

*Ministry of* **Economic  
Development**



*M a n a t ū   Ō h a n g a*

# **Non-Confidential Initiation Report**

## **Preserved Peaches from Spain**

**Dumping and Countervailing Duties Act 1988**

### **Dumping Application**

Ministry of Economic Development

February 2011

ISBN: 978-0-478-35889-6 (PDF)

ISBN: 978-0-478-35890-2 (HTML)



# Table of Contents

---

<b>Abbreviations.....</b>	<b>4</b>
<b>1. EXECUTIVE SUMMARY.....</b>	<b>5</b>
<b>2. INTRODUCTION .....</b>	<b>7</b>
2.1 Application .....	7
2.2 Report Details.....	7
2.3 Investigation Period .....	7
2.4 Date for Submissions.....	8
<b>3. INTERESTED PARTIES .....</b>	<b>9</b>
3.1 Basis for the Application .....	9
3.2 Tariff Classification: Imported Goods.....	9
3.3 Interested Parties.....	10
3.4 Imported Goods Description .....	11
3.5 New Zealand Production of “Like Goods” .....	11
3.6 New Zealand Industry.....	14
<b>4. EVIDENCE OF DUMPING.....</b>	<b>15</b>
4.1 Export Prices .....	15
4.2 Normal Values .....	16
4.3 Comparison of Export Price and Normal Value .....	17
4.4 Conclusion.....	18
4.5 Import Volumes.....	18
<b>5. MATERIAL INJURY .....</b>	<b>21</b>
5.1 Material Injury and Threat of Material Injury .....	21
5.2 Introduction.....	22
5.3 Import Volume Effects .....	24
5.4 Price Effects .....	27
5.5 Economic Impact.....	31
5.6 Causal Link.....	37
5.7 Other Causes of Injury.....	38
5.8 Conclusions Relating to Material Injury.....	40
<b>6. CONCLUSIONS.....</b>	<b>43</b>
<b>7. RECOMMENDATIONS .....</b>	<b>45</b>

# Abbreviations

---

The following abbreviations are used in this Report:

Act (the)	Dumping and Countervailing Duties Act 1988
Agreement	World Trade Organisation Agreement on Implementation of Article VI of the General Agreement Tariffs and Trade 1994
CIF	Cost-Insurance-Freight
Customs	New Zealand Customs Service
EBIT	Earnings Before Interest and Tax
FOB	Free on Board
HWL	Heinz Wattie's Limited
Kgs	Kilograms
Ltd	Limited
Ministry	Ministry of Economic Development of New Zealand
Oanda	<a href="http://www.oanda.com">www.oanda.com</a> (Exchange Rate Data)
Statistics	Statistics New Zealand
VFD	Value for Duty
WTO	World Trade Organisation

# 1. Executive Summary

---

## Introduction

1. On 29 November 2010 the Ministry of Economic Development (the Ministry) accepted a properly documented application for a dumping investigation from Heinz Wattie's Limited (HWL). HWL claims that imports of canned peaches from Spain are being dumped and are threatening to cause material injury to the New Zealand industry.
2. Pursuant to section 10 of the Dumping and Countervailing Duties Act 1988 (the Act), this report assesses the accuracy and adequacy of the evidence provided to determine whether there is sufficient evidence to justify the initiation of an investigation.

## Goods Subject to the Application

3. The imported goods covered by the application are:

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

## Dumping

4. The Ministry is satisfied that HWL has provided sufficient evidence of dumping for the purpose of initiating an investigation. The dumping margins for two sizes of retail cans, expressed as a percentage of export prices, are 60 percent and 133 percent.

## Injury and Threat of Injury

5. There is evidence that import volumes of the subject goods have increased significantly in absolute terms and relative to production and consumption in New Zealand. There is also evidence that the New Zealand industry's prices have been undercut by the subject goods and that the New Zealand industry's prices are likely to be depressed and suppressed. Consequent on these volume and price effects there is evidence of a likely adverse economic impact reflected in declines in sales revenue and profits.
6. The application did not contain any information relating to the industry's cash flow, productivity, utilisation of production capacity, inventory, employment and wages, growth and ability to raise capital and investments. HWL has stated that "the loss of volume, sales revenue and profits from the dumped canned peaches imports from Spain will also have significant adverse effects upon Heinz Wattie's achievable return on investments, utilization of production capacity, cash flow, inventories, employment and growth." The Ministry notes that information on these factors will be sought from the industry during any investigation.
7. There is no evidence in the application that suggests that a threat of injury is likely to be caused by factors other than the allegedly dumped imports from Spain. The Ministry is satisfied HWL has provided sufficient evidence showing that imports of

the subject goods are threatening to cause material injury to the New Zealand industry for the purpose of initiating an investigation.

## **Causal Link**

8. HWL has provided evidence in support of its claim that material injury is threatened by the allegedly dumped canned peaches from Spain.

## **Measures Requested**

### **Provisional Measures**

9. HWL is seeking the urgent imposition of provisional anti-dumping duties because the peak selling season for canned peaches is over the summer months when dumped canned peaches from Spain will cause or threaten to cause material injury to HWL. Provisional measures may be applied at any time after 60 days from the date on which an investigation has been initiated in order to prevent material injury being caused during the period of investigation.

### **Retrospective Measures**

10. HWL considers there may also be a case for the retrospective application of duties because there is a history of dumping of canned peaches causing material injury to the New Zealand industry and the importer(s) should have been aware that the goods were dumped. Anti-dumping duties may be levied to cover a period of up to 60 days before provisional measures if certain conditions met.

## **Conclusion**

11. The Ministry is satisfied, based on the information reasonably available to HWL, that sufficient evidence of dumping causing a threat of material injury has been provided for the purpose of initiating an investigation.

## **Recommendation**

12. This report recommends that the Chief Executive of the Ministry initiate an investigation to determine the existence, effect and likely effect of any alleged dumping of preserved peaches from Spain.

## 2. Introduction

---

### 2.1 Application

13. On 29 November 2010 the Ministry of Economic Development (the Ministry) accepted a properly documented application from Heinz Wattie's Limited (HWL), alleging that dumped imports of preserved peaches from Spain are threatening to cause material injury to the New Zealand industry.
14. In accordance with section 10 of the Dumping and Countervailing Duties Act 1988 (the Act), the Ministry's Chief Executive may initiate an investigation to determine both the existence and effect of any alleged dumping of any goods on being satisfied that sufficient evidence has been provided that the goods are being dumped and, by reason thereof, material injury to an industry has been or is being caused or is threatened.
15. The New Zealand legal case *Kerry (NZ) Ltd v Taylor*<sup>1</sup> determined that in order to initiate an investigation, there must be evidence beyond a mere assertion and of a nature and extent that indicate a likelihood of dumping and material injury, requiring investigation. The Court stated the application should be assessed with due scepticism, bearing in mind the commercial context, but emphasised that the assessment is one of sufficiency of evidence, not of dumping and material injury.
16. This report assesses the present application against the requirements of the Act to determine if adequate evidence has been presented to justify the initiation of an anti-dumping investigation.
17. Dumping is defined in sub-section 3(1) of the Act and is essentially price discrimination between markets. Dumping occurs when an exporter sells goods to New Zealand (export price) at a price less than the price charged in its domestic market (normal value). Adjustments are made to ensure that the comparison of these prices is fair.

### 2.2 Report Details

18. In this report years are ended 30 April and values are in New Zealand Dollars (NZD) unless stated otherwise. In tables, column totals may differ from individual figures, or those in the application document, due to rounding.

