Non-Confidential

Final Report

Preserved Peaches
From
Spain

Dumping and Countervailing Duties Act 1988

Dumping Application

Ministry of Economic Development

August 2011

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Abbreviations

The following abbreviations are used in this Report:

Act (the)	Dumping and Countervailing Duties Act 1988
Agreement (the)	Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994
Alcurnia	Alcurnia Alimentacion SL
C + F	Cost and Freight
Cofrusa	Conservas Y Frutas
EBIT	Earnings Before Interest and Tax
EFC Report	Essential Facts and Conclusions Report
Euroaliment	Euroaliment SL
Euromonitor	Euromonitor International
FOB	Free on Board
gms	Grams
Halcon	Halcon Foods SA
HWL	Heinz Wattie's Ltd
James Crisp	James Crisp Ltd
Kg(s)	Kilogram(s)
LDC	Less Developed Countries
Leos	Leos Imports & Distributors Pty Ltd
LLDC	Least Developed Countries
Minister (the)	Minister of Commerce
Ministry (the)	Ministry of Economic Development
Navarrico	Conservas El Navarrico
Pac	Forum Island Members of the South Pacific Regional Trade and Economic Cooperation Agreement
POI (dumping)	Period of Investigation (1 January to 31 December 2010)
VAT	Value Added Tax
VFD	Value for Duty
WTO	World Trade Organisation

Executive Summary

Introduction

An investigation into preserved peaches from Spain was initiated on 7 February 2011, following the receipt of an application for a dumping investigation from Heinz Wattie's Limited (HWL) claiming that preserved peaches are being imported at dumped prices and are threatening to cause material injury to the New Zealand industry.

HWL requested the application of provisional measures to prevent material injury being caused during the period of the investigation. The Minister of Commerce declined to impose provisional measures because the initial information collected during the investigation showed that the largest importer, James Crisp Ltd, had ceased importing the subject goods pending the outcome of the investigation, therefore, further imports of the subject goods were unlikely to occur in significant volumes to cause material injury to the New Zealand industry during the remainder of the investigation.

On 4 July 2011 the Ministry released the Essential Facts and Conclusions (EFC) Report which found that 100 percent of the volume of the preserved peaches imported from Spain during the POI were dumped, and that these goods were threatening material injury to the domestic industry.

Interested parties were given the opportunity to make submissions on the Ministry's conclusions in the EFC Report. The Ministry considered all submissions made in response to the essential facts and conclusions and has responded to these in this Report.

Preserved Peaches Subject to Investigation

The goods subject to the investigation are described as:

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

Dumping

Information obtained in the investigation established four Spanish manufacturers who supplied preserved peaches to New Zealand. Of the four manufacturers two used an exporter to facilitate their sales to New Zealand.

Information on export and domestic prices together with market information was requested from all parties. One manufacturer provided limited information and one manufacturer and one exporter provided minimal information. The Ministry received no information from other parties. In the absence of sufficient information from parties the Ministry has applied the provisions of section 6 of the Dumping and Countervailing Duties Act 1988 and established export prices and normal values by having regard to all available information, that being information provided by the industry, Heinz Wattie's Ltd and publicly available information.

The Ministry calculated a weighted average dumping margin for each Spanish manufacturer. As the Ministry had identified the manufacturers that supplied preserved peaches to New Zealand using an exporter a separate dumping margin was not calculated for these exporters.

The Ministry has established that 100 percent of preserved peaches imported into New Zealand over the calendar year 2010 (i.e. the period of the dumping investigation) were imported at dumped prices. The weighted average dumping margins ranged from 16 percent to 143 percent which are shown in more detail below.

Manufacturer/Exporter	*Weighted Ave. Export Price*	*Weighted Ave. Normal Value*	*Dumping Margin as % of Export Price*	*Vol of Dumped Imports (kgs)*
Alcurnia Alimentacion Sl	[redacted]	[redacted]	143%	[redacted]
Conservas el Navarrico	[redacted]	[redacted]	16%	[redacted]
Conservas y Frutas SA	[redacted]	[redacted]	77%	[redacted]
Halcon foods SA	[redacted]	[redacted]	35%	[redacted]
Total volume of dumped goods (Spain)				[redacted]
Total volume of non-dumped goods (Spain)				Nil
Import volume from other countries*				[redacted]
Total volume (all countries)				[redacted]
Dumped imports (Spain) as a % of total imports				3.80%

The figures shown above demonstrate that preserved peaches from Spain supplied to New Zealand over the period of investigation were imported at dumped prices. The Ministry is satisfied that it has found sufficient evidence of dumping as the dumping margins are more than de minimus i.e. the margins are greater than 2 percent, expressed as a percentage of export price and the volume of dumped imports are not negligible as they were found to account for more than 3 percent of imports of the like product imported into New Zealand.

Injury

HWL is the only producer of like goods in New Zealand, therefore, the Ministry considers that the company represents the New Zealand "industry" for the purpose of the investigation and in terms of the New Zealand Act.

The Ministry has concluded that:

- there has been a recent significant increase in imports of dumped goods from Spain indicating the likelihood of substantially increased importations imminently.

- there is evidence that Spanish exporters have sufficient freely disposable capacity and inventories to supply preserved peaches to New Zealand indicating the likelihood of substantially increased dumped imports into New Zealand, in the near future.

- there are significant levels of current price undercutting indicating that preserved peaches from Spain are entering New Zealand at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports.

- there continues to be few barriers to entry for an importer of preserved peaches in the New Zealand market and New Zealand importers and retailers have the existing distribution systems in place to facilitate the importation of significantly increased volumes of preserved peaches from Spain into New Zealand.

- further dumped exports are imminent and that, unless protective action is taken, material injury attributable to dumped imports will occur to the New Zealand industry in terms of a decline in sales revenue, a decline in profits and profitability, a decline in return on investments; and an adverse impact on growth.

The Ministry is satisfied that the New Zealand industry is threatened with material injury by dumped imports from Spain.

Conclusion

The Ministry has concluded that:

- the goods under investigation are being dumped; and

- by reason thereof material injury to an industry is being threatened.

Recommendations

The Ministry recommends that the Minister make a final determination that preserved peaches from Spain are dumped and by reason thereof material injury to the New Zealand industry is being threatened.

If the Minister agrees to the above recommendations, the Ministry consequently recommends that anti-dumping duties are imposed by way of reference (or bench-mark) prices. The following table sets out the recommended reference price rates of duty:

Spanish Supplier	*Reference Price (per kg)*	*Alternative Duty per kg (Cap)**
Conservas Y Frutas	NZ$[redacted]	€ [redacted]
Alcurnia	NZ$[redacted]	€ [redacted]
Halcon Foods	NZ$[redacted]	€ [redacted]
Conservas El Navarrico	NZ$[redacted]	€ [redacted]
Residual duty (all other suppliers)	€1.26	n/a

An alternative reference price for the four Spanish suppliers identified as exporting to New Zealand over the period of investigation has been set at the un-dumped price calculated for each supplier. This alternative reference price will apply where the non-injurious price (also calculated for each supplier) becomes higher than the un-dumped price, due to exchange rate movements, to ensure that the amount of anti-dumping duty collected does not exceed the margin of dumping. As the residual (all other suppliers) duty rate has been set at the un-dumped price, an alternative duty is not applicable.

1. Introduction

1.1 Application

1. 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.

2. On 7 February 2011, the Chief Executive of the Ministry, formally initiated an investigation into preserved peaches from Spain pursuant to section 10 of the Dumping and Countervailing Duties Act 1988 (the Act), on being satisfied that sufficient evidence has been provided that:

- preserved peaches imported from Spain are being dumped; and
- by reason thereof material injury to the New Zealand industry is being threatened.

3. The Ministry's investigation is required to establish both the existence and effect of the alleged dumping of preserved peaches from Spain and is conducted in accordance with the Act and the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the Agreement).

1.2 Consideration of Provisional Measures

4. The application from HWL requested that provisional measures be considered. The Minister of Commerce can impose provisional measures under section 16(1) of the Act at any time after 60 days from the date of initiation of an investigation, if he has reasonable cause to believe that injurious dumping is occurring and is satisfied that provisional measures are necessary to prevent further material injury to the industry during the remainder of the investigation period.

5. On 29 May 2011, the Minister of Commerce considered the imposition of provisional measures and concluded that the initial information collected during the investigation period showed that the largest importer, James Crisp Ltd, had ceased importing the subject goods pending the outcome of the investigation. On this basis, the Minister concluded that further imports of the subject goods were unlikely to occur in volumes significant enough to cause material injury to the New Zealand industry during the remainder of the investigation, and therefore it was not necessary to impose provisional measures.

1.3 Essential Facts and Conclusions

6. Written advice of the essential facts and conclusions as provided for under Section 10A of the Act were released to interested parties for comment on 4 July 2011. All submissions have been considered by the Ministry and taken into account in this report.

1.4 Disclosure of Information

7. 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. During the course of this investigation HWL requested copies of documents held on the Public File. No other interested party requested a copy of any documents from this file.

1.5 Participation in the Investigation

8. All interested parties have been given the opportunity to participate in the dumping investigation. The Ministry dispatched foreign manufacturers and exporters questionnaires as well as importers questionnaires. Of the six Spanish suppliers of preserved peaches to New Zealand, the Ministry received one manufacturer's questionnaire response, that provided limited information, and one manufacturer and one exporter responded by providing brief details on their exports (a more detailed explanation of the information provided to the Ministry can be seen later in this report under the relevant company heading). No other interested party provided the Ministry with information on their exports or on their sales on the domestic market.

9. The Ministry is required under Section 6 of the Act (which reflects paragraph 8 of Article 6 of the Agreement) to base its conclusions on the best information available if any interested party has not provided the necessary information within a reasonable period. A number of parties did not provide any information and some parties provided only limited information. The extent to which information gaps exist, and as a result best information has been relied upon, are discussed in the relevant sections of this report.

1.6 Report Details

10. In this report the years are ended 30 April and the values are in New Zealand dollars (NZD) unless stated otherwise. In tables column totals may differ from individual figures due to rounding.

11. The period of considering claims of dumping, the period of investigation, (POI) is the calendar year 2010, while the consideration of injury involves the evaluation of data from 1 May 2008 to 30 April 2011 (actual) and from 1 May 2011 to 30 April 2013 (projected).

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

1.7 Exchange Rates

13. Article 2.4.1 of the Agreement provides as follows:

> When the comparison under paragraph 4 *[of Article 2]* requires a conversion of currencies, such conversion should be made using the rate of exchange on the date of sale[8], provided that when a sale of foreign currency on forward markets is directly linked to the export sale involved, the rate of exchange in the forward sale shall be used. Fluctuations in exchange rates shall be ignored and in an

investigation the authorities shall allow exporters at least 60 days to have adjusted their export prices to reflect sustained movements in exchange rates during the period of investigation.

8 Normally, the date of sale would be the date of contract, purchase order, order confirmation, or invoice, whichever establishes the material terms of sale.

14. In establishing export prices most of the export sales were denominated in euro, the currency used in Spain and therefore an exchange of currencies was not required. For one exporter, however, the export sales were denominated in [redacted] dollars. For this exporter only, the Ministry converted the [redacted] dollars to euros using an exchange rate of [redacted] (obtained from an on-line website at http://www.x-rates.com/cgi-bin/hlookup.cgi), which is the average rate of the month in which the subject goods were imported into New Zealand. The exporter concerned did not furnish sufficient information for the actual date of sale to be determined and the Ministry has therefore used the date of import as the date of sale.

2. Interested Parties

2.1 Exporters

15. Table 2.1 below lists in alphabetical order the exporters and manufacturers who have been identified as exporting and/or manufacturing the subject goods. Information was sought from all parties but a number of them did not respond to the Ministry's request for information.

Table 2.1: Exporters and Manufacturers

Alcurnia Almentacion SL
Conservas El Navarrico
Conservas Y Frutas SA
Euroaliment SL
Halcon Foods SA
Leo's Imports & Distributors Pty Ltd

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

Alcurnia Alimentacion S.L.

17. Alcurnia Alimentacion S.L. (Alcurnia) is a Spanish manufacturer of preserved peaches (and other fruit preserves such as apricots and mandarins) selling to both the Spanish domestic market and the international market, mostly under the trade name "Alcurnia". Over the POI it made [redacted] preserved peach halves in 850gms cans to the New Zealand importer, [redacted].

Conservas El Navarrico

18. Conservas El Navarrico (Navarrico) is a Spanish manufacturer of peaches (as well as other fruit and vegetables) selling to both the Spanish domestic market and the international market, under the trade name "Navarrico". Its preserved peaches come in a variety of containers such as glass jars of 700gms and 2.65kg and tins (cans) of 840gms and 2.65kg net weight. The company exported [redacted] preserved whole peaches in glass jars of 2.65kg to New Zealand over the POI through the Spanish exporter/distributor, [redacted] which on-sold to the New Zealand importer, [redacted].

Conservas Y Frutas S.A.

19. Conservas Y Frutas S.A. (Cofrusa) is a Spanish manufacturer of preserved peaches (and other deciduous fruits and vegetables) packed in a variety of sizes from 220gms to 3.1kgs net weight, sold domestically under the trade name "Cofrusa". Over the POI Cofrusa exported [redacted] preserved irregular sliced

peaches of 420gms cans to New Zealand. It sells to the New Zealand importer, [redacted].

Euroaliment SL

20. Euroaliment (Euroaliment) is located in Spain and is an exporter/distributor for [redacted], a manufacturer of preserved peaches that are supplied to New Zealand.

Halcon Foods S.A.

21. Halcon Foods S.A. (Halcon) is a Spanish manufacturer of canned and bottled peaches (and other fruit and vegetable preserves) which it sells on both the Spanish domestic market and the international market. The company exported [redacted] preserved peach halves in 840gms cans to New Zealand over the POI through the [redacted] distributor exporter, [redacted] which on-sold to the New Zealand importer, [redacted].

Leo's Imports & Distributors Ltd

22. Leo's Imports & Distributors Ltd (Leo's) is located in Australia and is an exporter/distributor for [redacted], a manufacturer of preserved peaches that are supplied to New Zealand.

2.2 Importers

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

James Crisp Ltd
Mediterranean Group Ltd
On Trays Ltd
Sabato Ltd

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

James Crisp Ltd

25. James Crisp Ltd (James Crisp) imports preserved peaches direct from its Spanish supplier, [redacted]. It made a number of importations over the POI. The company supplied the Ministry with a detailed response to the Ministry's Importers Questionnaire, including import documentation (including commercial invoices from its exporter, [redacted], bills of lading, and bank documents showing payment records) relating to all its purchases of preserved peaches.

Mediterranean Group Ltd

26. Mediterranean Group Ltd (Mediterranean) imports preserved peaches direct from the Spanish producer/exporter, [redacted]. The company provided information to show that it imported [redacted] preserved peaches during the POI.

27. While Mediterranean did not provide a response to the Ministry's importer questionnaire, it provided the Ministry with import documentation (including a copy of the commercial invoice from its Spanish producer, showing the price it had paid for the goods, and bank documents showing payment records).

On-Trays Limited

28. On-Trays Limited (On-trays) imported [redacted] preserved peaches into New Zealand over the POI through the [redacted] distributor exporter, [redacted], which sourced the shipment from the Spanish producer, [redacted]. The company provided a partial response to the Ministry's Importers Questionnaire.

Sabato Limited

29. Sabato Limited (Sabato) imported [redacted] of preserved peaches into New Zealand during the POI through the Spanish exporter/distributor, [redacted], which sourced the shipments from the Spanish producer, [redacted]. The company did not provide a response to the Ministry's Importers Questionnaire.

2.3 New Zealand Industry

30. In order for anti-dumping action to be taken, there must be evidence that imported dumped goods are causing or threatening to cause material injury to an "industry" as defined by the Act. The Ministry's analysis of the New Zealand industry is discussed in the following section of this report.

3. New Zealand Industry

31. "Industry" is defined in section 3A of the Act as follows:

> 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.

32. "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:

3.1 Imported Goods

33. The goods subject to the investigation (subject goods) are described as:

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

34. Over the POI the subject goods exported from Spain to New Zealand were predominantly 420gm cans, but also included 850gm cans and 2.65kg glass jars. The contents range from whole peaches, peach halves and irregular sliced peaches and all cuts are preserved in syrup. The labelling varied from illustrating the name of the manufacturer to a brand specifically requested by the New Zealand importer. All of the imported peach products over the POI appear to be destined for the retail market in New Zealand.

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

Table 3.1: Working Tariff of New Zealand Classification

20.08	Fruit, 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, ground nuts and other seeds, whether or not mixed together]
	[- Pineapples]

			[-		Citrus fruit]
			[-		Pears]
			[-		Apricots]
			[-		Cherries]
2008.70			-		Peaches, including nectarines
2008.70.01	00K	kg	-	-	Cooked and preserved by freezing, not containing added sugar
2008.70.09	00L	kg	-	-	Other

36. Imports of preserved peaches, classified under the above tariff item and originating from Spain, are subject to Customs duty rate of 5 percent. Imports from a country that is a specified AANZFTA party, Canada, Malaysia, Thailand and a country that is a specified TPA party enter New Zealand free from the imposition of Customs duty. As from the first day of January 2012 imports from the People's Republic of China and Hong Kong will enter New Zealand free from the imposition of Customs duty.

37. This tariff item also includes importations of goods that are not under investigation such as nectarine pulp or puree, preserved peaches suspended in jelly and preserved peaches in containers exceeding 4.0 kg. These goods have been excluded from the Ministry's investigation.

3.2 New Zealand Produced Goods

38. 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.

39. HWL is the only New Zealand manufacturer of peaches in preserving liquid and produces preserved peaches in a range of styles (halves, slices and dices) that are packed in various media (such as syrup, fruit juice and lite) in can sizes of 410g, 820g and 2.95kg. The Weight Watchers brand, made by HWL, has been excluded from the injury analysis in previous dumping investigations into canned and preserved peaches because it is marketed by another company for use as part of a wider product, i.e. weight-loss programs and diet plans.

40. In terms of the containers in which the peaches are packed (i.e. cans as opposed to plastic pottles or glass jars), the Ministry notes that in a dumping investigation relating to "peaches in preserving liquid, in containers up to and including 4.0kg" from China completed in August 2006, it concluded that the canned

peaches produced by HWL were a like good to the subject goods which covered all types of packaging.

41. In response to the initiation of the investigation, James Crisp Ltd (James Crisp), an importer of preserved peaches from Spain, stated that the Ministry has overlooked the fact that canned peaches are internationally classified on the basis of grade, which is reflected in the prices charged by its Spanish supplier, and that irregular canned sliced peaches (of the type imported by James Crisp) can be materially distinguished from the regular halved, sliced and diced peaches produced by HWL. James Crisp identified the main differences as; the proportions of slices and non-slice pieces; irregularity of slice size; irregularity of appearance; and consequential reduced decorative market appeal when compared with the canned peaches produced by HWL.

42. HWL submitted, in response to James Crisp's claim, that there is no material distinction between the preserved peaches it produces and that imported by James Crisp. HWL said that preserved peaches are not sold in the New Zealand market by grade as they are in international markets and that the cut of the peach is not a factor in consumers buying decisions.

43. The Ministry has considered the argumentation and examined the information supplied by James Crisp to substantiate its position and has also considered evidence and submissions made by HWL in response to the claims by James Crisp. The Ministry has also sighted the contents of the canned peaches imported by James Crisp and notes they are not dissimilar in appearance to that produced by HWL. The Ministry does not consider there are differences in the physical characteristics between the two products that are large enough to suggest that the canned peaches produced by HWL are not like goods to those imported by James Crisp.

44. To determine whether the goods produced in New Zealand are like goods to the imported preserved peaches from Spain, 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

45. 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.

46. HWL produces canned peaches in the form of halves, slices or pieces. The composition of its preserved peaches is similar to the preserved peaches imported from Spain.

47. The description of imported goods from New Zealand Customs import data describes the goods generally as preserved peaches and does not in all instances identify the size of the container(s) and/or describe the type of pack e.g. glass, can or other form of packaging. The investigation has shown that the majority of preserved

peaches are being imported from Spain in 420gm cans, but there have been other imports of 850gm cans and 2.65kg glass jars. The peaches themselves are irregular sliced peaches in syrup, half peaches in syrup and whole peaches in syrup.

48. While no information has been forthcoming from the Spanish producers on their production methods, HWL noted in its application 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

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

50. HWL produces canned peaches for retail and food service sale in New Zealand. The investigation has uncovered no significant distinction between the function and usage of the subject goods and those produced by HWL. In effect, the domestically-produced and the imported goods have the same function and application as imported preserved peaches.

Pricing Structures

51. 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.

52. HWL has said that the canned peaches it produces compete at the same price point as the imported peaches. Information collected during the investigation shows significant price undercutting by the subject goods at the relevant level of trade in New Zealand. This information does not, in itself, indicate that the pricing structure of the subject goods differs in such a 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

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

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

55. The information collected during the investigation shows that while limited volumes of preserved peaches in larger-sized glass jars and cans have been imported and sold in food warehouses seemingly to satisfy the upper-end of the New Zealand market, the vast majority of the shipments consisted of sliced peaches in 420gm cans destined for supermarkets. The Ministry is not aware of any significant

difference between the marketing of preserved peaches from Spain and those produced by HWL.

Other

56. Part of the peach crop purchased by HWL is devoted to fruit salad products. The description of subject goods does not cover fruit salad products, and even though the fruit salad products produced by HWL include preserved peaches, the Ministry notes there are considerable differences in appearance, taste, and production methods between the product containing peaches only and that containing fruit salad. Fruit salad has been considered not to be a like good in previous peach investigations largely for not sharing the same physical characteristics as plain peach products and the Ministry has not seen any evidence that would lead it to a different conclusion in this case.

57. 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. The Ministry agrees that the tariff classification would be the same for the subject goods and the preserved peaches produced by HWL.

3.3 New Zealand Industry

58. 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, marketing and tariff classification.

59. The imported subject goods and the domestically produced goods are similar in appearance, although there is some variation in the range of styles (halves, slices and dices), the regularity of the cut and in the form of packaging. The imported goods are, however, sold mostly in the same container size, range of styles and various media as the domestically produced goods. Furthermore, the information available shows that the subject goods and the domestically produced goods are sold in the same outlets, perform the same function and have the same usage and are marketed in the same manner, which suggests that the two products compete directly with each other in the New Zealand market.

60. The Ministry does not consider fruit salad to be like the subject goods, due to considerable differences in appearance, taste, production and the product containing peaches only and that containing fruit salad. Fruit salad has been considered not to be a like good in previous peach investigations for these reasons.

61. On the basis of the information available, the Ministry concludes that the canned peaches produced in New Zealand by HWL (excluding the Weight Watchers brand), 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

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

4.1 Introduction

63. 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 December 2010, to determine whether preserved peaches from Spain were imported into New Zealand at dumped prices.

Methodology

64. Article 2.4.2 of the Anti-dumping Agreement states that the existence of margins of dumping shall normally be established on the basis of either a comparison of a weighted average normal value with a weighted average of prices of all comparable export transactions or by a comparison of normal value and export prices on a transaction-to-transaction basis.

65. The Ministry normally undertakes the comparison of export prices and normal values on a transaction-to-transaction basis. In this case, however, the Spanish manufacturers and exporters did not provide the Ministry with details of their individual domestic transactions and therefore the Ministry did not consider it appropriate to undertake the export price and normal value comparison (for each company) on a transaction-to-transaction basis. It has consequently carried out this comparison on a weighted average-to-weighted average basis.

66. Each manufacturer/exporter supplied New Zealand over the POI with only one size of preserved peaches and therefore it was not necessary to amalgamate the weighted average comparisons of separate sizes in order to calculate an overall weighted average dumping margin for each manufacturer.

67. Because the Ministry was able to identify the manufacturer that supplied the two companies that are exporters only (Leo's and Euroaliment) the Ministry has not calculated a dumping margin for these two companies. The Ministry has calculated a weighted average export price and normal value at the ex-factory level of trade for each Spanish manufacturer, which is the preferred point of comparison under Article 4.2 of the Agreement. To arrive at the ex-factory values for each manufacturer, the Ministry has made a number of deductions/allowances from the base export and domestic prices, where sufficient information was available, to ensure a fair comparison between export sales of preserved peaches and sales for domestic consumption in Spain.

