



**MINISTRY OF BUSINESS,  
INNOVATION & EMPLOYMENT**  
HĪKINA WHAKATUTUKI

**TRADE AND  
INTERNATIONAL**

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Trade (Anti-dumping and Countervailing Duties) Act 1988

**Full Review**

**Preserved Peaches from Spain**

**Stage 2 Final Report**

**May 2022**

**MBIE/AD/R/2021/002**

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## Abbreviations

The following abbreviations are used in this Report:

Act (the)	Trade (Anti-dumping and Countervailing Duties) Act 1988
AD Agreement	The WTO Agreement on Implementation of Article VI of the GATT 1994
chief executive, the	Chief Executive of the Ministry of Business, Innovation and Employment
CIF	Cost, Insurance, Freight
Customs	New Zealand Customs Service
EBIT	Earnings Before Interest and Tax
EC	European Commission (the administrative body of the European Union)
EU	European Union
EUR	Euro(s)
HWL	Heinz Wattie's Ltd
kg	Kilogram(s)
MBIE	Ministry of Business, Innovation and Employment
Minister, the	The Minister of Commerce and Consumer Affairs
MT	Metric ton/tonne
NIFOB	Non-Injurious Free on Board
NV(VFDE)	Normal Value (Value for Duty Equivalent)
NZD	New Zealand dollar(s)
PIP Report	Public Interest Preliminary Findings Report
PIPES	Public Interest Partial Equilibrium Simulation
POR(D)	Period of review for dumping assessment, the year ended 30 June 2021
POR(I)	Period of review for injury assessment, the period starting 1 July 2018 to 30 June 2021.
Review	A full review of the imposition of anti-dumping duty on preserved peaches from Spain (also known as a "sunset review"), authorised under section 17D of the Trade (Anti-dumping and Countervailing Duties) Act 1988
Stage 1 Report	Stage 1 Report following the full review of anti-dumping duty on preserved peaches from Spain 2021.
Subject goods	Imported goods that are the subject of the review
US	United States of America
USD	United States Dollar
VFD	Value for Duty
WTO Agreement	Marrakesh Agreement Establishing the World Trade Organization

# 1. Proceedings

## 1.1 Summary

1. On 3 August 2021, the Ministry of Business, Innovation and Employment (MBIE) initiated a review into the continued need for the imposition of an anti-dumping duty on preserved peaches from Spain under the Trade (Anti-dumping and Countervailing Duties) Act 1988 (the Act).
2. Stage 1 of the review (stage 1) was completed, and, on 21 February 2022, the Minister of Commerce and Consumer Affairs (the Minister) determined that the continued imposition of the anti-dumping duty was necessary to offset likely dumping and that material injury to the domestic industry would be likely to recur if the duty expired or were otherwise removed or varied. This affirmative determination was made in respect of Spanish imports from all suppliers other than Alcurnia Alimentacion SL (Alcurnia), which was determined not to have been dumping.
3. Consequently, the Minister determined the rates of the anti-dumping duty to form the basis for stage 2 of the review (stage 2) – the public interest test – and directed the Chief Executive of MBIE (the chief executive) to begin stage 2 in respect of all producers other than Alcurnia.
4. At stage 2, MBIE investigates whether continuing to impose an anti-dumping duty at the rates determined is in the public interest. Section 17H(2) of the Act, which sets out the public interest test, provides that it is in the public interest to continue to impose the duty unless the cost to downstream industries and consumers of imposing the duty is likely to materially outweigh the benefit to the domestic industry of imposing the duty. As part of this assessment, MBIE must consider the matters set out in section 10F(3) of the Act regarding the effect of the duty on a range of factors, including prices, alternative supplies, and competition in the market, as well as the effect on the domestic industry.
5. MBIE began stage 2 on 22 February 2022, providing interested parties with a Stage 2 Framework and Questionnaire (Stage 2 Questionnaire). The Framework outlined MBIE’s approach to carrying out stage 2, while the Questionnaire sought information necessary to undertake stage 2 analysis and invited parties to lodge submissions to be considered as part of the stage 2 process.
6. On 14 April 2022, MBIE provided interested parties with a Public Interest Preliminary Findings Report (PIP Report) in accordance with section 17I of the Act, and invited them to make submissions on the findings presented. The PIP Report sets out the preliminary findings that were likely to form the basis for the stage 2 determinations to be made by the Minister under section 17J(1) of the Act. Submissions were received from the European Commission (EC) and Heinz Wattie’s Ltd (HWL) and, where relevant, have been taken into account in the preparation of this stage 2 Final Report (Stage 2 Final Report).
7. This Stage 2 Final Report is provided in accordance with section 17I(4) of the Act, and sets out the stage 2 findings for the Minister. MBIE has reached the conclusion that continuing to impose the duty at the determined rates is in the public interest. The current and proposed rates of duty are set out in Figure 4, at Section 2.1.1 of this Report. MBIE has found that the cost to downstream industries and consumers of imposing the duty is not likely to materially outweigh the benefit to the domestic industry of imposing the duty.

8. Section 1 of this Stage 2 Final Report includes key background information; section 2 contains MBIE’s assessment of the matters set out in section 10F(3) of the Act; section 3 of this Report discusses findings in relation to the section 17H public interest test; and section 4 sets out the conclusions that will form the basis for MBIE’s recommendations on the final determination to be made by the Minister. Annex 1 to this Stage 2 Final Report contains additional context around the New Zealand market situation and the international market for preserved peaches. Annex 2 summarises interested parties’ submissions on the PIP Report, and sets out how MBIE has addressed these comments.

## 1.2 Legal requirements

9. Part 6 of the Act sets out the legal requirements for reviews – these requirements are covered sequentially in this Stage 2 Final Report. Section 17H of the Act provides that:

- (1) *If the Minister directs the chief executive to start full review stage 2, the chief executive must investigate whether continuing to impose an anti-dumping or a countervailing duty at the rate determined under section 17G(2)(a) is in the public interest.*
- (2) *Continuing to impose the duty is in the public interest unless the cost to downstream industries and consumers of imposing the duty is likely to materially outweigh the benefit to the domestic industry of imposing the duty.*
- (3) *In investigating whether continuing to impose the duty is in the public interest, the matters the chief executive must investigate include those referred to in section 10F(3).*

10. Section 10F(3) of the Act provides that, in investigating whether imposing the duty is in the public interest, the matters the chief executive must investigate include the following:

- (a) *the effect of the duty on the prices of the dumped or subsidised goods:*
- (b) *the effect of the duty on the prices of like goods produced in New Zealand:*
- (c) *the effect of the duty on the choice or availability of like goods:*
- (d) *the effect of the duty on product and service quality:*
- (e) *the effect of the duty on the financial performance of the domestic industry:*
- (f) *the effect of the duty on employment levels:*
- (g) *whether there is an alternative supply (domestically or internationally) of the like goods available:*
- (h) *any other factor that the chief executive considers essential to ensure the existence of competition in the market.*

11. MBIE can also investigate other matters that it considers appropriate or that are raised by other parties, and is not restricted to solely investigating the matters in section 10F(3) of the Act.