### 2.3 Investigation Period

19. This report recommends that an investigation be initiated. Due to its timing it is recommended that the period used to determine claims of dumping (the period of

---

<sup>1</sup> (1991) 2 PRNZ 393

investigation) be the year ended 31 December 2010. This period is in accordance with New Zealand's preferred period for assessing dumping of twelve months<sup>2</sup>.

20. It should be noted that the inclusion of any information in this report does not indicate that the Ministry necessarily accepts that information or any conclusions arising from it. Any final determination of whether or not goods are dumped and causing injury can be made only after a full investigation has been carried out in accordance with the Act and the World Trade Organisation Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the Agreement).

## 2.4 Date for Submissions

21. Importers, exporters and manufacturers will be directly invited to make submissions and provide responses to questionnaires. Importers will be given 30 days, and exporters and manufacturers will be given 37 days, to respond to questionnaires. In order that all views can be considered in the Ministry's report on the essential facts and conclusions of this case, it is recommended that all submissions are made by no later than **17 June 2011**. Submissions can be made to the Trade Rules, Remedies and Tariffs Group, Ministry of Economic Development, P O Box 1473, Wellington 6011, New Zealand, or by email at [traderem@med.govt.nz](mailto:traderem@med.govt.nz).

---

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



### 3. Interested Parties

---

#### 3.1 Basis for the Application

22. The application for an anti-dumping investigation was made by HWL which has stated it is the only producer in New Zealand of canned peaches. No other New Zealand producers of either canned peaches or preserved peaches in any other form of packaging have been identified by the Ministry.

23. HWL claims that as a result of imports of the subject goods there is a threat of material injury resulting from:

- increased import volumes of the subject goods;
- price undercutting, and
- price depression and suppression;

that is threatening:

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

#### 3.2 Tariff Classification: Imported Goods

24. The goods covered by the application, which are referred to as the subject goods, (hereinafter referred to as “preserved peaches”) are described as:

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

25. When the application was first lodged, the subject goods were described as “peaches (halves, slices or pieces) in various packs”. The Ministry sought clarification from Heinz Wattie’s about the description of subject goods and the description was subsequently amended.

26. HWL stated that the subject goods enter under the following Tariff Item and Statistical Key:

**Table 3.1: Tariff Classification**

**20.08**

**Fruits, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included:**

*[- Nuts, groundnuts and other seeds, whether or not mixed together]*

*[- Pineapples]*

*[- Pears]*

*[- Apricots]*

*[- Cherries]*

2008.70 -Peaches, including nectarines:  
*[-Cooked and preserved by freezing, not containing added sugar]*

2008.70.09 00L --Other

27. The Normal Tariff rate for Tariff Item and Statistical Key 2008.70.09.09L is 5 percent and this is the rate that applies to imports from Spain.

28. The Tariff Item and Statistical Key cover a broader range of goods than the subject goods.

### 3.3 Interested Parties

#### Exporters

29. HWL said it does not know who the exporters of the subject goods are.

30. As noted in paragraph 28 above, the Tariff Item and Statistical Key under which the subject goods enter New Zealand covers a broader range of products than the subject goods and some of the suppliers in the Customs data may not be supplying the subject goods.

31. The Customs data shows that in the year ended 31 December 2010 there were 5 firms supplying goods from Spain entered under Tariff Item and Statistical Key 2008.70.09.09L. The 5 firms are listed in alphabetical order in the following table.

**Table 3.2: Exporters/Suppliers**

Alcurnia Alimentacion sl
Binder International
Conservas Y Frutas SA
Euroaliment
Leos Import Distributors Pty Ltd

32. Customs data shows that during the year ended 31 December 2010 one importation of goods classified under Tariff Item and Statistical Key

2008.70.09.09L which originated in Spain was exported to New Zealand from a third country. Any investigation may need to identify, where those exports are the subject goods, the relevant manufacturer in Spain and establish whether the exporter that appears in the Customs data is a manufacturer or solely an exporter. Whether there are any intermediary sales in the supply chain between the original manufacturer in Spain and the exporter that shipped the subject goods to New Zealand, will also need to be established.

## Importers

33. HWL said it knows that James Crisp Ltd has imported the subject goods from Spain over the last year. The Customs data shows that in the year to 31 December 2010, 5 firms imported goods classified under Tariff Item and Statistical Key 2008.70.09.09L which originated in Spain. The 5 firms are listed in alphabetical order in the following table.

**Table 3.3: Importers**

Directus International Ltd
James Crisp Ltd
Mediterranean Group Ltd
On Trays Ltd
Sabato Ltd

## 3.4 Imported Goods Description

34. The subject goods were defined in section 3.2 of this report as:

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

35. HWL has stated in the application that the various packs may vary from cans to glass jars to plastic pottles and other forms of packaging such as retort packs with different capacities.

## 3.5 New Zealand Production of “Like Goods”

### Preserved peaches

36. HWL has stated that it produces a range of styles of canned peaches (halves, slices and dices) packed in various media (such as syrup, fruit juice and lite) and in can sizes of 410g, 820g and 3kg.

## Like Goods Analysis

37. Section 3 of the Act provides that like goods are goods that are either like the imported goods in all respects or have characteristics that closely resemble those goods. To determine whether the goods produced in New Zealand are like goods to the subject goods, the Ministry normally considers physical characteristics, function and usage, pricing structures, marketing and any other relevant considerations, with no one of these factors being necessarily determinative.
38. HWL has provided an analysis of like goods issues in its application. HWL said it has used the Ministry's framework in order to determine what goods produced in New Zealand are like goods to the allegedly dumped goods. HWL's analysis is outlined below along with the Ministry's assessment of this analysis.

### ***Physical Characteristics***

39. Assessing the physical characteristics involves looking at the appearance, size and dimensions, composition of the product and the production methods and technology utilised to create it.
40. HWL said it produces canned peaches in the form of halves, slices or pieces. HWL noted that its cans are similar to cans imported from Spain. HWL also asserted that its cans are similar to other types of packs containing processed peaches and commented that this other kind of packaging can vary and is expected to include different forms of packs. As noted in paragraph 35 above, HWL has stated that packs other than cans can range from glass jars to plastic pottles and other forms of packaging such as retort packs with different capacities.
41. HWL said the only preserved peaches it is aware of that have been imported from Spain recently are 410g cans, but HWL said it is possible there may have been imports in glass, plastic or pouch packaging. The tariff item under which the subject goods are imported does not identify the size of the container and in some cases does not describe the type of pack (where the type of pack is described all such imports are identified as preserved peaches).
42. HWL said the 410g cans that it knows have been imported from Spain contain sliced peaches in syrup. HWL has also noted that the canned peaches imported from Spain will have been produced using a manufacturing process very similar to that used by HWL. HWL did not comment on the production methods used for other types of packaging.

### ***Function and Usage***

43. Function and usage covers consumer perceptions, and expectations, and end use, which can assist in reaching conclusions regarding substitutability where relevant.
44. HWL has commented that it produces canned peaches for retail and food service sale in New Zealand which have the same function and application as imported preserved peaches.

45. The Ministry considers, on the basis of previous cases relating to canned and preserved peaches, that there is unlikely to be any significant distinction between the function and usage of the subject goods and those produced by HWL.

### **Pricing Structures**

46. 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.