68. The weighted average ex-factory export price was calculated by establishing an ex-factory price for each shipment then weighting the value according to the related export volume against the total export volume of that manufacturer over the POI. A weighted average normal value was calculated on the basis of average selling prices,

on the domestic market in Spain, over the POI. To calculate a dumping margin the weighted average export price has been subtracted from the weighted average normal value for each manufacturer and the difference has been divided by the weighted average export price to calculate a dumping margin for that manufacturer.

Information Used

69. Upon initiating the investigation, four Spanish producers and two exporters were identified as supplying preserved peaches over the POI. These parties were requested to provide details of their shipments to New Zealand and domestic market selling prices so that the Ministry could determine if their shipments to New Zealand are being dumped.

70. Only one Spanish manufacturer, Navarrico provided a response to the Ministry's foreign manufacturer's questionnaire. One manufacturer, Alcurnia and one exporter, Euroaliment SL, provided limited information on their export transactions.

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

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

- questionnaire responses (including importers);
- New Zealand Customs importation data;
- previous dumping investigations concerning imports of preserved peaches; and
- the application document and subsequent information provided by HWL.

4.2 Export Prices

Introduction

73. Export prices are the prices at which the goods are exported from Spain to New Zealand, adjusted to allow a fair comparison with the prices of goods sold in the country of export, as required by section 4 of the Act.

74. An explanation is given below of the calculation of export prices for each of the manufacturers of preserved peaches exported from Spain to New Zealand.

Alcurnia Alimentacion SL

Introduction

75. Alcurnia did not complete a manufacturer's questionnaire response. Alcurnia advised that it did not want to be involved in the investigation but it did provide brief details of its exports to New Zealand over the POI. Alcurnia is described on its website[1] as a family firm that is engaged in the manufacture of quality fruit preserves, especially peaches, apricots and mandarins.

76. In the absence of sufficient information from Alcurnia the Ministry has had regard to all available information in calculating export prices. Alcurnia is a manufacturer and exporter and supplies its preserved peaches directly to New Zealand. Alcurnia exported to New Zealand [redacted] kgs representing [redacted] percent of the total exports of subject goods over the POI.

Base Prices

77. To identify a starting point, i.e. base price, the Ministry has used information supplied by the importer, [redacted]. The importer provided the Ministry with copies of invoices issued by Alcurnia that show the type of product, quantity sold and amount paid by the importer. The importer purchases their products on an Free on Board (FOB) basis and it is this price point that the Ministry has used as its base price.

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

Adjustments

Inland Freight, Customs and Port Handling Charges

79. The Ministry has not been provided with any information on the costs, charges and expenses incurred in preparing preserved peaches for shipment to New Zealand that are additional to those incurred on sales for home consumption. HWL submitted in its application document a deduction of 1 percent of the FOB value as an estimate of the cost of inland freight. For initiation of this investigation the Ministry checked the reasonableness of HWL's estimation and found in previous investigations that on average the cost between FOB value and ex-factory was slightly higher at [redacted] percent of the FOB value, however, the latter figure does include other costs such as customs clearance and port handling. The Ministry considers it reasonable for the current investigation to apply [redacted] percent of the FOB value which was used in a previous investigation as it is based on all costs and it is information that has been applied and verified.

[1] http://www.alcurnia.com/mainEnglish.htm

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

Export Prices

81. From the base price and the adjustment outlined above, the Ministry has calculated a weighted average ex-factory export price of €[redacted] per kg for the preserved peaches exported to New Zealand by Alcurnia.

Conservas El Navarrico

Introduction

82. Navarrico is a Spanish manufacturer of peaches (as well as other fruit and vegetables) preserved in a variety of containers such as glass jars and cans, destined for the upper end of both the domestic and export markets. The company provided a partial response to the Ministry's foreign manufacturer's questionnaire.

83. The preserved peaches produced by Navarrico are supplied to New Zealand by an exporter, [redacted]. Over the POI there were [redacted] [redacted] totalling [redacted] kgs representing [redacted]% of the total volume of exports of the subject goods.

Base Prices

84. Navarrico did not provide any documentary evidence of the goods that it produced for supply to New Zealand. The exporter, [redacted] provided some information; size, weight and price of its exportations but copies of invoices were not provided. The Ministry has cross referenced the FOB value provided by the exporter with the information held by the New Zealand Customs Service and they are the same.

85. The Ministry has used as its base price the total FOB price of the [redacted] shipments divided by their total volume to derive a unit value of €[redacted] per kg.

Adjustments

Exporter's margin

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

87. Navarrico supplied in its questionnaire response its sales quantity and net sales revenue over the POI for its export sales to New Zealand but the quantity, and as a consequence the sales revenue, is not the same as either the figures provided to the Ministry by its exporter, [redacted] or what is recorded in the Customs data. It is unclear whether the quantity of subject goods supplied to New Zealand in Navarrico's questionnaire response refers to gross or net weight. The volume of kgs noted by Navarrico as export sales to New Zealand is less than the volume supplied to New Zealand over the POI, which may indicate that the exporter has supplied New Zealand with stock held in inventory to make up for the shortfall/demand of the New Zealand importer. Navarrico did not provide details of its selling prices to the

exporter, [redacted] and therefore it was not possible to calculate [redacted] margin. The Ministry, therefore, has looked at other available information to calculate a margin.

88. The Ministry has undertaken a number of dumping and review investigations concerning imports of canned peaches or preserved peaches originating from various countries. The Ministry considers that an investigation concerning a European country, such as Greece, would be the closest in terms of what would be considered a reasonable margin. The Ministry has therefore used the exporter's margin calculated in the 2002 review of the anti-dumping duty on canned peaches from Greece of [redacted] percent of the FOB value.

89. A downward adjustment of [redacted] percent of the FOB value as an exporters margin has been made of €[redacted] per kg

Inland Freight, Customs and Port Handling Charges

90. The Ministry has not been provided with any information on the costs, charges and expenses incurred in preparing preserved peaches for shipment to New Zealand that are additional to those incurred on sales for home consumption. To fill in this information gap the Ministry has used a cost of [redacted] percent of the FOB value, which has been established in previous investigations as the average cost of inland freight, customs and port handling charges, as explained in paragraph 79 above.

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

Export Prices

92. 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 peaches exported to New Zealand by Navarrico.

Conservas Y Frutas S.A.

Introduction

93. Cofrusa did not respond to the overseas manufacturer's questionnaire. The company is described on its website[2] as "Spanish Number ONE company in export of canned vegetables and fruit".

94. In the absence of sufficient information the Ministry has had regard to all available information in calculating export prices. The Ministry understands that Cofrusa is a manufacturer and exporter and supplies its preserved peaches directly to New Zealand.

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[2] http://www.cofrusa.es/en/index.php

95. According to the New Zealand Customs data Cofrusa exported over the POI [redacted] of subject goods totalling [redacted] kgs representing [redacted] percent of the total volume of exports of the subject goods.

Base Prices

96. To identify a starting point, i.e. base prices, the Ministry has used information supplied by the importer, [redacted]. The importer provided the Ministry with copies of import documentation that includes commercial invoices issued by Cofrusa (including the type of product, quantity sold, basis of purchase price and value in foreign currency). The importer purchases their products on a Cost & Freight (C+F) basis and the Ministry has used these prices as the base prices.

97. The base price is the total C+F prices of the [redacted] shipments divided by their total volume to derive a per unit value of €[redacted] per kg.

Adjustments

Overseas Freight

98. Based on the importer's purchase terms the value includes the cost of freight and therefore a downward adjustment for the cost of freight is required. To calculate the cost of overseas freight on a per kg basis the Ministry has analysed the New Zealand Customs Service import data. Customs data includes the cost of overseas freight for every import entry. The Ministry has calculated the cost of freight per kg by subtracting the declared FOB total foreign value (in euros) from the total invoice value of Cofrusa (in euros) and dividing the difference by the number of kgs, for each import entry.

99. A downward adjustment for the cost of freight ranges from €[redacted] to €[redacted] per kg.

Inland Freight, Customs and Port Handling Charges

100. The Ministry has not been provided with any information on the costs, charges and expenses incurred in preparing preserved peaches for shipment to New Zealand that are additional to those incurred on sales for home consumption. To fill in this information gap the Ministry has used a cost of [redacted] percent of the FOB value, which has been established in previous investigations as the average cost of inland freight, customs and port handling charges, as explained in paragraph 79 above.

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

Export Prices

102. From the base prices and adjustments outlined above, the Ministry has calculated a weighted average ex-factory export price of €[redacted] per kg for the preserved peaches exported to New Zealand by Cofrusa.

Halcon Foods SA

Introduction

103. Halcon did not complete a manufacturer's questionnaire response. Halcon is described on its website[3] as "the main canned fruit and vegetable producer in Spain and the first national exporter in the sector. We are all about quality, service and innovation".

104. The preserved peaches produced by Halcon are supplied to New Zealand by an exporter, [redacted] who is located in [redacted]. The exporter did not complete an exporter's questionnaire. In the absence of sufficient information the Ministry had regard to all available information in calculating export prices for sales by Halcon.

105. According to the New Zealand Customs data Halcon exported [redacted] of the subject goods to New Zealand over the POI totalling [redacted] kilograms (kgs) representing [redacted]% of the total volume of exports of the subject goods.

Base Prices

106. The New Zealand importer completed an importer's questionnaire which included details regarding the type of goods imported, basis of purchase price (ex-works) and value in both foreign and New Zealand currency, but no invoices were supplied to substantiate the figures.

107. The Ministry has used as the base price the FOB value disclosed in the New Zealand Customs data. The Ministry notes that the importer purchases its goods in [redacted] dollars on an ex-works basis but it is unclear whether the price refers to ex-works [redacted] or Spain. Customs data shows that the goods are exported from Australia but it is unknown if the goods are stored in [redacted] for distribution or if they just pass through an [redacted] port on their way to New Zealand. The Ministry considers that it does not hold sufficient information to use the ex-works price and therefore it has used Customs' FOB price as a base price as invoices and shipping documents are provided to Customs to substantiate the figures.

108. The FOB price is in [redacted] dollars and therefore, in accordance with Article 2.4.1 and footnote 8 of the Agreement, the Ministry has converted the value into euro using an exchange rate on the date of sale which has been taken as the date of import into New Zealand as no other details are known on when the material terms of sale occurred.

109. The base price is the FOB price which has been divided by the total volume of the shipment to derive a per unit value of €[redacted] per kg.

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[3] http://www.halcongrupo.com/user/contenido.php?content=31

Adjustments

Exporter's margin

110. No information has been provided that would assist in calculating an exporter's margin. In the absence of information from parties the Ministry has deducted a margin of [redacted] percent of the FOB value on the same basis as explained in paragraph 88 above.

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

Inland Freight, Customs and Port Handling Charges

112. The Ministry has not been provided with any information on the costs, charges and expenses incurred in preparing preserved peaches for shipment to New Zealand that are additional to those incurred on sales for home consumption. To fill in this information gap the Ministry has used a cost of [redacted] percent of the FOB value, which has been established in previous investigations as the average cost of inland freight, customs and port handling charges, as explained in paragraph 79 above.

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

Export Prices

114. From the base prices and adjustments outlined above, the Ministry has calculated a weighted average ex-factory export price of €[redacted] per kg for the preserved peaches exported to New Zealand by Halcon.

4.3 Normal Values

115. The normal value is usually the price at which the Spanish manufacturers sell preserved peaches in the domestic market in Spain. 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 Spain. Where an exporter makes no such sales, sales by other sellers of like goods in Spain can be used to establish normal values.

116. In the absence of relevant and suitable sales in the ordinary course of trade, normal values may 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 Spain, reasonable amounts for administrative and selling costs and other costs incurred in the sale, and a rate of profit normally realised on sales of goods of the same general category in the Spanish domestic market; or (b) established on the basis of selling prices to a third country.

117. 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 as possible to the same time and with due allowance for differences that affect price comparability.

118. 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. In this situation the provisions of section 6(1) of the Act require the Ministry to ascertain normal values having regard to all available information.

119. Navarrico provided some pricing information regarding its sales on the domestic market in Spain. No other Spanish manufacturer who sells preserved peaches on the domestic market in Spain provided any information. As a result of having insufficient or no information supplied to it by the Spanish manufacturers, the Ministry has had to derive normal values having regard to all available information.

120. In its application HWL provided evidence of normal values based on a retail selling price of canned peaches in Spain obtained from an online supermarket in Spain called Mercadona. At the time HWL obtained this information the retail price was €2.00 per kg (400g can) and €1.36 per kg (850g can). To calculate an ex-factory normal value, for comparison with the ex-factory export price, HWL identified three downward adjustments to the retail selling price; 8 percent VAT, 15 percent retail margin and inland freight of €0.01 per kg. The percentage of VAT was substantiated by information held on a website[4]; "News from Spain" dated 29 June 2010, and the retail margin is based on HWL's knowledge of the distribution of preserved peaches in New Zealand. The Ministry notes that it has also applied a retail margin of 15 percent in a recent review investigation concerning canned peaches from Greece. No evidence was supplied by HWL to support its estimation of the cost of inland freight.

121. James Crisp objected to the Ministry's acceptance of Mercadona's retail price as constituting sufficient evidence of a normal value in HWL application because its research revealed that this price includes free delivery up to a maximum distance of 10km and further within provincial capital cities and it is a price in force at the time the online purchase is invoiced. The Trade Commission of Spain also objected to the use of the online retail prices as a normal value, because it was obtained from one source rather than from a number of sources and the difference in price per kg between the sizes showed substantial inconsistencies.

122. Since the initiation of this investigation HWL has provided additional domestic pricing information from Euromonitor International[5] (Euromonitor). The pricing information includes a number of supermarket or hypermarket retail prices of canned or preserved fruit in various pack sizes that applied in June 2010, which includes retail prices for the types and can sizes of preserved peaches under investigation. Euromonitor has offices worldwide and it provides a market research service. Its

[4] http://news-spain.euroresidentes.com/2010/06/vat-in-spain.html

[5] http://www.euromonitor.com/

website states briefly that it provides strategy research, based on its customer's requirements, on consumer markets worldwide.

123. The Ministry has undertaken its own research regarding Spanish domestic pricing of preserved peach products and the grocery retail market in Spain. There are a number of websites that include material on the domestic market in Spain but information of the type and reliability required by the Ministry is not so readily available. The Ministry has located, however, a Report/Guide, dated September 2010, specifically on the Spanish grocery retail market. The Ministry considers the Report/Guide has been compiled from credible sources and its findings, where applicable, can be applied to establishing normal values together with information provided by Spanish exporters and HWL.

124. The Report/Guide is titled "Successfully Entering the Spanish Retail Market – an understanding of price margins and supply chain mechanics"[6] , which is held on Bord Bia, Irish Food Board's website[7]. The aim of the report (at page 4) is to provide Irish exporters with an in-depth insight into the supply chain mechanics in Spain's grocery retail market. The sources used in the preparation of the Report/Guide can be sighted at page 5 and pages 44 to 46.

125. The author of the Report/Guide, Bord Bia, was established by an Act of the Irish parliament and it is responsible, along with other matters, for the development of the horticultural industry in Ireland. According to its website its head office is located in Ireland and its regional offices are worldwide, with one located in Madrid, Spain. Bord Bia holds conferences on export markets for the benefit of its industry in Ireland and has posted to its website guides on various European markets[8]. Bord Bia's Report/Guide on Spain's grocery retail market is one of these guides. Bord Bia's Report/Guide provides information on value chain mechanics and how they apply to a number of Spanish retailers. The Report/Guide does not provide any pricing information on canned or preserved fruit products for the domestic market in Spain but it does include useful information on Spanish grocery retailer's margins and other considerations that may affect price comparability with export prices.

126. HWL submitted that the grocery retailer margins in Bord Bia's Report/Guide need to be treated with due caution. In their opinion preserved peaches are a commodity item and therefore the margins would be at the lower end of the spectrum. HWL said it is possible, dependant on how Bord Bia undertook its research, that the retailers may have reported inflated margins for new entrants into their domestic market to lift overall category margins.

127. The Ministry has had due regard to the information provided by HWL as well as from its own research. An explanation is given below of the calculation of normal

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[6] http://www.bordbia.ie/eventsnews/ConferencePresentations/MarketplaceSeminar2010EuropeanGuides/Spain%20Guide.pdf

[7] http://www.bordbia.ie/aboutus/pages/default.aspx

[8] http://www.bordbia.ie/eventsnews/conferencepresentations/pages/postmarketplaceseminar2010.aspx

values for each of the manufacturers and exporters that supply Spanish preserved peaches to New Zealand.

Alcurnia Alimentacion SL

Introduction

128. Alcurnia provided brief details on its export sales but did not provide any information on its domestic sales. The Ministry has therefore had due regard to all available information.

129. Alcurnia's website provides information on the type of products it produces and sells but there is no information concerning its domestic pricing or terms of trade.

130. Section 5 of the Act sets out the requirements for establishing normal values. The first method that must be considered under this section to establish normal value is the price paid for like goods sold in the ordinary course of trade for home consumption in arm's length transactions or, if like goods are not sold by the exporter, by other sellers of like goods.

131. In accordance with Section 5 of the Act, in the absence of information from Alcurnia the Ministry has considered other Spanish sellers of like goods i.e. Navarrico's domestic pricing information. The pricing information from this source meets, prima facie, the provisions of the Act. Navarrico's sales volume on the domestic market is less than Alcurnia's export sales to New Zealand. In terms of Article 2.2 of the 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. The Ministry has established that sales volume by Navarrico on the domestic market exceeds 5 percent of export sales to New Zealand by Alcurnia and therefore Navarrico's domestic sale information can be used to establish normal values for Alcurnia. There is no indication that Navarrico's domestic selling prices are anything other than sales in the ordinary course of trade and at arm's length and therefore the Ministry considers that it may use Navarrico's domestic pricing information to establish normal values for Alcurnia.

132. There is no indication that Navarrico's domestic sales are not at the same level of trade as Alcurnia's export sales to New Zealand and the pricing information relates to the period that is under investigation. Navarrico's domestic selling price is the average price over the POI and refers to sales of the same sized container of preserved peaches exported to New Zealand by Alcurnia, which is substantiated by invoices, and therefore may be used to establish normal values for Alcurnia.

Base Prices

133. In accordance with section 5 of the Act the Ministry has used Navarrico's domestic selling price of 840gms canned peaches to establish normal value for Alcurnia.

134. The base price is Navarrico's into store weighted average selling price for 840gm cans of €[redacted] per kg.

Due Allowances

135. Due allowances/adjustments are discussed below to calculate an ex-factory normal value.

Value Added Tax

136. The base prices, discussed in the paragraphs above, are at the into-store price level. Navarrico advised that value added tax (VAT) is 8 percent on domestic sales of preserved peaches.

137. The Ministry has reduced the base price by the 8 percent VAT included in the selling price at €[redacted] per kg

Inland Freight

138. Under normal circumstances if a manufacturer's terms of trade on the domestic market are made on an into-store basis a downward adjustment is made regarding inland transport costs incurred. Navarrico submitted that its domestic sales are to provincial distributors and it delivers the goods to the distributor warehouse(s) but does not charge for transportation of those goods.

139. Bord Bia's Report/Guide states that some retailers require goods to be transported by the manufacturers to their distribution depots and others may request ex-works prices and collect the order themselves if it results in a lower price. This implies in the Ministry's opinion that if a manufacturer does sell its goods on a free-into store basis it would incur extra costs that it factors into its selling price.

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

Other

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

Normal Values

142. The Ministry has based Alcurnia's normal values on domestic sale information of another seller of like goods, Navarrico. The Ministry has used as its base price Navarrico's domestic into-store selling price of an equivalent product to that exported to New Zealand. From this value the Ministry has made a downward adjustment for VAT. No other adjustments have been made.

143. The weighted average ex-factory normal value for Alcurnia is €[redacted] per kg.

Conservas El Navarrico

Introduction

144. Navarrico sells preserved peaches in a variety of containers such as glass jars and cans (tins), destined for the upper end of the domestic market in Spain, through regional distributors. According to the information provided by Navarrico its domestic sales are of a like product to those exported to New Zealand. Navarrico's preserved peach sales to New Zealand over the POI were one size; glass jars of 2.65kgs. In its questionnaire response Navarrico provided average domestic selling prices over the POI for preserved peaches in glass jars of 2.65kgs and 700gms net weight and cans of 2.65kg and 840gms. Navarrico provided invoices to substantiate domestic sales of preserved peaches in cans of 840gms only.

145. In terms of Article 2.2 of the 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. Navarrico's sales volume on the domestic market is greater than its export sales to New Zealand and therefore its domestic sale information can be used to establish normal values. There is no indication that Navarrico's domestic selling prices are anything other than sales in the ordinary course of trade and at arm's length and therefore the Ministry considers that it may use Navarrico's domestic pricing information to establish normal values.

146. There is no indication that Navarrico's domestic sale are not at the same level of trade as its export sales to New Zealand and Navarrico's pricing information relates to the period that is under investigation. Navarrico's domestic selling price is the average price over the POI and refers to sales of the same sized container of preserved peaches it exports to New Zealand and therefore may be used to establish normal values.

Base Prices

147. From the information provided to it by Navarrico, the Ministry has been able to establish a base price to establish normal values. While not ideal in all respects, as the domestic selling price of an equivalent size of preserved peach product to that exported to New Zealand (i.e. glass jars of 2.65kgs) is not substantiated by any commercial invoices, Navarrico supplied invoices supporting the domestic selling price of another size of the same product (i.e. 840gms). The Ministry has compared the price of preserved peaches in glass jars of 2.65kg with the pricing information relating to 840gms cans and considers the 2.65kg glass jar price is reasonable relative to the price of the 840gms cans.

148. The base price is the into store price for 2.65kg of €[redacted] per kg.

Due Allowances

Value Added Tax

149. A deduction from the base price has been made for VAT at €[redacted] per kg on the same basis as outlined above in relation to sales by Alcurnia starting at paragraph 136.

Inland Freight

150. No adjustment has been made for inland freight on the same basis as outlined above in relation to sales by Alcurnia starting at paragraph 138.

Other

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

Normal Values

152. The Ministry has based Navarrico's normal values on information that it has provided. The Ministry has used as its base price Navarrico's domestic into-store selling price of an equivalent product to that exported to New Zealand. From this value the Ministry has made a downward adjustment for VAT. No other adjustments have been made.

153. The weighted average ex-factory normal value for Navarrico is €[redacted] per kg.

Conservas Y Frutas S.A.

Introduction

154. Cofrusa did not respond to the manufacturer's questionnaire and therefore the Ministry had regard to all available information.

155. Cofrusa's website provides information on the type of products it produces and sells but there is no information concerning its domestic pricing or terms of trade.

156. Section 5 of the Act sets out the requirements for establishing normal values. The first method that must be considered under this section to establish normal value is the price paid for like goods sold in the ordinary course of trade for home consumption in arm's length transactions or, if like goods are not sold by the exporter, by other sellers of like goods.

157. In accordance with Section 5 of the Act, in the absence of information from Cofrusa the Ministry has considered other Spanish sellers of like goods i.e. Navarrico's' domestic pricing information. The pricing information from this source meets, prima facie, the provisions of the Act. The Ministry notes, however, that Navarrico's sale price information does not include a domestic selling price of the same size of product that Cofrusa exported to New Zealand. The Ministry has observed from other investigations on preserved peaches that there is a difference in

price between the different sizes of product, on a per kg basis, and therefore on this basis it considers that Navarrico's domestic prices are not suitable to be used to establish normal values for Cofrusa.

158. In the absence of relevant and suitable sales in the ordinary course of trade, normal values may be constructed on the basis of the sum of cost of production and, on the assumption that the goods had been sold for home consumption in the ordinary course of trade in Spain, reasonable amounts for administrative and selling costs and other costs incurred in the sale, and a rate of profit normally realised on sales of goods of the same general category in the Spanish domestic market. The Ministry has not been provided with any cost build up to selling price information that could be used to construct normal values for Cofrusa.

