profits, productivity, return on investments, and utilisation of production capacity; factors affecting domestic prices; and actual and potential effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investments;

337. In addition, the Chief Executive must have regard to factors other than dumping which may be injuring the industry, since in accordance with Article 3 of the WTO Anti-Dumping Agreement, it must be demonstrated that the dumped imports are,

through the effects of dumping, causing material injury. The demonstration of a causal relationship between the dumped imports and the injury to the domestic industry must be based on an examination of all relevant evidence before the authorities, who must examine any known factors other than the dumped imports which at the same time are injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the dumped imports. Factors which may be relevant in this respect include, inter alia, the volumes and prices of non-dumped imports of the product in question, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry.

338. Material injury is considered for the industry as a whole, or in the absence of information from all 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.

339. An application can be made on the basis of either current material injury or the threat of material injury. When no current material injury is found the Ministry assesses the extent to which a threat of material injury may exist using the guidelines in paragraph 7 of Article 3 of the Anti-Dumping Agreement. The Agreement states that a threat of material injury has to be clearly foreseen and imminent, being beyond mere allegation, conjecture or remote possibility.

340. Material injury is assessed by comparing data for an injury factor against the data in a period unaffected by dumping. HWL stated that the New Zealand industry has been subjected to the impact of dumped tomatoes from Italy for a long time, and that its 2009 financial year was affected by dumping. However, HWL noted that the injurious effects caused by dumped imports have increased significantly since 2009, and for this reason considered that 2009 represented a suitable starting point for the Ministry's assessment of whether HWL has been injured by dumped imports.

341. For the purpose of assessing material injury, HWL provided financial information for its financial years 2009 to 2011 (HWL's financial year ends April).

342. HWL imports 400g cans of whole peeled tomatoes from Italy, as well as 2.9kg cans of chopped tomatoes from Thailand. Both of these SKU's were removed from the financial information provided by HWL. HWL also imported some 400g cans of chopped tomatoes from Italy in their 2011 financial year. HWL advised the Ministry that neither its accounting system nor inventory management system separately identify imported and domestic products. HWL considered that a reasonable estimate of the sale of imported and domestically produced canned tomatoes was to assume that 50 percent of the imported chopped tomatoes were sold in the 2011 financial year, with the remaining 50 percent being sold in the 2012 financial year. HWL subsequently made an adjustment to their financial information to remove sales of imported tomatoes. All figures were checked at the verification visit and the Ministry is satisfied the data can be used reliably as an injury indicator.

343. Bidvest stated that its tomatoes imported from Italy could not be compared to HWL's 2.9kg can size, as it believed these were not grown in New Zealand but imported from Thailand. In making comparisons between domestically produced

preserved tomatoes and those imported from Italy, the Ministry is guided by section 3A of the Act, which defines like goods, and indirectly via Article 2.4 of the Anti-Dumping Agreement, which pertains to the characteristics required to be considered in making fair comparisons between export prices and normal values. As stated above, any imports of preserved tomatoes by HWL were extracted from the analysis.

344. Section 11(1) of the Act provides for the termination of an investigation where the Minister is satisfied in respect of some or all of the goods under investigation, that there is insufficient evidence that material injury to a New Zealand industry has been or is being caused or is threatened by means of the dumping of the goods.

## **5.2 Import Volumes**

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

346. Some adjustments have been made to the import volume data. As noted previously the Customs' data for imports of preserved tomatoes under the relevant tariff item and statistical key includes a number of products which are not considered to be subject goods. Import entries that are not subject goods have been removed from the data to calculate import volumes.

347. Only exports by the manufacturer found to be dumping are included in the volume of dumped imports used in the analysis of injury. Exports by those exporters and manufacturers found not to be dumping have been included in the volume of non-dumped imports for the purposes of this analysis. HWL's domestic production and HWL's imports of preserved tomatoes have been separated for ease of comparison.

348. To estimate the volume of dumped imports in periods outside of the POI, the percentage of imports of the goods under investigation over the POI found to be dumped, expressed as a percentage of the total volume of imports from the Italian exporters and manufacturers selected for investigation (17%), has been applied to periods outside of the POI to estimate the volume of dumped goods in previous years. Import volumes are based on Customs' data for the relevant year ended 30 April.

**Table 5.1: New Zealand Import (Volume)  
(Years ended 30 April)**

	2009	2010	2011
Dumped imports from Italy			
Non-dumped imports all sources			
Imports by HWL from Italy			
Total imports			
Sales of NZ domestic production			
NZ market			
<i>As % of Consumption:</i>			
Dumped imports from Italy			
Non-dumped imports all sources			
Imports by HWL from Italy			
Sales of NZ domestic production			
<i>As % of Industry Domestic Production:</i>			
Dumped imports from Italy			
Non-dumped imports all sources			
Imports by HWL from Italy			
<i>Change on Previous Year:</i>			
Dumped imports from Italy			
Non-dumped imports all sources			
Imports by HWL from Italy			
Total imports			
Sales of NZ domestic production			
NZ market			
<i>% Change:</i>			
Dumped imports from Italy		8%	24%
Non-dumped imports all sources		23%	3%
Imports by HWL from Italy			
Total imports			

Sales of NZ domestic production			
NZ market			

349. The volume of dumped imports increased significantly in absolute terms (by 33%) over the period. At the same time there has been a 27% increase in the volume of non-dumped goods over the same period. The New Zealand industry's sales have increased only slightly over all of the period (by 1%), although its sales fluctuated, increasing by 5% in 2010, but declining by 3% in 2011.

350. HWL's own imports from Italy (all of which are non-dumped) have increased significantly over the period (by 15%). Some of this can be attributed to HWL importing chopped tomatoes in 2011, which are additional to the tomatoes this company usually imports.

351. Relative to consumption, dumped imports have been at close to the same level over the period, only increasing by 1 percentage point in 2011. Non-dumped imports have also remained steady relative to consumption, increasing by 1 percentage points in 2010 and decreasing by 1 percentage points in 2011. HWL's own imports from Italy have increased slightly relative to consumption, increasing by 1 percentage points. There has been a corresponding small decline in the New Zealand industry's share of total consumption from 10 percent in 2009 to 9 percent in 2011, a decline of 1 percentage points.

352. Dumped imports have increased significantly relative to the New Zealand industry's production over all of the period. In 2009 dumped imports represented 10 percent of the New Zealand industry's production and in 2011 they represented 15 percent, an increase of 5 percentage points. Over the same period, non-dumped imports have also increased significantly relative to the New Zealand industry's production, growing from 10 percent in 2009 to 15 percent in 2011, an increase of 5 percentage points. HWL's imports have also increased relative to production, by 5 percentage points.

**Conclusion**

353. The Ministry concludes that over the period from 2009 to 2011 there has been an increase in the volume of dumped imports both in absolute terms, and relative to production in New Zealand. There has been only a slight increase in dumped imports relative to consumption in New Zealand.

**5.3 Price Effects**

**Price Undercutting**

354. 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. It should be noted that the determination that price undercutting exists is not by itself a determination of the extent of injury, i.e., the margin of price undercutting is not a measure of the extent of economic impact on the industry. That impact is to be measured in terms of the factors and indices set out in section 8(2)(d) of the Act.

355. In respect of this investigation, price undercutting refers to the extent to which preserved tomatoes from Italy are sold at lower prices than the preserved tomatoes produced by the domestic industry. Prices are compared at the point that the preserved tomatoes from Italy first compete in New Zealand with the preserved tomatoes produced in New Zealand (referred to as the level of trade). The level of trade has been determined for each importer and therefore the prices of several importers sit at different points on the supply chain.

### **Domestic Industry's Selling Prices**

356. The Ministry has grouped HWL's preserved tomato product into the following categories and calculated a separate average Net Sales Values (NSV) per kg for each category:

- 410g cans unflavoured tomatoes
- 410g cans flavoured tomatoes
- 2.8/2.9 kg cans unflavoured tomatoes

357. As the can size of the subject goods varied between importers and between HWL and importers, to keep the issue manageable, cans with a net weight of 850g or less have been notionally categorised by the Ministry as 'small' cans, and those with a net weight over 850g have been categorised as 'large' cans. This 'small' and 'large' categorisation has been done for both the HWL and imported product.

358. To ensure a fair comparison of prices, the Ministry calculated HWL's net sales value (NSV) for the same period as the importers were requested to provide information on their importations of preserved tomatoes into New Zealand (i.e. 1 September 2010 to 31 August 2011, or the dumping POI). Because HWL sells on a FIS basis the Ministry has deducted HWL's freight to customer costs (██████████ per Kg) from the NSV and made similar adjustments in respect to the importers costs to ensure a fair comparison was reached.

359. The NSV represents HWL's list selling prices net of all trade spend. Trade spend represents the various forms of promotional expenditure undertaken by HWL as part of selling its products, but does not include general marketing expenses.

360. It was submitted by FOBL, acting on behalf of the Foodstuffs group of companies, that HWL, as a local producer and seller of proprietary branded preserved tomatoes, as opposed to a seller of 'private label' preserved tomatoes imported from Italy, would incur a range of additional expenses that it broadly described as 'covering the costs of attracting both consumer (end user) and customer (wholesaler & retailer) interest'.

361. In particular FOBL submitted the following in relation to the supply of a proprietary brand such as HWL's "Wattie's" brand:

- (a) The producer would seek to price on a fully absorbed basis, i.e. to fully recover all costs including costs of capital, operational and manufacturing overheads.



(b) The producer would seek to fully recover the costs of distribution.

(c) Sales and marketing expenses have the following major classifications:

- Consumer marketing costs to attract consumers which are generally termed “above the line” spend, e.g. television and print advertising, consumer promotions.
- Consumer or trade investment costs which are associated with driving sales and marketing the product to consumers that are typically termed “below the line spend”, e.g. price-off promotions, advertising features in mailer catalogues, end aisle display space in-store.
- Sales and marketing overheads which cover the costs of sales activity and the marketing function to build equity, e.g. sales managers and representatives, account managers, merchandising.
- Research and development costs associated with driving future product and brand innovation.

(d) The profit margin is typically higher than contract or private label business as this is associated with their proprietary brand and reflects price positioning.

362. FOBL contrasted this with the supply of a private label product by submitting the following:

- (a) The producer often uses this business to increase its efficiency which is reflected in a marginal costing approach.
- (b) The cost of distribution is borne by the supplier in shipping the product directly into Foodstuffs’ distribution centres and in the case of imported products these costs are often shared between supplier and retailer depending on the shipping and payment terms.
- (c) To reflect volume and the marginal costing approach the profit margin is typically lower than a supplier’s base business.

363. To illustrate the difference in pricing between a proprietary brand and a private label product, FOBL provided details of its purchase prices from HWL for two “Wattie’s” brand products and for the same products under a private label brand. This showed that its purchase price for the private label product was significantly lower than that for the “Wattie’s” brand products.