47. HWL has said that the canned peaches it produces compete at the same price point as the imported peaches. HWL has provided information which shows significant price undercutting by the subject goods at the retail level in New Zealand. While this information shows a significant difference in retail selling prices it does not in itself indicate that the pricing structure of the subject goods differs in such way from the pricing structure of the canned peaches produced by HWL as to clearly differentiate the subject goods from the New Zealand product.

### **Marketing**

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

49. HWL has commented that the distribution channels, customers and means of advertising are similar for both the canned peaches it produces and the peaches imported from Spain.

50. Based on its experience with previous cases relating to canned and preserved peaches, the Ministry considers it unlikely that the peaches imported from Spain would be marketed in a different way to the canned peaches produced by HWL.

### **Other**

51. HWL has stated that the canned peaches it produces, if they were imported into New Zealand, would be classified under the same Tariff Item and Statistical key in the New Zealand Customs' Tariff (Tariff Item 2008.70.09L) as the subject goods.

52. On the basis of previous cases relating to canned and preserved peaches the Ministry agrees that the tariff classification would be the same for the subject goods and the canned peaches produced by HWL.

### **Conclusion Relating to Like Goods**

53. HWL has provided information regarding the subject goods and compared the characteristics of the subject goods with those domestically produced. HWL has considered the physical characteristics, function and usage, pricing, marketing and tariff classification. HWL considers that its preserved peaches, while not like in all respects, possess characteristics that closely resemble the subject goods and are therefore like goods within the terms of the Act.

54. The domestically produced preserved peaches are packaged in a can whereas HW stated that the subject goods may be packaged in a can, glass jar, plastic pottle or another form of packaging (such as a retort pack). The domestically produced preserved peaches are packaged in cans in the sizes 410g, 820g and 3.0 kg. The subject goods description for the purposes of initiation includes sizes larger than HW produces.

55. Should a dumping investigation be initiated further analysis will be required as to whether HW makes like goods to all goods within the subject goods description, and if not how the goods description should be amended to exclude goods HW do not make like goods to. The Ministry notes, however, that in a dumping investigation relating to “peaches in preserving liquid, in containers up to and including 4.0kg” from China completed in August 2011, it concluded that the canned peaches produced by HWL were a like good to the subject goods which covered all types of packaging.

56. During a number of previous reviews involving canned peaches, and in the investigation relating to preserved peaches from China, the “Weight Watchers” brand produced by HWL was excluded from the injury analysis because it was not deemed to be a like good to the subject goods. Should an investigation be initiated the Ministry will also consider if this is still the case.

57. The Ministry concludes that there is sufficient evidence for the purposes of initiation that preserved peaches produced by HWL, while not like in all respects, have characteristics that closely resemble the subject goods, and therefore are like goods to the subject goods.

58. On the basis of the information available, the Ministry considers that HWL is the New Zealand producer of like goods and therefore constitutes the industry within the terms of the Act.

### **3.6 New Zealand Industry**

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

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

## 4. Evidence of Dumping

---

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

### 4.1 Export Prices

62. HWL has calculated a single export price from information sourced from Statistics New Zealand on import volumes and values for imports from Spain under the tariff item and statistical key covering the subject goods (2008.70.09.09L) for imports in August and September 2010, i.e. the total value for duty in NZ\$ for this period has been divided by the total volume for the period to obtain an average NZ\$ VFD per kilogram of \$1.23.

63. HWL has converted this figure into euros and made a deduction for freight from factory to port of one percent to estimate an ex-factory export price. HWL has noted that it does not have evidence of this deduction, “[b]ut has included a small amount as an estimate.”

64. In support of its export price calculation HWL has provided details of the imports from Spain for each month of 2010 from January to September taken from Statistics New Zealand data. This data show that over this period there were imports only in March, August and September and that the average VFD per kilogram for the March imports was significantly higher than for the imports in August and September.

65. The Ministry has checked the calculation of the average VFD per kilogram for imports in August and September provided by HWL against import data obtained from New Zealand Customs. The Ministry has also calculated average VFD per kilogram figures for the years ended 31 August 2010, 30 September 2010 and 31 October 2010 which were respectively \$1.32, \$1.24 and \$1.24, which indicate that the figure calculated by HWL is reasonable.

66. To check the reasonableness of the deduction made by HWL for inland freight the Ministry has calculated the percentage that costs from ex-factory to FOB represented of the FOB price in a recent review undertaken by the Ministry relating to canned peaches, where this type of deduction was made. In this review the deduction made for these costs (which covered a wider range of costs than inland freight) amounted to 10 percent of the FOB price. This indicates that the deduction made by HWL is conservative and if a deduction was to be made for all of the likely costs between ex-factory and FOB the deduction would likely be larger and increase the dumping margin.

67. The Ministry has also checked the exchange rate used by HWL against the average exchange rate taken from the OANDA currency conversion web site for August and September 2010. The average exchange rate from this source for

this period was 0.556, indicating that the exchange rate used by HWL is reasonable.

68. The calculations provided by HWL are shown in the following table:

**Table 4.1: Calculation of Export Price**

	Imports for Aug. & Sept. 2010
Value for duty NZ\$	\$133,502
Volume (kg)	108,446
VFD/kg	\$1.23
Converted to euros @ 0.55	0.68
Less freight @ 1%	0.01
Ex-factory export price euros/kg	0.67

## 4.2 Normal Values

69. HWL has provided evidence of normal values based on the retail selling price of peaches in Spain obtained from an online supermarket in Spain called Mercadona. HWL has provided a screen dump from this company's web site showing the price per kilogram for a 400g can of peaches in light syrup and an 850g can of peaches in syrup.

70. HWL has deducted from these 2 prices an amount for VAT (7 percent), retail margin (15 percent) and for freight at 0.01 euros per kilogram. HWL has noted there is a 7 percent VAT in Spain and commented that the retail margin is based on its knowledge of preserved peaches in New Zealand. HWL has not explained the basis on which the deduction for freight was made.

71. The Ministry queried HWL about whether the 7 percent rate for VAT was correct following an increase in the VAT rate in Spain in July 2010. HWL subsequently advised that the correct rate is 8 percent and provided a link to a relevant web site to substantiate this rate.

72. In the review carried out in 2008/09 of the anti-dumping duty on canned peaches from Greece, normal values were established on the basis of retail prices in Greece from which a deduction was made for a supermarket margin of 15 percent. In the final report on that review the Ministry noted (at paragraph 72) the following: "The Ministry does not have any information regarding retail margins in Greece but considers that HW's estimate is reasonable based on HW's knowledge of the distribution of canned peaches and the likelihood that retail margins would be similar between countries." For the purposes of considering the adequacy of the evidence for initiation, the Ministry considers it is reasonable to



accept HWL's estimate on the same basis as it was accepted in the Greece review.

73. HWL has advised that the deduction for freight is to cover the cost of freight from factory to supermarket. However, if a deduction is made for a supermarket's margin, then that margin will represent the difference between the supermarket's purchase price and its retail selling price and would therefore encompass any costs incurred by the supermarket. A deduction for freight should therefore not be necessary. The deduction made by HWL is, however, a negligible amount and slightly reduces the dumping margin and has consequently been left in the calculation of the ex-factory normal value.