## 1.3 Subject goods

12. The goods which are the subject of this review, hereinafter referred to as “preserved peaches”, or “subject goods”, are:

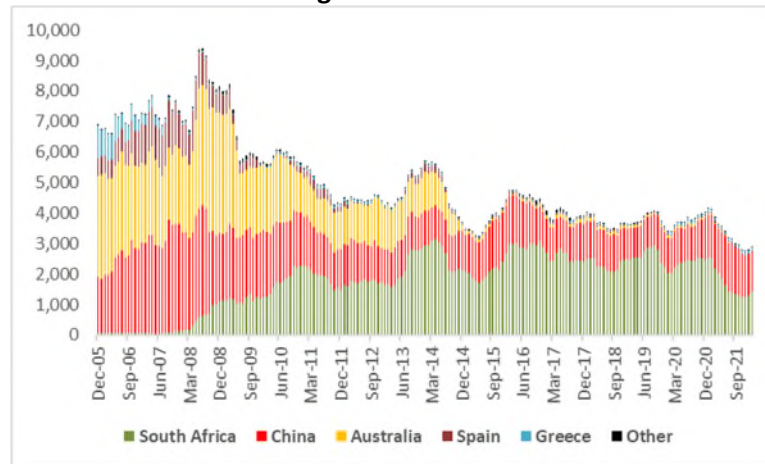
*Peaches in preserving liquid, in containers up to and including 4.0kg.*

13. This description includes preserved peaches in packaging, including cans, jars and plastic packaging<sup>1</sup> of various sizes, with contents including whole peaches, peach halves, regular and irregular sliced peaches and peaches in media containing any type or amount of sugar, naturally from the peaches in water or as fruit juice, or sugar syrup, in any concentration. This description excludes aseptically packaged peaches or preserved peaches packed in drums.
14. Imports of the subject goods from Spain are currently subject to the Normal rate of Customs duty of 5%.

*Imports*

15. Figure 1 shows that, from 2005 to 2021, imports of preserved peaches have been sourced mainly from China, South Africa, Spain, Greece, and Australia.

**Figure 1: Imports, 2005-2021 (In kilograms)  
Rolling 12-month totals.**



16. Importers of the subject goods from all countries include supermarkets<sup>2</sup> that mainly import preserved peaches under their private label brands for retail sales, and other importers of limited quantities of foreign manufacturer brands generally for distribution to the niche retail sector. There are also imports for the food service sector and downstream industries.
17. The private label brands for preserved peaches sold by the supermarket chains include Pams and Value for Foodstuffs outlets, while the Countdown private labels are Countdown/Woolworths and Essentials (previously Homebrand).

**1.4 Like goods**

18. Section 3(1) of the Act defines “like goods”, in relation to any goods, as:

(a) *other goods that are like those goods in all respects; or*

<sup>1</sup> The description of the subject goods is the same as for stage 1 of this review. While not specifically noted in the Stage 1 Final Report, the goods description includes plastic containers up to and including 4.0kg. While imports of subject goods from Spain over the investigation period did not include goods in plastic packaging, it is possible the subject goods could be imported in such packaging in future.

<sup>2</sup> The two supermarket operators are Foodstuffs NZ (New World, PAK'n'SAVE, Four Square supermarkets and Gilmours wholesalers) and Woolworths (Countdown, Super Value and FreshChoice supermarkets).

(b) *in the absence of goods referred to in paragraph (a), goods which have characteristics closely resembling those goods*

19. To determine whether the goods produced in New Zealand are like goods to the subject goods, MBIE normally considers physical characteristics, function and usage, pricing patterns, marketing and distribution, substitutability and commercial interchangeability, and any other relevant matters, with no one of these factors necessarily being determinative.
20. During stage 1, MBIE reviewed the information available and concluded that the preserved peaches produced by HWL, while not alike in all respects, had characteristics closely resembling the subject goods and were therefore like goods to the subject goods.

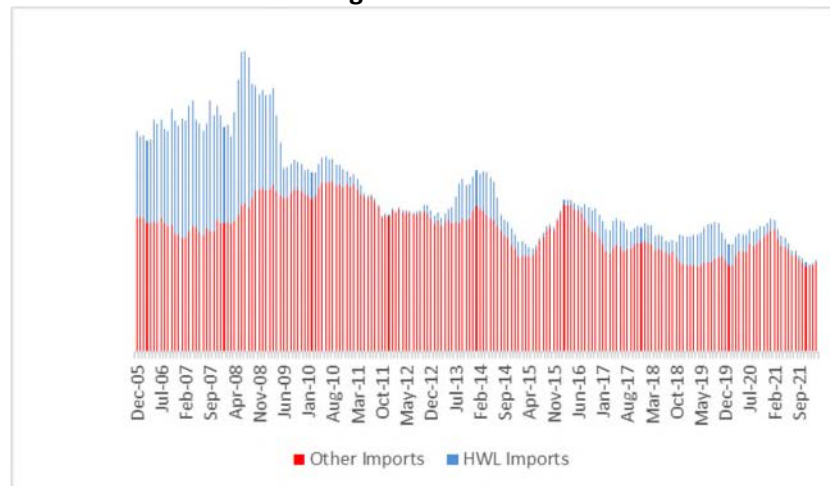
## **1.5 Notified parties**

### **1.5.1 New Zealand Industry**

21. Section 3A of the Act provides that the term “industry” (referred to in this report as the New Zealand 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.*
22. HWL remains the sole manufacturer of preserved peaches in New Zealand and therefore constitutes the New Zealand industry for the purpose of this review.
23. HWL is the only producer of preserved peaches in New Zealand, owning two of the most prominent manufacturer brands – Wattie’s and Oak. HWL produces a range of styles of preserved peaches in cans, including sliced and halved and preserved in syrup, in a ‘lite’ medium (artificial sweetener in water), or in fruit juice. HWL produces preserved peaches in cans of three sizes – 400g/410g, 820g and 2.95kg/3kg – under both its Wattie’s and Oak brands. HWL does not currently produce any private label products.
24. HWL imports preserved peaches under its Oak brand to maintain market share, shelf space and customer goodwill when there is a shortfall in volumes of fresh fruit available for processing from New Zealand growers. During the current review, HWL stated that it has invested in local growers to ensure the domestic supply of fresh fruit that it requires to produce preserved peaches at a level that meets domestic demand for preserved peaches. HWL explained that its approach to importing preserved peaches is to limit such imports to times of unexpected increases in demand for preserved peaches, or declines in the supply of fresh peaches due to a poor harvest in New Zealand.
25. Figure 2 shows imports of preserved peaches from all sources for 2005 until 2021 – there has been a moderate decline in the volume of preserved peaches imported by the New Zealand market, and a more significant decline in HWL’s imports over the given period.



**Figure 2: Imports of preserved peaches, 2005-2021 (In kilograms)  
Rolling 12-month totals.**



26. HWL’s distribution is at a wholesale level to supermarkets, other retailers and the food service sector.
27. HWL provided a response to the Stage 2 Questionnaire, in which it noted that the continued dumping of the subject goods would mean a recurrence of injury to the industry. HWL made a submission on the PIP Report – this submission, and MBIE’s response to the matters raised, are detailed in Annex 2 to this Stage 2 Final Report.

### **1.5.2 Exporters**

28. MBIE identified Alcornia as the only supplier of preserved peaches from Spain to New Zealand during the period of review for dumping (POR(D)). Alcornia did not provide a response to the Stage 1 Questionnaire it was sent and, on this basis, has been considered uncooperative.
29. MBIE also identified the suppliers from the initial investigation and subsequent reviews, noting that the description in the Act of notified parties refers to “exporters... known by the chief executive to have an interest in those goods”. These parties also did not provide responses to the Stage 1 Questionnaires they were sent.
30. Neither the above parties nor any intermediaries have provided any information in response to the Stage 2 Questionnaire, PIP Report or otherwise in relation to stage 2 of this review.

### **1.5.3 Importers**

31. In the current review, imports from Spain during the POR(D) were made by importers of low volume high-end products that, in New Zealand, do not normally compete with the like goods produced by the New Zealand industry.
32. As part of the stage 1 process MBIE invited two New Zealand-based importers, identified from Customs data, to supply information which would assist in identifying the export prices of imports of subject goods.
33. MBIE also invited importers from previous investigations and reviews, including supermarkets, which in the past have stocked preserved peaches from Spain and are

current importers of preserved peaches from other countries, to provide information which MBIE considered might be able to assist the review.