159. In the absence of information that would allow for the construction of normal values the Ministry can use a price that represents the price paid for similar quantities of like goods sold at arm's length in the ordinary course of trade in the country of export for export to a third country. Cofrusa did not provide the Ministry with any information on export sales to countries other than Spain. Navarrico provided information on its export sales to countries other than New Zealand over the POI but the quantity is less than the volume exported to New Zealand and the type(s) and container sizes that make up this volume is unknown and therefore Navarrico's pricing information on export sales to countries other than New Zealand is unsuitable to be used to establish normal values for Cofrusa.

160. As the Ministry has not received any information from Cofrusa and information supplied by other sellers of like goods is unsuitable to establish normal values for Cofrusa the Ministry has had to consider all available information which includes grocery retail sales data gathered by Euromonitor, supplied by HWL. Euromonitor's pricing information includes the price of the same size of product as that exported by Cofrusa but as it is a retail price, due allowances for price comparability with export prices are required. The Ministry considers the Euromonitor data to be more reliable and comprehensive than the information provided by HWL in its application relating to a selling price from an on-line Spanish supermarket.

Base Prices

161. Using the Euromonitor pricing information, the Ministry has calculated a weighted average retail price specific for 410gm to 480gm cans of preserved peaches. The weighted average price is the average price that is weighted by the number of kgs sold at each unit price.

162. The Ministry has used as its base price a weighted average retail price of €[redacted] per kg relating to the sale of a 410gm to 480gm cans of preserved peaches.

Due Allowances

Value Added Tax

163. The base prices, discussed in the paragraphs above, are grocery retail prices and therefore include VAT of 8 percent.

164. The Ministry has reduced the base price by the 8 percent VAT at €[redacted] per kg

Retailer's margin

165. HWL has submitted that a retailer's margin on the domestic market is in the vicinity of 15 percent of the net invoiced price. HWL said that this percentage is based on its knowledge of the preserved peach industry in New Zealand and the Ministry notes that it has applied the same deduction in a previous review investigation concerning canned peaches from Greece.

166. Bord Bia's Report/Guide provides, along with other matters, a range of Spanish retailer's margins. Bord Bia's report states that there are different margins for branded and private label products. On average margins for branded products vary between 25 to 35 percent and for private label products margins can vary between 25 to 50 percent *(page 23).* The weighted average base price used to establish normal values (referred to above in paragraph 162) is based on retail prices of private label products; [redacted]

167. The Ministry has considered information provided in HWL's submission and that disclosed in Bord Bia's Report/Guide. The Ministry has chosen to apply the margins disclosed in Bord Bia's Report/Guide as these margins relate to Spanish grocery retailers over the POI. The Ministry has taken a conservative approach and applied the lower end margin. The Bord Bia's Report/Guide indicates that the higher end margins differ between retailers and brands and the extent of margin depends upon where the supermarket/hypermarkets are placed in terms of price and service levels but the Ministry considers it reasonable to assume that at least a 25 percent margin would apply.

168. HWL submitted that the Ministry should approach the margins disclosed in Bord Bia's Report/Guide with caution because of the way in which they were acquired but if the Ministry was to use them HWL said it should use the margin at the lower end of the spectrum.

169. The Ministry has made a downward adjustment representing a 25 percent retailer's margin at €[redacted] per kg.

Inland Freight

170. HWL estimated that the cost of inland freight is €0.01 per kg. HWL, however, did not provide any evidence to support this cost.

171. The Ministry considers that a retailer's margin represents the difference between the retailers purchase price from the manufacturer and its selling price and therefore would encompass the cost of inland freight. The Ministry has made a downward adjustment for a retailer's margin and therefore no adjustment for inland freight is required.

Other

172. Bord Bia's Report/Guide provides information that indicates other downward adjustments from the base price may be required in order to effect a fair comparison

with export price. These considerations range from packaging tax for packaging waste placed in the domestic market, which would not be incurred on export sales, or the amount of contribution sought from manufacturers by retailers for marketing the products.

173. The Ministry does not, however, hold sufficient information to make any other adjustments.

Normal Values

174. The Ministry has established Cofrusa's normal value having regard to all available information. The base price is a weighted average retail price of €[redacted] per kg. From this value the Ministry has made downward adjustments for VAT and a retailer's margin of 25 percent. No other adjustments have been made.

175. The weighted average ex-factory normal value on sales by Cofrusa is €[redacted] per kg.

Halcon Foods SA

Introduction

176. Halcon did not respond to the manufacturer's questionnaire and therefore the Ministry has had regard to all available information.

177. Halcon's website provides information on the type of products it produces and sells but there is no information concerning its domestic pricing or terms of trade.

178. Section 5 of the Act sets out the requirements in establishing normal values. The first method that must be considered under this section to establish normal value is the price paid for like goods sold in the ordinary course of trade for home consumption in arm's length transactions or, if like goods are not sold by the exporter, by other sellers of like goods.

179. In accordance with Section 5 of the Act, in the absence of information from Halcon the Ministry has considered other Spanish sellers of like goods i.e. Navarrico's domestic pricing information. The pricing information from this source meets, prima facie, the provisions of the Act. In terms of Article 2.2 of the 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. Navarrico's sales volume on the domestic market is greater than Halcon's export sales to New Zealand and therefore Navarrico's domestic sale information can be used to establish normal values for Halcon. There is no indication that Navarrico's domestic selling prices are anything other than sales in the ordinary course of trade and at arm's length and therefore the Ministry considers that it may use Navarrico's domestic pricing information to establish normal values for Halcon.

180. There is no information to suggest that Navarrico's domestic sales are not at the same level of trade as Halcon's export sales to New Zealand and the pricing information relates to the period that is under investigation. Navarrico's domestic

selling price is the average price over the POI and refers to sales of the same sized container of preserved peaches exported to New Zealand by Halcon, which is substantiated by invoices, and therefore may be used to establish normal values for Halcon.

Base Prices

181. In accordance with section 5 of the Act the Ministry has used Navarrico's domestic selling price of 840gms canned peaches to establish normal value for Halcon.

182. The base price is Navarrico's into store weighted average selling price for 840gm cans of €[redacted] per kg.

Due Allowances

183. Due allowances/adjustments are discussed below to calculate an ex-factory normal value.

Value Added Tax

184. The base prices, discussed in the paragraphs above, are at the into-store price level. Navarrico advised that value added tax (VAT) is 8 percent on domestic sales of preserved peaches.

185. The Ministry has reduced the base price by the 8 percent VAT included in the selling price at €[redacted] per kg.

Inland Freight

186. No adjustment has been made for inland freight on the same basis as outlined above in relation to sales by Alcurnia starting at paragraph 138.

Other

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

Normal Values

188. The Ministry has based Halcon's normal values on domestic sale information of another seller of like goods, Navarrico. The Ministry has used as its base price Navarrico'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 a downward adjustment for VAT. No other adjustments have been made.

189. The weighted average ex-factory normal value on sales by Halcon is €[redacted] per kg.

4.4 Comparison of Export Price and Normal Value

Dumping Margins

190. The Ministry has calculated a weighted average dumping margin for each Spanish manufacturer. Two of the companies (Euroaliment and Leo's) are exporters only, i.e. they did not manufacture the preserved peaches they exported to New Zealand over the POI. As it has been possible to identify the Spanish manufacturers which supplied these two exporters, a separate dumping margin has not been calculated for these exporters.

191. The table below shows the dumping margin calculated for each Spanish manufacturer which made shipments to New Zealand over the POI. The table also includes the volume of dumped imports for the year ended 31 December 2010.

Table 4.1 Dumping Margins
(Euro per Kg)

Manufacturer/Exporter	*Weighted Ave. Export Price*	*Weighted Ave. Normal Value*	*Dumping Margin as % of Export Price*	*Vol of Dumped Imports (kgs)*
Alcurnia Alimentacion Sl	[redacted]	[redacted]	143%	[redacted]
Conservas el Navarrico	[redacted]	[redacted]	16%	[redacted]
Conservas y Frutas SA	[redacted]	[redacted]	77%	[redacted]
Halcon foods SA	[redacted]	[redacted]	35%	[redacted]
Total volume of dumped goods (Spain)				[redacted]
Total volume of non-dumped goods (Spain)				[redacted]
Import volume from other countries*				[redacted]
Total volume (all countries)				[redacted]
Dumped imports (Spain) as a % of total imports				3.80%

* does not include imports by HWL

4.5 Volume of Dumped Imports

192. 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's obligations as a party to the WTO Agreement.

193. Article 5.8 of the 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.

194. The Ministry has found that all of imports of the subject goods were dumped and that this volume is more than negligible in terms of Article 5.8 of the Agreement. On this basis, the Ministry concludes that the volume of dumped imports is not negligible.

4.6 Conclusions Relating to Dumping

195. The Ministry concludes that preserved peaches imported from Spain over the POI have been dumped. Dumping margins as a percentage of export prices range from 16 percent to 143 percent. The dumping margins of all the Spanish manufacturers/exporters are more than *de minimis* in terms of Paragraph 8 of Article 5 of the Agreement.

5. Material Injury and Threat of Material Injury

5.1 Introduction

196. Section 8 of the Act sets out in detail the matters that must be examined in any investigation to establish if material injury to an industry has been or is being caused or is threatened by means of the dumping of goods imported or intended to be imported into New Zealand from another country. The Ministry interprets section 8 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.

197. Section 8 also sets out a number of factors and indices which the Chief Executive shall have regard to when analysing the volume of the dumped goods, their effect on prices and the consequential impact on the industry, although noting that this is without limitation as to the matters the Chief Executive may consider. These factors and indices are considered below in this report.

198. The demonstration of a causal relationship between the dumped imports and the injury, or threat thereof, must be based on an examination of all relevant evidence and any known factors other than the dumped imports, which are injuring, or threatening to injure, the domestic industry. Any injury caused or threatened by factors other than dumping must not be attributed to the dumped imports.

199. Material injury caused or threatened to the industry 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. In the present case, material injury is assessed in relation to the New Zealand industry, which for the purposes of the present case is HWL only.

200. An application for measures can be made on the basis of either actual material injury or the threat of material injury. If the application has been made on the basis of a threat of material injury, the Ministry, in the main, assesses the extent to which a threat of material injury exists using the guidelines in paragraphs 7 and 8 of Article 3 of the 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 and also that 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.

5.2 Threat of Material Injury

201. The present investigation was initiated on the basis of a threat of material injury to the domestic industry rather than the occurrence of actual injury. In making its claim of threat of injury, HWL has projected that it will suffer material injury in its 2012 and 2013 financial years (1st May – 30th April) due to price competition from the dumped [redacted] lower priced Spanish imports. HWL considers that price undercutting, price depression and price suppression caused by the dumped imports of preserved peaches from Spain will result in a

decline in its sales revenue and profits but that the economic impact will be felt in other factors such as return on investment and growth and its ability to raise capital and investment.

202. When an investigation is based on actual injury (rather than threat of injury), material injury is assessed by comparing data for each injury factor against the data in a period unaffected by dumping. For the purpose of assessing whether there is a threat of material injury in the present case, HWL has provided the Ministry with historical and forecast financial information. This has allowed the Ministry to evaluate the forecast information provided by HWL to gauge the extent to which the dumped goods are likely to impact negatively on the company's future financial performance if anti-dumping measures are not imposed.

5.3 HWL's Financial Performance

Introduction

203. HWL provided the Ministry with details of its financial performance for its sales of preserved peaches on the New Zealand market over the POI (its 2008/9 – 2010/11 financial years). HWL also provided forecast financial information (for its 2011/12 and 2012/13 financial years) for two scenarios: (i) if there was no dumping of preserved peaches from Spain and consequently no injurious effects (i.e. measures are imposed to counteract the injurious effects of the dumped imports); and (ii) continued dumping of preserved peaches from Spain causing injurious effects during the period. This information was provided in order to assess the impact on its financial performance if no measures are imposed and the goods continue to be imported at dumped injurious prices.

204. In terms of HWL's 2011/12 financial year, the company considers that if no anti-dumping duties are imposed to eliminate the injurious dumping, the impact will only be felt in the latter part of this year. In other words, HWL considers that the price effects resulting from the lower-priced Spanish imports will occur for [redacted] on the basis that the most significant importer, James Crisp, has stopped importing pending the outcome of the investigation but will recommence importing at dumped prices if no anti-dumping measures are imposed. In terms of HWL's 2012/13 financial year, HWL considers that the effect of the dumped goods will be felt over this entire financial year.

Injury Scenario Submitted by HWL

205. HWL provided the following scenario in respect of the dumped goods from Spain. For both its 2011/12 and 2012/13 financial years, the sales volumes are forecast to [redacted] with and without dumping. This reflects HWL's strategy [redacted] meaning that the impact from dumped imports is reflected in declines in total and per kilogram sales revenue. This strategy will involve HWL positioning [redacted], which will result in price depression and losses in sales revenue and Earnings Before Interest and Tax (EBIT). [redacted]

[redacted] meaning that the price pressure caused by Spanish imports undercutting its prices would result in the company [redacted] the lower-priced Spanish imports. HWL has also based its strategy on the premise that preserved peaches from Spain represent a heightened threat of injury compared to those from other countries because of consumer perception that the Spanish product is [redacted].

206. In terms of volume effects, HWL is contractually bound to purchase raw peaches from its growers in relation to the [redacted]. Nearly all of the preserved peaches resulting from the [redacted] will be sold in HWL's [redacted] financial year, therefore, the company will [redacted] selling New Zealand produced canned peaches in its financial year 2012/13. On this basis, HWL has [redacted] included the impact of dumped imports on its canned peach operation in its [redacted] financial year.

207. HWL's financial forecasts for its 2011/12 and 2012/13 financial years (without dumping) are taken from the company's normal standard budget. The sales volume for these two years is forecast to decline when compared with the company's financial year 2010/11 because its forecasts reflect its standard budget (based on sales of around [redacted] tonnes) whereas its [redacted] because of a good peach harvest that year.

208. HWL's forecast sales revenue, if the dumping continues, is based on the current imported price of Spanish peaches and it has estimated the impact of dumping for both its Oak and Wattie's brands. For the Oak brand the reduction in sales revenue is based on HWL's estimate of the ex-wharf price per tonne of preserved peaches from Spain and the amount by which this price undercuts HWL's Oak brand ex-factory selling price and assumes [redacted]. As noted above, [redacted] meaning that the price pressure caused by Spanish imports undercutting its prices will result in the [redacted] being reduced to such an extent that the prices of its [redacted] Wattie's brand [redacted] [suffer price depression]. According to HWL, the Wattie's brand can only be maintained if [redacted] does not create such a price differential that consumers resist paying for the Wattie's brand.

209. HWL has stated that the Wattie's brand will command a [redacted]. Therefore, for the Wattie's brand the reduction in projected sales revenue assumes that this brand can maintain a [redacted] over the selling price of the Oak brand and therefore assumes the Wattie's brand selling price will need to be [redacted] to in order to compete with the dumped goods.

210. HWL has estimated the current FOB price of a 420gm can of preserved peaches from Spain, based on the average FOB prices of preserved peaches exported from Spain to New Zealand. This information was obtained from Statistics

New Zealand in the form of INFOS data. HWL then added estimated importation costs, based on its own costs of importing, included overseas freight and insurance, customs clearance, port services charges, customs duty and internal freight costs to derive an estimated ex-wharf value of a 420gm can of preserved peaches from Spain. The ex-wharf price estimated by HWL is very similar to the figure calculated by the Ministry for the purpose of calculating the amount of price undercutting experienced by the domestic industry (see section 5.5 of this Report).

211. HWL considers that the [redacted] to compete with the dumped imports would not only affect its sales revenue but will also cause a significant reduction in its EBIT in its 2011/12 and 2012/13 financial years. HWL also submits that it will suffer price undercutting, price depression and price suppression which would impact on other injury factors in its 2011/12 and 2012/13 financial years. In interpreting HWL's projections, the Ministry considers that caution must be applied. The projections are based on the company's total range of can sizes and types of Oak and Wattie's preserved peaches being affected by the dumped imports from Spain. In the price undercutting exercise in section 5.5 below, the Ministry found that only the smaller can size was being undercut by the imported goods and there remains doubt if, and to what extent, significant imports of the 420gm can size will affect, to the extent projected by HWL, its sales of the other can sizes (820 – 3kg). However, the Ministry notes that most sales in the New Zealand market appear to be of the smaller can size. For instance, over the dumping investigation period [redacted] percent of imports and [redacted] percent of HWL's sales (by volume) were of the smaller can size suggesting that any volume and price effects resulting from imports of the smaller can size are likely to significantly influence the domestic industry's total sales of preserved peaches.

212. HWL considers that the full effect of price undercutting, price depression and price suppression will come into force in later years with the [redacted]. The company also claims that the [redacted].

5.4 Ministry's Approach to Threat of Injury Investigations

213. Footnote 9 of the Agreement 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". In the circumstances of the present case the Ministry must consider whether the dumping of preserved peaches from Spain is threatening to cause material injury to HWL.

214. In relation to the types (concepts) of injury described in footnote 9 of the Agreement, the World Trade Organisation Dispute Settlement Panel Report *United*

States – Investigation of the International Trade Commission in Softwood Lumber from Canada[9] (*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 Articl[e] 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.

215. 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.**[10] 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.
>
> [10] 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.

216. 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*[10] clarified that "the

[9] Report of the Panel – United States – Investigation of the International Trade Commission in Softwood Lumber from Canada – WT/DS277/R – Adopted 26 March 2004.

[10] 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.

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

217. The Panel Report in *Softwood Lumber VI* (paragraph 7.54) refers to footnote 10 of the 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 Articl[e] 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".

218. 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".

219. 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 AD Agreement (paragraph 7.60).[11]

220. 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

[11] 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.

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 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

221. Article 3.8 of the 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.

222. 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".

Summary of Ministry's Approach

223. 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 AD 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 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 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".[12] Further guidance on the threshold required to meet the "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.*[13]

- 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.

- 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

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

[13] 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.

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.

5.5 The Case for a Threat of Injury Determination in the Present Case

224. 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.

A Change in Circumstances

225. The Ministry considers that, in the present case, the change in circumstances which it is obliged to consider under Article 3.7, is whether the domestic industry will [redacted] in order to compete with substantially increased volumes of dumped imports from Spain, in the near future, and if so, whether this will cause material injury to the domestic industry in the form of price effects and a consequential impact on the domestic industry. Bearing in mind the factors listed in Article 3.7 (i) to (iv) of the Agreement, the Ministry considers that the likelihood of this change in circumstances eventuating is related to factors such as:

- the rate of increase of dumped imports indicating the likelihood of substantially increased import volumes of dumped goods;
- the capacity of the Spanish preserved peach industry to substantially increase its exports to New Zealand, providing for the availability of other export market to absorb additional exports;
- the price advantage which the dumped imports hold over the domestic goods;
- inventories of the product being investigated;
- Other factors such as the ease of entry into the New Zealand market; the ability of importers to handle a significant increase in imports; and the ease of distribution of the goods in New Zealand.

Rate of Increase of Dumped Imports

Historical Import Volumes

226. In order to measure the rate of increase in dumped imports from Spain the Ministry examined historical import volumes since 2007. As noted in section 3 of this

Report, the subject goods are not identified separately in the Tariff of New Zealand and the Customs data for imports of preserved peaches under the relevant tariff item and statistical key includes a number of products which are not considered to be subject goods. Therefore, import entries that are not subject goods have been removed from the data when calculating import volumes.

227. Only exports by those exporters and manufacturers found to be dumping (those with a dumping margin greater than *de minimis*) are included in the volume of dumped imports. It was determined in section 4 above that 100 percent of the imported goods over the POI were dumped and this percentage has been applied to previous years' import volumes.

228. The Ministry has removed HWL's imports of preserved peaches from the import figures to avoid double counting as both HWL's imported and domestically-produced preserved peaches are recognised as New Zealand industry sales for the purpose of the Ministry's injury analysis. While this is not so relevant presently, in the past, when the New Zealand peach crop has fluctuated in size due to disease and weather events, HWL has needed to import preserved peaches from abroad to supplement its domestic production. Removing HWL's own imports from the import figures also more clearly shows the volumes of injurious imports (i.e. imports of the subject goods by firms other than HWL).

229. On the basis of the above, the Ministry has created the following table using Customs data for the last 4 years (ending 30 April):

Table 5.1: Import Volumes (Kilograms)
Years Ended 30 April

	2008	2009	2010	2011
Imports from Spain*	[redacted]	[redacted]	17,228	347,846
Imports from Other Countries*	[redacted]	[redacted]	[redacted]	[redacted]
Total Imports*	[redacted]	[redacted]	[redacted]	[redacted]
NZ Industry Sales**	[redacted]	[redacted]	[redacted]	[redacted]
NZ Market	[redacted]	[redacted]	[redacted]	[redacted]
As % of Consumption:				
Imports from Spain*	[redacted]	[redacted]	0%	4%
Imports from Other Countries*	[redacted]	[redacted]	[redacted]	[redacted]
NZ Industry Sales**	[redacted]	[redacted]	[redacted]	[redacted]
As % of NZ Industry Sales:				
Imports from Spain	[redacted]	[redacted]	[redacted]	[redacted]
Imports from Other Countries	[redacted]	[redacted]	[redacted]	[redacted]
Change on Previous Year:				
Imports from Spain*		[redacted]	[redacted]	330,619
Imports from Other Countries**		[redacted]	[redacted]	[redacted]
Total Imports*		[redacted]	[redacted]	[redacted]
NZ Industry Sales**		[redacted]	[redacted]	[redacted]
NZ Market		[redacted]	[redacted]	[redacted]

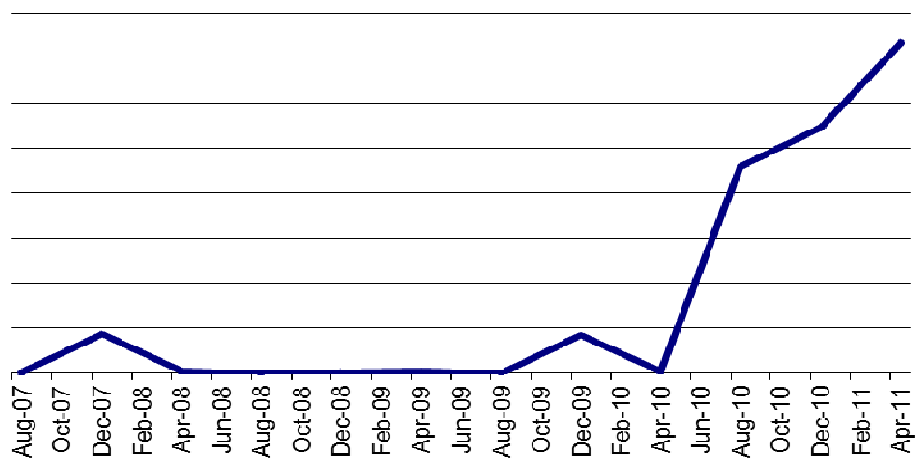
% Change:				
Imports from Spain*		[redacted]	[redacted]	1,919%
Imports from Other Countries*		[redacted]	[redacted]	[redacted]
Total Imports*		[redacted]	[redacted]	[redacted]
NZ Industry Sales**		[redacted]	[redacted]	[redacted]
NZ Market		[redacted]	[redacted]	[redacted]

* excludes imports by HWL and non-subject goods.

** includes sales of imported preserved peaches.

230. Figure 5.1 below illustrates the extent of the absolute increase in import volumes since the 2007/8 April year:

Figure 5.1: Import Volume from Spain
(1 May 2007 to 30 April 2011)



Conclusion

231. Table 5.1 and figure 5.1 show that there has been a significant rate of increase in import volumes from Spain since the third quarter of the 2010 calendar year, especially when compared with previous years.

Likelihood of Substantially Increased Importation

232. It is difficult to measure whether and to what extent there will likely be substantially increased imports of preserved peaches from Spain imminently because any projection of future events is a forward-looking exercise dependent on a number of events and variables. However, the recent trend of import volumes from Spain shows there has been a significant rate of increase in imports of preserved peaches from Spain since the third quarter of 2010.

233. In its importers questionnaire response, James Crisp, the most significant importer of Spanish preserved peaches over the dumping POI noted that it hopes to [redacted] an import volume of approximately [redacted] – [redacted]kgs of

Spanish irregular sliced peaches per annum, although the company did note that this will be dependent on the supply of irregular sliced peaches from its Spanish supplier, and currency exchange rates. In terms of the supply of irregular sliced peaches from its Spanish suppler, James Crisp considers that it is constrained in its ability to source large volumes due to its supplier not manufacturing this product in large volumes. James Crisp also noted that its aim is to achieve [redacted] in total sales of “Cinderella” products (its own brand), however, according to the company the nature and level of competition for sales of canned fruit suggests that [redacted].