74. The calculations provided by HWL are shown in the following table (the Ministry has changed the original calculations to account for the amendment to the VAT rate from 7 to 8 percent, as noted in paragraph 71 above):

**Table 4.2: Calculation of Normal Values (Euros)**

	400g Can	850g can
Selling price per kg	2.00	1.36
Less: VAT (8%)	0.15	0.10
Less: retail margin (15%)	0.28	0.19
Less: freight	0.01	0.01
Ex-factory price per kg	1.56	1.07

75. The Ministry notes that its calculation of the deduction for a supermarket's margin differs slightly from that calculated by HWL but the difference is not significant. The Ministry also notes that the selling price and deduction amounts provided by HWL for the 850g can (the change to the VAT rate did not alter the amount originally calculated by HWL when rounded to the nearest cent) yield an ex-factory price of 1.06 per kilogram, but again the difference is not significant.

### 4.3 Comparison of Export Price and Normal Value

76. The following table compares the export prices and normal values calculated in the sections 4.1 and 4.2 above.

**Table 4.3: Dumping Margins**

	400g Can	850g Can
Ex-factory normal value	1.56	1.07
Ex-factory export price	0.67	0.67
Dumping margin	0.89	0.40
Dumping margin as % of export price	133%	60%

## 4.4 Conclusion

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

78. Based on the information contained in the application and obtained by the Ministry, the Ministry concludes that there is sufficient evidence for the purpose of initiating an investigation that preserved peaches from Spain have been exported to New Zealand at dumped prices, with dumping margins of 60 and 133 percent.

## 4.5 Import Volumes

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

80. HWL provided import data for the tariff item and statistical key covering the subject goods sourced from Statistics New Zealand for the year ended September 2010. These statistics show that imports from Spain represented 1.8 percent of total imports. HWL stated that “because of the proven impact of dumped peach imports in previous investigations, Heinz Wattie’s believes that the current import volume of less than 3% cannot be regarded as negligible”.

81. When considering the volume of imports, the Ministry normally uses the proposed period of investigation to assess whether the import volumes are

negligible.<sup>3</sup> If an investigation is initiated the period of investigation will likely be the year ended 31 December 2010. Following its application, HWL provided import data from Statistics New Zealand for October 2010 showing that, for the year ended 31 October 2010, imports for the tariff item and statistical key covering the subject goods represented 3.4 percent of total imports. Customs data for the tariff item and statistical key covering the subject goods for the year ended 31 December 2010 shows that imports from Spain represented 3.6 percent of total imports as shown in the table below.

**Table 4.4: Import Volumes of Preserved Peaches  
(Year to 31 December 2010)**

	<b>Kilograms</b>	<b>% of Total</b>
Imports from Spain	205,538	3.6%
Imports from Other Countries	5,465,300	96.4%
Total Imports	5,670,838	

82. Import volumes of the subject goods for the year ended 31 December 2010 are therefore above the 3 percent negligibility threshold in Article 5.8 of the Agreement. In any event, the Ministry does not consider that imports below the negligible threshold is determinative, i.e. it does not mean that an application will automatically be rejected if imports are less than 3 percent of total imports.

83. However, before an investigation can be initiated, in addition to having a properly documented application, the Chief Executive of the Ministry must also be satisfied under section 10(1) of the Act that sufficient evidence has been provided that dumped imports have caused or threaten to cause material injury to a New Zealand industry. Whether, for the purposes of initiating an investigation, there is sufficient evidence that imports from Spain at the relatively low volumes shown in the table above threaten to cause material injury to HWL is considered in the injury section below.

## **Conclusion on Import Volumes**

84. Based on the information available, the import volumes of subject goods from Spain are not negligible.

---

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



## 5. Material Injury

---

### 5.1 Material Injury and Threat of Material Injury

#### Material Injury

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

86. Material injury is considered for the industry as a whole or, in the absence of information from all domestic producers, in relation to those producers that constitute a major proportion of the New Zealand industry, regardless of whether an application has been supported by all producers. Section 8 of the Act sets out in detail the matters that must be examined in any investigation to establish if material injury exists. In determining whether the evidence provided by HWL is sufficient in terms of section 10 the Ministry therefore takes guidance from the provisions of section 8 of the Act.

#### Threat of Material Injury

87. An application can be made on the basis of either current material injury or the threat of material injury. The application by HWL is based on a threat of injury. In assessing the sufficiency of the evidence of threat of injury the Ministry also takes guidance from Article 3.7 of the Agreement which states as follows:

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;
- (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.

## 5.2 Introduction

88. Investigations into dumping of canned peaches into New Zealand from several exporting countries have been carried out in recent years. Anti-dumping duties were imposed on preserved peaches from China on 21 August 2006, canned peaches from Greece in 1998 (most recently reassessed in November 2009) and canned peaches from South Africa in 1996 (a reassessment of all rates was most recently completed in February 2008 and a partial reassessment was completed in February 2010).

89. The historical financial information in the injury analysis section of this report is presented in years ended 30 April, which align with HWL's financial year, and covers the period 1 May 2007 to 30 April 2010. Forecast financial information is provided for the years ended 30 April 2011 and 2012. For the year ended 30 April 2011, HWL has provided forecast financial information for two scenarios: (i) if there had been no dumping of canned peaches from Spain and consequently no injurious effects; and (ii) continued dumping of canned peaches from Spain causing injurious effects during the period.

90. HWL provided sales revenue, cost of production, selling and administration expenses and EBIT for the years ended April 2008 to 2010 and provided forecast information for 2011 and 2012. HWL has stated that its forecasts are based on the following assumptions:

- [REDACTED] The price undercutting figure [REDACTED] has been used as a measure of injury [REDACTED].
- HWL has stated that the Wattie's brand in 2011 and 2012 will [REDACTED]. HWL has stated that the full effect of price undercutting has not therefore been used in the application. HWL considers that "the full effect of price undercutting would come into force in later years [REDACTED].

91. HWL has stated that [REDACTED]. HWL considers that the price pressure caused by Spanish canned peaches undercutting its prices would likely result in the [REDACTED].

would also have to be reduced. HWL stated that

92. HWL has advised that the historical data it has provided include the sales of both imported canned peaches and canned peaches it produced in New Zealand. HWL has stated that it endeavours to source New Zealand grown fruit for its peach canning operation and [REDACTED]. "In times of short supply, [it] is compelled to import canned peaches from [REDACTED] and other sources which are subject to trade remedies". HWL has been [REDACTED] importer from Spain and in the years ended April 2008 and 2009 was [REDACTED], but has not imported from Spain since December 2008.

93. As HWL imports canned peaches to make up for any shortfall in the local peach crop any trends in the data relating solely to the production and sale of like goods produced in New Zealand are likely to reflect variations in the domestic peach crop rather than either the impact of dumped imports or other factors. For the purpose of assessing the sufficiency of the evidence to determine whether an investigation should be initiated, the Ministry therefore considers that it can use the data that includes imported product as this will more clearly show any relevant trends in the data. Any investigation will, however, need to obtain from HWL data relating to the production and sale of like goods produced in New Zealand, to the extent it is available.

94. HWL considers that price undercutting, depression and suppression caused by dumped imports of canned peaches from Spain will result in a decline in output, sales, market share, profits, return on investments, and utilisation of production capacity. HWL also claims that there will be adverse effects on cash flow, inventories, employment and growth.

95. HWL also claims that [REDACTED].

96. HWL appears to have used price undercutting at the level of retail selling prices to calculate its loss in sales revenue. This approach could result in the loss of sales revenue being overestimated. The Ministry notes that HWL forecasts a decrease in sales revenue between 2011 and 2012 of \$[REDACTED]. The Ministry has calculated price undercutting at the ex-wharf and ex-importer's store levels below in Table 5.4. If the amount of price undercutting at the ex-wharf level is applied to HWL's sales volume in 2010, it is estimated HWL would suffer a loss of sales revenue of \$[REDACTED], which is relatively close to the amount of revenue loss forecast in 2012.