364. In response to the specific points in the submission by FOBL, HWL submitted the following:

- (a) The profit and loss data provided by HWL takes into account all of the variable and fixed costs.
- (b) HWL’s NSV has the costs of distribution built into it.
- (c) Sales and marketing expenses are accounted for as follows:

- Consumer marketing costs are not included in the NSV.
  - Trade investment is accounted for in the NSV.
  - Sales and marketing overheads are not included in the NSV.
  - Research and development overheads are not included in the NSV.
- (d) It is debateable whether proprietary brand production has a higher profit margin.
- (e) For any exporter with a domestic market it is a common practice to price on a marginal costing approach and this gives rise to dumping.
- (f) The cost of distribution is addressed through the comparison of HWL's NSV with the importer's ex-wharf cost.

365. HWL has also commented that even own branded product will not have the costs referred to by FOBL fully allocated to the export product, if at all, as the Italian brand product is not supported in the export market. HWL said that when similar arguments are raised that an adjustment should be made to normal values (for differences in selling and administration costs between domestic and export markets) they fail in most cases. HWL said such costs are generally seen to occur in the general course of business and unless there are specific accounts showing different selling expenses for domestic product and the exported product then such adjustments for general expenses are not made.

366. HWL commented that manufacturers incur different costs compared with an imported product, particularly around marketing and distribution. By way of an example, HWL queried how you would account for a retailer importing product where that retailer has its own distribution channels and does not have to incur expenses in "selling" to itself compared to a manufacturer who, in order to obtain shelf/floor space in a retail outlet has to incur costs to meet customer demands otherwise the manufacturer will not be able to sell the product. HWL submitted that the Ministry should take into consideration the factors HWL takes into account when it negotiates a sale. HWL said these factors are those that are included in its "trade spend" and whenever the sales team negotiates a sale it is these factors they take into account, not the fixed costs referred to by FOBL. HWL also noted that these are the same considerations that are taken into account whenever it launches a new product.

367. HWL also submitted that if the sales and distribution costs referred to by FOBL are netted off its NSV then the Ministry must also consider the retailers' distribution networks and net off the associated costs against private label brands, including:

- Centralised distribution centre costs, including freight.
- Store costs, including capital cost and depreciation as well as running costs.
- Comparable general and administration costs.
- Procurement costs relating to research and development for manufacturers.

368. HWL said that just as it has to pay for space and have associated fixed selling costs to promote and sell its products, retailers have to absorb the costs of providing that service. HWL has submitted that this would mean consideration and analysis for the two distinctly different retailer models we have in the market (company owned stores and owner operated stores of various sizes). In addition, HWL said if the approach submitted by FOBL was to be adopted the fixed selling costs of importers of Italian brand product would also need to be analysed and netted off to ensure consistent treatment with private label importers.

369. In considering this issue, the Ministry has referred to the provisions of section 8(2)(b) of the Act which are set out in paragraph 354 above. The provisions of section 8(2)(b) reflect the provisions of Article 3.2 of the Anti-Dumping Agreement. Neither the Act nor the Anti-Dumping Agreement provide either any detailed guidance about how the extent of any price undercutting is to be established or any principles that should be applied in determining whether any significant price undercutting exists. The Act simply requires that it is to be established in relation to prices of dumped goods and prices in New Zealand (at the relevant level of trade) for like goods of New Zealand producers. The relevant level of trade at which prices should be compared is not at issue in this case so it is a matter of determining how the “prices” (for both the dumped goods and the like goods of New Zealand producers) referred to in the Act are to be determined.

370. The Ministry considers that the “prices” to be compared should be the effective net transactional values at which the dumped goods are purchased or sold (depending on the relevant level of trade) and at which the like goods of New Zealand producers are sold (at the relevant level of trade). The Ministry considers that adjusting prices beyond the effective net transactional values would go beyond the requirements of the Act. The Ministry considers that if there are instances where the significance of any price undercutting needs to be interpreted in light of the particular circumstances of a case, then that should be addressed in assessing the economic impact on the New Zealand industry of the volume and price effects.

371. In this case the effective net transactional value of the preserved tomatoes imported by the Foodstuffs companies is the purchase price at the ex-wharf level of trade and that of the like goods sold by HWL is the NSV less cost of freight to customer. The Ministry notes the argument by FOBL that an adjustment should be made for differences in a fully absorbed costing methodology and a marginal costing approach and differences in profit margins goes to the issue of whether the goods are dumped. The Ministry therefore cannot envisage any circumstances where it would be appropriate to make an adjustment for such differences to determine the effective net transactional value. The Ministry also notes that an adjustment for differences in the cost of distribution are not required as any such differences are effectively accounted for in the relevant level of trade at which prices are compared. In this case the relevant level of trade is ex-wharf or ex-store for the imported goods and ex-factory for HWL, so distribution costs are excluded from the comparison.

### **Level of Trade**

372. Price undercutting refers to the extent that the allegedly dumped preserved tomatoes from Italy are sold more cheaply than preserved tomatoes produced in New Zealand. Prices are compared at the point that the imported preserved

tomatoes first compete with preserved tomatoes that are manufactured in New Zealand (referred to as the level of trade). The level of trade is determined for each importer and therefore prices from several importers may be considered at different points in the supply chain.

373. As noted above, there were a number of different types and can sizes of preserved tomatoes imported into New Zealand over the POI. To assist with price comparisons the Ministry has grouped imported preserved tomatoes into sub-categories according to can size ('small' and 'large') and whether the preserved tomatoes were unflavoured or flavoured. In addition to the main categories further sub-categories for cherry and organic tomatoes, each imported by a single party (Delmaine and Ceres respectively), were required because the price per kilogram of these products was significantly higher than the other product types. Net can size of the subject goods varied slightly between importers and between HWL and importers. In general imported cans had net sizes of around 400g, around 800g, and around 2.5kg.

374. With respect to classification in terms of unflavoured or flavoured preserved tomatoes, the classification was relevant only to 'small' cans, as no large can imported during the POI was found to have contained flavoured preserved tomatoes. Additionally, no differentiation was made between the various flavours, or the 'varietals' or 'recipes', as they are referred to by producers of preserved tomatoes, themselves, as any difference in their production costs was considered to be negligible.

375. The following are the sub-categories of preserved tomatoes for which prices have been determined for the imported product for price undercutting purposes:

- Small – unflavoured tomatoes
- Small – flavoured tomatoes
- Small – cherry tomatoes
- Small – organic tomatoes
- Large – unflavoured tomatoes

376. The Ministry has calculated average prices of the preserved tomatoes at the level of trade each importer represents. The prices have been calculated regardless of whether those goods were found to be dumped, however a section of the report below specifically deals with undercutting in relation to dumped preserved tomatoes from Italy. For the purpose of the exercise the prices were calculated based on the EUR/NZD exchange rate at the date of the exporter's invoice for the goods. Those exchange rates were obtained from [www.oanda.com](http://www.oanda.com).

377. The following paragraphs discuss for each importer, the level of trade, the calculation of prices and the extent of any price undercutting compared to HWL's selling prices. The percentages of price undercutting shown in the tables below are the amounts of any undercutting as a percentage HWL's ex-factory selling prices.

**Baroni Foods Limited (Baroni)**

378. Baroni is a Christchurch-based importer and distributor of a variety of Italian food products. New Zealand Customs records show that during the POI Baroni imported [REDACTED] of subject goods from Italy.

379. The Ministry received no information from Baroni. Enquiries have indicated that its imports consisted of 2.5 kg cans of preserved tomatoes, which have been assumed to be unflavoured, due to the fact that all other ‘large’ cans of preserved tomatoes were unflavoured. Given the small quantity imported by Baroni it has also been assumed that the preserved tomatoes that it exported were ‘own brand’.

380. The Ministry considers that for undercutting analysis purposes Baroni’s imports should be assessed on an ex-store basis against HWL’s ex-factory NSV.

381. Costs to the FOB level of trade were obtained from Customs data and the Ministry applied additional costs, to the ex-store level using information from [REDACTED], who the Ministry considered to be an importer of a similar nature.

382. The extent of price undercutting in respect to Baroni is recorded in the table below.

**Table 5.2: Baroni Foods Ltd**

Baroni Price/kg 'Large' Unflavoured	HWL Price/kg 'Large' Unflavoured	Undercutting amount	Undercutting percentage
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

383. The table shows that imports by Baroni are significantly undercutting the equivalent HWL product.

**Bidvest New Zealand Limited (‘Bidvest’)**

384. Bidvest is a wholesale distributor to the foodservice industry in New Zealand. New Zealand Customs records indicate that Bidvest imported [REDACTED] of preserved tomatoes, from Italy [REDACTED] during the POI. In that period Bidvest imported only ‘large’, 2.5 kg and 2.55 kg, cans of unflavoured preserved tomatoes. The Ministry understands that during the POI Bidvest sold ‘private label’ preserved tomatoes under the brand name ‘Smart Choice’.

385. The Ministry considers that for price undercutting analysis purposes Bidvest’s imports should be assessed on an ex-store basis against HWL’s ex-factory NSV.

386. Bidvest’s ex-store price was considered to consist of costs in respect to the FOB price paid for product, ex-wharf costs, as well as cartage, devanning, selling and administration, warehousing, and distribution to its storage facilities were taken into account along with Bidvest’s profit margin.

387. The extent of price undercutting in respect to Bidvest is recorded in the table below.

**Table 5.3: Bidvest New Zealand Ltd**

Bidvest Price/kg 'Large' Unflavoured	HWL Price/kg 'Large' Unflavoured	Undercutting amount/kg	Undercutting percentage/kg
██████████	██████████	██████████	██████████

388. The table shows that Bidvest’s imported preserved tomatoes were not undercutting the equivalent HWL product.

**Ceres Enterprises Limited ‘(Ceres)’**

389. Ceres is a New Zealand importer and distributor of a variety of organic food products. New Zealand Customs records show that during the POI Ceres imported ██████████ of subject goods from Italy. The Ministry’s investigation has indicated that those imports consisted exclusively of 410g cans of preserved organic unflavoured tomatoes. Ceres was the sole importer involved in the investigation to import organic tomatoes from Italy. The Ministry understands that all Ceres imported preserved tomatoes are, generally, branded in their own name and distributed for sale.

390. The Ministry considers that for undercutting analysis purposes Ceres imports should be assessed on an ex-store basis against HWL’s ex-factory NSV. The nearest HWL product was considered to be ‘small’ cans of unflavoured preserved tomatoes.

391. Ceres costs included the FOB price paid for the preserved tomatoes from Italy, freight, insurance, import transaction fees and biosecurity fees. Due to limitations around information provided by Ceres, the ex-store costs, including profit margin, that were applied to ascertain a sale price were obtained from another importer, ██████████, who was considered to be an importer similar in nature.

392. The extent of price undercutting in respect to Ceres is recorded in the table below.

**Table 5.4: Ceres Enterprises Ltd**

Ceres Price/kg 'Small' Organic Unflavoured	HWL Price/kg 'Small' Unflavoured	Undercutting amount/kg	Undercutting percentage/kg
██████████	██████████	██████████	██████████

393. The table shows that the organic preserved tomatoes imported by Ceres were not undercutting the nearest equivalent HWL product.