34. MBIE received responses to a limited list of questions from most of the above importers, although none of them completed the Stage 1 Questionnaire in full.
35. As part of the stage 2 process, MBIE provided the Stage 2 Questionnaire and PIP Report to past and present importers. None of these parties provided responses to either document.

## **1.6 Affected Parties**

### **1.6.1 Downstream Industries**

36. Section 17H(4) of the Act defines “downstream industries” for the purposes of section 17H as:
  - (a) *each immediate downstream New Zealand industry that uses the dumped or subsidised goods, or like goods, as an input in the production of other goods; and*
  - (b) *if the Minister considers it appropriate for the purposes of this section, any other relevant downstream New Zealand industry.*
37. For the purposes of the present review, MBIE considers that “downstream industries” include manufacturers of food items containing preserved peaches, such as bakers and other food producers. MBIE notes that downstream industries of preserved peaches tend to purchase the goods in can sizes greater than 1kg and up to 3kg, and also in container sizes that are outside the scope of the subject goods description. Downstream industries use preserved peaches produced by the domestic market and imported in the same way – they are commonly used in baking, and in the production of other food products.
38. MBIE provided the Stage 2 Questionnaire, as well as more specific requests for information about potential affected parties, to relevant business groups and companies. This was done in order to identify potential downstream industries, and to understand how these potential downstream industries would be affected by the anti-dumping duty. The entities approached were the New Zealand Food & Grocery Council, Retail NZ, The Manufacturers’ Network, Business New Zealand, the New Zealand Chefs Association and the Baking Industry Association of New Zealand. None of these parties provided responses to the requests above.
39. MBIE provided potential downstream industries with the Stage 2 Initiation Notice, seeking input from interested and affected parties on MBIE’s public interest investigation, and the Stage 2 Questionnaire. Responses were not received from any downstream industries to either of these documents.
40. MBIE sees no reason to consider an extension of the coverage of downstream industries to any other downstream New Zealand industries under section 17H(4) of the Act. This is because the goods produced by immediate downstream industries are sold to resellers and consumers and are not further processed.

## 1.6.2 Consumers

41. Section 17H(4) defines “consumers” for the purposes of section 17H as:
- (a) *New Zealand consumers of –*
    - (i) *the dumped or subsidised goods; or*
    - (ii) *like goods; or*
    - (iii) *the other goods referred to in paragraph (a) of the definition of downstream industries; and*
  - (b) *if the Minister considers it appropriate for the purposes of this section, any other relevant New Zealand consumers*
42. MBIE considers customers who purchase preserved peaches or downstream goods from the retail sector are included in the definition of consumers. MBIE notes that these consumers of preserved peaches tend to purchase the goods in can sizes less than 1kg.
43. MBIE considers that consumers of preserved peaches may also include customers of the commercial food service sector including restaurants and retailers, and institutions such as schools, care homes, hospitals, and prisons.
44. MBIE provided the Stage 2 Initiation Notice and the Stage 2 Questionnaire to organisations representing the interests of consumers, seeking information on their perceptions of how consumers would be affected by the anti-dumping duty. These organisations included ConsumerNZ, Hospitality New Zealand and the Restaurant Association of New Zealand. No comments were received either directly from consumers or from any representative bodies.
45. MBIE sees no reason to consider an extension of the coverage of consumers to any other New Zealand consumers, under section 17H(4) of the Act, for the purposes of this review. This is because the subject goods are only sold to New Zealand consumers directly in their imported form, or as other goods produced by immediate downstream industries using the subject goods.

## 1.6.3 Other interested parties

### *Government of Spain*

46. The Government of Spain (GOS) made submissions in response to the initiation of the review and to the preliminary findings presented in the Essential Facts and Conclusions Report (EFC Report) and at the beginning of stage 2 in response to the Stage 2 Initiation Notice. The GOS did not make a submission in response to the PIP Report.
47. The GOS submitted that it considered the seriousness of the measures under review to be unjustified as export volumes of the subject goods between 2012 and 2019 were very low and it was not likely that they could increase to the point of causing injury to the domestic industry. The GOS also noted that Spanish companies did not participate in the review due to the small percentage of exports of the subject goods to New Zealand and the legal fees and defence costs involved.

### *European Commission*

48. The EC made submissions on behalf of the European Union (EU) in response to the initiation of the review, to the preliminary findings presented in the EFC Report in stage 1 and in response to the PIP Report in stage 2. In its response to the EFC report, the EC submitted that it considered the criteria for prolonging the anti-dumping duties currently

under review, which have already been in place for ten years, not to have been met. MBIE's response to the EC's submission on the EFC Report was detailed in an Annex to the Stage 1 Final Report. Annex 2 to this Stage 2 Final Report sets out the EC submissions on the PIP Report and MBIE's responses to the matters raised.

## **1.7 Findings of stage 1 of the review**

### **1.7.1 Dumping**

49. In stage 1, MBIE established that imports of the subject goods from the Spanish producer Alcornia are not dumped, but it was likely that dumping would recur generally. Stage 1 also established likely dumping margins, for Spanish producers other than Alcornia, of 24.2% for goods in containers not exceeding 1kg and 7.6% for goods in containers exceeding 1kg.

### **1.7.2 Injury**

50. In stage 1, MBIE concluded that the dumping of subject goods from Spain was likely to cause a recurrence of material injury to HWL if the anti-dumping duty is not continued. In particular, MBIE considered that:

- Previous behaviour, and the competitive pricing of preserved peaches from Spain, indicates that in the absence of anti-dumping duty imports of preserved peaches from Spain will likely increase in volume.
- A recurrence of dumping of subject goods from Spain is likely to result in continued price undercutting, with consequent price suppression.
- Consequent upon the likely price effects, and if duty is not continued:
  - There is likely to be a reduction in sales revenue but not sales volume.
  - There is unlikely to be a significant effect on HWL's market share, at least in the foreseeable future, depending on whether or not HWL decides to defend its market share.
  - Profits, expressed as earnings before interest and taxation (EBIT) and return on investment are likely to decline if HWL were to look to match the lower priced, dumped imports from Spain.
  - Output and utilisation of production capacity are unlikely to be useful indicators of the likelihood of injury attributable to dumped goods in the foreseeable future, particularly due to the quantity of raw peaches available and the company's purchasing requirements with growers.
  - Productivity, inventories, employment, and wages are not particularly useful factors in this case when assessing injury caused by dumped imports.
- The magnitude of the margin of dumping will likely contribute to the injurious effects of the dumped goods.
- Potential negative effects on HWL's cash flow and growth will likely arise from the impact on sales revenue, return on investments and profits.
- It is difficult to reach any meaningful conclusion on capital requirements and investment that is specific to canned peaches.

### 1.7.3 Determined duty

51. At the end of stage 1, the Minister terminated the review in respect to exports of the subject goods produced by Alcurnia and subject goods produced by Alcurnia are excluded from the anti-dumping duty.
52. The Minister also determined at the end of stage 1 that an anti-dumping duty would be applied to producers other than Alcurnia at an *ad valorem* rate of duty of 7.1% for subject goods exceeding 1kg and 7.2% for subject goods not exceeding 1kg. These determined rates of anti-dumping duty formed the basis of MBIE's public interest analysis.
53. In determining the rates of duty, the Minister had regard to the desirability of ensuring that the duty imposed is not greater than is necessary to prevent material injury or a recurrence of material injury and was no greater than the margin of dumping. The determined rates of duty are less than the full margin of dumping but are at a level that will prevent material injury or a recurrence of material injury.

## 1.8 Previous Proceedings

### 1.8.1 Spain

#### *Countervailing duty*

54. A countervailing duty was in place on imports of canned peaches from the European Union (EU) from January 1998 to October 2009, and covered imports from Spain.