234. According to the Ministry’s calculations, if James Crisp was to import [redacted]kgs of canned peaches annually over the next two to three years, in the 2012 April year Spanish imports would increase to approximately [redacted]kgs (representing [redacted] - [redacted] percent of current import volumes) and represent an approximately [redacted] percent increase since the 2011 year. As a comparison, Spanish imports represented approximately [redacted] percent of total import volumes from all countries in the 2011 year, of which James Crisp’s imports represented approximately [redacted] percent. However, James Crisp stopped importing preserved peaches in early March 2011 pending the outcome of the investigation and had the company not stopped importing, it may have made further shipments before the end of the April 2011 year.

235. Assuming that the domestic market remains constant at around [redacted] million kilograms, and a [redacted] percent increase in Spanish imports in the following year (2013), reflecting James Crisp’s [redacted], imports from Spain would increase to around [redacted] percent of the total import volume from all countries (and around [redacted] percent of the total market) for that year. Again, this compares with approximately [redacted] percent of total import volumes from all countries (and around [redacted] percent of the total market), in the 2011 April year.

236. The above projected import volumes and percentage figures are based on the assumption that import volumes by James Crisp will [redacted]kgs annually (based on the company’s own plans) and that imports by importers other than James Crisp will remain constant (at around [redacted] kgs), although it is also assumed the total volume of Spanish imports will increase by 5 – 10 percent per year.

237. The question then becomes does the increase in import volumes in the 2010/11 financial year (up until James Crisp ceased importing) represent a significant rate of increase which indicates that substantially increased importations are likely and can this projected increased volume of dumped imports from Spain be considered a reliable indication of the likely imminent import volumes from Spain.

238. Regarding the reliability of the projected import figures, in an email dated 2 May 2011 HWL referred to a statement made by James Crisp in a meeting between James Crisp and Ministry officials where the company estimated that it would have imported 250,000kgs of preserved peaches up to 31 December 2011, had it not stopped importing due to the initiation of the investigation. HWL noted in its email that with the sharp increase in import volumes of dumped peaches from Spain in late 2010, the additional volumes that James Crisp has committed to may have been scheduled to enter the country over one or two months in late 2010 and early 2011.

According to HWL, this would indicate a substantial rate of increase for imports from Spain, meaning that James Crisp's intent may have been to import a far greater volume in 2011 than the 'up to 250,000kg of product the company referred to in its meeting with Ministry officials.

239. In order to measure the likely volume of future imports from Spain and to gauge whether James Crisp's intended import volume of approximately [redacted] – [redacted]kgs of Spanish irregular sliced peaches per annum seems reasonable and reliable, the Ministry examined the trend of imports of canned peaches by James Crisp since the company first began importing in [redacted] [redacted]. Over the period [redacted] – [redacted] (when the company stopped importing from Spain), James Crisp imported [redacted]kgs of canned peaches. Extrapolated out to a full year, this figure equates to an import volume of [redacted]kgs, a figure which is very similar the upper-end ([redacted]kgs) of the range of volume that James Crisp has suggested it intends to import annually.

240. The Ministry compared its projected import volume figure calculated above with import volume projections provided by HWL (in an email dated 22 December 2010). The company's projections were for 2011 and 2012 and did not take into account advice from James Crisp that it would not make further importations pending the outcome of the investigation nor did they take into account the impact of HWL [redacted] in order to combat increased import volumes. On this basis, HWL's projections can be directly compared to the Ministry's.

241. At the time of making its projections, HWL estimated that import volumes from Spain would increase to 1,023 tonnes for the 2011 April year and 1,675 tonnes for the 2012 April year. The company based its 2011 projection on actual import volumes for the first six months of the April year (May - Oct 2010) and forecast volumes for the last six months for the April year (Nov 2010 - April 2011). The six-month forecast was based on the market share achieved by James Crisp in a particular Wellington supermarket account over a 4-week period when the company's "Cinderella" brand first entered the New Zealand market and assumes that particular market share (of [redacted] percent) will be achieved over the whole of New Zealand. HWL based its 2012 projection on the same basis as its forecast for the last 6-months of 2011. Effectively, therefore, HWL are projecting that the Spanish imports will gain a [redacted] percent market share over the entire country.

242. HWL's import volume forecasts (for both the April 2011 and 2012 years) are considerably greater than those calculated by the Ministry. In order to gauge the accuracy of HWL's figures, the Ministry has compared the company's forecast for the 2011 April year with the actual import volumes from Spain recorded that year. As noted above, HWL projected imports from Spain would increase to 1,023,000kgs for the 2011 April year. Actual import volumes reached 348,000kgs. While it should be noted that James Crisp (the most significant importer of Spanish preserved peaches) stopped importing in March 2011 pending the outcome of the investigation, the Ministry considers there is still a considerable difference in what HWL projected for the April 2011 year and the import volumes recorded.

243. In its response to the Ministry's EFC Report, HWL stated that any forecasted volume of imports should not just be limited to James Crisp's activities. The company noted that other marketers of preserved peaches in New Zealand will [redacted] and if trade remedies are not put in place it his highly likely that the volume of imports will increase [redacted]. According to the company, this factor needs to be a consideration in calculating likely forecasted import volumes.

Conclusion

244. Import volumes of preserved peaches from Spain since the third quarter of the 2010 calendar year demonstrate a recent significant rate of increase in import volumes of preserved peaches from Spain. On its own, the significant rate of increase in dumped imports from Spain would not ordinarily indicate conclusively the likelihood of substantially increased importations imminently. Other factors should be considered such as the time period over which the rate of increase has occurred and whether the imports are likely to maintain or increase their market share in the near future (which will depend on factors such as consumer acceptance of the product and the price advantage the goods hold over both the domestically-produced goods and imports from other countries).

245. The Ministry's analysis of the recent rate of increase in import volumes of preserved peaches from Spain and the likely import volumes in the near future (based on information sourced from the largest importer of Spanish preserved peaches), indicates there has been a significant recent rate of increase in dumped goods from Spain and that this rate of importation will continue. From the Ministry's calculations and analysis of recent trends, it is likely that the import volumes from Spain will reach between 10.5 - 11.5 percent of total imports and approximately six percent of the total market for preserved peaches.

246. On this basis and after considering the totality of the information sourced during the investigation, the Ministry is satisfied that there has been a significant rate of increase of dumped imports into the New Zealand market since 2009 (and especially since the third quarter of 2010), indicating the likelihood of substantially increased importations of dumped imports imminently. This would be on the proposition, however, that the domestic industry would not need to lower its domestic prices to meet the imported prices to combat the increased import volumes of the dumped goods.

Spanish Exporters' Capacity to Supply the New Zealand Market

247. HWL claims that Spanish preserved peaches producers have "huge surplus capacity" which makes their product easily available to importers. The company provided a Global Agricultural Information Network (GAIN) report from the United States Department of Agriculture (USDA) Foreign Agricultural Service (FAS) dated 13 October 2010 titled "Spain Canned Deciduous Fruit Annual 2010" to substantiate its claim. This report estimates that production of canned peaches for the marketing 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 GAIN 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 due to the surviving plants being the most efficient.

248. 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 GAIN report notes that, while Spain is the second largest European Union (EU) 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. The GAIN report also notes that total exports have remained fairly stable over the past couple of years and that "the competitiveness of suppliers like China and some Latin American countries is significantly affecting the Spanish exports".

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

250. The Ministry considers that the USDA GAIN report provides a reliable and recent summary of the Spanish peach canning industry's disposable capacity to not only sell canned peaches within the EU but to export abroad. Spain is the second largest EU exporter of canned peaches and the information on the Spanish industry's export volume of canned peaches indicates that around 45,000 tonnes are exported annually. While the information in the GAIN report suggests there is the availability of many export markets other than New Zealand to absorb Spanish exports, the Report also notes that the competitiveness of exporters in emerging countries such as China and some Latin American countries is significant and these countries have increased their production and exports in recent years. The GAIN report also notes that the competitiveness of the exporters in these other countries has been a major problem for Spanish producers wanting to export to foreign countries.

251. Other information sourced by the Ministry on the manufacturing and export capacity of the Spanish peach processing industry mirrored the information in the USDA GAIN report. For instance, the website "Index Mundi"[14] provides a table which lists production of Spanish canned peaches on a yearly basis, since 1966. The information shows that Spanish canned peach production in 2010 was 85,000 metric tonnes which was a decrease from 100,000 tonnes in 2009 and 110,000 tonnes in 2008.

252. The Ministry also noted particular comments in a recent on-line article regarding the most recent peach harvest in Spain. The article, dated 30 September 2010 and titled 'Murcian agriculturalists could teach the protesters a lesson or two,[15] notes that "[T]he biggest damage to the soft fruit industry … is the downturn in

[14] http://www.indexmundi.com/agriculture/?country=es&commodity=canned-peaches

[15] http://www.simplynetworking.es/news-3784-31-murcian_agriculturalists_could_teach_the_protestors_a_lesson_or_two.html

canning production, which absorbs much of the yellow peach and apricot production of the region. Canneries are downscaling and cutting production …". The article further notes that "Consumer habits are changing, less canned fruit is being sold as the drive to lead a better lifestyle pushes consumers to eat fresh, not canned, and Murcian producers are being 'canned' by the competition from the EU, where lower labour costs and lower production costs make Murcian canned products too expensive to compete in the worldwide canned fruit markets".

253. The Ministry did note, however, particular comments in the same article to the effect that competition in Europe between Spanish and Greek peach growers is a farce with " … many of the problems last year being caused by the Greek producers' whose produce came online earlier than anticipated, colliding with the Spanish producers in the wholesale markets, surplus quantities of fruit being sold at below cost rather than leave it rotting in the fields. Watermelons and peaches were the worst affected …". The article also noted, in respect of the change in consumer habits, that "[t]hose who have seen this coming and moved ahead had an excellent year. New varieties of red peach and Paraguay … took the markets by storm, yielding excellent profits and boding well for the future, finding new international European markets."

254. In its importers questionnaire response, James Crisp stated that it expects its import volumes of Spanish canned irregular sliced peaches to be limited because its supplier does not manufacture this type of product in large volumes. The company also considers that technological improvements to manufacturing processes are anticipated to result in even less production of lower grade canned peaches, [redacted].

255. In a counterclaim, HWL has noted that if producers in Spain had surplus stock they would likely sell higher grade product at a lower grade price (and label it accordingly) in order to clear stock. While the company provided no evidence to substantiate this claim, it did refer the Ministry to a Colmar Brunton survey of consumer preferences (which it commissioned in 2006) in support of its claim that [redacted] is not a factor in New Zealand consumers' buying decisions and that there is no distinction in the New Zealand market by [redacted].

Conclusion

256. The information from the USDA GAIN report and the website "Index Mundi" (which sources data from the USDA) shows that the Spanish canned peach production was 85,000 metric tonnes in 2010, although this figure has decreased from 110,000 tonnes since 2008. This decrease in production volumes is not unusual, however, as the situation in Spain mirrors that in other markets where canned fruit consumption seems to be shrinking as consumers prefer fresh fruit, when available. Furthermore, while the statistics show that there has been a decrease in production volume in recent years, other information sourced by the Ministry suggests that Spanish peach growers recently enjoyed another quality crop and that the overall processing capacity of canned peaches has remained about the same. In other words, while there has been a decrease in the number of canned peach processing plants the surviving plants are the most efficient and competitive.

257. The Ministry also notes, from James Crisp's response to the Ministry's importers questionnaire, that in October 2010 it was presented with an "offer of supply' by its supplier for 272,000kgs to be supplied from the 2010 crop. While James Crisp placed orders for less than this volume with its supplier (verified by NZ Customs import statistics) this information does confirm that James Crisp's supplier was, at certain times over the dumping POI, willing to supply James Crisp with significant volumes of canned peaches.

258. The New Zealand market for processed peaches is not large compared to other international markets. This fact, in itself, suggests that the Spanish producers would be unlikely to find it difficult to supply the New Zealand market with sufficient product at short notice when the demand arises. The information also shows that the Spanish producers are finding it difficult to remain competitive internationally, due to competition from producers in emerging countries such as China and Latin America which indicates new markets would be an attractive proposition to them.

259. On the totality of the information collected in respect of the freely disposable production capacity of the Spanish preserved peach industry, the Ministry is satisfied that Spanish preserved peach manufacturers and 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 that it would prevent exports to New Zealand in meaningful quantities from occurring.

260. On this basis, the Ministry is satisfied that there is sufficient freely disposable capacity of the Spanish exporters to supply preserved peaches to New Zealand indicating the likelihood of substantially increased dumped imports into New Zealand market, in the near future.

Price Advantage held by the Dumped Imports

Introduction

261. The price advantage imported goods hold over domestically-produced goods is known as the margin of price undercutting. More specifically, price undercutting refers to the extent to which the imported goods (in the present case, preserved peaches from Spain) are sold at lower prices than the preserved peaches made by the domestic industry (at the relevant level of trade).

262. In a dumping investigation, 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. Where possible (and if sufficient information is available), the level of trade is determined for each importer and for each product type and therefore the prices of several importers may be considered at different points in the supply chain.

263. In analysing 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, the Ministry has firstly examined the extent to which Spanish imports are currently undercutting the domestic goods and secondly,

examined the extent to which the price of the imported goods will have a depressing or suppressing effect on domestic prices.

Current Price Undercutting

264. In considering price undercutting, the Ministry will normally seek to compare prices at the ex-factory and ex-importer's store levels, to ensure that differences in distribution costs and margins do not confuse the impact of dumping. Accordingly, the Ministry's position is generally to compare importers' prices, including relevant selling and administration costs, which involve similar cost elements to those in the New Zealand manufacturer's ex-factory price, but not including cost elements relating to the distribution of goods.

265. The purpose of the price undercutting comparison is to establish whether or not there is price undercutting attributable to dumping. 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. This impact is to be measured in terms of the factors and indices set out in s.8(2)(d) of the Act.

Information Sourced during the Investigation

266. Responses to the importer's questionnaire were received from James Crisp and OnTrays. While the questionnaire response from OnTrays was incomplete, the Ministry was able to use some information from it when calculating an ex-wharf and ex-importer's store price for the company. OnTrays' information was complimented with information sourced from NZ Customs and from information sourced from James Crisp's questionnaire response and invoices provided by Mediterranean. In the absence of sufficient information and no importers questionnaire response from Sabato, the Ministry relied on the best available information to calculate ex-wharf and ex-importers store selling prices in New Zealand for preserved peaches imported by these companies. This has included information contained in an exporter's questionnaire response, import values per unit (in $NZ) from NZ Customs and import costs (on a per kilogram basis) from other importers' questionnaire responses.

267. The Ministry was able to source sufficient information to calculate an undercutting margin at the appropriate level of trade for the four importers who imported preserved peaches over the POI. Because two of the four importers (OnTrays and Mediterranean Group) imported the same product (850gm peach halves in syrup), and sold the goods at the same level of trade (wholesaler), the Ministry used the information in respect of these importers to calculate weighted average ex-wharf and ex-store prices. The above exercise has resulted in undercutting margins being established for 420gm and 850gm cans and for a 2.65kg glass jar of preserved peaches.

Level of Trade

268. The Ministry considers that the level of trade at which HWL's ex-factory prices are compared with its competitors' prices in the New Zealand market will depend on the type of purchasing and selling arrangement its competitors have and to what

sector the imported goods are being sold into. In past investigations, HWL has competed with overseas suppliers directly and with New Zealand importers (who may be supermarket chains or independent importers), to supply preserved peaches in the New Zealand market destined for either the retail sector or the food service sector.

269. In the current investigation, HWL considered there are three distinct levels of trade in the New Zealand market for preserved peaches: ex-manufacturer (ex-factory), namely ex-HWL; ex-importer direct to customer (supermarket or ex-store); and direct to supermarket from the exporter (ex-wharf).

270. During the dumping POI, the 420g and 850g cans and the 2.65kg glass jar of preserved peaches from Spain were imported by James Crisp, OnTrays, Mediterranean Group and Sabato, acting as distributors who on-sold the goods in the New Zealand market to supermarkets and retailers. It is this level which HWL competes directly with the importers because their customers make their purchasing decision between HWL and the importers/distributors. On this basis, the Ministry considers that the undercutting analysis for the goods should be assessed by comparing the importers' ex-store selling prices against HWL's ex-factory selling prices (net of trade spend) or what HWL terms the Net Sales Value (NSV).

Relevant Prices

HWL's Ex-Factory Prices

271. The Ministry has calculated separate average NSVs for the Oak and Wattie's brands for the can sizes which are as near as possible to the imported can sizes. To ensure a fair comparison of prices, the Ministry has calculated HWL's NSVs for the same period as the importers were requested to provide information on their importations of preserved peaches into New Zealand (i.e. Jan – Dec 2010 or the dumping POI).

272. The NSVs represent 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, [redacted]. The Ministry considers that HWL's NSV, which is exclusive of trade spend, remains an appropriate price on which to calculate the ex-factory price. As HWL sells on an [redacted], the Ministry has also made adjustments to the NSV for [redacted] ($[redacted]/kg) where the importer has not incurred these particular costs when sourcing from abroad.

Imported Prices

Importers Ex-Store Prices

273. As noted above, the Ministry considers that the undercutting analysis should be assessed at the importer's ex-store level for the imported goods. To conduct this exercise, the Ministry firstly calculated ex-wharf prices for the 420gm, and 850gms cans and the 2.65kg glass jar of preserved peaches imported from Spain during the

dumping POI. The ex-wharf calculations include costs incurred by the New Zealand importers from the ex-factory level in Spain to the ex-wharf level in New Zealand (including amounts for port services charges, cartage from wharf, devanning). For the 420gm can of preserved peaches, the Ministry has used information provided by James Crisp in its Importers Questionnaire response along with some limited information from NZ Customs on the company's importations. For the 850gm can of preserved peaches, the Ministry has used information supplied by both On-Trays and Mediterranean Group (who imported this product over the dumping POI), limited information sourced from exporters supplying these companies and information sourced from NZ Customs on these companies' imports of 850gm cans of preserved peaches into New Zealand over the dumping POI. As noted above, because these two companies imported the same product (850gm peach halves in syrup), and sold at the same level of trade (wholesaler), the Ministry has calculated a weighted average ex-wharf price.

274. For the 2.65kg glass jar of preserved peaches, the Ministry has used information sourced from NZ Customs on the two shipments of 2.65kg glass jars imported into New Zealand by Sabato over the dumping POI to calculate an ex-wharf price.

275. Ex-store prices were then calculated for some importers by adding to the ex-wharf amounts established above, amounts for an importer's selling and administration expenses and a profit margin. For other importers the information used to establish ex-store prices was their selling prices to their New Zealand customers provided by the importers in respect of their particular type and size of preserved peaches.

276. The Ministry notes that since the period over which the import prices were calculated, the exchange rate against the Euro (being the currency most transactions were invoiced in) has strengthened thereby reducing the price paid by the importers, in NZ dollars.

Price Undercutting Comparison

277. The tables below show the level of undercutting when HWL's ex-factory prices for its Wattie's and Oak brands are compared to the importers' ex-store selling prices calculated for the most equivalent can sizes. The undercutting is measured as a percentage of HWL's average ex-factory price.

Table 5.2: Price Undercutting – 420gm cans
($NZ/kg)

	HWL's Ex-Factory Price	Importer's Ex-Store Price	% Price Undercutting
		--- Supermarket Level* ---	
Wattie's	[redacted]	[redacted]	[redacted]%
Oak	[redacted]	[redacted]	[redacted]%
		--- Delivery Centre Level** ---	
Wattie's	[redacted]	[redacted]	[redacted]%
Oak	[redacted]	[redacted]	[redacted]%

* sales direct to supermarkets (represents approx. [redacted]% of James Crisp's sales of preserved peaches).

** sales direct to Foodstuffs regional Co-op Delivery centres (represents approximately [redacted]% of James Crisp's sales of preserved peaches).

Table 5.3: Price Undercutting – 850gm cans
($NZ/kg)

	HWL's Ex-Factory Price	Importers' Ex-Store Price	% Price Undercutting
Wattie's	[redacted]	[redacted]	nil
Oak	[redacted]	[redacted]	nil

Table 5.4: Price Undercutting – 2.65kg glass jars
($NZ/kg)

	HWL's Ex-Factory Price	Importers' Ex-Store Price	% Price Undercutting
Wattie's	[redacted]	[redacted]	nil
Oak	[redacted]	[redacted]	nil

278. Table 5.2 shows that the selling price of the imported 420gm cans of preserved peaches from Spain is undercutting both the Wattie's and Oak ex-factory prices by [redacted] percent and [redacted] percent respectively when the product is sold directly to supermarket outlets. There is also price undercutting when the product is sold to the Foodstuffs regional Co-op delivery centres for both the Wattie's ([redacted]%) and the Oak ([redacted]%) brand.

279. Tables 5.3 and 5.4 show that the selling prices of the imported 850gm cans of preserved peaches and the 2.65kg glass jars of preserved whole peaches from Spain are not undercutting either the Wattie's or Oak ex-factory prices at the ex-store level.

280. The Ministry considers that due regard should be given to the fact that Wattie's is [redacted] and it is likely to be less comparable with certain types of the imported product than is the Oak brand. Market research has found [redacted].

Conclusion on Current Price Undercutting

281. Based on the price undercutting analysis above, the Ministry concludes that both the Wattie's and Oak ex-factory prices are being significantly undercut by the imported 420gm cans of preserved peaches from Spain, although there is no undercutting occurring for either the Wattie's or Oak brands when comparing prices with the imported 850gm can size and the 2.65kg glass jar of whole preserved

peaches. Imports of the 420gm can size represented approximately [redacted] percent of total import volumes from Spain over the dumping POI.

282. Based on the evidence of the amount of current price undercutting by imports of 420gm cans of preserved peaches, the Ministry is satisfied that should these goods continue to enter the country at their current prices, they will continue to undercut the domestic industry's prices.

283. The Ministry has analysed below the extent to which it considers imports of the 420gm cans of preserved peaches will have a depressing or suppressing effect on domestic prices of preserved peaches and would likely increase demand for further imports. In conducting this analysis the Ministry has firstly examined the extent to which domestic prices have historically been depressed and suppressed and secondly, examined the extent to which it considers the domestic industry's prices will be depressed and suppressed if has to compete with lower-priced dumped goods.

Price Depression

284. 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.

285. As outlined above in this report, HWL uses its [redacted]. HWL maintains a [redacted]. HWL stated that prices for the [redacted] Wattie's brand have been forced down in the past when dumped imports have caused loss of sales volume and market share and the [redacted].

Current Price Depression

286. HWL provided financial information to enable the Ministry to assess whether it has suffered price depression during the injury period. The following table shows HWL's average selling prices (at the ex-factory level) per kilogram of canned peaches over its 2008/9 - 2010/11 financial years.

Table 5.5: Price Depression
($NZ/kg)

	2008/9	*2009/10*	*2010/11*
Avg. Price (NSV) per kg	[redacted]	[redacted]	[redacted]
As a % of 2008/9	100%	[redacted]%	[redacted]%

287. The table shows that HWL's average selling price for canned peaches increased from 2008/9 to 2009/10, and then declined in 2010/11, but was still at a level slightly above that in 2008/9. The data indicates that the company has not suffered price depression when prices are considered over the entire injury period.

Price Depression if competing with the Dumped Imports

288. HWL contends that the New Zealand wholesale market for the supply of preserved peaches to distributors and retailers is highly competitive. The company stated that all supermarkets stock brands of preserved peaches other than those supplied by HWL, house brand supply contracts are up for constant tender and that there are no long-term supply contracts in place meaning that the market is always open to new sources of supply.