**Neil Cropper & Co. Limited ('Neil Cropper')**

394. During the POI Neil Cropper, a wholesaler and distributor to the New Zealand retail sector imported 400g and 2.5kg cans of unflavoured preserved tomatoes imported from Italy. New Zealand Customs records indicate it imported a total of [REDACTED] during the period concerned. The Ministry understands that Neil Cropper imported Italian brand, unflavoured, preserved tomatoes during the POI.

395. It was considered that the appropriate level of trade, for comparative purposes, was Neil Cropper's ex-store price against HWL's ex-factory NSV.

396. Neil Cropper effectively operated with two methods of selling; some imported stock was sold on an indented basis, being taken directly from the wharf in New Zealand to its customers, whilst other stock was retained in Neil Cropper's store until required by customers. With this dual system of selling subject goods from Italy, a number of the relevant costs, including the company's profit margin, were recorded in an amalgamated manner in respect of product sold on an indented basis. This made ascertaining accurate information difficult. However, product imported and then sold via Neil Croppers' warehousing facilities demonstrates that its ex-store price consisted of the FOB price paid for the preserved tomatoes, freight and related port clearance fees as well as a margin of [REDACTED]. For reporting purposes the two selling methodologies used have been amalgamated.

397. The extent of price undercutting in respect to Neil Cropper is recorded in the tables below.

**Table 5.5: Neil Cropper & Co. Ltd**

Neil Cropper Price/kg 'Small' Unflavoured	HWL Price/kg 'Small' Unflavoured	Undercutting amount	Undercutting percentage
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Neil Cropper 'Large' Warehouse	HWL Price/kg 'Large' Unflavoured	Undercutting amount	Undercutting percentage
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

398. The above tables show that both Neil Cropper's imported preserved tomatoes were significantly undercutting the equivalent HWL products.

**Davis Trading Company Limited ('Davis')**

399. Davis operates as an importer/distributor to the retail sector. During the POI it imported a total of [REDACTED] of preserved tomatoes, according to New Zealand Customs Service records. It sold 400g and 2.55kg cans of unflavoured preserved tomatoes from Italy. It is understood that those preserved tomatoes were an Italian brand and unlike the other importers Davis purchased subject goods [REDACTED]

then shipment on to New Zealand, where they are sold via its own distributors.

400. It was considered that the appropriate level of trade, for comparative purposes, in respect to Davis was its ex-store level of trade price and HWL’s ex-factory NSV.

401. To establish Davis’s selling price amounts were added to its ex-factory price including ex-wharf costs (equivalent to the difference between Davis’s purchase price and the weighted average of other importers who purchased preserved tomatoes from the same supplier in Italy), freight costs, insurance costs, into store costs and into customers store costs (including profit margin). Due to a lack of information provided by Davis, the ex-store costs that were applied were obtained from another importer, [REDACTED], who was considered to be an importer similar in nature.

402. The extent of price undercutting in respect to Davis is recorded in the tables below.

**Table 5.6: Davis Trading Company Ltd**

Davis Price/kg 'Small' Unflavoured	HWL Price/kg 'Small' Unflavoured	Undercutting amount	Undercutting percentage
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Davis Price/kg 'Large' Unflavoured	HWL Price/kg 'Large' Unflavoured	Undercutting amount	Undercutting percentage
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

403. The tables show that imports by Davis were not undercutting the equivalent HWL product.

**Delmaine Fine Foods Limited (‘Delmaine’)**

404. Delmaine is primarily an importer and distributor to the New Zealand retail sector. Over the POI, according to Customs records, Delmaine imported [REDACTED] of preserved tomatoes from Italy. Those imports consisted of 400g cans of flavoured, unflavoured, and cherry preserved tomatoes, and 2.52 kg cans of unflavoured preserved tomatoes. Delmaine’s imported preserved tomatoes are branded in its own name.

405. It was considered that the appropriate level of trade, for comparative purposes, in respect to Delmaine was its ex-store store level of trade price. This was compared to HWL’s ex-factory NSV.

406. To establish Delmaine’s selling price the FOB price for product purchased, freight costs, port service charges, documentary and entry fees, cartage and



devanning costs, in addition to selling costs and profit margin were taken into account.

407. The extent of price undercutting in respect to Delmaine is recorded in the tables below.

**Table 5.7: Delmaine Fine Foods Ltd**

Delmaine Price/kg 'Small' Unflavoured	HWL Price/kg 'Small' Unflavoured	Undercutting amount	Undercutting percentage
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Delmaine Price/kg 'Small' Flavoured	HWL Price/kg 'Small' Flavoured	Undercutting amount	Undercutting percentage
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Delmaine Price/kg 'Large' Unflavoured	HWL Price/kg 'Large' Unflavoured	Undercutting amount	Undercutting percentage
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Delmaine Price/kg 'Cherry' Unflavoured	HWL Price/kg 'Small' Unflavoured	Undercutting amount	Undercutting percentage
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

408. The tables show that imports by Delmaine of large unflavoured preserved tomatoes were undercutting the equivalent HWL product but Delmaine's imports of other types/sizes were not undercutting HWL equivalent products.

**Foodstuffs Companies**

409. The three Foodstuffs companies involved in the investigation, Foodstuffs (Auckland) Limited, Foodstuffs (Wellington) Cooperative Society Limited, and Foodstuffs (South Island) Limited independently order preserved tomatoes from Italy.

[REDACTED]  
 When ordered product is landed in New Zealand it [REDACTED].  
 [REDACTED]. Members of the co-operatives, such as individual New World or Pak n Save supermarkets, then purchase the subject goods [REDACTED].  
 [REDACTED]. With the exception of a small quantity of small unflavoured

preserved tomatoes imported by Foodstuff's Wellington company, all the product imported by the group was 'private label' product using the brand names 'Pams', 'Budget', and 'Gilmours'.

410. During the POI the Foodstuffs companies imported 400g, 800g and 2.55 kg cans of unflavoured preserved tomatoes and 400g cans of flavoured and unflavoured preserved tomatoes from Italy. According to New Zealand Customs records, the Auckland company imported a total of [REDACTED], the Wellington company [REDACTED], and the South Island company [REDACTED] during the POI.

411. It was considered that the appropriate selling price in respect of New Zealand supermarket importers, including the Foodstuffs group of companies, for both 'own brand' and 'private label' products, for comparative purposes, was the ex-wharf prices for preserved tomatoes from Italy. This price was compared to HWL's ex-factory selling prices at the NSV level.

412. The provision of information pertaining to cost varied amongst three companies, with [REDACTED] providing the fullest information. For this reason, where ex-wharf costs were unknown or unclear, a weighted average of the relevant cost of [REDACTED] was applied to the other importers.

413. The extent of price undercutting in respect to the Foodstuffs Companies is recorded below.

**Table 5.8: Foodstuffs (Auckland) Ltd**

Foodstuffs (AKL) Price/kg 'Small' Unflavoured	HWL Price/kg 'Small' Unflavoured	Undercutting amount	Undercutting percentage
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Foodstuffs (AKL) Price/kg 'Small' Flavoured	HWL Price/kg 'Small' Flavoured	Undercutting amount	Undercutting percentage
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Foodstuffs (AKL) Price/kg 'Large'	HWL Price/kg 'Large'	Undercutting amount	Undercutting percentage
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

**Table 5.9: Foodstuffs (Wellington) Co-operative Society Ltd**

Foodstuffs (WLG) Price/kg 'Small' Unflavoured	HWL Price/kg 'Small' Unflavoured	Undercutting amount	Undercutting percentage
██████████	██████████	██████████	██████████

Foodstuffs (WLG) Price/kg 'Small' Flavoured	HWL Price/kg 'Small' Flavoured	Undercutting amount	Undercutting percentage
██████████	██████████	██████████	██████████

Foodstuffs (WLG) Price/kg Large'	HWL Price/kg 'Large'	Undercutting amount	Undercutting percentage
██████████	██████████	██████████	██████████

Foodstuff (WLG) Price/kg 'Own Brand' 'Small' Unflavoured	HWL Price/kg 'Small' Unflavoured	Undercutting amount	Undercutting percentage
██████████	██████████	██████████	██████████

**Table 5.10: Foodstuffs (South Island) Ltd**

Foodstuffs (SI) Price/kg 'Small' Unflavoured	HWL Price/kg 'Small' Unflavoured	Undercutting amount	Undercutting percentage
██████████	██████████	██████████	██████████

Foodstuffs (SI) Price/kg 'Small' Flavoured	HWL Price/kg 'Small' Flavoured	Undercutting amount	Undercutting percentage
██████████	██████████	██████████	██████████

Foodstuffs (SI) Price/kg 'Large'	HWL Price/kg 'Large'	Undercutting amount	Undercutting percentage
██████████	██████████	██████████	██████████

414. The tables show that all imports by the Foodstuffs companies significantly undercut the price of the equivalent HWL product.

**Hutchinsons Limited ('Hutchinsons')**

415. Hutchinsons is a food importer and distributor. During the POI it imported flavoured and unflavoured 400g cans of preserved 'private label' tomatoes from Italy. New Zealand Customs records indicate it imported a total of ██████████. Hutchinson's preserved tomatoes are sold under the brand name 'Trident'.

416. The Ministry considers Hutchinson's most appropriate level of trade for comparison to HWL's ex-factory NSV to be its ex-store price.

417. Due to Hutchinsons not providing any importing information to the Ministry, its costs to the FOB level of trade were obtained from exporter documentation, ex-wharf costs were acquired from New Zealand Customs and their ex-store costs, including profit margin, were arrived by using information attributed to ██████████, who was considered to be an importer who is similar in nature.

418. The extent of price undercutting in respect to the Hutchinsons is recorded in the tables below.

**Table 5.11: Hutchinsons Ltd**

Hutchinsons Price/kg Unflavoured 'Small'	HWL Price/kg 'Small' Unflavoured	Undercutting amount	Undercutting percentage
██████████	██████████	██████████	██████████

Hutchinsons Price/kg 'Small' Flavoured	HWL Price/kg 'Small' Flavoured	Undercutting amount	Undercutting percentage
██████████	██████████	██████████	██████████

419. The table shows that all 'private label' imports by the Hutchinsons were undercutting the price of the equivalent HWL products.

**Moi Agencies Limited (Moi)**

420. Moi is an Auckland-based importer and distributor of a variety of food products. New Zealand Customs records show that during the POI Moi imported [REDACTED] of subject goods from Italy.

421. The Ministry considers Moi’s most appropriate level of trade for comparison to HWL’s ex-factory NSV to be its ex-store price.

422. The Ministry received no information from Moi. [REDACTED] imported a small quantity of preserved tomatoes from the same exporter as Moi which it indicated were in ‘small’ cans. Based on the price per kilogram taken from Customs data for Moi’s imports, relative to the price per kilogram paid by [REDACTED], it has been assumed that Moi imported ‘large’ cans of unflavoured product. Based on comments on Moi’s website, it has been assumed by the Ministry that the preserved tomatoes imported by Moi were ‘private label’ product.