#### *Anti-dumping duty*

55. An anti-dumping duty on preserved peaches imported from Spain was first imposed in August 2011, following an application from HWL. The duty was terminated with effect from 23 February 2017, after a 2016 review found that there was not likely to be a continuation or recurrence of injury following the removal of the duty.
56. HWL challenged this outcome, through judicial review proceedings in the High Court of New Zealand. The High Court held that MBIE's process had breached natural justice and directed that MBIE reconsider its 2016 review.
57. MBIE's reconsideration, carried out in 2019, concluded that in the absence of the anti-dumping duty, material injury to the industry was likely to recur. The basis for MBIE's conclusion differed from the earlier determination in 2016 as it assessed a broader data set than previously, in accordance with orders from the High Court that MBIE should consider past, present and future conduct in the import of the products. The anti-dumping duty was imposed with effect from 30 August 2019, was not backdated and was to apply for five years from when the previous duty was due to expire (that is, 5 years from 4 August 2016).
58. Rates of anti-dumping duty subject to the current review were imposed at the following *ad valorem* rates of duty on imports from Spanish producers:
- Alcurnia Alimentacion SL (Alcurnia): 2.5% of the Customs value for duty (VFD) for 850g cans and 15.9% for 2.65kg cans
  - Conservas El Navarrico: free of anti-dumping duty
  - Other subject goods from Spanish producers: 7.9%

## 1.8.2 Other countries

### *South Africa*

59. A countervailing duty on canned peaches from South Africa was first imposed in 1997 following an investigation that was initiated in 1996, but was terminated in 1998. An anti-dumping duty was also first imposed in 1997. Since then, the duty has been reviewed in 2001, 2007, 2013 and 2019, and has been continued on some or all imports following each review.
60. The current duty on imports from South Africa is set at 16.4% for can sizes under 3kg from Langeberg & Ashton Foods and 16% for all can sizes from all other producers. There is no duty on canned peaches of can sizes greater than 3kg produced by Langeberg & Ashton Foods or on any can sizes produced by Rhodes Food Group.
61. South Africa remains a significant supplier of canned peaches to New Zealand.

### *Greece*

62. A countervailing duty on canned peaches from Greece was first imposed in 1998 when New Zealand imposed a duty on subsidised canned peaches from the EU. This duty was reviewed and continued in 2003 and terminated in 2009.
63. A dumping investigation was conducted in 2009 which led to the imposition of an anti-dumping duty. This duty was reviewed in 2015 and 2020, and continued at both times.
64. All imports of canned peaches from Greece are currently subject to an anti-dumping duty of 34%.

### *China*

65. The anti-dumping duty on preserved peaches from China was first imposed in 2006. It was reviewed in 2012 and continued, then further reviewed and terminated in 2017. HWL contested the findings of the latter review, leading to a reconsideration in 2019 which upheld the findings of the 2017 review.
66. China remains a significant supplier of preserved peaches to New Zealand

## 1.9 Information Available

67. Limited information has been available to MBIE for the purposes of stage 2 due to a lack of responses from Spanish producers, exporting intermediaries, New Zealand importers, downstream industries, industry bodies and consumers.
68. In its stage 2 analysis, MBIE has used information from:
- Submissions on stage 2
  - Stage 1 of the review
  - Previous investigations and reviews of anti-dumping duties on canned or preserved peaches from Spain and other countries.
  - MBIE's independent research
  - Other relevant sources

## 1.10 Report Details

69. In this report, unless otherwise stated, years are calendar years ending 30 June and dollar values are New Zealand dollars (NZD). In tables, column totals may differ from individual figures because of rounding.
70. For stage 1, the period of investigation for dumping (POI(D)) was the year ended 30 June 2021, while the investigation of injury (POI(I)) involved evaluation of data for the period from July 2018 to June 2021. The POI(D) and the POI(I) are different time periods because of the nature of the information collected and conclusions which need to be reached in respect of this information over each period.
71. During stage 2, MBIE has considered the matters provided for in section 17H of the Act in the context of investigating whether the imposition of an anti-dumping duty for the period 2022-2026 is in the public interest. Stage 2 is forward-looking and takes into account the situation affecting the New Zealand industry, consumers and downstream industries over the next five years, because that is the period for which the proposed anti-dumping duty would be in force.
72. All volumes are expressed on a metric ton (MT, t, or tonne) or kilogram (kg) basis unless otherwise stated. Exports to New Zealand were invoiced in Euros (EUR). The exchange rates used to convert these amounts to New Zealand dollars (NZD) are those relating to specific transactions, where available, or the Customs exchange rates or the rate that MBIE considers most appropriate in the circumstances, as indicated in the text.





## 2. Public interest investigation

73. In undertaking stage 2 of this review, MBIE has addressed the test set out in section 17H(2) of the Act, namely whether continuing to impose an anti-dumping duty is in the public interest. Section 17H(2) provides that the answer to this question will be yes unless the cost to downstream industries and consumers of imposing the duty is likely to materially outweigh the benefit to the domestic industry of imposing the duty. Section 17H(3) requires that in investigating whether continuing to impose the duty is in the public interest MBIE investigate the matters set out in section 10F(3) of the Act. MBIE is not restricted to solely investigating these matters and may also investigate other matters that it considers appropriate, or that are raised by other parties.
74. In a review, MBIE’s assessment considers the situation that might result from the continuation of duty, at the rates determined in stage 1, and the counterfactual situation that would apply if the duty was removed. In the current review, the proposal is to continue the anti-dumping duty at effectively the same rate, which is a rate less than the margin of dumping but is assessed as being sufficient to remove the injurious impact of the dumping. In this situation, the consideration of benefits to the industry and costs to consumers and downstream industries must take account of the effect on the industry if the duty, at the rate proposed, is removed. These costs to the industry are to be weighed when considering the benefits to the domestic industry of continuing the duty. Similarly, the assessment of costs to consumers arises from the extent to which a decision not to remove the duty means that consumers do not experience benefits that might occur if the duty were removed.
75. In this context, the relevant rates of duty are as follows:

**Figure 1: Current and proposed rates of duty.**

Producer	Current Duty		Proposed Duty	
Alcurnia	850g cans 2.5%	2.65kg cans 15.9%	Not subject to duty (review terminated after stage 1)	
Conservas El Navarrico	No duty		Covered by “Other producers”	
Other producers	All containers 7.9%		Containers not exceeding 1kg 7.2%	Containers exceeding 1kg 7.1%

### Quantitative Assessment

76. MBIE has developed the Public Interest Partial Equilibrium Simulation (PIPES) model to assist in the analysis of the potential economic impacts of the imposition of an anti-dumping duty and typically uses that model in undertaking its analyses under the Act. The PIPES model can inform, to the extent practicable, the consideration of certain factors set out in section 10F(3) of the Act.
77. MBIE has not used the PIPES model in the present review due to there being insufficient data available. In order to undertake a quantitative assessment of the effect of the duty

on import prices of preserved peaches using the PIPES model, MBIE requires data on the demand and supply of imported preserved peaches and on the demand and supply of like goods produced domestically. In the absence of dumped imports over the period of review and without cooperation from the importers and exporters, in particular in regard to forward orders, there is no data on the likely or actual import volumes and prices that would otherwise be affected by the duty to support this analysis.

78. While the PIPES model itself has not been used, MBIE's investigation has included quantitative analysis of trade data and other information, in particular in investigating the effect of the anti-dumping duty on prices of the dumped goods and on prices of the like goods produced in New Zealand.

## 2.1 Effect of the duty on the prices of the dumped goods

79. MBIE is required to consider the effect of the duty on the prices of the dumped goods. This includes consideration of past experience of the imposition of an anti-dumping duty on the subject goods; the extent to which the removal of an anti-dumping duty will contribute to price decreases that are likely to be passed on to downstream industries and consumers and any subsequent effect on prices for downstream goods; price factors that may be affecting the price of the imported goods and any downstream goods, including input costs, currency fluctuations, and the extent of competition in the market; and any other matters that may be relevant to the effect of the duty on the prices of the goods.
80. The assessment of the effect of the duty on the prices of the dumped goods addresses prices at two levels:
- **Import prices**, which are the effective prices of the imported dumped goods to importers, reflecting the price paid to the exporter and any costs and duties (Customs duty and anti-dumping duty where relevant) incurred by the importer relating to importation.
  - **Prices to consumers and downstream industries**, which are the prices paid by these parties to importers or distributors, being retail prices in the case of consumers.