97. For purposes of considering initiation, therefore, the Ministry will use HWL's figures. Any investigation will however need to test further the accuracy of forecast information.

### 5.3 Import Volume Effects

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

#### Historic Volumes

99. HWL has provided monthly New Zealand Statistics import volume figures for the calendar years 2005 to 2009 and the year ended 31 October 2010. The Ministry has created the following table using Customs data for years ended April and for the year to date 31 October 2010.

100. The Ministry has excluded imports by HWL from the Customs data in order to avoid double counting of these imports in the calculation of the total New Zealand market and to more clearly show the volumes of injurious imports (i.e. imports of the subject goods by firms other than HWL). The goods description in the Customs data shows that some of the imports are preserved peaches in containers exceeding 4.0kg and are therefore not subject goods. Any investigation will need, to the extent possible, to exclude non-subject goods from the import volume figures.

**Table 5.1: Import Volumes (Kilograms)**

	2008	2009	2010	2011 (Oct.)
Imports from Spain*				
Imports from other countries*				
Total imports*				
NZ industry sales**				
NZ market				
<i>As % of consumption:</i>				
Imports from Spain*				
Imports from other countries*				
NZ industry sales**				
<i>As % of NZ industry sales:</i>				
Imports from Spain*				
Imports from other countries*				
<i>Change on previous year:</i>				
Imports from Spain*				
Imports from other countries*				
Total imports*				
NZ industry sales				



NZ market				
% Change:				
Imports from Spain*				
Imports from other countries*				
Total imports*				
NZ industry sales**				
NZ market				
* Excludes imports by HWL				
** Includes sales of imported canned peaches				

101. Historical import data shows that imports from Spain in the years ended April 2008, 2009 and 2010 were at very low levels relative to consumption and the New Zealand industry's sales. In absolute terms imports from Spain in the first six months of the year ended April 2011 more than doubled previous yearly imports and increased approximately threefold relative to consumption and approximately six fold relative to the New Zealand industry's sales. These increases in the first six months of the year ended April 2011 were, however, from a very low base and relative to both consumption and to the New Zealand industry's sales were still at a fairly low level.

### Likelihood of Increased Imports

102. The evidence provided in support of a likely significant increase in imports (including that in support of the forecast figures shown above) has been assessed below by the Ministry, first in terms of the framework set out in Article 3.7 of the Agreement, and then by looking at other relevant factors.

### Rate of Increase

103. Analysis of Customs data has allowed the Ministry to identify imports contained in the import data that are not subject goods, for example peaches packed in 200 kilogram drums. If non-subject goods and imports by HWL are excluded from the import figures, imports in kilograms for years ended October are [redacted] for 2008, [redacted] for 2009 and [redacted] for 2010.

104. There were no imports of canned peaches from Spain from May to July 2010. The volume of imports of preserved peaches from Spain in the year to 31 October 2010 was more than 6 times higher than the import volume in each of the previous two years ended October, demonstrating a significant rate of increase of imports of canned peaches from Spain.

105. The Ministry is satisfied that sufficient evidence has been provided of a significant rate of increase of dumped imports into the domestic market indicating the likelihood of substantially increased importation.

### Exporters' Capacity

106. HWL has stated that Spanish canned peaches producers have "huge surplus capacity" which makes their product easily available to importers. HWL provided

a report from the USDA Foreign Agricultural Service dated 13 October 2010 titled "Spain Canned Deciduous Fruit Annual 2010". This report estimates that production of canned peaches for the market year beginning June 2010 will be 85,000 metric tons, resulting in ending stocks, after exports and domestic consumption, of 40,000 metric tons. The report notes that the sector has experienced significant consolidation with economic and producer pressure cutting the number of canned peach processing plants although capacity has remained about the same.

107. Under Article 3.7 of the Agreement, account also needs to be taken of the availability of other export markets to absorb any additional exports. The USDA Foreign Agricultural Service report notes that, while Spain is the second largest exporter, after Greece, it only exports a few thousand tons outside of the EU – an estimated maximum 9,500 metric tonnes of a total 45,000 metric tons exported in the 2010 market year. The main export markets outside of the EU are the United States of America and the Middle East. Total exports have remained fairly stable over the past couple of years. The USDA report notes that "the competitiveness of suppliers like China and some Latin American countries is significantly affecting the Spanish exports".

108. HWL has noted that "the entire New Zealand retail [canned] peach market is [REDACTED] so there is excess capacity for Spanish canned peaches to capture the entire New Zealand retail market at dumped prices".

109. The Ministry is satisfied that sufficient evidence has been provided that Spanish exporters have sufficient freely disposable capacity to substantially increase dumped exports to New Zealand and that other export markets are unlikely to absorb that capacity to such an extent as to prevent a substantial increase in exports to New Zealand from occurring.

### **Effects of Prices on Demand**

110. In section 5.4 below, the Ministry has concluded that there is evidence that prices of the subject goods are significantly undercutting HWL's prices.

111. Based on the evidence of the level of price undercutting, the Ministry is satisfied that sufficient evidence has been provided that imports of canned peaches from Spain are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports.

### **Inventory Levels in Spain**

112. The figures in the USDA Foreign Agricultural Service report show that ending stocks in the Spanish market have been increasing over recent years, from 30,000 metric tons in 2008/09 to 35,000 metric tons in 2009/10 and the estimated 40,000 metric tons in 2010/11.

113. The Ministry is satisfied that sufficient evidence has been provided that significant inventories are held in Spain to allow export markets such as New Zealand to be supplied with surplus product.

## Other Factors

114. HWL has alluded to the ease of importation into and distribution throughout New Zealand. HWL has stated that “the importer understands the peach market” due to previous distribution of other products and brands using “an established distribution and customer interface”. HWL has pointed out that the current importer of Spanish canned peaches previously achieved a 10 percent share in the New Zealand market for canned peaches.

115. The Ministry is satisfied that sufficient evidence is available to show that ease of importation and existing distribution channels would facilitate the supply of Spanish canned peaches in the New Zealand market.

## Conclusion on Import Volumes

116. There is evidence that import volumes of the subject goods have increased significantly in absolute terms, and relative to production and consumption in New Zealand in the six months to October 2010 when compared to imports over the preceding three years ended April, although the imports from Spain over this six month period were still at a relatively low level.

117. There is evidence of a significant rate of increase of dumped imports into the domestic market, Spanish exporters have sufficient freely disposable capacity and surplus inventories, prices are low enough to encourage more demand for canned peaches from Spain, and there is ease of importation into and established distribution channels in the New Zealand market. These factors support the likelihood of substantially increased importation.

## 5.4 Price Effects

118. Sub-section 8(2) of the Act sets out several price effects that need to be considered when assessing material injury. These are price undercutting, price suppression and price depression. Each of these is set out below.

### Price Undercutting

119. Price undercutting refers to the extent to which the prices of the dumped goods represent significant price undercutting in relation to prices in New Zealand for like goods of New Zealand producers. Prices are compared at the point that the imported goods first compete with the goods made in New Zealand (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.

120. HWL refers to three distinct levels of trade in the New Zealand market for canned peaches:

- Ex-manufacturer (ex-factory), namely ex-HWL;
- Ex-importer direct to customer (supermarket); and

- Direct to supermarket from the exporter.