289. HWL provided its forecast average selling prices for 2011/12 and 2012/13 in the presence and in the absence of dumped imports from Spain. The forecast prices have been prepared on the basis outlined above in section 5.3 of this report ("Injury Scenario Submitted by HWL"). HWL has forecast that if imports from Spain were to continue to be imported at dumped prices, the company [redacted] Spanish preserved peaches in order to compete with the cheaper imports. HWL has forecast this would result in price depression for its preserved peaches. As noted in paragraph 211 above, the Ministry considers that caution must be applied to these [redacted] projections. The projections are based on the company's total range of can sizes and types of Oak and Wattie's preserved peaches being affected by the dumped imports from Spain whereas the price undercutting exercise conducted by the Ministry found that only the smaller can size was being undercut by the imported goods.

290. For the purpose of calculating the forecast average selling price, in the presence of the dumped imports, HWL set its forecast Oak brand selling price at the estimated [redacted]. HWL considers that [redacted] the price of the Spanish imported peaches. However, the Ministry considers that such an exercise should be based on HWL [redacted] imports from Spain at the importer's ex-store level because, as noted above, this is the level of trade at which HWL's product first competes with the Spanish product. To reflect this situation, the Ministry has adjusted the figures provided by HWL and has incorporated the new figures into this report.

291. For the Wattie's brand, HWL has assumed that this brand can maintain [redacted] over the selling price of its Oak brand, therefore it has projected that the Wattie's selling price will [redacted] the price at which the Oak brand [redacted]. For the financial year 2011/12 the discounting of the Oak and Wattie's brands is projected for [redacted] on the basis that James Crisp (the largest importer of Spanish peaches) stopped importing prior to the start of the current financial year but will re-start importing if anti-dumping duties are not imposed. For the 2012/13 financial year, the [redacted] for the Oak and Wattie's brands has been projected over the entire year.

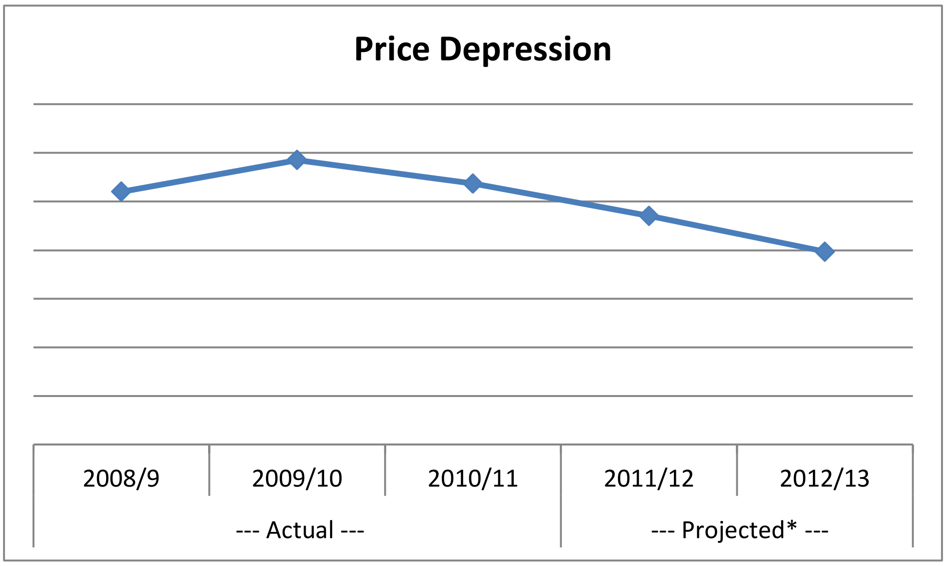
292. HWL's forecast prices for the 2012 and 2013 financial years (with dumping) have been compared with its projected 2012 average price (in the absence of dumping) to give an indication of the likely price depression the company would suffer if it was to have to compete with dumped imports. To derive projected average prices, the forecast sales volumes for both brands combined were multiplied by their respective forecast selling prices (see paragraph 289 above) to calculate the total net revenue, which was then divided by the total forecast sales volume to derive average forecast selling prices for the 2012 and 2013 financial years. The table below illustrates the calculated average prices using this scenario:

Table 5.6: Projected Price Depression
($NZ/kg)

	-------- 2011/12 (est.) ----------		*--- 2012/13 (est.) ---*
	Without Dumped Imports	With Dumped Imports	With Dumped Imports
Avg. Price (NSV) per kg	[redacted]	[redacted]	[redacted]
Percentage Change		[redacted]%	[redacted]%

293. The figures in the table show that, when having to compete with the dumped imports, HWL's selling price is forecast to decline in the years ending April 2012 and 2013 to well below the selling prices it has projected in the absence of dumped imports (for the 2011/2 financial year). The company's projected average prices (in the presence of dumped imports) are also well below its actual average price (achieved in its 2010/11 financial year). The forecast information indicates that significant price depression will occur in the future, in the presence of dumped imports.

294. The graph below charts HWL's actual (2009-2011) and projected (2012 – 2013) average selling prices for preserved peaches (in the presence of dumped imports from Spain) using the figures in tables 5.5 and 5.6 above:



* If having to compete with dumped imports (in the absence of AD duties).

295. The projected average selling prices (for 2012 and 2013) reflect HWL's [redacted] of the imported preserved peaches on the New Zealand market. As a result, the company has projected a significant reduction of its sales revenue [redacted]. The graph shows that the company's projected average selling prices for 2012 and 2013 (in the presence of dumped imports) are well below the actual average prices recorded for its last three financial years.

Conclusion on Price Depression

296. The Ministry considers that, on the basis of the information collected during the investigation, HWL is currently not suffering price depression from the dumped goods. However, the Ministry further concludes that if imports from Spain continue to be imported at their current pricing levels and at their current rate of importation, HWL will suffer price depression as a direct result of having to compete with the lower-priced dumped imports [redacted].

Price Suppression

297. 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 prevent price increases for those goods that otherwise would have been likely to have occurred.

298. 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 total 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.

Current Price Suppression

299. HWL provided per unit cost and price information to enable the Ministry to compare the company's total costs as a percentage of sales revenue from 2008/9 to 2010/11. The results are shown in the table below:

Table 5.7: Price Suppression
($NZ/kg)

	2008/9	*2009/10*	*2010/11*
Avg. Price (NSV) per kg	[redacted]	[redacted]	[redacted]
Total cost per kg	[redacted]	[redacted]	[redacted]
Total cost as % of NSV	[redacted]%	[redacted]%	[redacted]%

300. The table shows that the company's costs (as a percentage of sales revenue) have fluctuated since 2008/9 and currently represent approximately [redacted] percent of its selling price. While there has been a particularly significant rise in this percentage

in 2011 (when compared to the preceding year), the figures show that the company's costs as a percentage of selling price have decreased over the entire injury period. On this basis, there is no evidence that HWL's prices have been suppressed over the injury period.

Price Suppression if competing with the Dumped Imports

301. HWL stated that price suppression would result from competition from the dumped imports due to it experiencing price undercutting and price depression, with the company being unable to offset the significant undercutting by means of cost savings and price increases elsewhere. In fact the company considers that the opposite effect could occur with its cost base increasing due to market share being taken by dumped Spanish preserved peaches causing processing costs per tonne to increase. HWL has pointed out that if dumped preserved peaches continued to trade in the New Zealand market at injurious prices the company [redacted]. Either way, HWL claim injury will have occurred.

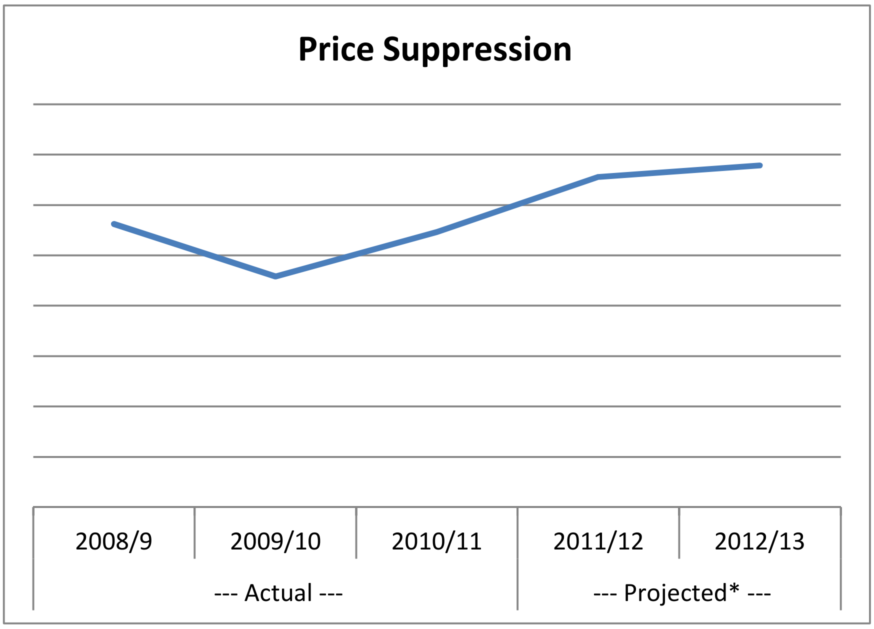
302. HWL's projected total costs for its 2012 and 2013 financial years (with dumping) have been compared with its projected 2012 average price (in the absence of dumping) to give an indication of the likely price suppression the company would suffer if it was to have to compete with dumped imports. The calculation of the company's projected average prices has been explained in paragraph 290 above. The table below illustrates the scenario:

Table 5.8: Projected Price Suppression
($NZ/kg)

	------ 2011/12 (est.) --------		*--- 2012/13 (est.) ---*
	Without Dumped Imports	With Dumped Imports	With Dumped Imports
Avg. Price (NSV) per kg	[redacted]	[redacted]	[redacted]
Total cost per kg	[redacted]	[redacted]	[redacted]
Total cost as % of NSV	[redacted]%	[redacted]%	[redacted]%

303. The figures in the table show that, in the presence of dumped imports, HWL's costs (as a percentage of sales revenue) are projected to increase sharply in the 2012 and 2013 financial years to well above the percentage it has projected in the 2012 financial year (in the absence of dumped imports). While the main basis for the company's projected increase in total costs (as a percentage of sales revenue) is a [redacted] (rather than an increase in cost per unit), the forecast information does indicate that HWL will suffer significant price suppression in the future, in the presence of dumped imports.

304. The graph below charts HWL's actual (2009-2011) and projected (2012 – 2013) total cost per unit as a percentage of average selling price (NSV) for preserved peaches using the figures in tables 5.7 and 5.8 above:



* If having to compete with dumped imports (in the absence of AD duties).

305. The graph shows that the company's total cost per unit as a percentage of average selling price for 2012 and 2013 is projected to increase (in the presence of dumped imports) to well above the figures recorded from 2008/9 to 2010/11. On this basis, the forecast information indicates HWL will suffer significant price suppression in the future, if having to compete with the lower-priced dumped imports.

Conclusion on Price Suppression

306. The Ministry considers that, when the information is analysed over the entire injury period, HWL has not suffered price suppression. However, on the basis of HWL's projected costs and revenue, the Ministry concludes that if imports from Spain continue to be imported at their current pricing levels and at their current rate of importation, HWL will suffer price suppression as a direct result of having to compete with the lower-priced dumped imports on price.

Conclusions on Price Advantage held by the Dumped Imports

307. The Ministry concluded above that HWL's selling prices are being undercut by dumped imports at the ex-store level in respect of imports of the 420gm can size of preserved peaches but not by the 850gm can size or the 2.65kg glass jar of whole preserved peaches. Over the dumping POI, imports of the 420gm can size of preserved peaches represented a significant proportion of total imports from Spain.

308. If the information is analysed over the entire injury POI it shows no evidence that domestic prices of preserved peaches are being either depressed or suppressed by the dumped goods, although there is some evidence of price depression and suppression over the HWL's latest full financial year (2010/11) when comparisons are made with the immediately preceding year.

309. In any event, the investigation was initiated based on a threat of injury claim by the New Zealand industry (rather than of actual injury) due to the dumped imports from Spain. In terms of the extent to which the prices of the dumped goods will have a depressing or suppressing effect on domestic prices, the Ministry has examined the domestic industry's projected pricing and cost information. The industry has calculated future prices based on [redacted] the lower-priced dumped goods.

310. On the basis of the information provided by HWL as well as that collected from importers and exporters of the subject goods, the Ministry considers that HWL will face increased pricing pressure from the dumped Spanish peaches if they continue to be imported at their current prices and they continue to increase at the rate they were increasing at in the 2010/11 April year. This is demonstrated through the company's projected 2012 and 2013 prices and costs. While caution should be applied regarding the extent of the company's projected [redacted] in the face of competition from the dumped imports), a comparison of HWL's 2012 and 2013 projected prices (in the face of competition from dumped goods) with its current and projected 2012 and 2013 prices (in the absence of dumping) clearly shows that the company will [redacted] suffer significant price depression and suppression as a result.

311. Based on the totality of the pricing information collected during the investigation, including the significant level of current price undercutting, the Ministry is satisfied that imports of preserved 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

312. The figures in the USDA GAIN report show that ending stocks in the Spanish market have been increasing over recent years, from 30,000 metric tons in June 2009 to 35,000 metric tons in June 2010 and an estimated 40,000 metric tons in June 2011.

313. In terms of inventories held by its Spanish supplier, James Crisp noted in its response to the Ministry's importers questionnaire that in June 2010 the company placed an order for 180,000kgs, which it stated was the total inventory available for supply to it until the next crop. This volume of canned peaches was imported into New Zealand in two shipments in the second half of 2010. The company also noted that it was presented with an "offer of supply" by its supplier in October 2010 for 272,000kgs to be supplied from the 2010 crop. James Crisp stated that it placed orders for less than this volume. Import statistics obtained by the Ministry shows that the company made [redacted] further imports during the first four months of 2011, totalling [redacted]kgs.

Conclusion on Inventory Levels in Spain

314. It is difficult to gauge the volume of inventories the Spanish exporters have on hand at any one time. None of the Spanish exporters identified as exporting to New Zealand over the dumping POI provided the Ministry with their levels of inventory. The information supplied by James Crisp (the most significant importer of Spanish canned peaches over the dumping POI) suggests that its supplier was, at certain times over the POI, willing to supply significant volumes of canned peaches to New Zealand. Furthermore, the figures in the USDA GAIN report indicate that the Spanish industry has historically held inventories of canned peaches in reasonably significant volumes.

315. As noted above under the section titled “Spanish Exporters’ Capacity to Supply the New Zealand Market”, the New Zealand market for processed peaches is not large compared to other international markets which, in itself, suggests that the Spanish producers would be unlikely to find it difficult to supply the New Zealand market with sufficient product at short notice when the demand arises. Taking the totality of the information on inventory levels in Spain into account and also noting that it has already concluded there is sufficient freely disposable capacity of the Spanish exporters to supply preserved peaches to New Zealand, the Ministry is satisfied that significant inventories are held in Spain to allow export markets such as New Zealand to be supplied with surplus product.

Other Factors

The Ease of Entry into the New Zealand Market

316. HWL alluded to the ease of importation into the New Zealand. The company 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 pointed out a particular importer of Spanish canned peaches previously achieved a [redacted] percent share in the New Zealand market for preserved peaches.

317. HWL also stated that the New Zealand wholesale market for the supply of preserved peaches to distributors and retailers is highly competitive. HWL claimed that there are no long-term contracts in place for customers and house brand supply contracts are up for constant tender. All supermarkets stock brands of preserved peaches other than those supplied by HWL. HWL has no exclusive customers and the market is always open to new sources of supply.

318. James Crisp noted in its reply to the Ministry’s importers questionnaire that there are no significant barriers to any importer to enter the preserved fruit market, in general. However, in terms of importing irregular cut peach products, the company stated that locating sufficient quantity of product would pose a major hurdle.

Conclusion

319. The Ministry has concluded in previous investigations and reviews concerning preserved peaches that barriers to entry to the New Zealand market are extremely

low, for reasons such as the ability of house brand customers to terminate contracts at short notice, the lack of contractual agreements between supermarkets and suppliers, the ability of house brand customers to switch suppliers with ease and the ability of brokers to source the subject goods from anywhere in the world to take advantage of market opportunities.

320. In respect of the current investigation, HWL stated that the previous behaviour that has been demonstrated of importers selling dumped preserved peaches in the New Zealand market still exists.

321. In terms of James Crisp's claim that locating a sufficient quantity of irregular cut canned peaches would pose a major hurdle, the Ministry has addressed this above under "Inventory Levels in Spain". The Ministry noted in that section that information had been provided suggesting that James Crisp's Spanish supplier was, at certain times over the POI, willing to supply significant volumes of canned peaches to New Zealand.

322. On the basis of the totality of the information sourced during the investigation, the Ministry considers that there continues to be few barriers to entry for an importer of preserved peaches in the New Zealand market.

The Ability of Importers to Handle a Significant Increase in Imports and the Ease with Which Goods can be distributed

323. HWL alluded to the ease of distribution throughout New Zealand. The company also claimed that with the Spanish imports being sourced at such low injurious prices it could be foreseen that retailers would source [redacted] from Spain, and use [redacted] to drive foot traffic.

324. In previous investigations and reviews of preserved peaches, the Ministry concluded that importers and retailers have the ability to import and distribute significant volumes of preserved peaches. Relationships between trading houses and retailers already exist with traders often acting as the broker on some products already sold in supermarkets. Retailers often source direct from suppliers and they have their own warehousing and distribution networks to be able to manage the integration of their peach volumes from abroad and some importers already source their private label products from offshore.

325. James Crisp noted in its reply to the Ministry's importers questionnaire that New Zealand currently has a significant supply of imported preserved peaches from Australia, South Africa, China, Greece and Spain which, according to James Crisp, are not dumped.

Conclusion

326. The Ministry considers that there have been few changes in the New Zealand market recently regarding the ability of importers to handle a significant increase in imports of preserved peaches from abroad. The Ministry concludes that, on the totality of the information gathered, importers and retailers have the existing

distribution systems in place to facilitate the importation of significant volumes of preserved peaches from Spain into the New Zealand market.

Conclusions on the change in circumstances under Article 3.7

327. The Ministry determined in paragraph 225 above that, in the present case, the change in circumstances which it is obliged to consider under Article 3.7, is whether the domestic industry will [redacted] preserved peaches in order to compete with substantially increased volumes of dumped imports from Spain, in the near future, and if so, whether this will cause material injury to the domestic industry in the form of price effects and a consequential impact on the domestic industry.

328. Bearing in mind the factors listed in Article 3.7 (i) to (iv) of the Agreement, the Ministry examined a number of factors which it considers are relevant to deciding whether there has been a change in circumstances which would create a situation in which the dumping would cause injury and therefore whether a threat of injury exists in the present case.

329. In its above analysis, the Ministry concluded the following:

- Import volumes of dumped Spanish goods have increased significantly over the last three years and in particular since the beginning of 2010. Based on its analysis of the recent rate of increase in import volumes and the New Zealand importers' planned import volumes in the near future, the Ministry is satisfied that there has been a significant rate of increase of dumped imports into the New Zealand market, indicating the likelihood of substantially increased importations of dumped imports in the near future.

- There is evidence that Spanish exporters have sufficient freely disposable capacity and surplus inventories to supply preserved peaches to New Zealand indicating the likelihood of substantially increased dumped imports into New Zealand, in the near future.

- Imported prices are currently undercutting the domestic industry's prices which will cause the domestic industry to lower its prices in order to compete with the imported prices, thereby resulting in price depression and suppression and a likely increase in demand for further preserved peaches from Spain.

- There is ease of importation into, and established distribution channels, in the New Zealand market to facilitate the importation of significantly increased volumes of preserved peaches from Spain into the New Zealand market.

330. Article 3.7 of the Agreement concludes by stating "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."

331. In reference to Article 3.7 and the factors an investigating authority considers when making a determination of a threat of material injury, the Panel in *Softwood*

Lumber VI (paragraph 7.68) stated that the word 'should' in Article 3.7 indicates that, unlike the situation in under Article 3.4, consideration of each of the factors is not mandatory. The Panel also concluded that "Whether a violation existed would depend on the particular facts of the case, in light of the totality of the factors considered and the explanations given".

332. On the basis of its analysis of the above factors and in light of the totality of the factors considered, the Ministry concludes that further dumped exports are imminent, that the change in circumstances identified by the Ministry would create a situation in which the dumping can cause injury and can be clearly foreseen and imminent.

5.6 The Consequential Economic Impact of the Dumped Goods

Introduction

333. In order to gauge the extent to which the change of circumstances would cause material injury to the domestic industry, 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 examines 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 analysing the likely consequential economic impact of the dumped goods and in making either a negative or positive threat of material injury determination.

334. The Ministry has analysed below the injury information provided by the industry in order to assess the likely extent of the industry's injury in order to determine the extent to which, unless protective action is taken, material injury would occur and over what time period.

335. 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

336. Dumped imports can affect a domestic industry's production volume through increased supply of goods to the market and through price competition.

337. Not all peaches that are sourced from HWL's growers are destined to be processed into canned peaches. While the company processes the entire raw

peach crop available each year from its contracted New Zealand peach growers, it dedicates [redacted] peaches sourced from these growers to fulfilling its fruit salad production requirements. Furthermore, HWL's domestic output for preserved peaches fluctuates with the availability of raw peaches from the growers which is sometimes affected by weather and diseases.

338. In order to guard against fluctuations in the crop or if there has been a bad growing season due to weather or disease, HWL imports canned peaches to maintain continuity of supply to its markets and protect its brand when New Zealand production is unavailable.

339. HWL processes the entire raw peach crop available each year from its contract growers and it is contractually bound to purchase raw peaches from its growers in relation to [redacted]. Consequently, its output over the [redacted] financial years is unlikely to be affected by the presence of imports from Spain in the market. On this basis, and the fact that the company is sometimes forced to import preserved peaches to maintain continuity of supply, the Ministry considers that the company's sales is likely to be a more reliable indicator of any injury incurred by the company due to dumped goods, than output.

Sales Volume and Revenue

340. 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.

Historical Sales Volume and Revenue

341. The following table shows HWL's historical volume and revenue figures for its sales of preserved peaches, from 2008/9 to 2010/11:

Table 5.9: Sales Volume (kgs) and Sales Revenue ($NZ)

	2008/9	*2009/10*	*2010/11*
Sales (000 kg)	[redacted]	[redacted]	[redacted]
- As % of 2008/9	100%	[redacted]%	[redacted]%
Net Revenue ($)	[redacted]	[redacted]	[redacted]
- As % of 2008/9	100%	[redacted]%	[redacted]%

342. Table 5.9 shows that HWL's sales volume and revenue relating to preserved peaches decreased significantly from 2008/9 to 2009/10 although both indicators recovered the following year. If the information is analysed over the entire injury period, both sales volume and revenue are currently slightly below the figures recorded in 2008/9. On this basis, there is little evidence the company has suffered material injury in terms of sales volume and revenue over the injury POI.

Sales Volume and Revenue if Competing with Dumped Imports

343. In order to compete with the dumped goods, HWL's strategy is to [redacted], and therefore to incur no loss of sales volume in its 2011/12 and 2012/13 financial years. HWL forecasts a significant reduction of its sales revenue over the same period due to [redacted]. The calculation of the forecast net revenue for the 2011/12 and 2012/13 financial years in order to compete with the dumped goods is described in paragraph 292 above.