423. Costs to the FOB level of trade were obtained from Customs data and the Ministry applied additional costs, up to the ex-store level, using information from [REDACTED], whom the Ministry considered an importer of similar nature.

424. The extent of price undercutting in respect to Moi is recorded in the table below.

**Table 5.12: Moi Agencies Ltd**

Moi Agencies Price/kg 'Large' Unflavoured	HWL Price/kg 'Large' Unflavoured	Undercutting amount	Undercutting percentage
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

425. The table shows that the imports by Moi were significantly undercutting the price of the equivalent HWL products.

**Progressive Enterprises Limited ('Progressive')**

426. Progressive operates supermarkets throughout New Zealand and imports subject goods from Italy on the same basis as its main competitor, Foodstuffs. During the POI it was established that its purchases were limited to ‘private label’ unflavoured preserved tomatoes in 400g and 800g cans. For the purpose of the investigation those cans were considered to be ‘small’. New Zealand Customs records indicate that a total of [REDACTED] were imported by Progressive during the POI; all are understood to have been ‘private label’ products sold under the ‘Home Brand’ brand.

427. It was considered that the appropriate selling price for ‘private label’ products in respect of New Zealand supermarket importers, including Progressive, for comparative purposes was the ex-wharf prices for preserved tomatoes from Italy. Again, this price was compared to HWL’s ex-factory NSV.

428. As Progressive provided no ex-wharf costs to the Ministry the ex-wharf costs of [REDACTED] were applied to arrive at an ex-wharf price and FOB prices were ascertained via exporter invoices.

429. The extent of price undercutting in respect to Progressive is recorded in the table immediately below.

**Table 5.13: Progressive Enterprises Ltd**

Progressive Price/kg 'Small' Unflavoured	HWL Price/kg 'Small' Unflavoured	Undercutting amount	Undercutting percentage
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

430. The table shows that all 'private label' imports by the Progressive were substantially undercutting the price of the equivalent HWL product.

**Service Foods Limited ('Service Foods')**

431. Service Foods is a wholesale distributor to the foodservice industry in New Zealand. New Zealand Customs records indicate that during the POI Service Foods imported [REDACTED] of preserved tomatoes from Italy. The Ministry's investigation established that these were 'own brand' 2.55 kg cans of unflavoured preserved tomatoes from a single exporter in Italy. For the purpose of the investigation these were considered 'large' cans. They are understood to have been sold under an Italian brand.

432. The Ministry considers that the appropriate level of trade, for comparative purposes, in respect to Service Foods was its ex-store store level of trade price. This was compared to HWL's ex-factory NSV.

433. Due to Service Foods providing no importing information to the Ministry its costs to the FOB level of trade were obtained from exporter documentation, ex-wharf costs were acquired from Customs and their into store and into customers store costs, including margin, were arrived at using information attributed to [REDACTED], who was considered to be an importer similar in nature.

434. The extent of price undercutting in respect to Service Foods is recorded in the table below.

**Table 5.14: Service Foods Ltd**

Food Services Price/kg 'Large' Unflavoured	HWL Price/kg 'Large' Unflavoured	Undercutting amount	Undercutting percentage
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

435. The table shows that Service Foods imported preserved tomatoes were undercutting the price of the equivalent HWL product.

436. The following table summarises the results of the price undercutting comparisons in the tables above.

**Table 5.15: Price Undercutting Summary**

437. Seven of the 11 importers of preserved tomatoes from Italy undercut HWL

	Small Unflavoured	Small Flavoured	Small Organic	Small Cherry	Large	All
Private Label						
Average Price /kg (\$)	██████	██████	██████	██████	██████	██████
HWL Price/kg (\$)	██████	██████	██████	██████	██████	██████
Price Undercutting/kg (\$)	██████	██████	██████	██████	██████	██████
% Price Undercutting	██████	██████	██████	██████	██████	██████
Own Brand						
Average Price/kg (\$)	██████	-	-	-	██████	██████
HWL Price/kg (\$)	██████	-	-	-	██████	██████
Price Undercutting/kg (\$)	██████	-	-	-	██████	██████
% Price Undercutting	██████	-	-	-	██████	██████
All Preserved Tomatoes						
Average Price/kg (\$)	██████	██████	██████	██████	██████	██████
HWL Price/kg (\$)	██████	██████	██████	██████	██████	██████
Price Undercutting/kg (\$)	██████	██████	██████	██████	██████	██████
% Price Undercutting	██████	██████	██████	██████	██████	██████

prices. This is based on average prices for the various types of preserved tomatoes products imported into New Zealand. On average the importer undercut HWL prices by ██████% on a per kg basis.

438. ‘Private label’ imported tomatoes, overall, on average, undercut the price of HWL’s equivalent products by ██████%, whilst overall on average ‘own brand’ imported preserved tomatoes undercut the price of HWL’s equivalent product by ██████%.

439. The most significant price undercutting was found to relate to ‘small’ flavoured and unflavoured private label imported preserved tomatoes. The products that were

significantly more expensive than HWL products were the more niche products for which there is no exact HWL equivalent, namely cherry and organic preserved tomatoes.

### Undercutting by Dumped Preserved Tomatoes from Italy

440. Table 4.1 records that 17 percent of preserved tomatoes from Italy imported during the POI that were selected for review were dumped.

441. One exporter was found to be dumping preserved tomatoes in the New Zealand market, Conserve Italia, which exported [REDACTED] tonnes of the subject goods to New Zealand. The table below shows the average price per kilogram of dumped preserved tomatoes from Conserve Italia compared to equivalent HWL product. All of the companies importing from this exporter were at the same level of trade for each product type shown in the tables.

**Table 5.16: Conserve Italia Price Undercutting**

Level of Trade	Average Price/kg 'Small' Unflavoured	HWL Price/kg 'Small' Unflavoured	Undercutting amount	Undercutting percentage
Ex-wharf	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

442. The table shows that exports by Conserve Italia are significantly undercutting the equivalent HWL product, by a margin of [REDACTED] %.

### Price Depression

443. Price depression occurs when prices are lower than those in a market unaffected by dumping, usually in a previous period. In a dumping investigation 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

444. In previous investigations relating to canned and preserved peaches HWL has advised that it has used its Oak branded products as a defensive brand against cheaper brands when they have forced Watties product prices down and dumped imports have caused loss of sales volume and market share. During the POI Oak brand preserved tomatoes were, on average, [REDACTED] cheaper than Watties branded product.

[REDACTED] HWL made no suggestion that their Oak brand preserved tomatoes products should be considered any differently to those in their Watties range. The Ministry therefore did not distinguish between HWL's brands in calculating HWL's average sales prices.

445. HWL provided financial information to enable the Ministry to assess whether it had suffered price depression during the injury period. The following table shows



HWL's average selling prices for preserved tomatoes (at the ex-factory level) on a per kilogram basis over its 2008/9 – 2010/11 financial years.

**Table 5.17: Price Depression (NZD/kg)**

	2009	2010	2011
Average Price (NSV)/kg	██████████	██████████	██████████
As a % of 2008/9 Price	██████████	██████████	██████████

446. The table shows that HWL's average selling price for preserved tomatoes increased from 2008/9 to 2009/10, by ██████, and then ████████████████████ from 2009/10 to 2010/11. The data indicates that the company has not suffered price depression when prices are considered over the entire injury period.

### Price Suppression

447. 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.

448. The Ministry has generally based its assessment of price suppression on positive evidence, in particular the extent to which cost increases have not been recovered in prices. Cost increases not recovered in prices will be reflected in increases in costs expressed as a percentage of sales. Where cost savings have been made, the lack of any price increase will not normally be regarded as price suppression.

449. HWL provided per unit cost and price information to enable the Ministry to compare the company's total costs (costs of production and selling and administration) as a percentage of sales revenue over its 2008/9 – 2010/11 financial years. The results are shown in the table below.

**Table 5.18: Price Suppression (NZD/kg)**

	2009	2010	2011
Average Price (NSV)/kg	██████████	██████████	██████████
Total costs/kg	██████████	██████████	██████████
Total Costs as % NSV	██████████	██████████	██████████

450. The table shows that HWL's total costs for preserved tomatoes (as a percentage of revenue) have increased each year over the period by a total of ██████ percentage points, indicating that HWL's prices have been suppressed.

## Conclusions on Price Effects

451. Dumped imports are significantly undercutting the price of the equivalent HWL product. There is also significant price undercutting of the equivalent HWL product by the majority of the non-dumped preserved tomatoes imported from Italy.

452. There is no evidence that HWL's prices have been depressed but there is evidence of price suppression.

## 5.4 Economic Impact

453. Section 8(2)(d) of the Act provides that the Chief Executive shall have regard to the economic impact of the dumped or subsidised goods on the industry, including—

- Actual and potential decline in output, sales, market share, profits, productivity, return on investments, and utilisation of production capacity; and
- Factors affecting domestic prices; and
- The magnitude of the margin of dumping; and
- Actual and potential effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investments.

## Output and Sales

454. Movements in sales revenue reflect changes in volumes and prices of goods sold. Dumped imports can affect both of these factors through increased supply of goods to the market and through price competition.

455. HWL provided sales volume and revenue figures related to preserved tomatoes. Imports of subject goods were removed from the data.

**Table 5.19: 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			

456. 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.

457. HWL's total sales revenue also 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.

458. 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

459. The analysis of market share must take account of changes in the growth of the market as a whole. A decline in the share of the market held by the domestic industry in a situation where the market as a whole is growing will not necessarily indicate that injury is being caused to the domestic industry, particularly if the domestic industry's sales are also growing. There is no "entitlement" to a particular market share.

460. HWL has claimed that it lost market share due to the presence of dumped imports from Italy. It stated that the New Zealand market has grown over the last 5 years but HWL has not been able to retain its market share.

461. A number of importers, in their comments to the Ministry, broadly, questioned the injury that HWL had purportedly suffered in the New Zealand market. The larger importers of preserved tomatoes from Italy, including Delmaine, the Foodstuffs companies (via FOBL) and Progressive all claimed that their research and/or sales information indicated that HWL's market share had grown in line with an increase in market volume, whereas 'private label' sales had not. Delmaine further submitted that despite the growth in sales volume (during the POI), value growth had been suppressed by discounting brought about by economic conditions as well as lower costs of production.

462. The following table shows the market share (by volume) of the New Zealand industry compared with dumped imports of the subject goods from Italy and non-dumped imports from all sources. Import volume figures have been compiled on the same basis as outlined in paragraphs 346 to 347 above.

**Table 5.20: Market Share (Kilograms)**

	2009	2010	2011
Sales of NZ domestic production			
Dumped imports from Italy			
Non-dumped imports all sources			
Imports by HWL from Italy			
NZ Market			
<i>As % of NZ Market:</i>			
Sales of NZ domestic production			
Dumped imports from Italy			
Non-dumped imports all sources			
Imports by HWL from Italy			

463. The table shows that the market share of HWL's domestic production has declined by a small amount (10 percentage points) between 2009 and 2011.