121. In the most recent reassessment of duties on canned peaches, namely the February 2010 reassessment of anti-dumping duties on canned peaches from South Africa, the level of trade at which the canned peaches were considered to first compete in the New Zealand market was determined to be ex-factory for HWL, ex-importer's store for one importer and ex-wharf for some other parties.

122. HWL has calculated a retail selling price for canned peaches from Spain based on import data, other import costs based on HWL equivalent costs for importing, and an importer's margin based on HWL's understanding of the market.

123. To estimate the retail selling price per kilogram of Spanish canned peaches, HWL used import data from Statistics NZ for the 6 months ended October 2010 to arrive at a per kilogram value for duty or FOB value of NZD1.22. HWL then added shipping costs (NZD [REDACTED]), import duty (NZD0.06), port charges (NZD [REDACTED]), transport to importer's store (NZD [REDACTED]), an importer's margin ([REDACTED]%) and GST (15%).

124. The Ministry considers that the amounts of these adjustments are reasonable when compared to similar adjustments accepted by the Ministry in a previous investigation, although the retail selling price for imported product may be understated slightly for some imports by NZD [REDACTED] because importers' costs of storage and administration do not appear to have not been added, unless they are included in the importers' margin. HWL's figures are considered to represent a reasonable estimate for purposes of considering whether a dumping investigation should be initiated.

125. Using HWL's figures, the Ministry has estimated an ex-wharf value of \$ [REDACTED] and an ex-importer's store value of \$ [REDACTED] per kilogram for canned peaches from Spain.

126. The following table compares the average ex-wharf value and ex-store price for imports from August to October 2010 with HWL's average ex-factory price to establish the extent of price undercutting. The undercutting is measured as a percentage of HWL's average net selling price in the year ended 30 April 2010. HWL's average price for 2011 was estimated by HWL to be very similar to its average net selling price for 2010 if dumped Spanish imports were not in the New Zealand market.

**Table 5.2: Price Undercutting  
(NZD per Kilogram)**

	2010
HWL's Average Ex-factory Price	[REDACTED]
Importer's Ex-wharf Value	\$ [REDACTED]
Amount of Undercutting	[REDACTED]
Percentage Undercutting of HWL's Prices	[REDACTED]
Importer's Ex-importer's Store Price	\$ [REDACTED]
Amount of Undercutting	[REDACTED]



127. Table 5.2 indicates significant price undercutting by Spanish imports when HWL's average ex-factory selling price is compared to the average prices of Spanish preserved peaches at both the ex-wharf and ex-importer's store levels.

128. HWL has also provided an estimate of the extent of price undercutting at the retail level. HWL has estimated a retail selling price by adding to the importer's ex-store price shown in Table 5.2 above an estimated importer's profit margin and has compared this price with the average retail selling prices of its Oak and Wattie's brands, taken from AC Neilsen data, for the three months to April 2010. Details are shown in the table below.

**Table 5.3: Price Undercutting (NZD per Kilogram)**

	Oak	Wattie's
HWL's Retail Selling Prices		
Importers' Estimated Retail Selling Price		
Amount of Undercutting		
Percentage Undercutting of HWL' Prices		

129. Table 5.3 above shows evidence of significant undercutting by Spanish canned peaches of HWL's retail selling prices of canned peaches.

**Price Depression**

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

131. As outlined in paragraphs 89 to 91 above, HWL has explained how its HWL maintains a HWL has explained that prices for the have been forced down in the past when dumped imports have caused loss of sales volume and market share and the

132. HWL provided financial information to enable the Ministry to assess whether it has suffered price depression during the injury period. The following tables show HWL's average selling prices per kilogram of canned peaches from 2008 to 2010 and forecast average selling prices for 2011 and 2012 in the presence and in the absence of dumped imports from Spain. (The prices forecast in the presence of dumped imports have been prepared on the basis outlined in paragraph 90 and

are considered reasonable for initiation purposes.) HWL’s average prices are at the ex-factory level and have been compared with the average selling price in the year ended April 2010, being the most recent year unaffected by dumped imports.

**Table 5.4: Price Depression  
(NZD per Kilogram)**

				With Dumped Imports		Without Dumped Imports	
	2008	2009	2010	Est. 2011	Est. 2012	Est. 2011	Est. 2012
Average Selling Prices							
As % of 2010			100%				

133. Table 5.4 shows that HWL’s average selling price for canned peaches increased from 2008 to 2010, but, in the presence of dumped imports, is forecast to decline significantly in the years ending April 2011 and 2012 to well below the selling prices forecast in the absence of dumped imports. By 2012, HWL’s average selling price is forecast to be well below the average selling price in 2008. The forecast information indicates the likelihood of significant price depression.

**Price Suppression**

134. Price suppression exists when New Zealand manufacturers are unable to fully recover increases in costs by raising sale prices.

135. HWL has stated that price suppression would exist due to price undercutting and price depression, “with Heinz Wattie’s being unable to offset the significant undercutting by means of cost savings and price increases elsewhere. In fact the opposite effect would occur with Heinz Wattie’s cost base increasing due to market share being taken by dumped Spanish canned peaches causing processing costs per tonne to increase”. HWL has pointed out that if dumped canned peaches continued to trade in the New Zealand market at injurious prices HWL “ [REDACTED] ”.

136. The Ministry has compared HWL’s cost of sales and selling and administration expenses as a percentage of sales revenue from 2008 to 2010 and as forecast by HWL for 2011 and 2012 in both the presence and absence of dumped imports from Spain. The following table shows the resulting calculations.

**Table 5.5: Price Suppression  
(NZD per Kilogram)**

				With Dumped Imports		Without Dumped Imports	
	2008	2009	2010	Est. 2011	Est. 2012	Est. 2011	Est. 2012
Average Selling Prices							
Cost of Sales							
Selling and Admin.							
Total Costs							
Total Costs as % of Ave Selling Price							

137. Table 5.5 shows that, in the presence of dumped imports, total costs as a percentage of sales revenue are forecast to increase significantly in 2011 and 2012 compared both to the three preceding financial years and to the forecast in the absence of dumped imports. The data indicates HWL will be unable to recover increases in costs in 2011 and 2012 and will suffer price suppression in those years.

## Conclusion on Price Effects

138. HWL's forecast information indicates that its canned peaches business will likely suffer from price undercutting, price depression and price suppression in 2011 and 2012.

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

## 5.5 Economic Impact

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

### Output and Sales

141. HWL has stated that the price effects caused by dumped canned peaches from Spain will result in a decline in output and sales.

142. HWL has stated that as a [REDACTED]. Based on price undercutting of retail sales as shown above in Table 5.3 and sales volumes for the year ended 31 October 2010, HWL provided a table showing a loss of sales

revenue of \$ [REDACTED]. This would represent total sales revenue lost at the level of retail sales to consumers however, rather than sales revenue lost by HWL.

143. HWL stated that its production volume closely follows its sales volume. HWL provided historical financial information for sales volume and sales revenue for the years ended April 2008 to 2010 and forecast figures for 2011 and 2012 both in the presence and absence of dumped preserved peaches from Spain, as shown in the following table.