A key element of the assessment is the extent to which changes in import prices arising from the continuation, a change in rates, or removal of the duty are passed on as changes in prices to consumers and downstream industries.

81. The assessment takes into account the level of price undercutting established in stage 1 as the indicator of the likely level of price decrease that, in the absence of duty, HWL would need to apply in order to compete with the dumped imports.
82. In the case of a review, where the proposed course of action is to maintain the duty at materially the current level, the assessment of costs to consumers involves considering the extent to which a decision not to remove the duty means that consumers do not benefit from any price reduction that might occur if the duty was removed. In assessing the possible effects of the duty, MBIE has considered information from previous investigations and reviews involving preserved peaches, any relevant submissions from interested parties, and MBIE's analysis of the data available.

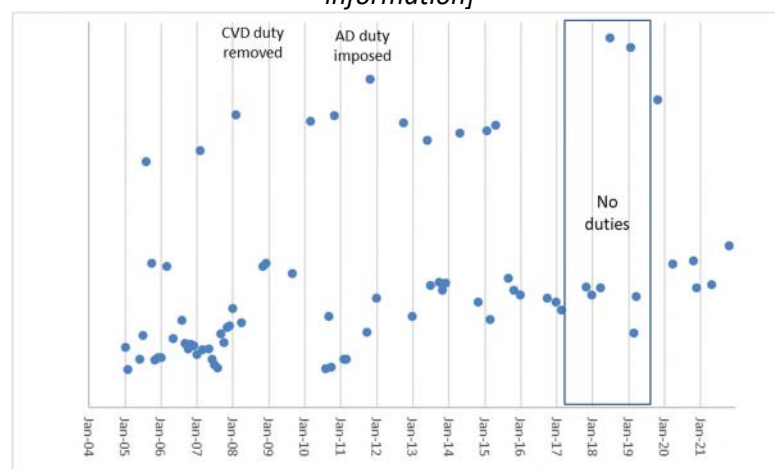
83. In its assessment, MBIE has noted that importers are likely to either be retailers themselves or sell to retailers.

### 2.1.1 Experience

#### *Investigations and reviews involving Spain*

84. During stage 1, importers submitted that the imposition of an anti-dumping duty affected decisions on whether they would import the subject goods from Spain. Figure 4 below sets out the unit values for imports from Spain over the period from 2005 to date, on the basis of CIF, duty paid, values. MBIE has reviewed the evolution of prices in relation to the imposition, amendment or removal of duty during that period for individual transactions.

**Figure 2: Values of imports from Spain. CIF, duty-paid, NZD/kg**  
[Y-axis redacted, does not cross X-axis at 0, gridlines deleted, to protect confidential information]



85. During the period between February 2017 and August 2019, when no duties were applied, there does not appear to have been the marked reduction in import prices that might have been expected. HWL has submitted that this may have reflected caution on the part of importers who were aware of HWL's legal challenge to the removal of the duty.
86. The price data shown in the chart does not suggest that the removal of duty at this time led to a general reduction in import prices, although it could be argued that the reimposition of the duty in August 2019 may have contributed to an increase in import prices. However, there are insufficient data points to support a definitive correlation.

#### *Other proceedings*

87. The anti-dumping duty previously imposed on preserved peaches from China was terminated from July 2017, following a review and a reconsideration of that review. An anti-dumping duty currently applies to some preserved peaches from South Africa and all canned peaches from Greece.
88. South Africa is the largest foreign supplier of preserved peaches to New Zealand. In the 2019 review of anti-dumping duty on preserved peaches from South Africa, MBIE concluded that the imposition of anti-dumping duty had affected the export price of the subject goods. MBIE referred to evidence of past behaviour, particularly since the 2013 review, which showed that movements in export prices of preserved peaches from South

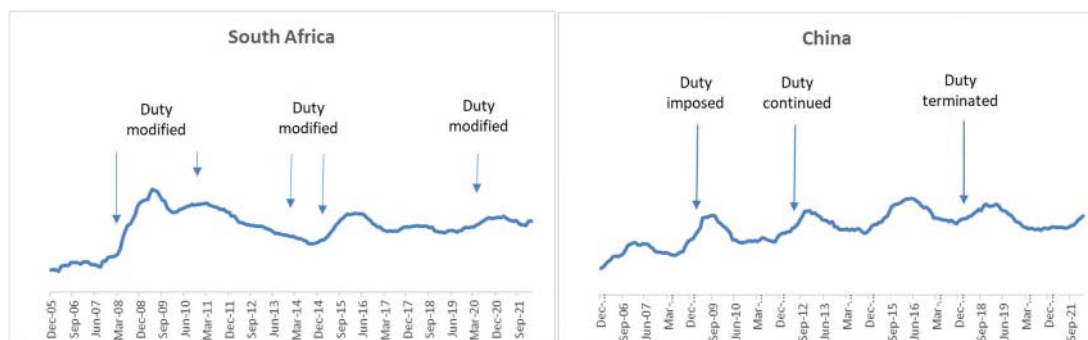
Africa had tended to follow changes in the rates of anti-dumping duty. This reflected the fact that anti-dumping duty had generally been expressed as reference prices based on the margin of dumping. This meant that any increase in export prices up to the reference price levels increased returns to exporters, rather than requiring importers to pay a duty based on the difference between the export price and the reference price. The net effect on prices of imports into the New Zealand market was similar.

89. China is also a significant supplier of preserved peaches to New Zealand. In the 2019 reconsideration of the review of preserved peaches from China, MBIE analysed the pricing of imports of the subject goods (which covered a broader range of goods than the South African review), and noted that on average, there did not appear to be a strong increase in export prices after the imposition of duty in 2006, although prices have been steadily increasing since then, likely due to inflation.
90. The charts below illustrate the trends of rolling 12-month average values in relation to the imposition, modification or termination of anti-dumping duty with respect to all or some of the imports concerned.<sup>3</sup> The values relate to goods like the subject goods in the current review of preserved peaches from Spain.

**Figure 3: Rolling 12-Month Average Values**

**CIF, duty-paid, NZD/kg**

*[Y-axis redacted, does not cross X-axis at 0, to protect confidential information]*



91. The values are rolling 12-month totals so the impact of any changes in duty will be delayed. On this basis the charts indicate there is some correlation between movements in anti-dumping duty and the average values for imports from South Africa and China, but the correlation is not strong.
92. Imports from Greece have been at relatively low levels since 2014 and MBIE considers that the amount of data available is not sufficient to allow any broad conclusions to be reached regarding any impact on values and prices of the anti-dumping duty in force against Greece.

*Conclusion on experience*

93. MBIE considers that the historical trade data indicates that there is evidence of some correlation between the imposition, modification or removal of the anti-dumping duty and movements in prices of imports, although the correlation is not strong. What is not

<sup>3</sup> For example, the most recent South African modification excluded imports from one of the major suppliers from the application of duty.

clear is the extent which these movements have been reflected in prices to consumers and downstream industries.