464. Over the same period, the market share held by dumped imports from Italy has been close to the same level each year, with a slight increase over all of the period of 1 percentage point.

465. The market share of non-dumped imports has also been close to the same level each year, with a small increase of 1 percentage points in 2010, which then decreased by 1 percentage points, meaning there has been only a slight increase in market share over the period of 1 percentage point. HWL's own imports from Italy have shown a small increase in market share of 1 percentage points over all of the period.

466. The table shows that only about a quarter of the small amount of market share lost by the New Zealand industry can be attributed to dumped imports from Italy, with the remainder being attributed to HWL's own imports from Italy and non-dumped imports.

## Profits

467. Changes in net profit reflect changes in prices, sales volumes or costs. Dumped imports can impact on any or all of these. Normally, the extent of any decline in profit will be measured against the level achieved in the period immediately preceding the commencement of dumping.

468. HWL provided the following information on its earnings before interest and tax.

**Table 5.21: EBIT**

	2009	2010	2011
EBIT (\$)	██████████	██████████	██████████
Change from previous year		██████████	██████████
As % of 2009		██████	██████
EBIT per Kg	██████████	██████████	██████████
Change from previous year		██████████	██████████
As % of 2009		██████	██████
EBIT as % of sales revenue	██████████	██████████	██████████

469. The table shows that EBIT for preserved tomatoes has been positive, but has declined significantly from 2009 to 2011. EBIT in 2011 was ██████% of EBIT in 2009. As indicated in paragraph 457, sales revenue has increased. This indicates that the reduction in EBIT is due to an increase in costs not being fully recovered in price increases, indicating that prices have been suppressed, as concluded under price suppression above. This is also reflected in EBIT decreasing as a percentage of sales revenue and a decline in EBIT per kilogram which in 2011 was ██████% of the EBIT per kilogram achieved in 2009.

## Productivity

470. Productivity is the relationship between the output of goods and the inputs of resources used to produce them. Changes in productivity are affected by output levels and by the level of capacity utilisation.

471. HWL provided details of the number of employees engaged in preserved tomato production on a full-time equivalent basis, as well as sales volume, from 2009 to 2011 as shown in the following table.

**Table 5.22: Sales Volume per Employee**

	2009	2010	2011
Number of Employees			
Sales Volume (kg)			
Sales Volume per Employee			

472. The table shows that the number of employees has remained relatively stable, increasing slightly in 2010 and decreasing slightly in 2011. Sales volume fluctuated, as discussed in paragraph 456. Sales volume per employee has fluctuated, increasing in 2010 and decreasing in 2011. Overall productivity has improved slightly over the whole period.

### Return on Investments

473. A decline in return on investments will result from a decline in returns with or without a relative increase in the investment factor being used. Movements in the return on investments affect the ability of the industry to retain and attract investment.

474. Return on investments is normally assessed by looking at trends in EBIT as a percentage of assets or shareholders' funds. As noted in paragraph 469 above, total EBIT decreased significantly from 2009 to 2011 and there may have been a corresponding decline in investment. HWL, however, provided insufficient information to assess return on investments, as noted in the initiation report. HWL said that it would need to identify assets used in the production of canned tomatoes and allocate them in some reasonable way across all products which use these assets. HWL considered that this exercise would be difficult and would not provide any meaningful information on return on investments for only canned tomatoes. The Ministry accepts this, and considers that return on investments would not be a useful indicator of injury in this case.

### Utilisation of Production Capacity

475. The utilisation of production capacity reflects changes in the level of production, although in some cases it will arise from an increase or decrease in production capacity. In either case, a decline in the utilisation of production capacity will lead to an increase in the unit cost of production, and a consequent loss of profit.

476. HWL provided figures on its production capacity and utilisation of that production capacity, as illustrated in the table below.

**Table 5.23: Utilisation of Production Capacity**

	2009	2010	2011
<b><u>400G Chopped Tomatoes</u></b>			
Available Capacity			
Tonnes Variants			
Capacity Utilised			
<b><u>A10 Crushed Tomatoes</u></b>			
Available Capacity			
Crushed			
Capacity Utilised			
<b><u>400G Crushed Tomatoes</u></b>			
Available Capacity			
Crushed			
Capacity Utilised			
<b><u>Total Crushed Tomatoes</u></b>			
Available Capacity			
Crushed			
Capacity Utilised			

477. The above table shows that there was a small decline in capacity utilisation for chopped tomatoes from 2009 to 2011, with capacity declining over this period from 100% to 100%. For crushed tomatoes there was a slight decline in capacity utilisation over this period from 25% to 25%.

### **Magnitude of the Margin of Dumping**

478. The magnitude of the margin of dumping can be a useful indicator of the extent to which injury can be attributed to dumping, particularly when it is compared with the level of price undercutting.

479. The dumping margin for the manufacturer/exporter found to be dumping was 13 percent. Dumped imports are undercutting the domestic industry's selling prices by

percent for the product as a whole. The manufacturer/exporter found to be dumping only exported small cans of preserved tomatoes, so the undercutting margin relates to the same type of product as that for which the dumping margin was calculated and therefore the undercutting margin can be directly compared to the margin of dumping.

480. A comparison of the weighted average dumping margin and weighted average margin of undercutting indicates that substantially less than half of the price undercutting can be attributed to dumping.

## **Other Adverse Effects**

### **Cash Flow**

481. HWL stated that an analysis of cash flow would not add any value to the assessment of injury. HWL's cash flow is measured at the corporate level, and since the preserved tomato business is seasonal, expenditure and revenue are uneven. The Ministry agrees with this and consequently no analysis has been undertaken of the impact of dumped imports on cash flow.

### **Inventories**

482. HWL's inventory information is recorded by SKU, and shows whether the SKU is imported or domestically produced. All whole peeled SKU's and the 2.9kg diced tomatoes are imported products. HWL noted that the chopped tomatoes imported in 2011 are recorded as domestically produced products in their inventory figures.

483. HWL manages its inventory on a first in, first out basis. Stock is produced February through to April to agreed forecasts that the business has signed off on through its demand management process. Stock is then sold throughout the next year with monthly reviews of supply versus demand to manage any fluctuations in the demand plan. HWL aims to enter the beginning of the season with weeks of 'safety stock'.

484. Inventory is valued at standard cost, excluding fixed overheads. There have been no changes in how inventory is managed or valued since 2009.

485. In its application, HWL submitted that price depression and loss of market share has resulted in higher inventory levels being carried over into the 2011 processing year. HWL noted that the build-up of inventory also supports its submission that HWL was not able to achieve the forecast target of an increase in market share based on the market share previously achieved by HWL and on the increases in import prices from 2008 to 2010. 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.

486. The inventory figures include some imports. HWL's imports for 400g whole peeled tomatoes and 2.9kg diced tomatoes have been excluded, as these were able to be clearly identified as imported. However, two different SKU's of 400g chopped tomatoes include imports from Italy. These are included in the inventory figures, as



HWL's inventory system does not track which goods are imported and which are domestically produced.

487. The following table shows the inventory levels at the end of HWL's financial year from 2009 to 2011 by quantity and value

**Table 5.24: Inventories**

	2009	2010	2011
Quantity (Tonnes)			
Difference			
% 2009			
Value			
Difference			
% 2009			

488. The quantity of inventory has fluctuated over the period, decreasing in 2010 and increasing in 2011 to a level a small amount above that in 2009. The value of inventory has followed a similar pattern.

**Employment and Wages**

489. HWL stated that its employment levels and expenditure on wages has been relatively stable over the period.

490. HWL provided information relating to wages and employee numbers (converted to full time equivalents) in respect of its employees engaged in the production of preserved tomatoes, as shown in the table below.

**Table 5.25: Employment and Wages**

Year	No. of FTE	Average Annual Wage	Average Hours per day
2009			
2010			
2011			

491. The table shows that the number of FTE's has been relatively stable, increasing slightly in 2010 and decreasing to 2009 levels for 2011. Wages have increased over the investigation period, and average hours worked per day has decreased slightly.

## **Growth, Ability to Raise Capital and Investments**

492. In its application for an investigation, HWL provided a capital appropriation request for [REDACTED]. HWL advised that this investment would have increased its production capacity by [REDACTED], which was vital as its capacity utilisation at the time was [REDACTED]. HWL stated that the proposed capital expenditure had been included in the 2011 financial year's budget as it was satisfied it was a sound investment given the selling volume and prices achieved at the time the proposal was made.

493. HWL said increased price competition from dumped imports meant that HWL considered it was no longer appropriate to follow through with the proposed investment as the circumstances on which the proposal was made had changed. HWL submitted that the decision to suspend the much needed capital investment in its tomato business was a direct result of negative effects caused by dumped imports from Italy.

494. HWL intended to [REDACTED] during the second and third quarters of HWL's 2012 financial year, which would have enabled HWL to [REDACTED].

495. HWL stated that the findings of any investigation will be a relevant consideration in its decision whether to invest in capital expenditure for its tomato business.

496. HWL advised that it had invested further capital into its tomato production lines but noted that this investment related to "good practice" manufacturing e.g., safety equipment. HWL noted that the proposed [REDACTED] was the first significant capital investment in respect of tomato production capacity in recent years.

## **5.5 Other Causes of Injury**

497. Sections 8(2)(e) and (f) of the Act provide 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; and

- vi. 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.

### Non-dumped Imports

498. Imports that are not dumped also have the potential to cause injury to the New Zealand industry.

499. Italy is the major source of imports of preserved tomatoes. In 2011, imports from Italy represented 80 percent of total imports, excluding imports from HWL. The investigation into dumping has found that 83 percent of the imports from Italy of selected exporters are non-dumped. Non-dumped imports from Italy therefore constitute a majority of the non-dumped imports. In considering whether non-dumped imports have been a cause of injury to the New Zealand industry the Ministry has consequently focused on non-dumped imports from Italy.

500. The price undercutting analysis shows that the majority of the preserved tomatoes imported from exporters found not to be dumping were undercutting the prices of the equivalent product produced by HWL. The volume of non-dumped imports has also increased significantly in absolute terms over the period under investigation. However, as noted in section 5.3 of this Report, while non-dumped imports currently hold the largest share of the New Zealand market, their market share has remained relatively steady over the period, with only a slight increase in market share (of 1 percentage point) between 2009 and 2011, indicating the increase in non-dumped imports volumes has been in line with the growth in the New Zealand market.

501. Given that most non-dumped imports from Italy are undercutting HWL's prices and given the growth in absolute import volumes of non-dumped imports, it is likely that the consequent economic impact of the non-dumped imports from Italy have been a significant cause of injury to HWL.

### Non-Dumped Imports from Sources other than Italy

502. The Ministry has used the Custom's data for the year to April 2011 for imports of preserved tomatoes from sources other than Italy in the table below. The Ministry has separately identified the two countries which have the highest export volumes to New Zealand behind Italy and grouped the remaining countries as "other sources".