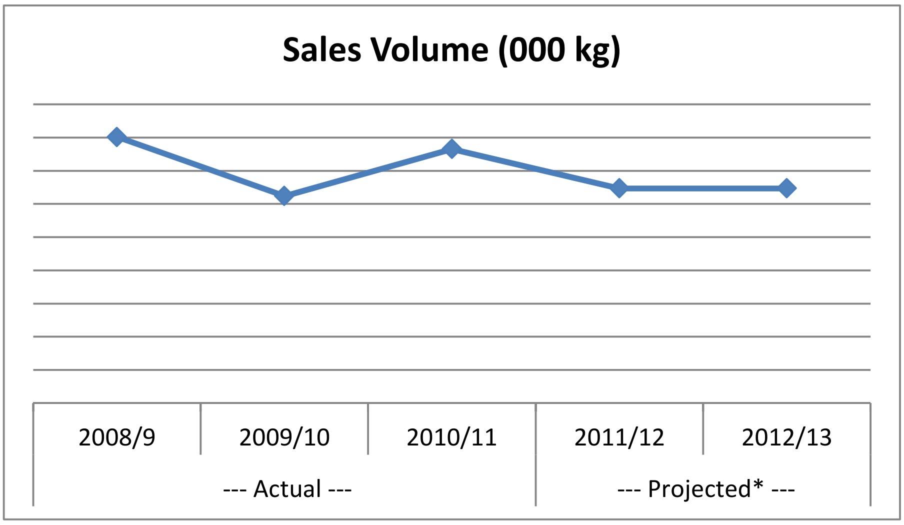
344. HWL provided forecast figures for its 2012 and 2013 financial years both in the presence and absence of dumped preserved peaches from Spain in the New Zealand market. These figures are outlined in the table below:

Table 5.10: Projected Sales Volume and Revenue

	-------- *2011/12 (est.)* ----------		--- *2012/13 (est.)* ---
	Without Dumped Imports	With Dumped Imports	With Dumped Imports
Sales (000 kg)	[redacted]	[redacted]	[redacted]
Percentage Change		[redacted]%	[redacted]%
Net Revenue ($)	[redacted]	[redacted]	[redacted]
Percentage Change		[redacted]%	[redacted]%

345. The figures in the above table reflect HWL's intended strategy to combat the dumped goods (if anti-dumping duties are not imposed). The table clearly shows that while the company intends to maintain sales volume (reflected in the company's standard sales budget which is based on sales of around [redacted] tonnes), it has projected a large decrease in net sales revenue over the 2011/12 and 2012/13 financial years, due to [redacted] the lower-priced dumped imports. In summary, HWL considers that if duties are not imposed on further imports of Spanish preserved peaches, the company will be forced to [redacted] retain sales volume, meaning that the impact from dumped imports is reflected in declines in total and per kilogram sales revenue rather than in declines in volumes. This strategy to combat the dumped goods is reflected in the large decrease in net sales revenue in the table above.

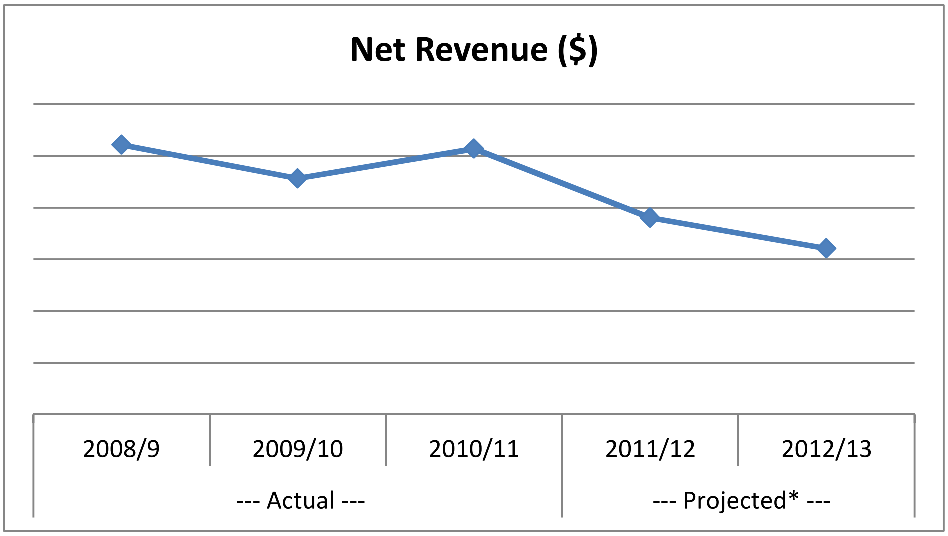
346. The graph below charts HWL's actual (2009-2011) and projected (2012 – 2013) sales volumes for preserved peaches (in the presence of dumped imports from Spain) using the sales volume figures in tables 5.9 and 5.10 above:



* If having to compete with dumped imports (in the absence of AD duties).

347. The graph shows that the company's projected sales volume figures for 2012 and 2013 (in the presence of dumped imports) are below its actual sales volume figure for the 2010/11 financial year but compares favourably with the sales figure recorded for 2009/10.

348. The graph below charts HWL's actual (2009-2011) and projected (2012 – 2013) sales revenue for preserved peaches (in the presence of dumped imports from Spain) using the sales revenue figures in tables 5.9 and 5.10 above:



* If having to compete with dumped imports (in the absence of AD duties).

349. The projected sales revenue figures (for 2012 and 2013) reflect HWL's planned strategy of combating the dumped imports from Spain [redacted] in the New Zealand market. As a result, the company has projected a significant reduction of its sales revenue [redacted]. The graph also shows that the company's projected sales revenue

figures for 2012 and 2013 (in the presence of dumped imports) are well below its actual sales revenue figures for its last three financial years.

350. As noted in paragraph 211 above, the Ministry considers that caution must be applied to these sales revenue projections. The projections are based on the company's total range of can sizes and types of Oak and Wattie's preserved peaches being affected by the dumped imports from Spain whereas the price undercutting exercise conducted by the Ministry found that only the smaller can size (410gm) was being undercut by the imported goods.

Market Share

351. 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.

Historical Market Share

352. The following table shows market share information (by volume) from 2008/9 to 2010/11:

Table 5.11: Market Share (Kilograms)

	2008/9	2009/10	2010/11
Dumped Imports from Spain*	[redacted]	17,228	347,846
Non-Dumped (all Sources)*	[redacted]	[redacted]	[redacted]
Sales by HWL**	[redacted]	[redacted]	[redacted]
NZ Market	[redacted]	[redacted]	[redacted]
As % of NZ Market:			
Dumped Imports from Spain*	[redacted]%	0%	4%
Non-Dumped (all Sources)*	[redacted]	[redacted]	[redacted]
Sales by HWL**	[redacted]	[redacted]	[redacted]

* excludes imports by HWL and non-subject goods.

** includes sales of imported preserved peaches.

353. The table shows that dumped imports from Spain increased their market share significantly from 2008/9 to 2010/11. There were minimal import volumes in 2008/9,

but in the latest full financial year (2010/11) imports had increased to 4 percent of the total market. Over the same period, HWL's market share remained static (at [redacted] percent), while non-dumped imports (from all sources) decreased their market share by four percent and now represent [redacted] the share of the total market for preserved peaches ([redacted] percent).

354. Over the last full financial year (from 2009/10 to 2010/11) imports from Spain have increased significantly, however, their gain in market share has been at the expense of imports from other countries while HWL has also gained market share at the expense of imports from other countries.

355. The changes in market share in Table 5.11 need to be treated with some caution. As noted previously in the report, 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 that some of the imports by HWL (and by other importers) in any given year were not sold until the following year and this timing factor may distort the total New Zealand market size figures and the shares held by the three categories shown in the table.

356. Furthermore, the fact that the figures in table 5.11 do not show any loss of market share by HWL that is attributable to imports from Spain is consistent with the company's threat of injury scenario [redacted], rather than lose out to the imports on volume (see 'Market share if competing with the dumped imports' below).

357. A more reliable indication of recent market share gains and losses is likely to be obtained from AC Nielsen data provided by HWL and James Crisp.[16] The market research data provided by HWL indicated a loss of market share by the company over a four-week period in October 2010 (soon after the Spanish imports began appearing in the market), of [redacted] percentage points in a key Wellington supermarket account. The data showed that dumped imports from Spain secured a [redacted] percent share of sales over the same period in the same supermarket account. The account represents 8.4 percent of total supermarket sales in New Zealand.

358. The AC Nielsen data provided by James Crisp was provided shortly prior to the release of this Report and contained more recent sales figures than the information provided by HWL. The data showed that for the one-year period ending 22 May 2011, HWL's supermarket sales of canned peaches represented [redacted] percent of total sales of canned peaches. The data also showed that HWL's sales of canned peaches increased by [redacted] percent (by value) and [redacted] percent (by volume). James Crisp claimed, in its email of 30 June, that this indicates HWL is [redacted]. The company also stated that it has

[16] HWL provided its information in its Application for measures while James Crisp provided its information in an email dated 30 June 2011.

observed that HWL is heavily discounting and promoting its brands across all retailers at very hard price points. The company noted that the heavy discounting behaviour of HWL was taking place well before it launched its ‘Cinderella’ brand.

359. In terms of the AC Nielsen data provided by James Crisp, the Ministry noted that it reflects the increased sales revenue and volume achieved by HWL in its latest full financial year i.e. from 2009/10 to 2010/11. The graphs under the “Sales” section above illustrate these sales increases. The data also seems to reflect the price depression HWL has incurred over its 2010/11 financial year (the graphs under the “Price Depression” section of this Report illustrate this price depression), although it should be noted that heavy discounting and promotion of prices at the retail/supermarket level doesn’t necessarily indicate the same has occurred at the ex-factory/ex-store level.

360. In response to the AC Nielsen data provided by James Crisp, HWL noted in an email dated 4 July 2011 that the data excludes private label brands (i.e. supermarkets’ own brands) such as Pams, Budget, Signature Range, Select and Homebrand. According to HWL, private label sales need to be included in any analysis of market share and, if these sales were included, the figures would align with the market share figures previously provided by HWL.

361. In any event, the current investigation was initiated on the basis of a threat of injury claim by HWL (rather than actual injury) and the Ministry is conducting the investigation on this basis. HWL has based its injury scenario on the effects that it considers the dumped imports from Spain will have on its future performance rather than any past loss of sales volume or market share (see below).

Market Share if Competing with the Dumped Imports

362. HWL has stated that, in order to compete with the lower-priced dumped imports from Spain, it would [redacted]. The company is contractually bound to purchase raw peaches from its growers in relation to the [redacted] and nearly all of the canned peaches resulting from this harvest will be sold in [redacted]. As noted previously in this report, HWL’s forecast sales volumes for 2012 and 2013, both with and without dumping, are based in its strategy of maintaining sales volume [redacted]. These forecasts therefore assume no loss of market share as a result of dumped imports over the company’s 2012 and 2013 financial years.

363. If the import figures are examined on an annual basis, they show that HWL has not lost market share to the dumped imports over the company’s latest full financial year (from 2009/10 – 2010/11). This is not unexpected, however, as imports only began entering the country in significant volumes in [redacted] and began appearing in the market soon after. Information provided to the Ministry indicates in the limited time the imports have been present in the New Zealand market, they have gained market share at the expense of the New Zealand industry. This is illustrated by retail level market research information showing that over a limited time period in October 2010 HWL’s Oak brand lost significant market share to canned peaches from Spain in a particular supermarket.

364. The impact of the dumped goods on HWL's future market share will depend on how HWL responds to increasing volumes of the Spanish imports e.g. the more HWL discounts its prices to compete with increased volumes of imports, the less will be the impact on market share, with the main impact being on HWL's revenue and profits.

365. Based on HWL's intended strategy to [redacted], it is unlikely that HWL would lose significant market share to dumped imports in its 2011/12 and 2012/13 financial years. The company intends to [redacted], rather than lose out to the imports on volume. On this basis, it follows that while the company may suffer some loss of market share in the short-term (as imports strive to gain a foothold in the market), as HWL [redacted] to combat the increasing volume of dumped imports, the less will be the impact of the dumped goods on the industry's market share.

Profits

366. 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.

Historical Profits

367. HWL provided the following information on its earnings before interest and tax (EBIT):

Table 5.12: EBIT

	2008/9	*2009/10*	*2010/11*
EBIT ($)	[redacted]	[redacted]	[redacted]
- change from previous year	n/a	[redacted]	[redacted]
- As % of 2008/9	100%	[redacted]%	[redacted]%
EBIT per kg	[redacted]	[redacted]	[redacted]
- change from previous year	n/a	[redacted]	[redacted]
- As % of 2008/9	100%	[redacted]%	[redacted]%
EBIT as % Sales Revenue	[redacted]%	[redacted]%	[redacted]%

368. The table shows that HWL's EBIT for preserved peaches has fluctuated over the injury period and has [redacted] each year with the exception of 2009/10. EBIT per kg and EBIT as a percentage of revenue has followed a similar trend.

Profits in Competition with the Dumped Imports

369. HWL has projected that it would need to compete with the dumped Spanish imports [redacted]. On the basis of this scenario, HWL has forecast a significant loss of sales revenue in the 2011/2 and 2012/13 financial years, which would impact directly on its profit.

370. HWL provided the following forecast EBIT figures for its 2012 and 2013 financial years both in the presence and absence of dumped preserved peaches from Spain in the New Zealand market:

Table 5.13: Projected EBIT

	-------- 2011/12 (est.) ----------		*--- 2012/13 (est.) ---*
	Without Dumped Imports	With Dumped Imports	With Dumped Imports
EBIT ($NZ)	[redacted]	[redacted]	[redacted]
Percentage Change		[redacted]%	[redacted]%
EBIT per kg	[redacted]	[redacted]	[redacted]
Percentage Change		[redacted]%	[redacted]%
EBIT as % Sales Revenue	[redacted]%	[redacted]%	[redacted]%

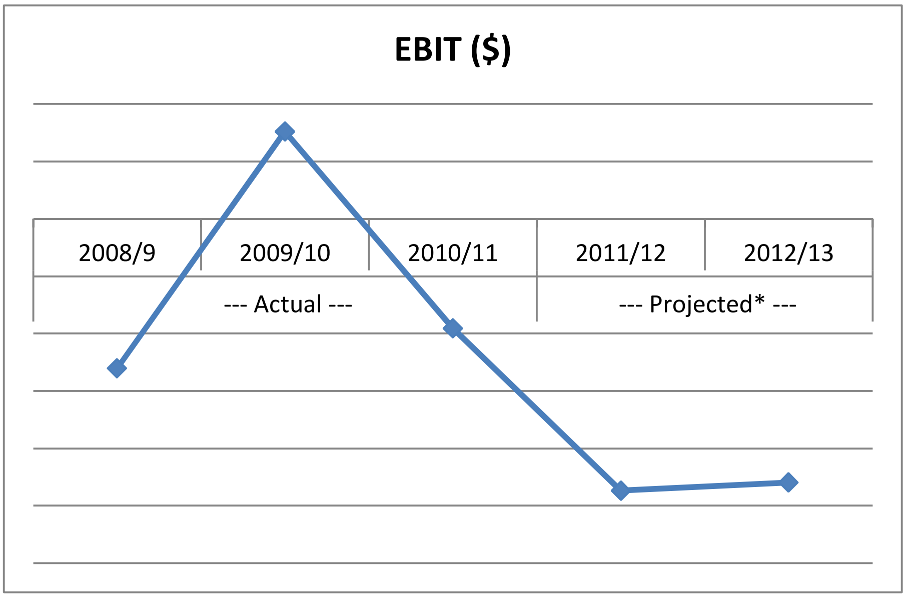
371. HWL has forecast [redacted] net profit in 2011/12 (if not having to compete with dumping). Under this scenario, HWL has based its 2011/12 forecast EBIT on its budgeted figures for the 2011/12 financial year. More specifically, the forecast is based on HWL's current cost of goods sold (including a [redacted] percent cost [redacted] to reflect the average cost [redacted] over the last three years), its current selling, general and administration costs (including a [redacted] percent cost [redacted] to reflect the average cost [redacted] over the last three years), and its forecast pricing strategy (including a [redacted] percent [redacted] in net prices to [redacted] the budgeted cost [redacted]) in the absence of dumped imports.

372. The forecast EBIT figures for 2012 and 2013 in the table above (in the presence of dumping) derive from HWL's projected sales volume and revenue figures considered above and reflect HWL's intended strategy of combating the dumped goods (if anti-dumping duties are not imposed) [redacted]. The company also noted that it will need to [redacted] to protect its volume and market share, which will also directly impact on profit.

373. The figures in table 5.13 above indicate that HWL will achieve a small positive EBIT ($[redacted]) and EBIT per kg ($[redacted]) in its 2012 financial year, in the absence of dumping, yet suffer significant net losses in this year ($[redacted]) and in its 2013 financial year ($[redacted]) if it is forced to compete with the dumped imports from Spain. As noted in paragraph 211 above, the Ministry considers that

caution must be applied to these EBIT projections. The projections are based on the company's total range of can sizes and types of Oak and Wattie's preserved peaches being affected by the dumped imports from Spain whereas the price undercutting exercise conducted by the Ministry found that only the company's smaller can sizes were being undercut by the imported goods.

374. The graph below charts HWL's actual (2009-2011) and projected (2012 – 2013) EBIT for preserved peaches (in the presence of dumped imports from Spain) using the EBIT figures in tables 5.12 and 5.13 above:



* If having to compete with dumped imports (in the absence of AD duties).

375. The projected EBIT figures (for 2011/12 and 2012/13) reflect HWL's planned strategy of combating the dumped imports from Spain [redacted] in the New Zealand market. As a result, the company has projected a significant reduction in EBIT [redacted]. The graph shows that the company's projected net losses for 2012 and 2013 (in the presence of dumped imports) are well below the EBIT figures it achieved over the last three financial years. HWL considers that such a reduction in profits [redacted].

Utilisation of Production Capacity

376. 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.

377. HWL's potential production capacity for peaches is determined by the availability of raw peaches from its growers. Currently HWL takes and processes every peach its contracted growers can supply. Theoretically, the peach season

could run from the beginning of February to the end of March (a total of 59 days). At [redacted] metric tonnes per day processing capacity, this gives a theoretical production capacity of [redacted] metric tonnes, but this includes crop tonnes for both peaches and peaches that are processed into fruit salad. In summary, the total production capacity of canned peaches is dependent on the quantity of raw peaches available for like goods production each year, competition for the parts of the canning line which are common to other seasonal fruit and vegetables and also by the storage life of the raw fruit.

378. Due to the range of canned products manufactured by HWL and the limitations mentioned above regarding the availability of the raw peaches and the storage life of the raw fruit, the Ministry considers that it is difficult to predict the impact on the utilisation of production capacity for canned peaches as a result of the company having to compete with the dumped imports from Spain. This is especially the case with HWL's intended strategy to combat the dumped goods (if anti-dumping duties are not imposed) [redacted] which it has projected will impact on its sales revenue rather than its volume.

379. In effect, the Ministry considers that the industry's production capacity utilisation rate is unlikely to be a useful threat of injury indicator in the present case.

Productivity

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

381. HWL provided details of the number of employees (both permanent and seasonal) engaged in the production of canned peaches, its domestic production volume from 2007/8 to 2009/10 and the total number of employee hours dedicated to the production of canned peaches. This enabled the Ministry to calculate productivity per employee and per hours worked in the production of canned peaches over these years. The table below shows these figures:

Table 5.14: Productivity per Employee and Labour Hours

	2007/8	*2008/9*	*2009/10*
Domestic Production (000 kg)	[redacted]	[redacted]	[redacted]
Seasonal Staff	[redacted]	[redacted]	[redacted]
Permanent Staff	[redacted]	[redacted]	[redacted]
Total Staff	[redacted]	[redacted]	[redacted]
Total Hours	[redacted]	[redacted]	[redacted]
Production vol. per employee	[redacted]	[redacted]	[redacted]
Production vol. per hours worked	[redacted]	[redacted]	[redacted]

382. The table shows that productivity per employee and in terms of the number of hours worked have fluctuated over the period. The Ministry notes that the figures are likely to be a result of fluctuating peach crop volumes, which influences the

production volumes, the staff numbers allocated to peaches and the hours worked by those staff for any given year. On this basis, the Ministry does not consider that the information provides a satisfactory basis from which to draw any past trends nor does it consider that the industry's productivity is likely to be a useful threat of injury indicator in the present case.

Return on Investments

383. Return on investments measures profit against the value of the investment in a business. 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 new investment.

384. [redacted] HWL's seasonal production plant is not specific to canned peaches. [redacted]. This fact made it difficult for the company to provide information on returns on investment specific to its canned peach operation. In any event, because anti-dumping duties are already in place from a number of sources on canned and preserved peaches and the current investigation is a threat of injury case, it is unlikely the company has suffered a decrease in its return of investment for canned peach production due to dumped imports from Spain.

385. In respect of the likely impact on HWL's return on investment should the Spanish imports continue to be imported at their current price level and in substantially increased volumes, HWL stated that the loss of sales and profits directly resulting from the dumped preserved peaches from Spain will have significant adverse effects upon HWL's achievable return on investments.

386. Because [redacted] HWL's seasonal production plant is not specific to canned peaches and [redacted] it has been difficult for the company to provide information on returns on investment specific to its canned peach operation. This has not enabled the Ministry to make a meaningful conclusion relating to historical return on investments specific to canned peach production. However, because the current investigation is a threat of injury case, it is unlikely the company has suffered a decrease in its return of investment for canned peach production due to dumped imports from Spain.

387. HWL considers that the loss of sales and profits directly resulting from the dumped preserved peaches from Spain will have significant adverse effects upon HWL's achievable return on investments. While the Ministry has been unable to make a meaningful conclusion relating to HWL's historical return on investments specific to canned peach production, the company has projected its profit would be adversely affected, as a result of having to compete with the dumped goods. Because return on investment measures profit against the value of the investment, it follows that any declines in profit would likely result in a subsequent adverse impact on the company's return on investment relating to its canned peach operation assuming there is no significant change in the value of the investment.

5.7 Factors Affecting Domestic Prices

388. HWL stated that raw material costs have increased in recent years, most notably the cost of tinplate which has increased in price due to high steel consumption in developing countries. HWL considers that up until anti-dumping duties were imposed on preserved peaches from China in 2006, dumped imports from this source made it [redacted] for HWL to pass on these cost increases in its selling prices.

5.8 Magnitude of the Margin of Dumping

389. 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.

390. The average dumping margin for those exporters and manufacturers exporting to New Zealand over the POI was found to be 68 percent. The dumping margins for each exporter ranged from 16 to 143 percent.

391. Dumped imports are undercutting the domestic industry's selling prices by [redacted] percent although this is in respect of 420gm cans of canned peaches only. Imports of 420gm cans represented a significant proportion of total imports of preserved peaches from Spain during the dumping POI.

392. A comparison of the dumping margin and the margin of undercutting for the 420gm can size indicates that a majority of the price undercutting can be attributed to dumping.

5.9 Other Adverse Effects

Cash Flow

393. Cash flow is managed at a corporate level in HWL and at H. J. Heinz. Given the seasonal nature of the peach business with an uneven distribution of expenditure and revenue relating to the production and sale of peaches, the company considers that it would not add value to the Ministry's analysis of injury for HWL to provide a cash flow analysis relating to peaches. The Ministry agrees with this, and therefore cash flow has not been assessed with respect to the domestic industry's historical injury analysis, or its analysis relating to threat of injury.

Inventories

394. Production over a relatively short period, once a year, means that inventory is at its peak soon after production and then declines as the inventory is sold down over the next 12 months. HWL stated that inventory levels were not a meaningful indication of injury because the company's policy was to manage its inventory levels to account for fluctuations in peach crop levels.

395. The Ministry considers it unlikely that the industry has experienced injury through any adverse impact on its inventory levels due to imports from Spain, as the investigation is based on a threat of injury (rather than actual injury).

396. Should the Spanish imports continue to be imported at their current price levels and in substantially increased volumes, the impact of the dumped goods on the industry's inventory levels will depend on how HWL responds to increasing volumes of the Spanish imports e.g. the more HWL discounts its prices to compete with the increased volumes of imports, the less will be the impact on inventory volumes, with the main impact being on HWL's revenue and profits. Based on HWL's intended strategy [redacted], in its 2011/12 and 2012/13 financial years, rather than lose out to the imports on volume, it follows that HWL's inventory levels are unlikely to be adversely affected by dumped imports from Spain during these periods.

Employment and Wages

Employment

397. The table below shows the number of full-time seasonal and permanent employees that are engaged in the domestic production of canned peaches from 2007/08 to 2009/10.

Table 5.15: Total Employee Numbers

	2007/8	*2008/9*	*2009/10*
Seasonal Staff	[redacted]	[redacted]	[redacted]
Permanent Staff	[redacted]	[redacted]	[redacted]
Total Staff	[redacted]	[redacted]	[redacted]
- change from previous year	n/a	[redacted]	[redacted]
- As % of 2007/8	100%	[redacted]%	[redacted]%

398. The number of employees engaged in the production of like goods has increased from [redacted] staff in the 2007/8 financial year to [redacted] in the 2008/09 and 2009/10 financial years. HWL stated that the number of staff required is dependent on the volume of raw peaches that HWL is able to source for the production of canned peaches. The low number of staff in the 2007/08 financial year was attributed to a poor peach crop, which resulted in a reduced volume of output and number of hours worked.