### 2.1.2 Pass on of price movements

94. For the current review, MBIE relied on Customs data to determine the levels and prices of imports from Spain during the period of review. Having determined in stage 1 that current imports from Alcurnia, the only exporter of subject goods into New Zealand during the POR(D), are not dumped, MBIE notes that there is no data on actual prices of dumped imports to use as the basis for establishing the impact of the duty on the prices of dumped imports. However, for the purposes of assessing the likelihood of dumping if the duty were removed, MBIE used the notional price of dumped imports established in stage 1 as the basis for determining the impact of the duty on the prices.
95. In the only submission received in response to the Stage 2 Questionnaire, HWL stated that it expects the anti-dumping duty will create a level playing field by removing the injurious effects of dumped preserved peaches from Spain. This assumes that the duty will increase the price of subject goods (which is not the case given the rate of proposed duty is materially the same), or that any decrease in prices if the duty is removed will be reflected in decreases in prices to customers of imported subject goods.
96. During stage 1, past importers indicated that the anti-dumping duty increased the price of the dumped goods, rendering those goods uncompetitive on the domestic market, while a resumption of imports from Spain would require a significant reduction in price. Submissions also indicated that the effect of the anti-dumping duty would be passed on to consumers and downstream industries but noted that the net effect of this pass on was uncertain as there are significant increases in other costs associated with importation that are also passed on to the market. This suggests to MBIE that any change in prices of dumped goods is not solely dependent on the duty, as there were other factors that are likely to also impact their price, including export costs and the availability of alternative supplies.
97. The continued imposition of the duty, at levels similar to those currently applying to other suppliers, is not in itself likely to increase the price that importers must pay for any imported subject goods. In order to consider the effect on costs to consumers, it is necessary therefore to consider the extent to which a decision not to remove the duty means that consumers do not experience benefits that might occur if the duty were removed. The effect on the price to consumers will depend on whether the sellers of the goods elect to pass on to their customers the benefits of the removal of the duty.
98. MBIE has also analysed the relationship between movements in import values and retail prices for preserved peaches in New Zealand. Figure 6 below shows annual import volumes (excluding imports by HWL) and average NZD/kg CIF, duty paid (including anti-dumping duty) values, compared with the annual simple average of NZD/kg retail prices from 410g cans of sliced peaches taken from Statistics New Zealand Consumer Price Index data and published by FigureNZ.<sup>4</sup> The chart shows that, over the period from 2007 to 2020, an indicative retail price for preserved peaches has declined slightly while import

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<sup>4</sup> FigureNZ. (2022, April 7). Retail price of canned peaches in New Zealand, Weighted average (supermarket only) per 410g, Jan 2012–Jan 2022, NZD. <https://figure.nz/chart/WNZOpEoBKRyz4hBh-waz9zFPf1THUKbw1>

volumes and values have fluctuated but have also declined overall. Otherwise, there appears to be little direct relationship between import values and retail prices.

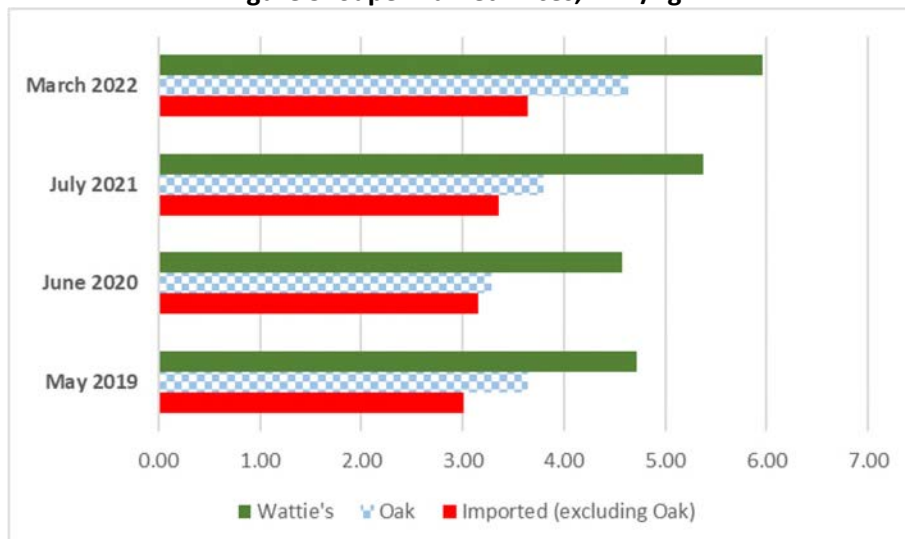
**Figure 4: Preserved Peaches Retail Prices and Imports**

*[Left-hand Y-axis redacted to protect confidential information]*



99. MBIE has also analysed New Zealand retail price information for preserved peaches that it has collected across a number of proceedings. This information compares supermarket prices listed online on specific dates in each year from 2019 to 2022. Figure 7 shows the simple average NZD/kg prices for all canned peaches for each of the four days recorded. While recognising that the data used may not accurately reflect all actual price movements in this period, it does indicate that supermarket prices for the Wattie's and Oak brands have increased in the last two years following a slight drop in 2020, while prices of imported goods increased each year (the Oak brand prices used were primarily of imported goods).

**Figure 5: Supermarket Prices, NZD/kg**



100. The period covered by the information in Figure 7 includes the removal of an anti-dumping duty on imports from China, and the removal of an anti-dumping duty on imports from a major exporter from South Africa. The information suggests that the removal of an anti-dumping duty would have little effect on the prices to consumers, in that a retail price decrease is unlikely in response to a removal of the duty. This means

that continuing the duty would not lead to costs to consumers in the form of a lost benefit (i.e. price decrease) that they might experience if there was a removal of the duty.

101. The anti-dumping duty is likely to have little effect when passed on to downstream industries in terms of their costs for finished products. This is because the preserved peaches component of any downstream goods (such as baked products or restaurant meals) is likely to comprise a relatively small part of the total cost of any finished products, and because of the limited current use of Spanish preserved peaches. For similar reasons, the removal of anti-dumping is not likely to provide any significant benefit to downstream industries.
102. MBIE has received no evidence relating to prices to downstream industries, but notes that the dumped imports from Spain are likely to be sold primarily at the retail level.

*Conclusion*

103. There appears to be no correlation between movements in the price of imports arising from the imposition, modification or termination of an anti-dumping duty, and the price to consumers of preserved peaches. This suggests a decrease in price to consumers is unlikely in response to the removal of the duty. The anti-dumping duty is unlikely to have an effect on downstream industries as preserved peaches comprise a relatively small part of the total cost of any finished products. MBIE therefore concludes that it is unlikely that there will be costs to consumers and downstream industries from the continuation rather than the removal of anti-dumping duty.

**2.1.3 Price Factors**

104. In assessing the effect of the duty on the prices of the dumped goods, MBIE has considered relevant price factors in the market for preserved peaches to determine the extent to which price movements of the dumped goods are attributable to the continued imposition of an anti-dumping duty rather than to other causes. These price factors include supply and demand, the responsiveness of the prices of the dumped goods to fluctuations in exchange rates, and other considerations such as perceptions of the quality of the goods which may be reflected in prices.

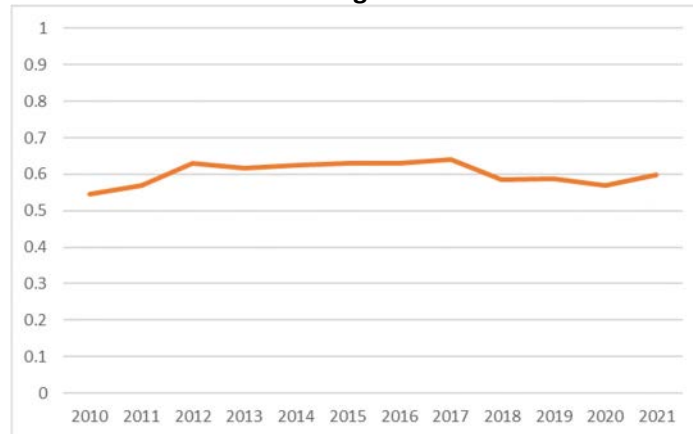
*Supply and demand*

105. The history of imports of preserved peaches from Spain indicates that, in general, demand is driven by New Zealand importers rather than any particular drive by Spanish producers to export to New Zealand. Nevertheless, Spain is a major producer and exporter of preserved peaches, and is competitive in pricing with other major supplying countries. Past experience has shown that in the absence of an anti-dumping duty, imports from Spain have taken place but have ceased and not recurred when an anti-dumping duty was imposed. Stage 1 established that potential imports from Spain are likely to be dumped, and that an anti-dumping duty, set at a level calculated to remove the injury, is justified.