**Table 5.26: Volume of Imports from Sources other than Italy**

	2009	2010	2011
Imports from Australia	155,276	405,757	246,119
Imports from Turkey	263,109	293,545	400,572
All other countries	469,173	871,214	743,673
<i>% change on previous year</i>			
Imports from Australia		161%	-39%

Imports from Turkey		12%	36%
All other countries		86%	-15%

503. Imports from Australia have increased by 59% from 2009 to 2011. Imports from Turkey have increased by 52% over the same period. Imports from all other countries have increased by 58% over this period.

504. The table below compares HWL's ex-factory price against the ex-wharf price per kg 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. The amount for customs clearance was based on an average amount calculated from costs supplied to the Ministry by importers. HWL's ex-factory selling price relates to its 2011 financial year (year ended April).

**Table 5.27: Prices of Imports from Sources other than Italy**

	Australia	Turkey	All other countries
Imported ex-wharf price	████████	████████	████████
HWL's Selling Price	████████	████████	████████
Amount of Undercutting	████████	████████	████████
Percentage of Undercutting	████████	████████	████████

505. The table shows that imports from Turkey were significantly undercutting HWL's average selling price (by ██████%). Imports from Turkey made up ██████% of the total New Zealand market for preserved tomatoes in 2011. It is unlikely that this small volume of goods has been causing injury to the New Zealand industry.

506. Preserved tomatoes from Australia were not undercutting the New Zealand industry in 2011. Preserved tomatoes from all other countries were not undercutting the domestic industry during this time period either. However, there were two outliers in the data for this information. France had an average ex-wharf price of \$11.92 and Greece of \$9.67. If these figures are removed from the data, the ex-wharf price for all other countries is \$████████, which undercuts HWL's ex-factory price by ██████%.

507. The prices indicated do show a significant amount of undercutting in 2011 by Turkish imports. However, the total volume of imports from sources other than Italy is only ██████% of the New Zealand market. As this is such a small volume, it is unlikely the New Zealand industry is experiencing significant injury from imports from sources other than Italy.

### **Contraction in demand or changes in the patterns of consumption**

508. Changes in the pattern of consumption or a reduction in demand can also be a potential cause of material injury to the New Zealand industry producing preserved tomatoes.

509. HWL commented that there does not appear to be any contraction in overall demand. HWL noted that consumers have moved towards more convenient preserved tomato products (chopped or flavoured), which has seen the whole peeled tomato market decline in volume by an average of 10.8 percent year on year for the last 3 years. All of HWL's whole peeled tomatoes are imported, so this segment has not been reflected in the injury information assessed by the Ministry.

510. Progressive and FOBL have indicated that the New Zealand market has grown over the year to August 2011.

511. FOBL, along with a number of other importers, stated that New Zealand producers have been unable to accommodate the volume required to meet demand. As a result, volume growth has been supported by imported product from Italy. It views the potential application of duty as a significant detriment to the market as local supply cannot meet demand or offer a viable price that consumers will accept.

512. FOBL further suggested that HWL was a net importer of preserved tomatoes. Whilst the Ministry's investigation confirmed that HWL does import preserved tomatoes to supplement New Zealand-produced preserved tomatoes, enquiries established that HWL was not a net importer of the subject goods in 2009, 2010, or 2011. HWL's imports of preserved tomatoes from Italy are assessed below.

513. FOBL and Davis stated that any application of duty will result in an overall market price shift upwards, and they anticipate consumers will buy less, resulting in an overall market decline. Progressive claimed that it would also reduce any incentives for HWL to continue to innovate and reduce costs of production.

514. Paddy's indicated that due to the low-margins on which they operate, smaller importers, such as themselves, would need to change their business model.

515. Based on the information sourced in the investigation, the Ministry considers that the nature of the market for preserved tomatoes in New Zealand is unlikely to be a cause of injury to the domestic industry.

### **Restrictive Trade Practices and Competition**

516. Restrictive trade practices of overseas or New Zealand producers, such as price ceilings, other statutory measures, or exclusive dealer arrangements, can affect the financial position of New Zealand manufacturers when they are not the beneficiaries of the restrictions. Competition between overseas and New Zealand producers of preserved tomatoes can be a cause of material injury independent of any dumping. For example, the existence of a price war or the constant threat of new competitors to the New Zealand market can cause a fiercely competitive environment where it is difficult for a New Zealand manufacturer to make a positive return.

517. HWL said it was not aware of any restrictive trade practices. HWL believed that Italian tomato canners were receiving some form of benefit from the Single Payment Scheme under the European Union Common Agricultural Policy reforms. La Doria stated that European contributions ceased to be allocated several years ago. It is Ministry's understanding that no benefits are given by the European Union to producers in respect of preserved tomatoes.

518. Foodstuffs does not believe there are any restrictive trade practises in place in the New Zealand market, and sees the competition as orderly, based on the nature of crop based products.

519. The Ministry has not seen any evidence that suggests restrictive trade practices of, and competition between, overseas and New Zealand producers, other than the volume and price effects of non-dumped imports set out above, have been a cause of increased injury to the domestic industry over the period under review.

### **Developments in Technology**

520. HWL has said it does not believe there is any evidence of a technology development relevant to the consideration of material injury. There have been no submissions to suggest that any differences between the technology used by the New Zealand industry and that used in Italy have been a cause of injury to the New Zealand industry. On this basis, the Ministry considers that development in technology is not a factor which has caused material injury to the domestic industry.

### **Export Performance and Productivity of New Zealand Producers**

521. HWL exports a small volume of canned tomatoes (██████████ 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.

### **Imports by the Industry**

522. The Ministry is required to assess the nature and extent of importation of dumped goods by New Zealand producers of like goods, including the value, quantity, frequency and purpose of any such importations.

523. HWL considers that its imports of preserved tomatoes from Italy 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. 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.

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

**Table 5.28: Domestic Industry's Imports**

	2009	2010	2011
HWL's Imports from Italy	██████████	██████████	██████████
As a % of 2009		██████	██████

525. The figures in the table show that HWL's imports from Italy have fluctuated over the period, decreasing in 2010 to ██████ percent of the imports in 2009 and increasing in 2011 to ██████ percent of 2009 imports. Over all of the period imports increased by ██████ percent.

526. 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.

527. The Ministry understands that HWL will continue importing at current levels, including some imports of chopped tomatoes.

528. HWL sources all of its whole peeled tomatoes from Italy, and HWL stated that its imports of whole peeled tomatoes have been at the same level, or may have even decreased from 2009 to 2011 (mainly due to the contraction in demand for the whole peeled tomatoes segment as consumers moved towards more convenient tomato products as discussed in paragraph 509 above).

529. HWL also explained that it has recently changed its inventory management policy. Previously, HWL focused on keeping inventory levels low by importing on a regular basis to meet customer orders as best as possible. HWL has now changed this process and makes a smaller number of large orders to ensure that product is always available for its customers, particularly when large orders are received e.g., where a large customer uses HWL's product as a loss leader. The Ministry notes that HWL's decision to import chopped tomatoes from Italy is likely to have caused an increase in the cost of holding inventory, but this is consistent with HWL's new inventory policy.

530. HWL's imports from Italy are likely to be the cause of the increase in inventory levels and have resulted in an increase in the cost of holding inventory, which the Ministry considers could be a cause of some injury to HWL, although it is unlikely to be material. As noted under market share above, about half of the small loss of market share by HWL's sales of domestically produced preserved tomatoes can be attributed to HWL's imports of preserved tomatoes from Italy.

## 5.6 Causal Link

531. Sub-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 other factors also being a cause of material injury. This reflects the requirements of Paragraph 2 of Article 5 of the Anti-Dumping Agreement.

532. 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.

533. 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.

### **First Causal Link Limb**

534. There is evidence that there was a reasonably significant increase (of 33 percent) in the volume of dumped imports from 2009 to 2011 in absolute terms. Relative to New Zealand production, dumped imports declined by 10 percentage points in 2010 and then significantly increased in 2011 by 15 percentage points, a level above that in 2009, largely reflecting an increase in dumped import volumes in 2011 and a decline in HWL’s sales between 2010 and 2011. However, relative to total New Zealand consumption, dumped imports were close to the same level over the period under review, increasing only slightly (by 1 percentage point) from 2009 to 2011, indicating that dumped imports have increased in line with growth in the New Zealand market for preserved tomatoes. While HWL has suffered a small decline in its market share over the period under review, only about one quarter of this can be attributed to the slight increase in market share held by dumped imports, with the remaining three quarters being attributable to an increase in the market share held by HWL’s own imports from Italy and by non-dumped imports.

535. There is evidence of price undercutting of HWL’s prices by dumped imports. At the same time there is also evidence that the majority of the non-dumped imports from Italy (which are imported in significantly greater volumes than dumped imports) are undercutting HWL’s prices. It is also likely that the majority of non-dumped imports from countries other than Italy are also undercutting HWL’s prices. There is no evidence of price depression over the period under review, but there is evidence of significant suppression over this period.

536. The volume and price effects (an increase in dumped imports in absolute terms and relative to New Zealand production, price undercutting by dumped imports, and price suppression) correspond with a significant decline in HWL’s profits. There is also evidence of a small decline in HWL’s market share as discussed in the paragraph 534 above. There is no other evidence of a significant economic impact on HWL’s preserved tomato business. The Ministry considers there is an inference that the volume and price effects and the consequent economic impact (reflected largely in a significant decline in profits) can be attributed to dumped imports from Italy.

### **Second Causal Link Limb**

537. The dumping investigation has found that 83 percent of the imports of the subject goods from Italy are not dumped. As noted previously in this report, most of



the imports of preserved tomatoes into New Zealand come from Italy. Non-dumped imports from Italy are consequently a significant factor in the New Zealand market representing a significantly larger part of the New Zealand market (10 percent in 2011) than either dumped imports or sales by the New Zealand industry. Together with non-dumped imports from countries other than Italy, non-dumped imports from all sources represented 15 percent of the New Zealand market in 2011.

538. There has also been a reasonably significant increase in the volume of non-dumped imports (by 27 percent) from 2009 to 2011, although this has been in line with the increase in the New Zealand market so that their market share has been stable over this period. There is evidence that the majority of the non-dumped imports have undercut the prices of the equivalent HWL product. The evidence on price undercutting does not indicate that the prices of preserved tomatoes from the exporter found to be dumping are competing with the equivalent HWL product at prices significantly lower than the prices available from non-dumping exporters. The evidence therefore does not suggest that the prices of dumped imports are exerting a greater pricing pressure on HWL than non-dumped imports.

539. Dumped imports represented only a relatively small proportion of the New Zealand market in 2011 (10 percent) and that share of the market had only increased slightly (by 1 percentage point) since 2009. The share of the market held by non-dumped imports is nearly 5 times greater than that held by dumped imports. When the preponderance of the market represented by non-dumped imports is considered in conjunction with the evidence relating to price undercutting (that dumped imports are not priced significantly lower than non-dumped imports), the Ministry cannot conclude that the injury to HWL can be attributed to dumped imports to a degree that would constitute material injury.