**Table 5.6: Sales Volume (kilograms) and Sales Revenue (NZD)**

				With Dumped Imports		Without Dumped Imports	
	2008	2009	2010	Est.2011	Est.2012	Est.2011	Est. 2012
Sales Volume	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
As % of 2010	[REDACTED]	[REDACTED]	100%	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Sales Revenue	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
As % of 2010	[REDACTED]	[REDACTED]	100%	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Revenue/kg	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
As % of 2010	[REDACTED]	[REDACTED]	100%	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

144. HWL has forecast that sales volumes in 2011 and 2012 will be [REDACTED] with and without dumped imports, due to its [REDACTED], indicating that HWL's production and sales volumes are unlikely to be adversely affected in 2011 and 2012. The sales volume forecast shows [REDACTED] in sales volume from 2010 to 2011 followed by [REDACTED] from 2011 to 2012 [REDACTED] sales volumes in 2012 are still forecast to be [REDACTED] achieved in 2010.

145. As a consequence of HWL's [REDACTED], sales revenue is forecast to fall significantly in 2011 and 2012 in the presence of dumped imports when compared to the forecast in the absence of dumped imports. Total sales revenue is forecast to [REDACTED] in 2011 from 2010 [REDACTED] the presence of dumped imports because of the [REDACTED], but revenue per kilogram is forecast to decline significantly over the same period. Total revenue in 2012 in the presence of dumped imports is forecast to decline sharply when compared to 2011 and when compared to forecast revenue in 2012 in the absence of dumped imports.



146. Forecast sales revenue relating to dumped imports being present in the market, has been based on the assumptions set out in paragraphs 90 to 91 above which the Ministry considers to be reasonable for initiation purposes. These forecasts indicate that HWL will suffer a significant loss of sales revenue should imports of the allegedly dumped goods continue to enter the New Zealand market.

## Market Share

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

148. In its initial application HWL noted that all previous dumping investigations had shown that the entry of dumped peaches has resulted in HWL losing market share. HWL also provided AC Nielsen data, for the four weeks to 10 October 2010, for a supermarket in Wellington where it said the canned peaches from Spain first appeared (under the "Cinderella" brand). This data shows that over this period the canned peaches from Spain secured a [REDACTED] percent share of sales in this particular supermarket while HWL [REDACTED] percentage points. HWL said it expects this share will increase given that these are the first sales by this brand.

149. HWL has noted that its share of the nationwide canned peaches market in the last year was [REDACTED] percent. HWL said it expects that it would lose nationwide the same relative share of the market as occurred in the Wellington supermarket, which would equate to a loss of [REDACTED] percentage points of market share nationwide.

150. Subsequent to lodging its initial application, at the Ministry's request, HWL provided forecasts for 2011 and 2012 for the situation both with and without dumped imports, as outlined variously above. As noted above under "Output and Sales", HWL's forecast sales volumes for 2011 and 2012 [REDACTED]. These forecasts therefore assume no loss of market share as a result of dumped imports.

151. This is somewhat at variance with HWL's claims in its initial application and may be as a result of simplifying assumptions made in order to prepare the forecasts. Given that HWL has [REDACTED] market share to imports from Spain it would appear likely that some further market share loss would result if imports from Spain continue to increase and any investigation will need to further consider the assumptions underlying these forecasts.

152. The following table provides market share information from 2008 to October 2010. This table has been prepared on the same basis as Table 5.1 above, i.e. the NZ industry's sales include HWL's imports and HWL's imports have been excluded from the import volume figures.

**Table 5.7: Market Share (Kilograms)**

	2008	2009	2010	2011 (Oct.)
NZ industry's sales*				
Imports from Spain**				
Imports from other countries**				
NZ market				
<i>As % of NZ Market:</i>				
NZ Industry's sales				
Imports from Spain				
Imports from other countries				
* Includes HWL's imports				
** Excludes HWL's imports				

153. Table 5.7 shows that the New Zealand industry's market share decreased from 2008 to 2010 and then increased in the six months to October 2010 to its highest level since 2008. Import volumes from Spain from 2008 to 2010 were at low levels and the loss of the NZ industry's market share over this period can be attributed to imports from other countries. The market share held by imports from Spain was at negligible levels from 2008 to 2010 but increased significantly in the six months to October 2010. The market share gain by imports from Spain in the six months to October 2010 is, however, attributable to market share lost by imports from other countries.

154. The changes in market share in Table 5.7 need to be treated with some caution. As noted above, because HWL's sales figures include its sales of imported product, HWL's imports have been excluded from the import volume figures to avoid double counting. It is likely, however, that some of the imports by HWL in any given year were not sold until the following year and this timing factor may distort the total NZ market size figures and the shares held by the three categories shown in the table, particularly in the six months to October 2010.

155. Having said that, Table 5.7 does not show any loss of market share by HWL that is attributable to imports from Spain, which is consistent with the sales volume forecasts provided by HWL but at variance with what HWL claimed in its initial application. As noted in paragraph 151 above, any investigation will need to consider to what extent imports from Spain are likely to result in a loss of the market share held by the NZ industry.

## Profits

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

157. HWL provided historical financial information for EBIT for the years ended April 2008 to 2010 and forecast figures for 2011 and 2012 in the presence and absence of dumped preserved peaches from Spain, as shown in the following table.

**Table 5.8: EBIT**

	2008	2009	2010	With Dumped Imports		Without Dumped Imports	
				Est. 2011	Est. 2011	Est. 2011	Est. 2011
EBIT							
Change from Previous Year							
EBIT per Kilogram							
Change from Previous Year							

158. The forecast EBIT figures for 2011 and 2012 in Table 5.8 are derived from the estimates of sales volume and revenue considered above, i.e. the loss of sales revenue between the forecast with dumping and the forecast without dumping equals the loss of EBIT between these two scenarios. Table 5.8 indicates that HWL's EBIT and EBIT per kilogram will move from a [REDACTED] in 2010 to [REDACTED] in 2011 and 2012 with dumping and show a significant difference between the EBIT achieved with dumping compared to without dumping. While HWL had [REDACTED] EBIT figures in 2008 and 2009, HWL's forecast EBIT figures for 2011 and 2012 (with dumping) are significantly lower than any of the previous years from 2008 to 2010.

## Productivity

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

160. HWL did not make any specific submissions regarding productivity. HWL provided its annual production volumes but did not provide information relating to the number of employees involved in the production of like goods.

161. Any investigation will need to obtain additional information regarding annual staff numbers and labour hours to fully evaluate the likely impact of imports of the subject goods on productivity.



171. The estimated margins of dumping are 133 percent for the 400g can and 60 percent for the 850g can. Price undercutting has been assessed on a per kilogram basis at 100 percent for HWL's Oak brand and 100 percent for the Wattie's brand.

172. The magnitude of the margins of dumping and the levels of price undercutting are all very significant and lend support to indications of the likelihood of injury being caused or threatened by dumped canned peaches from Spain.

### **Other Actual and Potential Effects**

173. The other adverse effects that the Ministry is required to consider are the actual and potential effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investments.

174. HWL has stated that "the loss of volume, sales revenue and profits from the dumped canned peaches imports from Spain will also have significant adverse effects upon Heinz Wattie's achievable . . . cash flow, inventories, employment and growth." Any investigation will need to obtain additional information to fully evaluate the impact of imports of the subject goods on the factors mentioned in the preceding paragraph over the injury period.

## **5.6 Causal Link**

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

176. 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 or a threat of 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 or there is a threat of material injury, it is caused by dumping.