### *Exchange rates*

106. Figure 8 sets out an assessment of average annual EUR-NZD exchange rate movements over the period 2011-2022<sup>5</sup>. The information presented indicates that, apart from a decline in the NZD value in 2018, there have been no significant fluctuations in exchange rates since that time. This suggests that exchange rate movements have not been a significant contributor to price movements of imports of preserved peaches in NZD terms.

**Figure 6: Exchange Rate Movements, EUR-NZD  
Annual averages 2010-2021**



### *Quality*

107. MBIE notes that there are no grade distinctions for preserved peaches in the New Zealand market.
108. Current importers of the subject goods sold through niche retail channels have indicated that one of the major factors affecting their decision to import from Spain is the demand by customers, and that these importers prefer what they perceive as the higher quality of the preserved peaches from Spain over all others. The Spanish product imported over the investigation period does not normally compete directly with the New Zealand goods. MBIE notes that the subject goods imported over the investigation period have been excluded from the review as it was found in stage 1 that these products were not dumped. It is not entirely clear which market sector any potential future imports from Spain may seek to fill.
109. The price premium achieved by HWL for its Wattie's brand suggests that customers are prepared to pay more for this brand, which emphasises its New Zealand origin and the quality of the peaches used.

### *Conclusion*

110. With regard to price factors which may be affecting the prices of dumped imports, MBIE notes that:
- While Spain has sufficient production capacity to supply the New Zealand market, demand is driven by importers rather than Spanish producers, and this demand

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<sup>5</sup> NZForex Limited. (2022, April 7). *Historical exchange rates*. <https://www.ofx.com/en-nz/forex-news/historical-exchange-rates/>.



will depend on the extent to which Spanish goods are available at competitive prices compared with other suppliers.

- Movements in exchange rates are unlikely to have been significant in relation to prices of preserved peaches to New Zealand importers.
- Quality considerations do not appear likely to be a major factor in the pricing of imports of the subject goods.

#### **2.1.4 Conclusion on the effect of the duty on the prices of the dumped goods**

111. In its assessment of the effect of the duty on the prices of the dumped goods, MBIE has taken account of any effects apparent from previous investigations and reviews involving preserved peaches, and has analysed the likely extent to which the continuation or removal of an anti-dumping duty will affect import prices and prices to consumers and downstream industries. In undertaking this assessment, MBIE has taken account of any relevant submissions from interested parties and has carried out its own analysis of the available data.

112. MBIE has concluded that while there may be some correlation between movements in anti-dumping duty and import prices, there appears to be no correlation between movements in import prices and the price to consumers and downstream industries of preserved peaches. As MBIE has noted, in the case of a review where the proposed course of action is to maintain the duty at the current level, the assessment of costs to consumers and downstream industries arises from the extent to which a decision not to remove the duty means that consumers and downstream industries do not benefit from any price reduction that might occur if the duty is removed. The conclusion reached is that it is unlikely that continuing or removing the duty in this case will have any effect on the prices paid by consumers and downstream industries for the subject goods. MBIE is satisfied, therefore, that there are no costs to consumers and downstream industries to be weighed against the benefits to the domestic industry of continuing the duty.

## **2.2 Effect of the duty on the prices of like goods produced in New Zealand**

113. MBIE is required to consider the effect of the duty on the prices of like goods produced in New Zealand. In this assessment, MBIE has had regard to the degree of substitutability between the imported and domestically produced goods; the extent to which the domestic industry is likely to change the price of the like goods in response to a change in the price of imported goods; and whether domestic prices are responding to market factors.

### **2.2.1 Substitutability**

114. MBIE considers that imported and locally produced preserved peaches are like each other, as explained in the Stage 1 Final Report (section 2.3), and have characteristics that closely resemble each other. MBIE considers that these products are substitutable as they share similar physical characteristics, function and usage and distribution channels, and there are no grade distinctions on the New Zealand market.

115. In the 2019 review of the anti-dumping duty on preserved peaches from South Africa, MBIE noted that importer demand in New Zealand was sensitive to a change in the import price of the goods and that preserved peaches were purchased based on the

lowest prices available in the market, not based on non-price factors such as quality or consumer perception. This indicates that the goods are highly substitutable for each other, and importers' purchasing behaviour is likely primarily guided by the lowest prices in the market. Based on the information available in the current review, MBIE has no reason to consider that this situation has changed with respect to the subject goods being considered in stage 2.

### **2.2.2 Price Movements**

116. The purpose of an anti-dumping duty is to remove the adverse effects of dumping by allowing the domestic industry to achieve prices that are not limited by competition from dumped imports. Normally, it can be expected that the domestic industry will seek to increase its prices to incorporate the full effect of the anti-dumping duty. In the current review, the proposal is to continue the anti-dumping duty at effectively the same rate, which is a rate less than the margin of dumping but which is assessed as being sufficient to remove the injurious impact of the dumping. In this situation, the consideration of benefits to the industry and costs to consumers and downstream industries must take account of the effect on the industry if the duty, at the rate proposed, is not continued.
117. This approach reflects the injury assessment made as part of stage 1. At that stage, MBIE considered HWL's forecasts for sales revenue, sales volume, cost of production, gross profit and fixed costs for two scenarios – with no anti-dumping duty and with an anti-dumping duty. With an anti-dumping duty continued, HWL forecast a small increase in net sales revenue per kg in 2022 and 2023, which would make it possible to recover increased costs of production. On the other hand, for the scenario where anti-dumping duty is removed, HWL's forecast showed a significant decline in net sales revenue per kg in 2022 and 2023. HWL stated that, if the anti-dumping duty were to cease in the short term, it would maintain market share by discounting existing stock to the depressed price of imports from Spain.
118. During stage 1, MBIE based its assessment of injury on the level of price undercutting of the Oak brand. HWL positions the Oak brand to compete on price with other brands in the market. MBIE assessed the level of price undercutting of the Oak brand as the basis for the proposed rate of duty. This is a lower level than that used by HWL in its application. MBIE considers it likely that if the duty is removed, and if imports from Spain take place at the prices MBIE has assessed is likely, then HWL will reduce its prices to reflect the likely prices of Spanish imports. MBIE notes that HWL resorts to importation in the event of a shortage of raw peaches from its contracted growers, to supplement the Oak brand for the purpose of maintaining its market share and customer goodwill.

### **2.2.3 Market factors**

119. In assessing the effect of the duty on the prices of like goods produced in New Zealand, MBIE has had regard to the current market situation, and has in particular assessed the relevant price factors in the domestic market that arise from competition.
120. With regard to competition in the retail sector, MBIE's assessment is that supermarkets have a major influence on prices to consumers, including through their use of private label brands, but the extent to which they influence the prices achieved by HWL is likely to be tempered by the size and scope of HWL's engagement in the New Zealand food industry.

121. With regard to the effects of the COVID-19 pandemic on prices, MBIE notes that there was an impact on the availability of fruit for processing in the 2020/21 season, which had a consequent impact on HWL's costs of production that continues to be felt. However imports are facing similar pressures, including higher transportation costs.

#### **2.2.4 Conclusion on the effect of the duty on prices of like goods produced in New Zealand**

122. MBIE considers that the removal of an anti-dumping duty is likely to result in a decrease in the prices of like goods produced in New Zealand by the level of injury established in stage 1, as HWL seeks to match the prices of dumped imports. Such activity would affect HWL's ability to recover any increased costs of production. On the other hand, the continuation of the duty at rates that are not higher than the current level applicable to dumped imports is unlikely to lead to any changes in import prices that would lead to changes in prices of like goods produced in New Zealand.