540. While dumped imports must be a cause of material injury in order for a finding of material injury to be sustained (neither the Act nor the Anti-Dumping Agreement requires that dumped imports must be the sole cause of material injury) the Ministry does not consider there is sufficient evidence of a causal link between the import of dumped goods and the injury to HWL. The Ministry therefore considers the inferred causal link under the first limb referred to above cannot be sustained in light of the evidence of the impact of non-dumped imports.

## **5.7 Conclusions Relating to Historical Injury**

### **Import Volumes**

541. There is evidence of an increase in the volume of dumped imports in absolute terms and in relation to production in New Zealand. There is evidence of only a slight increase in dumped import volumes relative to consumption in New Zealand.

### **Price Effects**

542. There is evidence of significant price undercutting by dumped imports and evidence of significant price suppression. There is no evidence of price depression.

## **Economic Impact**

543. There is evidence that the New Zealand industry has suffered the following adverse effects:

- A significant decline in profits.
- A small decline in market share.
- A small decline in capacity utilisation in relation to chopped tomatoes and slight decline in capacity utilisation in relation to crushed tomatoes.
- A small increase in inventories.
- The deferment of capital expenditure on new plant.

544. There is insufficient or no evidence of injury in relation to the following injury factors:

- There is no evidence of a decline in sales volume or sales revenue.
- There is no evidence of a decline in productivity.
- It was not feasible to provide evidence of on return on investments and cash flow.
- There is no evidence of a decline in employment or wages.
- No evidence was provided in relation to growth.

## **Other Causes of Injury**

545. The volume of non-dumped imports is several times greater than the volume of dumped imports. There has been a reasonably significant increase in absolute terms in the volume of non-dumped imports over the period under review and in relation to production in New Zealand. The increase in the volume of non-dumped imports has, however, been in line with the growth in the New Zealand market so that their share of consumption in New Zealand has only increased slightly over the period under review. At the same time, non-dumped imports hold the majority share of the New Zealand market and there is evidence that the majority of non-dumped imports have undercut the prices of the equivalent product produced by HWL.

546. There is evidence that HWL's own imports from Italy have been the cause of about a half of the small loss of market share suffered by HWL and that about only one quarter can be attributed to the slight gain in market share by dumped imports. There is also evidence that changes in the way HWL manages its imports has contributed to the increase in inventories.

547. There is no evidence that factors other than non-dumped imports and HWL's own imports have been a cause of material injury to HWL.

### **Material Injury and Causal Link**

548. The only evidence of a material economic impact resulting from the volume and price effects is the significant decline in profits suffered by HWL. While profits are an important indicator of injury, in the absence of evidence of a material impact on any other injury factors, it is problematic whether it would be possible to conclude that HWL has suffered material injury.

549. Even if it could be concluded that HWL has suffered material injury, the Ministry is not satisfied, for the reasons outlined above under “Causal Link”, that there is a causal link between any material injury suffered by HWL and dumped imports of the subject goods, primarily because non-dumped imports are likely to have had a much more significant impact on HWL than dumped imports and, even if it were possible in the circumstances of this case to isolate the impact of dumped imports from non-dumped imports, the impact of dumped imports alone is unlikely to be material.

550. The Ministry therefore concludes that material injury has not been caused to HWL by means of the dumping of imported goods.

## 6. Threat of Injury

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551. Having concluded that material injury has not been caused by means of the dumping of imported goods, the Ministry has examined, in accordance with section 8 of the Act, whether material injury is threatened by means of the dumping of imported goods imported or intended to be imported New Zealand.

552. The need to examine whether there is a threat of injury is reinforced by footnote 9 of the Anti-Dumping Agreement which states that “the term ‘injury’ shall, unless otherwise specified, be taken to mean material injury to a domestic industry, threat of material injury to a domestic industry, or material retardation of the establishment of such an industry”.

553. In relation to the types (concepts) of injury described in footnote 9 of the Anti-Dumping Agreement, the World Trade Organisation Dispute Settlement Panel Report *United States – Investigation of the International Trade Commission in Softwood Lumber from Canada*<sup>1</sup> (*Softwood Lumber VI*) noted at paragraph 7.56 that:

It seems clear to us that these three concepts describe different types of injury, occurring at different times and potentially in different ways. [Footnote omitted.] Thus, the focus of Article 3.7 . . . , in the context of Article 3 . . . as a whole, is the determination of one of these three types of injury, threat of material injury. The factors set out in Article 3.7 . . . are elements that should be considered in making a determination of threat of material injury.

### 6.1 The Ministry’s Approach to Threat of Injury Investigations

554. Article 3.7 of the Anti-Dumping Agreement states (emphasis added):

3.7 A determination of a threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. **The change in circumstances which would create a situation in which the dumping would cause injury must be clearly foreseen and imminent.**<sup>10</sup> In making a determination regarding the existence of a threat of material injury, the authorities should consider, inter alia, such factors as:

- (i) a significant rate of increase of dumped imports into the domestic market indicating the likelihood of substantially increased importation;
- (ii) sufficient freely disposal, or an imminent, substantial increase in, capacity of the exporter indicating the likelihood of substantially increased dumped imports to the importing Member’s market, taking into account the availability of other export markets to absorb any additional exports;

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<sup>1</sup> Report of the Panel – United States – Investigation of the International Trade Commission in Softwood Lumber from Canada – WT/DS277/R – Adopted 26 March 2004.

- (iii) whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports; and
- (iv) inventories of the product being investigated.

No one of these factors by itself can necessarily give decisive guidance but the totality of the factors considered must lead to the conclusion that further dumped exports are imminent and that, unless protective action is taken, material injury would occur.

<sup>10</sup> One example, though not an exclusive one, is that there is convincing reason to believe that there will be, in the near future, substantially increased importation of the product at dumped prices.

555. In interpreting Article 3.7, the Ministry considers that the factors listed are not exhaustive and that if appropriate, other factors should be considered. However, in terms of Article 3.7 in general, the Dispute Settlement Panel Report in *Egypt – Definitive Anti-dumping Measures on Steel Rebar from Turkey*<sup>2</sup> clarified that “the text of this provision makes explicit that in a threat of injury investigation, the central question is whether there will be a ‘change in circumstances’ that would cause the dumping to begin to injure the domestic industry”.

### **Change in Circumstances**

556. The Panel Report in *Softwood Lumber VI* (paragraph 7.54) refers to footnote 10 of the Anti-Dumping Agreement as containing “[t]he sole example given of a ‘change of circumstances’ in the text is that there will be substantially increased importation of the product at dumped prices”. The Panel Report also states at paragraph 7.55 that “while the change in circumstances must be clearly foreseen and imminent, the text does not clearly require the identification of a single event as the relevant change in circumstances. Thus, the text does not give us clear guidance as to the nature of the change in circumstances, or the degree of specificity with which it must be identified”. Further, at paragraph 7.57 the Panel notes “we consider that the relevant ‘change in circumstances’ referred to in Article 3.7 . . . is one element to be considered in making a determination of threat of material injury. . . . in our view, the change in circumstances that would give rise to a situation in which injury would occur encompasses a single event, or a series of events, or developments in the situation of the industry, and/or concerning the dumped...imports, which lead to the conclusion that injury which has not yet occurred can be predicted to occur imminently”.

557. In terms of a change in circumstances, the Panel Report in *Softwood Lumber VI* (paragraph 7.58) concludes by noting that “[W]hat is critical, however, is that it be clear from the determination that the investigation authority has evaluated how the future will be different from the immediate past, such that the situation of no present material injury will change in the imminent future to a situation of material injury, in the absence of measures”.

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<sup>2</sup> Report of the Panel – Egypt – Definitive Anti-dumping Measures on Steel Rebar from Turkey – WT/DS211/R – Adopted 8 August 2002, at paragraph 7.91.

558. In respect of the facts of the *Softwood Lumber VI* case, the Panel noted that the United States had identified a “progression” of circumstances that would create a situation in which material injury would occur in the near future. The Panel found that the US had “[c]onsidered these various elements in concluding that the continuation of the trends in the situation of the domestic industry, coupled with predicted substantially increased imports, would result in an imminent change in circumstances such that injury would occur.” As a result, the Panel concluded that the United States ITC had, in fact, “considered whether there would be a change in circumstances such that the dumped ... imports would cause injury,” as required under Article 3.7 of Anti-Dumping Agreement (paragraph 7.60).<sup>3</sup>

559. However, while the Panel in *Softwood Lumber VI* concluded that the US had considered whether there would be a change in circumstances such that the dumped imports would cause injury, the issue of whether the overall determination of threat, based on the totality of the factors considered was consistent with the Anti-Dumping Agreement, still needed to be answered. In this respect, the Panel noted that while a consideration of each of the factors listed in article 3.7 is *not* mandatory, that no one factor can necessarily give decisive guidance and that the investigating authorities are *not* required to make an explicit ‘finding’ or ‘determination’ with respect to the factors considered, “[t]he totality of the factors considered must lead to the conclusion regarding threat of material injury” (paragraph 7.69). In this respect, the Panel examined separately each of the factors considered by the USITC in its threat of injury determination in order that it could decide whether or not the USITC’s decision in light of the totality of the factors considered and its reasoning was “ ... one which could have been reached by an objective and unbiased investigating authority” (paragraph 7.96).

### **Special Care**

560. Article 3.8 of the Anti-Dumping Agreement states:

With respect to cases where injury is threatened by dumped imports, the application of anti-dumping measures shall be considered and decided with special care.

561. The Panel Report in *Softwood Lumber VI*, at paragraph 7.33, noted that this provision is part of Article 3 covering the overall determination of injury, including threat of material injury. The Panel considered that the Article 3.8 provisions of special care “reinforce the fundamental obligation” in Article 3.7 “[t]hat investigating authorities shall base a determination of threat of material injury on facts and not allegation, conjecture or remote possibility”.

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<sup>3</sup> More specifically, the US ITC determined in the investigation that while the volume of dumped (and subsidised) goods was significant, those imports had not yet caused material injury, however, the condition of the industry had deteriorated and was vulnerable and the imports were likely to have significant price effects in the near future, supporting a finding of threat of material injury.