Wages

399. The table below shows average hourly wage rates for staff that are engaged in the domestic production of canned peaches from 2007/08 to 2009/10.

Table 5.16: Wages

	2007/08	*2008/09*	*2009/10*
Seasonal Labour Rates*	[redacted]	[redacted]	[redacted]
- Change from previous year	n/a	[redacted]	[redacted]
- As % of 2007/8	100%	[redacted]%	[redacted]%

* for seasonal staff engaged directly in the production of canned peaches.

400. The average wage rate relating to canned peaches stayed reasonably static from 2007/8 to 2009/10. On this basis, there is no real evidence that wages have declined in absolute terms over the period.

401. As the current investigation is based on threat of injury, it is unlikely the domestic industry has experienced any adverse effects in terms of its employee numbers and wage rates due to dumped imports from Spain over the injury POI.

402. In respect of any future impact on employment and wages, the Ministry noted above under "Productivity" that fluctuating peach crop volumes influences not only production volumes of canned peaches but the staff numbers allocated to peaches and the hours worked by those staff. The Ministry has also noted previously in this report that HWL is contractually bound to purchase raw peaches from its growers in relation to the [redacted] which it intends to sell in its 2012/13 financial year. This fact supports the company's intended strategy of combating the dumped goods (if anti-dumping duties are not imposed) [redacted] which it has projected will impact on its sales revenue rather than its volume, in the near future.

403. Based on HWL's intended strategy to [redacted], in its 2011/12 and 2012/13 financial years, rather than lose out to the imports on volume, it follows that HWL's employment levels and wage rates are unlikely to be adversely affected by dumped imports from Spain during these periods.

Growth

404. HWL considers that the loss of sales revenue and profits from dumped imports from Spain will have significant adverse effects on the company's growth.

405. The Ministry considers any detrimental effects on growth will be reflected in other injury indicators such as sales, profit and return on investment. While there is no evidence of an adverse impact on HWL's current growth due to dumped imports from Spain, the company has projected its sales revenue, profit and return on investment would be adversely affected, as a result of having to compete with the dumped goods. On this basis, it follows that there would likely be a subsequent adverse impact on the company's growth.

Ability to Raise Capital, and Investments

406. Over the last few years HWL has made a number of investments in capital equipment in its production facility in Hastings. This has included a $[redacted] capital investment in the seasonal business, the majority of which is directly attributable to peaches and $[redacted] spent in its 2004 financial year on [redacted]. Further improvements were made [redacted] in its financial year 2006 with $[redacted] being invested. More recently, HWL has invested in [redacted].

407. The Ministry notes that not all the capital expenditure made by HWL over the last few years is directly attributable to the production of canned peaches, and of the amount that is attributable to its peach processing facility, not all the peaches that are processed through this facility are processed into canned peaches. Some of these peaches are also processed into fruit salad. In any event, the Ministry notes the extent of HWL's recent capital expenditure on its peach processing facilities and that as a result of not having to compete with dumped imports from a number of foreign sources, the domestic market conditions are now favourable for HWL investing in new processing facilities in order enable it to more effectively meet its domestic customer requirements.

408. In terms of any future impact on HWL's ability to raise capital and investments as a result of further imports of dumped Spanish peaches, the Ministry considers that it is extremely difficult to draw any conclusions from the information at hand and that any projections on the impact of the dumped goods on these factors would result in a degree of speculation in the decision-making process.

5.10 Causes of Injury Other than Dumping

Introduction

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

i. The volume and prices of goods that are not sold at dumped prices; and

ii. Contraction in demand or changes in the patterns of consumption; and

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

iv. Developments in technology; and

v. Export performance and productivity of the New Zealand producers; and

410. Under section 8(2)(f) of the Act the Chief Executive is also required to have regard to the nature and extent of importations of dumped or subsidised goods by New Zealand producers of like goods, including the value, quantity, frequency and purpose of any such importations.

Other Causes of Injury in a Threat of Injury Case

411. The prospective nature of a threat of material injury investigation makes the examination of any future injury suffered by the industry being a result of factors other than the dumped goods highly difficult. However, it could be argued that this prospective examination is no different when having to examine the extent to which the industry is threatened with material injury from the dumped imports. It is certainly clear from the Panel Report in *Softwood Lumber VI* (paragraphs 7.113 – 7.137) that, in a threat of injury case, authorities are expected to the extent possible and to the

extent to which information is available, examine factors other than the dumped goods which are threatening injury at the same time as dumped imports.

Non-dumped Imports

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

413. HWL has stated that no injury is being caused by imports from sources other than Spain. The company contends that injury caused by dumped imports from the significant exporting counties of China, Greece and South Africa has been addressed by the application of anti-dumping duties on imports from these countries. 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.

414. In the Initiation Report for the present investigation, it was noted that preserved peaches are also imported from countries other than Spain such as China, Greece, South Africa and Australia. HWL has pointed out that Spain is now the lowest cost source of supply which is supported by Statistics NZ data provided by the company. The Statistics NZ data provided by HWL showed that 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.

415. Since the initiation of the present investigation, the Ministry has sourced import statistics from NZ Customs relating to the more recent dumping POI (Jan – Dec 2010) which is the same period for which importers were requested to supply information on their imports from Spain (including volumes, prices paid to their Spanish suppliers and prices charged in the New Zealand market). The Ministry has used the information sourced from NZ Customs (relating to imports for all countries) to gauge the extent to which the price of Spanish imports compares with the price of imports from other countries.

416. The following table shows the import volumes of preserved peaches from Spain and other countries over the dumping POI and the values at which the imports are entering New Zealand:

Table 5.17: Import Volumes and Prices from Spain and Other Countries
($NZ/kg)

Country of Origin	*Volume Imported (kg)*	*Free-on Board Value (NZD/kg)*	*Cost, Insurance & Freight (CIF) plus other expenses*/kg*
Spain	201,548	1.24	1.47
Australia	1,306,619	4.03	4.12
China	1,329,938	1.55	1.75

Greece	72,334	1.46	1.90
South Africa	2,279,279	2.25	2.54

* Other importation expenses include customs duty and anti-dumping duty.

417. As noted in section 5.6 of this Report (under “Market Share”), non-dumped imports currently hold the largest share of the New Zealand market when compared to the shares held by the New Zealand industry and dumped imports from Spain. However, the share of non-dumped imports has decreased over the latest full April year (2010/11) by [redacted] percentage points. The loss in market share by non-dumped imports has been at the expense of both a gain in market share of the dumped imports from Spain (by [redacted] percentage points) and a gain in the market share by the New Zealand industry (by [redacted] percentage points) indicating that the dumped imports have had an impact on non-dumped imports.

418. As a result of the current imposition of anti-dumping duties on imports of canned and preserved peaches from China, Greece, and South Africa, it is unlikely that any injury suffered by HWL since the imposition of these duties can be attributable to imports from these sources. This is reflected through the most recent injury information supplied by HWL which indicates that the company has suffered no injury in terms of most of its performance indices over its last three financial years. Import volumes from the other main source of imports, Australia, have declined significantly over the last 2-3 years, which, in itself, indicates that imports from this source are unlikely to be causing injury to the domestic industry.

419. In terms of whether imports from countries other than Spain are entering New Zealand at prices which are threatening material injury to the domestic industry, the information in table 5.17 above clearly shows that the average per kilogram FOB and CIF prices (plus customs and anti-dumping duty) of preserved peaches from sources other than Spain are significantly higher than they are for Spanish imports. Based on the totality of the information sourced on volumes and prices of non-dumped goods, the Ministry considers that it is unlikely that imports from sources other than Spain is a factor other than the dumped goods which is threatening material injury to the domestic industry.

Changes in Consumption or Demand

420. 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 peaches.

421. HWL has stated that there does not appear to be any recent contraction in demand or changes in the patterns of consumption. HWL also noted that there is the consumer perception that preserved peaches from Spain are [redacted] in comparison to some alternative sources.

422. In its response to the Ministry’s Importers Questionnaire, James Crisp stated that it is likely that consumption of canned peaches has increased as a result of

HWL's saturation marketing of its products at "5 cans for $6", as it is well known that price promotions stimulate consumption.

423. An analysis of the market share figures in section 5.6 of this report shows that the total New Zealand market for preserved peaches has remained relatively stable in recent years although there was a dip in total consumption in the 2009/10 April year. While there is some indication from the literature research undertaken by the Ministry suggesting that less canned fruit is being sold world-wide because consumers are preferring to eat fresh rather than preserved fruit (in their quest for a healthier life style), the Ministry has uncovered no evidence of this trend in respect of the New Zealand market.

424. On the basis of the information sourced during the investigation, the Ministry considers that changes in consumption or demand in the New Zealand market is not a factor other than the dumped goods which is threatening material injury to the domestic industry.

Restrictive Trade Practices and Competition

425. 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 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.

426. 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.

427. With respect to restrictive trade practices, James Crisp stated in its Importers questionnaire response that it has no knowledge of and therefore could not comment on this matter. With regard to competition between overseas suppliers and the New Zealand industry, James Crisp stated that HWL effectively has a monopoly on the canning of all locally grown peaches and that all other suppliers of preserved peaches to the New Zealand market are required to import product. According to James Crisp, in order to compete with HWL's branded product and achieve a reasonable on-going level of sales, all importers of preserved peaches are required to source low-priced products and additional extensive supermarket promotion is required.

428. Information sourced in the investigation indicates that the New Zealand market for preserved peaches is highly competitive, a fact which was alluded to by James Crisp in its reply to the Ministry's importers questionnaire. It has been noted previously in this report that HWL claims there are no long-term contracts in place for customers and house brand supply contracts are up for constant tender. Furthermore, all supermarkets stock brands of preserved peaches other than those supplied by HWL, HWL has no exclusive customers and the market is always open

to new sources of supply. James Crisp also noted that there are no significant barriers to any importer to enter the New Zealand preserved fruit market, in general.

429. Based on the information sourced in the investigation, the Ministry considers that the highly competitive market for preserved peaches in New Zealand may have impacted on the New Zealand industry's performance, in the past. However, it is unlikely to be a major cause of injury or threat of injury to the domestic industry.

Developments in Technology

430. HWL stated that there had been no significant changes in technology for a number of years and that it does not believe there is any evidence of a technology development relevant to a consideration of material injury.

431. In its Importers questionnaire response, James Crisp stated that ongoing technological advancements are made by progressive well-funded businesses, but often without any resulting price advantage. According to the company, China has many ex-state-owned canneries and new canneries producing large volumes of canned food, although these canneries remain low-cost producers, thereby enabling China to undercut most other preserved food-producing countries.

432. There have been no submissions which suggest that differences between the technology used by the New Zealand industry and that used in Spain have been a cause of injury to the New Zealand industry. On this basis, the Ministry considers that developments in technology is not a factor other than the dumped goods which is threatening material injury to the domestic industry.

Export Performance and Productivity of New Zealand Producers

433. HWL's exports a small volume of canned peaches (less than [redacted] percent) to some Pacific Island countries and has recently exported a small amount to Australia. The company does not consider such small export volumes has had any impact on its domestic operation. The company also stated that there had been no significant changes in its productivity in recent years.

434. In its Importers questionnaire response, James Crisp stated that it has no knowledge of HWL's export performance and could not comment on this matter. In terms of HWL's productivity, James Crisp noted that the capacity for New Zealand to remain a cost-effective producer of canned peaches is limited, owing to the low volume of local production compared with the high output of canneries in China, South Africa, Greece and Spain.

435. The Ministry considers that HWL's exports of canned peaches are too small to have had any negative effect on the industry. In terms of productivity, the Ministry noted in section 5.6 of this Report that HWL's productivity (in terms of per employee and the number of hours worked) has fluctuated over the last few years but that this is likely to be the result of fluctuating peach crop volumes, which influences the production volumes, the staff numbers allocated to peaches and the hours worked by those staff for any given year.

436. On the basis of the information sourced in the investigation, the Ministry considers that the company’s export performance and productivity is not a factor other than the dumped goods which is threatening material injury to the domestic industry.

Imports of dumped goods from Spain by the Industry

437. 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.

438. HWL has advised that at times of short supply of peaches in New Zealand due for example to disease or weather events, it is compelled to import canned peaches in order to supplement its domestic production. 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 crop shortage.

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

440. Customs data shows HWL imported the following quantities of preserved peaches from Spain in its 2007/08 and 2008/09 financial years (the company has made no imports from Spain since this time):

Table 5.18: HWL’s Imports (kilograms)

2008	[redacted]
2009	[redacted]

441. In the past HWL has made importations from Spain due to peach crop fluctuations in New Zealand which it has used to supplement its domestic production. The information sourced by the Ministry shows that when the company has imported from Spain, they have been priced the same as the domestically-produced product in the market.

442. The focus of the current investigation (being a threat of injury case) is on the extent to which dumped imports from Spain is a factor which is threatening material injury to the domestic industry. The information shows that HWL is not currently importing preserved peaches from Spain and if it needed to import the goods in the future, it would likely do so to the extent necessary to supplement its domestic supply due to raw peach crop shortages. On this basis, the Ministry considers that

imports of dumped imports from Spain by the domestic industry is not a factor other than the dumped goods which is threatening material injury to the domestic industry.

Conclusions on Other Causes of Injury

443. There is some evidence that the highly competitive market for preserved peaches in New Zealand may have impacted on the New Zealand industry's performance, in the past. However, this is not unusual as the New Zealand market for preserved peaches is extremely competitive. On the basis of the information sourced in the investigation, the Ministry considers that the highly competitive nature of the New Zealand market has been a consistent factor that will not change in the near future. The Ministry found no evidence of any other factors, other than the dumped goods, which are threatening injury at the same time as dumped imports.

5.11 Causal Link

444. Sub-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 other factors also being a cause of material injury or threatening to cause material injury to an industry. This reflects the requirements of Paragraph 5 of Article 3 of the Agreement.

445. The Ministry adopts a two-limb test to assess causality. The first limb focuses on the dumped imports, asking whether the dumped imports are injuring or threatening material injury to the industry, 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 is threatened, it is caused by dumping.

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

First Causal Link Limb

447. The volume of dumped imports has increased significantly since 2009 and especially since the second half of the 2010 calendar year, both in absolute terms and relative to production and consumption in New Zealand (although the increase in dumped imports relative to consumption has coincided with an increase in the New Zealand industry's share of total consumption in New Zealand).

448. There is evidence of significant price undercutting of the New Zealand industry's canned peaches by the dumped imports, however, only in respect of the imported 420gm can of preserved peaches (which represents the vast majority of sales in New Zealand). There is no undercutting in respect of the imported 850gm can and 3kg glass jar of preserved peaches. While there is no evidence of price depression when average selling prices in 2010/11 are compared with those in

2008/9, the industry's average selling prices did decline in 2010/11 to a level below that achieved in 2009/10. There is also evidence of price suppression in 2010/11 in that the percentage total costs represented of sales revenue in that year was above that for the preceding year (2009/10).

449. The current investigation was initiated on the basis that the imports from Spain are threatening the domestic industry with injury (rather than causing actual injury) and in this respect the Ministry has examined the extent to which the industry is threatened by recent increased volumes of dumped imports from Spain. As a result of this analysis the Ministry found that the recent significant increase in import volume of dumped imports from Spain and the extent to which the imports are currently undercutting the price of the domestic peaches will depress and suppress domestic prices in the near future. The Ministry further found that these volume and prices effects will likely increase demand for further imports and cause material injury to the domestic industry in terms of declines in sales revenue, EBIT, return on investment and growth.

450. As a result of the analysis performed and the findings made, the Ministry consequently considers there is an inference that the recent significant increase in the volume of dumped goods, the current and imminent price effects and the likely consequent economic impact outlined in the paragraph above can be attributed to dumped imports from Spain.

Second Causal Link Limb

451. The dumping investigation has found that 100 percent of the imports of the subject goods from Spain are dumped. However, non-dumped imports (from other countries) are also entering New Zealand and while volumes have decreased over the last full April year (2010/11), these imports still represent a larger percentage (around [redacted] percent) of the New Zealand market than either dumped imports or sales by the New Zealand industry.

452. While the volume of non-dumped imports is significantly higher than that of dumped imports this does not mean that the pricing pressure and consequent economic impact exerted by non-dumped imports is necessarily greater than that of dumped imports, particularly in a situation where non-dumped imports are not undercutting domestic industry prices (or at least not undercutting domestic prices to the extent of dumped imports) and where non-dumped import volumes are not increasing at the same rate as dumped import volumes.

453. The information in the "Market Share" section of this Report shows that the market share held by non-dumped imports decreased over the latest April year, that the current prices of non-dumped goods from the major sources of supply are entering at non-injurious prices (because of the imposition of anti-dumping duties on these imports), that there has been a recent significant rate of increase in dumped imports from Spain (particularly since the second half of 2010) and that these dumped imports are significantly undercutting both the domestic industry's prices and those of the non-dumped imports.

454. There is some evidence that other factors, other than non-dumped imports, in particular the highly competitive market for preserved peaches in New Zealand, may

have impacted on the New Zealand industry' performance in the past. However, the market for most goods in New Zealand is open to fairly traded imports from all sources and is highly competitive, there are very few trade-restricting measures in place and all New Zealand domestic industries are expected to compete fairly amongst themselves and with competition from abroad.

455. The Ministry found no evidence of any other factors, other than the dumped goods, which are threatening injury at the same time as dumped imports. Dumped imports must be a cause of material injury threatened to the domestic industry in order for a finding of threat of material injury to be sustained. The Ministry does not consider that the Act or Agreement provides that dumped imports must be the sole cause of material injury threatening the domestic industry.

456. While there is some evidence that the highly competitive market for preserved peaches in New Zealand may have affected the New Zealand industry's past performance, the Ministry considers that this factor has always been present and will continue in the near future. The Ministry considers that any injury caused by this factor can be clearly distinguished from the injurious effects threatened by the dumped goods and that it is not sufficient to break the inferred causal link that dumped imports from Spain are threatening to cause material injury to the New Zealand industry.

5.12 Conclusions Relating to Threat of Material Injury

Introduction

457. Article 3.7 of the Agreement states that a threat of material injury has to be clearly foreseen and imminent, being beyond mere allegation, conjecture or remote possibility. Furthermore, Article 3.8 states that where injury is threatened by dumped imports, the application of anti-dumping measures shall be considered and decided with special care. The Panel in *Softwood Lumber VI* noted that the Article 3.8 provisions of special care reinforce the fundamental obligation in Article 3.7 that investigating authorities shall base a determination of threat of material injury on facts and not allegation, conjecture or remote possibility.

458. In making its threat of injury determination i.e. that further dumped exports are imminent and that, unless protective action is taken, material injury will occur, the Ministry has been mindful of its obligations under Article 3.7 and 3.8 of the Agreement. The prospective nature of a threat of material injury investigation makes the examination of any future injury by the industry difficult and, in this case, the outcome was finely balanced.

459. Of particular relevance in respect of these observations, the Ministry notes the following points:

- The domestic industry is facing significant levels of price undercutting from the Spanish imports, which in itself makes the conditions existing in the New Zealand market highly attractive to importers of Spanish preserved peaches.

- While the price undercutting is in respect of imported 420gm cans of preserved peaches only (no undercutting was found in respect of the imported 850gm can size and the 2.65kg glass jar of whole preserved peaches), imports of the 420gm can size represented a significant proportion of total import volumes from Spain over the dumping POI. Likewise, sales of the domestic industry's smaller can sizes represent a significant proportion of its total sales of preserved peaches.

- The price undercutting analysis was conducted by the Ministry using the New Zealand importers' and the domestic industry's own cost and pricing information.

- Based on the evidence of the amount of current price undercutting by imports of 420gm cans of preserved peaches, the Ministry is satisfied that should these goods continue to enter the country at their current prices, they will exert substantial pricing pressure on the domestic industry's prices.

- There was a degree of speculation in terms of some of the information provided and comments made by some interested parties. An example of this was the information provided and claims made by both James Crisp (the most significant importer of preserved peaches) and by HWL, in respect of the likelihood of substantially increased importations into New Zealand and the ability of Spanish exporters to supply the New Zealand market with product.

- For instance, James Crisp claimed that sourcing a sufficient quantity of irregular cut canned peaches would pose a major hurdle for the company because its suppler does not produce this product in large volumes whereas HWL's counter-claimed that if producers in Spain had surplus stock they would likely sell higher grade product at a lower grade price (and label it accordingly) in order to clear stock.

- Both companies provided information on what they considered would be the rate of increase in imports from Spain in the near future. HWL's projection of import volumes (in the absence of measures) differed greatly from James Crisp's claim about what it planned to import annually from its Spanish supplier.

- In making a finding on particular issues (such as likelihood of substantially increased importations into New Zealand and the ability of Spanish exporters to supply the New Zealand market with product), the Ministry had to weigh up the information and claims provided by both the importer and the domestic industry with information sourced independently. In doing so, it has tried as much as possible to make a balanced judgement on the issues.

- Many of the Ministry's findings hinged on the issues of the likelihood of substantially increased importations into New Zealand and the ability of Spanish exporters to supply the New Zealand market with product, and this assessment was hampered by a lack of co-operation from most of the Spanish exporters. In particular, the major exporter of preserved peaches to New Zealand over the dumping investigation period did not provide a response to the Ministry's foreign exporters questionnaire. It is likely that a response to the questionnaire would have enabled the Ministry to make a much more informed decision on these issues, particular in respect of the Spanish exporters' intentions regarding their exports to New Zealand.

- As a result of the Spanish exporters' non-cooperation in the investigation, the Ministry had to substitute the exporters' information with information and facts which were available. In a dumping investigation, if an interested party doesn't provide the necessary information requested by the authorities, the authorities do have some leeway in deciding what information is used as a substitute and are justified in using information which could lead to a result which is less favourable to the party than if the party did cooperate. Annex II of the Agreement allows for this possibility.

Conclusions under Article 3.7 (Threat of Injury)

460. The Ministry, in the main, assesses the extent to which a threat of material injury exists using the guidelines in Article 3.7 of the Agreement. Article 3.7 refers to the need to establish a change in circumstances which would create a situation in which the dumping would cause injury and that such a change in circumstances must be clearly foreseen and imminent.

461. The Ministry considers that, in the present case, the change in circumstances which it is obliged to consider under Article 3.7, is whether the domestic industry will [redacted] preserved peaches in order to compete with substantially increased volumes of dumped imports from Spain, in the near future, and if so, whether this will cause material injury to the domestic industry in the form of price effects and a consequential impact on the domestic industry.

462. Bearing in mind the change in circumstances in the present case and after considering the totality of the factors listed in Article 3.7 (i) to (iv) of the Agreement, along with other relevant factors, the Ministry has found that:

- there has been a recent significant increase in imports of dumped goods from Spain indicating the likelihood of substantially increased importations imminently;

- there is evidence that Spanish exporters have sufficient freely disposable capacity and inventories to supply preserved peaches to New Zealand indicating the likelihood of substantially increased dumped imports into New Zealand, in the near future;

- there are significant levels of current price undercutting by the 420gm canned peaches indicating that preserved peaches from Spain are entering New Zealand at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports; and

- there continue to be few barriers to entry for an importer of preserved peaches in the New Zealand market and New Zealand importers and retailers have the existing distribution systems in place to facilitate the importation of significantly increased volumes of preserved peaches from Spain into New Zealand.

463. Based on the above findings, the Ministry concludes that further dumped exports are imminent and that, unless protective action is taken, material injury will occur (see below).

Conclusions under Article 3.4 (Consequential impact on the Industry)

464. In order to gauge the extent to which the change of circumstances would cause material injury to the domestic industry, the Ministry examined projections provided by HWL of the injury it considers it will suffer as a result of the change in circumstances.

465. The Ministry has examined these projections in light of the company's past and projected future performance (in the absence of injurious dumping) in order to assist it in determining the extent to which, unless protective action is taken, material injury would occur and over what time period. The Ministry found that New Zealand industry would likely suffer the following adverse effects over its 2011/12 and 2012/13 financial years, attributable to dumped imports:

- a decline in sales revenue;
- a decline in profits and profitability;
- an adverse impact on return on investments; and
- an adverse impact on growth.