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

178. HWL has commented in its application that the causal link between dumped imports of canned peaches and material injury has been established in previous investigations. HWL has also commented that "With the removal of countervailing duties on canned peaches from the EU and subsequent cheaper source for importers, the behaviour that has been demonstrated on previous investigations by importers continues to exist and therefore this causal link still remains in place as has been determined previously." The Ministry notes, however, that the comments by HWL about the demonstration of a causal link between dumped

imports and injury established in previous investigations relating to dumped imports of canned peaches does not in itself constitute evidence of a causal link between imports of the subject goods and a threat of injury to HWL.

179. Under causal link, HWL has also noted that there is a continued threat of injury from:

- Excess supplier capacity.
- The current importer of canned peaches from Spain having an in depth understanding of the New Zealand market through previously importing significant quantities of canned peaches and being likely to target the upcoming peak season.
- A quality source of supply that will compete directly with both the Wattie's and Oak brands.

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

## **5.7 Other Causes of Injury**

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

181. HWL has stated that no injury is being caused by imports from sources other than Spain. Injury caused by dumped imports from the significant export countries of China, Greece and South Africa has been addressed by the application of anti-dumping duties. HWL has noted that while Australian imports have significant market share in New Zealand, they have been found in previous investigations to have not contributed to injury.

182. Canned peaches are also imported from countries other than Spain, China, Greece, South Africa and Australia, but volumes are relatively small. HWL has pointed out that "Spain is now the lowest cost source of supply" and this is supported by the Statistics NZ data provided by HWL. For the year ended October 2010, the lowest average value for duty per kilogram was for Spain at NZD1.24, followed by Greece at NZD1.48, China at NZD1.57, South Africa at NZD2.23, Singapore at NZD2.34 and the Philippines at NZD2.96. HWL is not claiming it is being injured by imports from other countries.

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

183. HWL has stated that there does not appear to be any contraction in demand or changes in the patterns of consumption. HWL does note however that there is "the consumer perception that Spain is a quality product in comparison to some alternative sources".

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

184. HWL has stated that there does not appear to be any evidence of restrictive trade practices of, and competition between, overseas and New Zealand producers causing injury, other than dumping causing injury.

## **Developments in technology**

185. HWL has stated that it “does not believe that there is any evidence of a technology development relevant to a consideration of material injury”.

## **Export performance of the New Zealand producers**

186. HWL has stated that it “exports a small volume of canned peaches (less than 1 percent) to the Pacific Islands”.

187. Due the very small volumes of preserved peaches exported by HWL, the Ministry considers that there is unlikely to be any injury caused by HWL’s export performance.

## **Productivity of the New Zealand producers**

188. HWL did not make any specific comments on its productivity.

## **Imports by the Industry**

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

190. HWL has advised that at times of short supply of peaches in New Zealand, it “is compelled to import canned peaches from [REDACTED] and other sources which are subject to trade remedies”. HWL considers that these imports do not cause it any injury due to the fact that HWL’s canned peach imports:

- are labelled the same as New Zealand-produced products (except for country of origin);
- are sold at the same regular price; and
- protect the market share, shelf space and consumer goodwill for New Zealand canned peaches at a time of shortage.

191. HWL has stated that it was [REDACTED] importer of canned peaches from Spain from 2005 to 2008 due to crop shortages in New Zealand. HWL has stated that it marketed and sold the Spanish canned peaches on the same terms as its local production and the imports did not cause injury to HWL.

192. Customs data shows HWL imported the following quantities of canned peaches from Spain in 2008 and 2009 (there were no imports in 2010 or in the six months to October 2010).

**Table 5.9: HWL's Imports (kilograms)**

2008	
2009	

193. Any investigation will need to examine the impact of HWL's imports of preserved peaches from Spain to the New Zealand industry.

### **Conclusion on other Causes of Injury**

194. There is no evidence that material injury has been caused or is threatened by other factors. Any investigation will need to consider these factors in more detail, including any evidence provided by parties other than HWL.

## **5.8 Conclusions Relating to Material Injury**

### **Volume Effects**

195. Import data shows that import volumes of preserved peaches from Spain have increased significantly in the year ended October 2010 in absolute terms and in relation to production and consumption in New Zealand, but this has been from a very low base and imports relative to both production and consumption remain at a fairly low level. The rate at which imports have increased and the level at which they are priced indicates, however, there is a likelihood of substantially increased imports.

196. There is evidence that the exporters in Spain have sufficient freely disposable spare capacity to substantially increase exports to New Zealand and evidence that other export markets are unlikely to absorb that capacity to such an extent as to prevent a substantial increase in exports from occurring. There is also evidence that the level of price undercutting is sufficient to have a significant depressing or suppressing effect on prices such as to likely increase demand for further imports.

197. There is evidence that significant inventories of the subject goods are held in Spain that would allow substantial exports to be made to New Zealand from surplus stocks. There is also evidence that importers have the capacity and distribution channels to substantially increase imports.

### **Price Effects**

198. HWL has provided evidence on the effects of the imports of the subject goods on its selling prices and the consequent impact on the New Zealand industry. Information has been provided to show that HWL is experiencing significant price undercutting. Forecast information indicates that HWL is likely to experience



significant price undercutting, price depression and price suppression in 2011 and 2012 as a result of imports of the subject goods.

## Economic Impact

199. The evidence provided by HWL indicates that the extent of price undercutting will likely result in a significant loss of sales revenue, although HWL will seek to [REDACTED]. There is evidence that this likely loss of sales revenue will likely cause a significant loss of EBIT. There is no clear evidence of a likely loss of market share.

200. HWL did not provide information specific to cash flow, productivity, employment and wages or its ability to raise capital and investments.

## Causal Link

201. HWL has provided sufficient evidence that the subject goods from Spain are dumped and has also provided sufficient evidence that there is a threat of material injury.

202. Establishing the existence of a threat of material injury by applying the guidelines in Article 3.7 of the Agreement inherently involves determining a causal link between the allegedly dumped imports and the existence of the threat, i.e.:

- There has been a significant rate of increase of imports of the subject goods from Spain.
- There is sufficient freely disposable capacity held by exporters in Spain to allow them to substantially increase their exports of the subject goods to New Zealand.
- The subject goods are significantly undercutting the prices of the New Zealand industry such as to have a significant depressing or suppressing effect on domestic prices and would likely increase demand for further imports.
- There are significant inventories of the subject goods held in Spain that would allow substantial exports to be made to New Zealand from surplus stocks.

203. There is no evidence of other causes of injury sufficient to break the inferred link between the subject goods and the threat of material injury.

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

## Overall Conclusion on Injury

205. Mindful of the test set out in *Kerry (NZ) Ltd v Taylor*<sup>4</sup> the Ministry is satisfied that evidence of a threat of material injury sufficient to warrant the initiation of an investigation has been provided by HWL.

---

<sup>4</sup> (1991) 2 PRNZ 393

## 6. Conclusions

---

206. On the basis of the information available, the Ministry concludes that, for the purposes of initiating an investigation, sufficient evidence has been provided that:

- a. preserved peaches from Spain are being dumped;
- b. material injury to the New Zealand industry is threatened; and
- c. imports of the subject goods are the cause of the threat of material injury.



## 7. Recommendations

---

207. Following the conclusion above, it is recommended in accordance with section 10 of the Act, that the Chief Advisor, Trade Rules, Remedies and Tariffs Group, acting under delegated authority from the Chief Executive initiate a dumping investigation into preserved peaches from Spain.

.....

.....

.....

Investigation Team  
Trade Rules, Remedies and Tariffs Group

Agree/Not Agree

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