## Summary of Ministry's Approach

562. Mindful of the different factors involved in each case, the Ministry approaches all anti-dumping investigations on a case-by-case basis. However, based on its interpretation of the Anti-Dumping Agreement and taking guidance from the WTO decisions referred to above, the Ministry adopts the following general principles in considering the threat of injury determination:

- Any threat of injury determination must be based on facts and not merely on allegation, conjecture or remote possibility and any application of anti-dumping measures shall be decided with special care.
- The Ministry is required to establish a change in circumstances which would create a situation in which injury would occur due to dumping, one example being that there is convincing reason to believe that there will be, in the near future, substantially increased importation of the product at dumped prices.
- The change in circumstances that would give rise to a situation in which injury would occur may encompass a single event, or a series of events, or developments in the situation of industry, and/or concerning the dumped imports, which leads to the conclusion that injury which has not yet occurred can be predicted to occur imminently.
- The test applied in determining whether the change in circumstances will result in material injury is a positive one, i.e., the Ministry needs to be satisfied, based on positive evidence, that certain events are likely to occur, and that those events will materially injure the industry in the absence of anti-dumping duty.
- The consideration of each of the factors listed in Article 3.7 (i) to (iv) of the Anti-Dumping Agreement is not mandatory, no one factor can necessarily give decisive guidance and the Ministry is not required to make an explicit 'finding' or 'determination' with respect to each the factors considered. However, the totality of the factors considered in Art. 3.7 (i) to (iv) must lead to the conclusion that further dumped exports are imminent and that unless protective action is taken, material injury will occur.
- The factors listed in Art. 3.7 (i) to (iv) of the Anti-Dumping Agreement are not exhaustive.
- Both the change of circumstances and further dumped goods must be imminent and the likelihood of substantially increased imports (Art. 3.7(i)) is both a relevant change of circumstances *and* a factor to be considered in determining the existence of a threat of injury.
- Interpretation of the word "likelihood" (in Article 3.7(i) and (ii)) and the term "would likely" (in Art. 3.7(iii)) is guided by a New Zealand Court of Appeal judgement referring to "a real and substantial risk..., a risk that might well eventuate".<sup>4</sup> Further guidance on the threshold required to meet the

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<sup>4</sup> *Commissioner of Police v Ombudsman [1988] 1 NZLR 385.*

“likelihood” or “would likely” test (in Article 3.7), can be gained from WTO jurisprudence, e.g. *United States – Sunset Reviews of Anti-Dumping Measures on Oil Country Tubular Goods from Argentina*.<sup>5</sup>

- In considering whether material injury will occur in the absence of measures in a threat of injury determination, the Ministry considers whether that injury will occur in the near future. The extent to which the Ministry is able to make judgements on events occurring in the near future will depend on the circumstances of each case.

563. To gauge the extent to which the ‘change in circumstances’ will cause material injury to the domestic industry in the near future, the Ministry generally requires the domestic industry to provide projections or forecasts of the injury it considers it will suffer as a result of the change in circumstances. The Ministry will examine these projections in light of the company’s past performance (in the absence of injurious dumping) and projected future performance (also in the absence of injurious dumping) in order to assist it in making either a negative or positive threat of material injury determination. However, such an assessment is only undertaken where the information is available and is likely to be useful. In other words, there may be instances where the necessary information is not available or useful and its use may result in a degree of speculation in the decision-making process.

## 6.2 The Case for Threat of Injury

564. In view of the Ministry’s approach to threat of injury determinations (outlined above) including the relevant WTO jurisprudence, the Ministry has undertaken the following analysis in terms of whether a change in circumstances exists in the present case in which the dumping would cause foreseen and imminent injury, and the extent to which the factors listed in Art. 3.7 indicate material injury will eventuate, unless measures are imposed.

565. In its application for this investigation the focus of the evidence provided by HWL was on the occurrence of actual injury based on historical information relating to various injury factors. HWL did, however, note in its application that in addition to the injury it had already allegedly incurred, it also faced the threat of further material injury. HWL said that in the past year there had been a proliferation of Italian brands entering the New Zealand market, which it said is a strong indicator that there is surplus inventory of Italian branded preserved tomatoes in Italy available for export to New Zealand. HWL said that the presence of these brands in the market and the rate of increase in the number of brands means that competition for retail space has increased.

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<sup>5</sup> 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. The Appellate Body reaffirmed its own determination in *United States – Sunset Review of Anti-Dumping Duties on Corrosion-Resistant Carbon Steel Flat Products from Japan*, that an affirmative likelihood determination may be made only if the evidence demonstrates that dumping would be *probable* if the duty were terminated - and not simply if the evidence suggests that such a result might be possible or plausible.



566. HWL said in its application that the New Zealand market has become increasingly attractive to Italian producers because of the economic crisis and the fact that the New Zealand selling season is counter to the northern hemisphere. HWL also noted that it had made some enquiries about stock availability and said that provided payment is made in advance, stock is available. HWL said that there is therefore no known shortage of preserved tomatoes because of commitments to other Italian export markets. HWL said it did not have specific information about exporter inventories and capacities, but noted that the Italian industry is large at 5,000,000 tonnes per annum with numerous producers. This compares with the New Zealand market of about 13,000 tonnes, which is relatively very small. HWL also commented that the weakening euro is influencing importers to increase volumes from Europe as prices are increasingly attractive compared to other sources of supply.

567. HWL provided forecast profit and loss statements for its 2012 financial year with and without dumped imports from Italy in the New Zealand market. HWL also provided an adjusted result for its 2011 financial year based on the assumption that dumped imports were absent from the market. This data shows a significant difference between the profit levels with and without dumped imports in the market. They assume, however, that all imports from Italy are dumped and consequently do not provide a useful indication of the possible impact of dumping.

568. In considering whether there is a change in circumstances in this case which can be clearly foreseen and imminent that would create a situation in which the dumping would cause injury, the Ministry has considered the factors listed in Article 3.7, as set out below.

### **Rate of Increase of Dumped Imports**

569. As noted variously above, there has been a reasonably significant increase in the volume of dumped imports from Italy (of 33 percent) from 2009 to 2011, although this was broadly in line with the growth in the New Zealand market such that there had only been a slight increase in the market share held by dumped imports.

570. Paddy's, a New Zealand importer of preserved tomatoes, has submitted that it would be difficult for a new importer to become established in the marketplace and move any significant quantity of tomatoes, as both supermarket chains already have established suppliers.

571. The Ministry has considered information from importers and exporters on forward orders and on their intentions to import and export more generally in the foreseeable future. In considering this information, the Ministry is conscious of the fact that only Conserve Italia has been found to be dumping and therefore information from other exporters and from importers importing from exporters other than Conserve Italia, relates to non-dumped product. Information specifically from Conserve Italia and its importers does not indicate that there is likely to be a significant rate of increase of dumped imports in the foreseeable future based on information they have provided on forward orders and future intentions. The same holds for information from non-dumping exporters and their importers.

572. The Ministry does not consider there is evidence of a significant rate of increase in the volume of dumped imports which indicates the likelihood of substantially increased imports.

### **Italian Exporters' Capacity to Supply the New Zealand Market**

573. Information provided by Conserve Italia shows that it has a production capacity well in excess of the entire New Zealand market. Conserve Italia has, however, noted that its capacity utilisation is very high, that it has no plans to increase its capacity and that its focus is on providing product for the internal market. Nevertheless, the information from Conserve Italia on its production capacity and the percentage utilisation of that capacity indicates it is likely that Conserve Italia has sufficient freely disposable capacity to substantially increase its export volumes to New Zealand. However, as noted below under inventories, Conserve Italia has advised that it has only low stocks of preserved tomatoes that are not already committed for sale under contracts, so it appears that the ability to substantially increase exports would be dependent on utilising capacity in the next production season.

574. More generally, it is clear that the preserved tomato industry in Italy is very large relative to the New Zealand industry and is likely to have sufficient freely disposable capacity to substantially increase exports to New Zealand, although based on the findings of this investigation, most of these exports are likely to be non-dumped.

### **Prices of Dumped Imports**

575. Dumped imports are entering New Zealand at prices which significantly undercut the prices of the equivalent HWL product and there is evidence HWL's prices have been suppressed (but no evidence they have been depressed).

576. As noted under causal link above, the evidence on price undercutting does not indicate that the prices of preserved tomatoes from the exporter found to be dumping are competing with the equivalent HWL product at prices significantly lower than the prices available from non-dumping exporters. In particular, the prices of the dumped imports are not the lowest prices for the particular product type involved, with lower (non-dumped) prices being available from another large exporter.

577. The evidence therefore does not suggest that the prices of dumped imports are exerting a greater pricing pressure on HWL than non-dumped imports. Therefore, while prices of dumped imports are likely to be contributing to a suppressing effect on prices they are not likely to increase demand beyond that which is likely from the prices of non-dumped imports.

578. Paddy's submitted that competition at the low budget end of the market has reached, or is close to reaching, equilibrium, and it expects prices and the level of imports to stabilise.

## Inventories

579. In its questionnaire response Conserve Italia commented in relation to inventory not already committed for sale under contracts, that it had a low stock of chopped tomatoes (although this was not quantified) and no stock of peeled tomatoes. As there has been no production since the questionnaire response was provided, the Ministry assumes this information is still relevant. The Ministry does not have any other information about the level of inventory more generally in Italy.

## 6.3 Conclusion on Threat of Injury

580. In coming to a conclusion on whether there is a threat of injury by means of the dumping of goods imported or intended to be imported into New Zealand, the Ministry has been mindful of its obligations under Article 3.7 and 3.8 of the Anti-Dumping Agreement, which are outlined above.

581. The following points are relevant in respect of the evidence available on threat of injury:

- While there has been an increase in the volume of dumped imports that increase has been broadly in line with the growth in the New Zealand market. Information from the supplier of dumped imports and its importers does not indicate there is likely to be a substantially increased imports of dumped goods.
- While the supplier found to be dumping is likely to have the capacity to substantially increase its exports to New Zealand, that capacity is unlikely to be available until at least the next production season (August – September). More generally, it is likely that there is freely disposable capacity available in Italy to substantially increase exports to New Zealand, but such exports are likely to be largely non-dumped.
- The evidence on the prices at which dumped and non-dumped imports are competing with the equivalent HWL product indicates that while prices of dumped imports are likely to be contributing to a suppressing effect on prices they are not likely to increase demand beyond that which is likely from the prices of non-dumped imports.
- There is no evidence that there are significant inventories of dumped goods available for export to New Zealand beyond those already contracted for and this is likely to be the case until at least the next production season (August – September).

582. On the basis of the foregoing considerations, the Ministry cannot be satisfied that there is likely to be a change in circumstances that can be clearly foreseen and imminent such that the dumping of imports of preserved tomatoes would cause injury to the domestic industry. The Ministry therefore concludes that there is not a threat of injury by means of the dumping of goods imported or intended to be imported into New Zealand



## **7. Overall Conclusion on Injury**

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583. The Ministry concludes that material injury to the New Zealand industry has not been caused and is not threatened by means of the dumping of goods imported or intended to be imported into New Zealand.



## 8. Conclusions

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584. On the basis of the information available, it is concluded that:

- (a) 17 percent of the goods under investigation are being dumped; and
- (b) material injury to an industry has not been or is being caused or is threatened by means of the dumping of goods imported or intended to be imported into New Zealand.





## 9. Recommendations

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585. It is recommended on the basis of the information obtained during the course of the investigation into the dumping of preserved tomatoes from Italy:

- (a) That the Minister terminate the investigation pursuant to section 11 of the Act because there is insufficient evidence that material injury to a New Zealand industry has been or is being caused or is threatened.
- (b) That the Minister sign the attached *Gazette notice*, and give notice of the termination to interested parties in accordance with section 11 of the Act.

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Investigating Team  
Trade Rules, Remedies and Tariffs Group