Conclusions under Article 3.5 (Causal Link and Other Causes of Injury)

466. To the extent possible and to the extent which information was available, the Ministry examined factors other than the dumped goods which are threatening injury at the same time as dumped imports, and found:

- there is some evidence that the highly competitive market for preserved peaches in New Zealand may have impacted on the New Zealand industry's past performance;

- any injury caused by this factor can be clearly distinguished from the injurious effects threatened by the dumped goods and it is not sufficient to break the inferred causal link that dumped imports from Spain are threatening to cause material injury to the New Zealand industry.

5.13 Overall Conclusion on Material Injury

467. The Ministry is satisfied, having considered all the mandatory requirements, in addition to considering other relevant factors, both as presented by interested parties to this investigation and those discovered in the course of the investigation, that the New Zealand industry is threatened by material injury. The Ministry is further satisfied that the New Zealand industry is threatened with material injury attributable to dumped imports.

6. Anti-Dumping Duties

6.1 Introduction

468. Section 14 of the Act sets out the requirements for the imposition of anti-dumping duties. Under section 14(1) of the Act, the Minister may, at any time after making a final determination under section 13(1) on whether dumped imports have caused or threaten to cause material injury to a New Zealand industry, impose an anti-dumping duty.

469. This section of the report provides the basis for the imposition of anti-dumping duties if the Minister makes a final determination under section 13(1) of the Act, that the goods are being dumped and thereby have caused or threatened to cause material injury to the domestic industry.

6.2 Method of Imposing Duties

470. The objective of an anti-dumping duty is to remove injury attributable to dumping, and is not to punish the exporter or to provide protection to an industry beyond the impact of the dumping. The Act prevents the Minister from imposing a duty that exceeds the margin of dumping.[17] Furthermore, the Act requires that the Minister have regard to the desirability of ensuring the amount of duty is not greater than is necessary to prevent material injury to the New Zealand industry.[18] This requirement is known as the "lesser duty rule".

471. There are numerous considerations that are taken into account when deciding on the form of the anti-dumping duty. Factors such as the ability to ensure the dumping margin is not exceeded, the ability to maintain fairness between parties, the predictability of the duty payable and the ease of administration, are all important aspects of an anti-dumping duty.

472. Anti-dumping duties can be applied in a number of different ways. The three basic approaches are:

- a specific duty approach;
- an *ad valorem* rate approach; and
- a reference price approach.

A Specific Duty

473. A specific duty is a set amount of duty payable per unit of product imported. This specific amount of duty is based on the monetary value of a margin of dumping. The approach is convenient to apply, impossible to evade by incorrectly stating the

[17] Dumping and Countervailing Duties Act 1988, s14(4).

[18] Dumping and Countervailing Duties Act 1988, s14(5).

value for duty, and it clearly indicates to the importer the amount of duty payable on the product.

474. Some problems with a specific duty approach may occur if there are a wide range of goods involved, exchange rates may fluctuate to the extent that the margin of dumping will be exceeded without constant reassessments of the specific amount, or where an exporter manipulates prices so that the duty is either greater than the margin of dumping or less than the margin of dumping previously established.

475. A specific duty, expressed as a monetary amount, can only operate effectively when two conditions are present. The first is that prices and exchange rates are consistent and stable. The second is that the transaction-to-transaction comparison does not result in a range of different dumping margins.

476. A specific duty approach can be implemented as a formula, being the difference between equivalent prices to the normal value and the export price of a particular shipment, with the values for the normal value and export price being fixed. When those elements of the formula are expressed in terms of the currency of each transaction, the problem of exchange rate movements can be dealt with. However, a formula approach does not deal with the problem of changes in export prices for reasons other than exchange rate movements or movements in normal values such as a price change.

Ad Valorem Rate Duty

477. An ad valorem duty is a duty based on the margin of dumping or the margin of injury (if the margin of injury is less that the margin of dumping), and is expressed as a percentage of the value for duty (VFD). An ad valorem duty is convenient to apply and is unlikely to be substantially affected by exchange rate movements. Ad valorem rates are often appropriate where there are a large range of goods. As with the other approaches, there is the possibility of collusion between an exporter and importer concerning the manipulation of the invoice value of the goods.

478. Under this approach, a particularly low export price (and therefore a potentially more injurious export price) would result in a lower amount of duty, which may not be sufficient to remove injurious dumping. Conversely, a particularly high export price (and therefore likely to be less injurious), would attract a higher amount of duty, which may be higher than is necessary to remove injurious dumping.

479. An ad valorem rate gives an indication of the impact of the duty, but is not as clear an indication as the other forms of duty, although the rate can usually be provided to all parties and is therefore very transparent.

Reference Price Duty

480. Under the reference price approach, the duty payable is the difference between the transaction price and a reference price. A reference price can be based on either a normal value or the domestic industry's non-injurious price (NIP). A Normal Value (Value for Duty Equivalent) or NV(VFDE) amount represents the un-dumped value of the goods at the free-on-board (FOB) level. A non-injurious free-on-board (NIFOB) price is the price at which the imports would not cause injury to the New

Zealand industry, calculated at the FOB level. The Ministry prefers to set the NV(VFDE) and NIFOB amounts in the currency in which the like goods are sold in their respective markets. In this case those currencies are Euros (for reference prices based on normal values) and NZD (for reference prices based on NIPs), as these are the currencies in which like goods are traded in their respective markets.

481. A reference price has advantages in that it is best able to deal with movements in the export price and exchange rates (if expressed in the currency of the normal value), and is particularly appropriate for dealing with situations where a lesser duty is applicable. However, it has been argued that it is more easily evaded than the other forms of duty by overstating the VFD of the goods. Nevertheless, a reference price does have the advantage of clearly signalling to exporters and importers what price is un-dumped or non-injurious. In addition, a reference price duty only collects duty when the goods are priced below the non-injurious or un-dumped reference price, therefore duty is collected only to the extent necessary to remove injurious dumping.

482. One of main problems with reference prices is that the information they are based on represents a snapshot of prices and costs at a particular point in time. If these prices or costs change, the reference prices may no longer be accurate although significant changes in prices or costs can be addressed by way of a reassessment of the reference prices.

Method of Imposing Duty in the Present Case

483. The Ministry's practice is to consider the suitability of all methods of imposing anti-dumping duties, i.e. a specific amount per unit, a reference price and an ad valorem rate, in the circumstances of each dumping investigation.

484. Under sub-section 14(5) of the Act the Minister must have regard to the desirability of ensuring the amount of duty is not greater than is necessary to prevent material injury to the New Zealand industry, and this issue is considered separately below.

485. There is a varying range of different product types involved in this investigation and also a wide range of export prices and normal values. Export prices can change when importers negotiate contracts with suppliers and normal values are subject to a competitive Spanish domestic market. For these reasons the Ministry does not consider that a specific duty is appropriate or feasible in this case.

486. Historically the Ministry's preference has been to impose duties through a reference price mechanism, for the reasons set out above. In terms of canned and preserved peaches imported from a number of countries already subject to anti-dumping measures, reference prices have been set for imports from these countries (i.e. Greece, China and South Africa).

487. In its response to the Ministry's Essential Facts and Conclusions Report, HWL stated that the Ministry should take a pragmatic view and look at using the reference price method of implementing any trade remedies regardless of can size. As noted above, reference prices are most suitable when dealing with export price and

exchange rate movements and are particularly useful for dealing with situations where a lesser duty is applicable. It also clearly signals to exporters and importers the level of pricing they need to negotiate in order to ensure that the goods are entering New Zealand at either un-dumped or non-injurious levels. In the present case, this is especially important as the NIFOBs calculated by the Ministry for the four Spanish suppliers of preserved peaches subject to the investigation are lower than the corresponding NV(VFDE)s which indicates that a lesser duty should apply.

488. On the basis of the above, the Ministry considers that the use of a reference price mechanism would be the most effective and fairest means of setting anti-dumping duties for the subject goods imported into New Zealand from Spain.

Consideration of Lesser Duty

489. Section 14(5) of the Act requires that the Minister has regard to the desirability of ensuring the amount of duty is not greater than is necessary to prevent material injury to the New Zealand industry. To establish whether a lesser duty should apply to imports of preserved peaches from Spain, the Ministry firstly calculated a non-injurious Free-On-Board amount (NIFOB) based on HWL's non-injurious price (NIP) and secondly calculated a NV(VFDE). The Ministry has compared the two reference prices at the FOB level representing an un-dumped selling price (NV(VFDE)) and a non-injurious selling price (NIFOB) to assess the appropriateness of a lesser duty.

Calculation of NIFOB Amounts

490. NIFOBs are calculated by deducting from the domestic industry's NIPs, those costs that arise after FOB up to the level of trade at which the imported product first competes with the domestic industry's product. The purpose of a NIFOB amount is to ensure that the price of imported Spanish preserved peaches, when considered at the FOB level, is such that when preserved peaches from Spain are sold at the relevant level of trade in the New Zealand domestic market, the sale price is not lower than the domestic industry's NIP (see below).

Calculation of Non-Injurious Prices (NIPs)

491. A NIP is an unsuppressed selling price, i.e. it is the price at which a domestic producer can sell its products in the New Zealand domestic market in the absence of dumped imports and is the basis on which a NIFOB reference price is calculated. There are a number of methods which can be used to calculate NIPs, including:

- the current cost of production plus industry profits taken at a time when the industry was unaffected by dumped imports;
- using pre-injury prices scaled up by a relevant index; and
- determining the lowest priced non-dumped product in the market.

492. In the present case, the Ministry concluded that there was some evidence of price suppression and price depression during the last full year of the injury POI (2010/11) when the domestic industry's prices are compared with its previous financial year (2009/10). In its response to the Ministry's EFC Report, HWL stated

that the Ministry noted a number of times in its report that price depression and price suppression existed in the market during the company's latest financial year (2010/11). According to HWL, this has been due to the presence of dumped imports from Spain already in the market and the injurious price effects and subsequent adjustments the company needed to make in its sales plan (for its 2010/11 financial year).

493. On the basis that there is evidence that HWL suffered some price depression and suppression during its latest full financial year (2010/11), which appears to be a result of the company having discounted its prices in order to combat the dumped imports from Spain (which began entering the New Zealand market during the latter half of HWL's 2010/11 financial year), the Ministry considers that HWL's domestic prices over this entire financial year would not be an appropriate period in which to calculate a NIP. The Ministry does, however, consider that HWL's domestic prices for the first half its 2010/11 financial year would be a reliable indication of its pre-injury NIPs. This is because any decrease in domestic prices to combat the increased importations of dumped goods from Spain is likely to have been felt in the second half of the company's 2010/11 financial year only (taking into account that imports began entering the country in significant volumes in August 2010 and were being sold in supermarkets in October 2010). On this basis, the Ministry considers it is reasonable to use HWL's selling prices over the first half of its 2010/11 financial year as the NIPs even though the Ministry has concluded that there is evidence of price depression and suppression over the entire financial year.

494. The Ministry has established a specific NIP relating to each Spanish exporter/manufacturer according to the container sizes of preserved peaches they exported to New Zealand during the dumping POI.

495. For Cofrusa, the company which exported only 420gm cans of preserved peaches in syrup, the Ministry has used HWL's average selling price for its full range of 400 – 410gm cans of preserved peaches, for the period May – October 2010, as the NIP. For Alcurnia and Halcon which both exported only 850gm cans of half peaches in syrup over the dumping POI, the Ministry used HWL's average selling price for its full range of 820gm cans of preserved peaches, during the May – October 2010 period, as the NIP. For Navarrico that exported only whole peaches in 2.65kg glass jars, the Ministry used HWL's May – October 2010 average selling prices for its full range of 2.95 - 3kg cans of preserved peaches, as the NIP.

Calculation of NIFOB Amounts

496. As noted previously in this report, the Ministry determined that the appropriate level of trade to compare prices is at the ex-store level for importers of preserved peaches from Spain. This is the level at which HWL competes directly with the importers because their customers make their purchasing decision between HWL and the importers/distributors.

497. In calculating the NIFOB amounts at the ex-store level of trade, the Ministry has established the costs between FOB and ex-store from information sourced during the investigation. The Ministry has made downward adjustments to the established

NIPs for overseas freight and insurance, import duty (5 percent), port clearance fees, importers bank charges and an importer's profit margin.

498. Of the four New Zealand importers that sourced preserved peaches from Spain over the dumping POI, only one company, James Crisp, supplied a response to the Ministry's importers questionnaire. While the Ministry was able to use this company's information in establishing costs between FOB and the ex-store level for James Crisp, it was necessary to use the best available information to calculate importation costs for the other three importers. Overseas freight and insurance was based on actual amounts incurred by the importers during the dumping POI (sourced from NZ Customs), other importations costs were sourced from James Crisp's questionnaire response while a reasonable profit margin was based on pricing information supplied by the importers themselves during the investigation.

499. In its response to the Ministry's EFC Report, HWL stated that, depending on the outcome of the investigation, it is highly likely that supermarket chains [redacted], which needs to be a consideration when determining the level of trade.

500. Although the proposed NIFOB amounts are established at the importers' ex-store level of trade (because this was the relevant level of trade established during the investigation), the Ministry does note HWL's concern regarding [redacted]. However, the Act provides for new anti-dumping duty rates being established under such circumstances.[19] More specifically, any interested party is able to request a reassessment of the current anti-dumping duty rate if it considers the duty rate does not reflect the level of trade at which imports are competing with the domestic industry's sales in the New Zealand market. In the present case, a new NIFOB amount (established at the ex-wharf level) could be established through a reassessment for a particular exporter if it was established that the exporter's goods were competing in the New Zealand market with the domestic industry's goods at the ex-wharf level. Likewise, importers and exporters are also able to request a reassessment of the anti-dumping duties rate if they considered the duty rates do not reflect the level of trade at which their imports are competing with the domestic industry's sales in the New Zealand market.

501. For the reasons noted above, the Ministry considers that the ex-store level of trade is the appropriate level of trade to establish the proposed NIFOB amounts for the four Spanish manufacturers whose product was exported to New Zealand over the dumping POI. In addition the Ministry has established a residual or "all other suppliers" anti-dumping duty rate on the basis of the weighted average of the NIFOB amounts calculated at the ex-wharf level for the four Spanish manufacturers. This is because the level of trade for future importers of Spanish preserved peaches is not presently known, and any duty rate based on a NIFOB established at the ex-store level of trade for such importers may be ineffectual in remedying the injury threatened by the industry from the dumped goods (see paragraph 514 below).

[19] Dumping and Countervailing Duties Act 1988, s14(6).

Calculation of NV(VFDE) Amounts

502. NV(VFDE) amounts are calculated by adding to the Spanish ex-factory normal values, all costs incurred by the Spanish manufacturers up to the FOB level. The NV(VFDE) amounts therefore represent an un-dumped price at the FOB level. As with the NIFOB, the Ministry has calculated a NV(VFDE) for each manufacturer. The Ministry has used the normal values calculated in Section 4.3 of this report as the base values for calculating NV(VFDE) amounts, as these normal values represent the normal values for the product as a whole (for each specific exporter).

Costs and margins for Spanish manufacturers/exporters of preserved peaches

503. For each of the four Spanish manufacturers, the Ministry has added the relevant costs incurred and, where relevant the exporter's margins achieved, between ex-factory and FOB. Where the company provided this information in a response to the Ministry's foreign manufacturers questionnaire, this information has been used, otherwise the Ministry has used the best information available (outlined in the "Dumping" section of this report).

504. For Cofrusa and Alcurnia, the costs included inland freight, customs and port handling charges. For Navarrico and Halcon, because these companies export preserved peaches through an intermediary, the Ministry added the margin taken by their intermediary which included all costs and margins incurred and achieved by the intermediary between ex-factory and FOB.

505. The NV(VFDE) amounts for each Spanish manufacturer are compared to the NIFOB amounts in Table 6.1 below.

Comparison of NIFOB and NV(VFDE) Amounts

506. The Ministry has compared the NIFOB and NV(VFDE) amounts calculated above to assess whether a lesser duty is appropriate. A lesser duty would be appropriate where a NIFOB amount is less than the NV(VFDE) amount. Where the NIFOB amount is not lower than the NV(VFDE) amount, the duty should be imposed at the full margin of dumping.

507. For the purpose of this comparison, the Ministry has converted the NV(VFDE) amounts, which are set in Euros, to NZD, to allow a comparison with the NIFOB amounts which are set in NZD. The Ministry converted the NV(VFDE) amounts using a 12-month rolling average of the Euro and NZD exchange rate to 15 December 2010, which was 0.5458.[20]

508. The following table compares the NIFOB and NV(VFDE) amounts established for the four Spanish suppliers of preserved peaches to New Zealand.

[20] http://www.ird.govt.nz/resources/2/2/22c68b804272d52ab31cbf82245c33b7/mid-month-currency-rates-2011.pdf

Table 6.1: Reference Price Comparison (NZD/kg)

Manufacturer/Exporter	NIFOB (NZD/Kg)	NV(VFDE) (NZD/Kg)	Lower Price
Conservas Y Frutas SA			NIFOB
Alcurnia Alimentacion SL			NIFOB
Halcon Foods SA			NIFOB
Conservas El Navarrico			NIFOB

509. The NIFOB amount is lower than the corresponding NV(VFDE) amount for each of the four Spanish manufacturers (although only slightly lower for Cofrusa) which indicates that the lesser duty is appropriate in all cases.

6.3 Proposed Rates of Anti-Dumping Duty

Introduction

510. On the basis of the exercise in the section above, the Ministry considers that the rates of anti-dumping duty for the four Spanish manufacturers should be based on reference prices set at the NIFOB amount (reflecting the margin of injury). The amount of any anti-dumping duty payable should be assessed against the VFD at which the goods enter New Zealand.

Effect of Exchange Rates on Anti-dumping Duties

511. As noted above in this section, the Ministry sets reference prices in the currency in which the like goods are sold in their respective home markets. NV(VFDE) amounts are set Euros as this is the currency in which the like goods are traded on the domestic market in Spain and NIFOB amounts are set in NZD as this is the currency in which like goods produced by the domestic industry are sold in the New Zealand market.

512. The Ministry recognises the problem of fluctuations of exchange rates when reference prices have been set according to the lesser duty rule i.e. set at a NIFOB amount. Exchange rate movements can result in the NIFOB amount, which was identified as being the lesser duty, later becoming higher than the corresponding NV(VFDE) amount, which would be contrary to the requirement of the Act that anti-dumping duties do not exceed the margin of dumping. For this reason, the Ministry considers the proposed NIFOB amounts in table 6.2 below should be capped by the corresponding NV(VFDE) amounts to ensure that the amount of anti-dumping duty collected does not exceed the margin of dumping.

Residual Rate of Duty

513. It is necessary to establish a residual or “all other suppliers” rate of duty that will apply to those manufacturers who were not part of the investigation. This rate of duty will be payable by importers of preserved peaches sourcing from these suppliers.

514. Using the NIFOBs and NV(VFDE)s established above for each of the four Spanish manufacturers, the Ministry has calculated a weighted average NIFOB and

a weighted average NV(VFDE) weighted by the volume of exports made by each supplier to New Zealand over the dumping POI. The Ministry considers that the ex-wharf level of trade is the most appropriate level of trade to calculate the weighted average NIFOB because the level of trade for future importers of Spanish preserved peaches entering the market is not presently known. If [redacted] for example (rather than distributors) begin importing preserved peaches from new suppliers, any NIFOB based on the ex-store level of trade may not adequately remedy any injury suffered by the industry from the dumped goods. The lesser of the two weighted average reference prices calculated by the Ministry (i.e. the NV(VFDE)), is the proposed residual rate of anti-dumping duty.

515. The proposed residual rate of duty, along with the reference prices calculated for the four Spanish manufacturers of preserved peaches identified as exporting to New Zealand during the dumping POI, are shown in the table below:

Table 6.2: Summary of Proposed Duty Rates

Supplier	*Reference Price per kg*	*Alternative Duty per kg (Cap)**
Conservas Y Frutas	NZ$[redacted]	€ [redacted]
Alcurnia Alimentacion SL	NZ$[redacted]	€ [redacted]
Halcon Foods SA	NZ$[redacted]	€ [redacted]
Conservas el Navarrico	NZ$[redacted]	€ [redacted]
Residual duty (all other suppliers)	€ 1.26	n/a

*Note: The alternative reference price for the four Spanish suppliers identified as exporting to New Zealand over the dumping POI has been set at the NV(VFDE) amount. This reference price will apply where the NV(VFDE) amount is lower than the NIFOB amount due to exchange rate movements. As the residual duty has been set at the NV(VFDE) (the margin of dumping), an alternative duty is not applicable.

516. Although the residual NIFOB amount has been established at the importers' ex-wharf level of trade, importers and exporters subject to this anti-dumping duty rate are able to request a reassessment of the duty rate if they consider the duty rate does not reflect the level of trade at which their imports are competing with the domestic industry's sales in the New Zealand market (see section 6.4 below).[21] In the case of an importer competing at the ex-store level of trade, the NIFOB amount could be reassessed for that particular importer or exporter provided that sufficient evidence was supplied to the Ministry on which it could establish new anti-dumping duty rates.

[21] Dumping and Countervailing Duties Act 1988, s14(6).

6.4 Reassessment for Exporters not selected for Investigation

517. The Act, at section 14(6), provides for the initiation of a reassessment on the initiative of the Chief Executive or at the request of an interested party who submits evidence justifying the need for a reassessment. The Ministry would not normally carry out a reassessment for at least six months after the completion of an investigation in order to allow sufficient time for the operation of the duties to be properly assessed.

518. However, paragraph 5 of Article 9 of the Agreement provides that authorities shall promptly carry out an accelerated review, for the purpose of establishing individual dumping margins for any exporter or producer of that product in the exporting country who has not exported the product to the importing country during the period of investigation and is not related to any of the manufacturers for which a separate rate of duty has been established.

6.5 Effective Dates

519. Section 14(2) of the Act requires that anti-dumping duty shall be collected and paid on the demand of Customs the day after the date the notice of the rate or amount of duty determined is published in the *New Zealand Gazette*. Under section 17 of the Act, the rate or amount determined is payable from either (a) the day after the date of the Minister's final determination on the investigation, or (b) a specified day after this date.

520. It is proposed that the anti-dumping duties should apply from the day after the date of the Minister's final determination on the investigation.

6.6 Impact of Anti-dumping Duties

521. The Ministry considers that it is difficult to gauge the extent of any price increases to New Zealand importers and New Zealand consumers as a result of the imposition of the duties. However, the Ministry has assessed whether a lesser duty is appropriate and considers that, in respect of the four Spanish manufacturers identified as supplying preserved peaches exported to New Zealand during the dumping POI, the duty should be imposed based on the domestic industry's non-injurious price (rather than the full margin of dumping). However, for any new exporters of Spanish preserved peaches, the duty should be based on the full margin of dumping (but only because the weighted average un-dumped selling price in New Zealand is lower than the industry's non-injurious price). Overall, the Ministry considers that the proposed rates of duty are set at a level which is sufficient to remove the threat of injury to the New Zealand which is attributable to dumping.

7. Conclusions

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

a. the goods under investigation are being dumped;

b. by reason thereof material injury to an industry is being threatened;

c. anti-dumping duties should be imposed using a *reference price* methodology with the duty being based on the domestic industry’s non-injurious price (or the margin of injury) rather than the full margin of dumping, for the four Spanish manufacturers identified as supplying the preserved peaches exported to New Zealand during the dumping POI; and

d. the residual anti-dumping duty for all other Spanish exporters should be set using a reference price based on the full margin of dumping.

8. Recommendations

523. It is recommended on the basis of the information obtained during the course of the investigation into the dumping of preserved peaches from Spain:

a That the Minister determine pursuant to section 13 of the Act that in relation to the importation or intended importation of preserved peaches from Spain:

  the goods are being dumped; and

  by reason thereof material injury to an industry is being threatened.

b That the Minister, having made a determination under section 13 of the Act, give notice pursuant to section 14(1) of the rate or amount of duty determined under section 14(4) of the Act to be imposed in respect of the goods under investigation imported from Spain, on the basis set out in Table 6.2 above.

c That the Minister sign the attached *Gazette* notice, and give notice of the final determination and imposition of duties in respect of preserved peaches from Spain, to interested parties in accordance with sections 9, 13 and 14 of the Act.

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Investigating Team
Trade Rules, Remedies and Tariffs Group