### **2.3 Effect of the duty on the choice or availability of like goods**

123. MBIE is required to consider the effect of the duty on the choice or availability of like goods. This includes consideration of the potential impact of the continuation of the anti-dumping duty at the rates determined, as well as the potential impact if the duty is removed, on the choice or availability of like goods in the New Zealand market. In addition, the assessment has considered the impact of the continuation or removal of the duty on domestic production, and market shares of imported and domestically produced goods. MBIE has also had regard to the past experience of the imposition of anti-dumping duty on the choice or availability of like goods.

#### **2.3.1 New Zealand market**

124. The market for preserved peaches in New Zealand is made up of locally produced goods and imported goods. Domestic production by HWL accounts for a major share of the market, while China and South Africa are the main sources of imported preserved peaches.
125. HWL expects that if the anti-dumping duty is continued there would be no changes to the availability of preserved peaches on the domestic market, but if the anti-dumping duty ceases some of the importers will look for opportunities to source cheaper product from Spain. HWL considers that the duty should have a levelling effect which would allow importers to still have a choice of country of origin and not exclude Spain as a choice.
126. HWL also stated that importers currently have access to competitively priced imports from China, a country currently not subject to any anti-dumping duty. HWL noted that China is an established alternative source for imports of the subject goods. Chinese goods are currently available for sale on the domestic market and importers have established relationships with Chinese suppliers.
127. Some of the current importers of private label preserved peaches have stated that their sourcing choices are influenced by the long-standing arrangements they have with their suppliers, and that a decision to change their sources was unlikely or would only be motivated by a significant change in circumstances. Where long-standing relationships were not a factor, importers stated that the standard practice is to tender for private

- label products on the international market and to choose a supplier on the basis of price and quality, among other factors considered by the buyer.
128. During stage 1, HWL noted that it faces competition from imports as supermarket chains were increasingly allocating more shelf space to private label over manufacturers' brands, with the former offering higher profit margins.
  129. MBIE notes that past reviews have established occasions when supermarkets sourced preserved peaches from the international market at dumped prices and sold them in retail sales to consumers.
  130. MBIE notes that if the duty is *continued*, the expected effects of the impact of the duty on prices of the imported goods will be that importers will be discouraged from purchasing dumped imports. This would result in a decrease in the volume of the imported goods supplied at some levels of trade, and a restriction, albeit minor, on the range of goods available in the domestic market.
  131. If the duty is *removed*, and if imports from Spain at low prices increase significantly, then the domestic industry will be materially injured by the dumped goods, which may affect the availability of domestic goods in the New Zealand market.
  132. MBIE also notes that the proposed anti-dumping duty rates are very similar to the current rates applying to Spanish producers other than Alcornia; that an anti-dumping duty has been in place on imports of preserved peaches from Spain since 2011; and that there have been no significant volumes of imports since 2012. This lack of imports suggests that the current and previous rates of anti-dumping duty had the effect of discouraging demand for Spanish preserved peaches by increasing import prices.
  133. Given the low volume of imports from Spain, MBIE does not have sufficient meaningful information on prices of preserved peaches from Spain to allow for a price elasticity assessment. However, in its review of anti-dumping duty on preserved peaches from South Africa, MBIE found that imports of preserved peaches are highly price elastic, meaning that demand is sensitive to a change in the import price. MBIE considers that importer demand for Spanish preserved peaches would likewise be sensitive to a change in the price of imports.
  134. The continued imposition of the duty would likely continue to result in limited volumes of subject goods being imported from Spain, and is likely to motivate importers to continue finding lower-priced alternatives from other sources. There are several other international markets available to supply the New Zealand market, including South Africa, which is the largest supplier of preserved peaches to New Zealand, and China which is also a significant supplier of preserved peaches and to which an anti-dumping duty does not currently apply. An anti-dumping duty also does not apply to one of the two South African producers.
  135. On the other hand, as MBIE concluded in stage 1, if the duty is removed, the domestic industry will likely suffer material injury in terms of price undercutting, with consequent price depression and suppression, resulting in adverse impacts on sales revenue, earnings before interest and tax (EBIT), productivity, return on investments and growth. These impacts may lead to a restriction of the range of goods available, to the extent that they could affect the range and volume of domestically produced goods.

136. In the Stage 1 Final Report, MBIE noted that the purpose of the anti-dumping duty on preserved peaches from Spain is to remove likely injury to the New Zealand industry, and specified that the duty is not intended to prevent trade in preserved peaches from Spain. The continued imposition of the anti-dumping duty does not necessarily mean that importing from Spain will be untenable. The determined anti-dumping duty has been set at a level that will remove injury but is not applied at the full margin of likely dumping. MBIE further noted that, on the basis of notional prices without an anti-dumping duty, imports from Spain are likely to have a price advantage over the New Zealand industry's prices and prices of imports from other sources.

### **2.3.2 Conclusion on the effect of the duty on the choice or availability of like goods**

137. MBIE concluded in the Stage 1 Final Report that, if the anti-dumping duty is removed, it is likely there would be a return of lower-priced imports from Spain. While this may result in a wider range of products, and therefore greater choice, available to consumers and end-users, this would be at the expense of the domestic industry.

138. MBIE is satisfied that, irrespective of whether the duty is removed or continued, the choice and availability of like goods will likely remain unchanged from that in recent years, in particular noting the availability of like goods imported from other sources.

## **2.4 Effect of the duty on product and service quality**

139. MBIE is required to consider the effect of the duty on product and service quality. In this assessment, MBIE has had regard to the goods' characteristics, including any industry or international standards that might be applicable; the extent to which the quality of goods or services in the market could be lowered upon the continued imposition of anti-dumping duty, or without duty in place; customer preferences and perceptions relating to quality of the products and of the service provided by the New Zealand industry and by Spanish suppliers, and any other relevant considerations.

### **2.4.1 Characteristics of the goods**

140. In its application, HWL stated that the physical characteristics of its preserved peaches are very similar to those of preserved Spanish peaches. HWL noted that previous investigations have found that there is a high level of substitutability between preserved peaches of various cuts and mediums and, therefore, considers that there will be no expected changes in terms of a standard of quality available to consumers. MBIE accepts that preserved peaches produced by the New Zealand industry are like goods to the subject goods imported from Spain.

141. Importers stated that they would continue to source preserved peaches from Spain given consumer preferences, noting that Spanish imports were perceived as being of superior quality. Some importers also considered that Spanish peaches were of a better quality than other brands available on the domestic market. MBIE has noted that the brands in the New Zealand market that are the subject of this review are not sold on the basis of any specific quality distinction or any particular product grading.

142. HWL has submitted that the New Zealand market is not segmented by grade as in some overseas markets where consumers demand that the labels show the grade of the peaches. It stated that the domestic and imported products would be indistinguishable in a blind taste test and also noted that the end uses of the products are identical.

143. MBIE did not receive any other submissions from producers or importers on the effect of the duty on product and service quality. In the absence of responses from the foreign producers, no other information was provided by current and past importers on matters relating to quality, including how they would differentiate quality when selling to different market segments.

#### **2.4.2 Conclusion on the effect of the duty on product or service quality**

144. MBIE is satisfied that there will not be any adverse impacts on product or service quality in New Zealand resulting from either the continued imposition or the removal of the anti-dumping duty on the dumped goods.

### **2.5 Effect of the duty on the financial performance of the domestic industry**

145. MBIE is required to consider the effect of the duty on the financial performance of the domestic industry. In this assessment, MBIE has had regard to the current financial state of the domestic industry, the impact of imposing the duty and whether any effects, other than those intended, could arise from the removal of the duty at the determined rate.

#### **2.5.1 Assessment of injury factors**

146. During stage 1, MBIE assessed the likely financial impact on HWL in terms of whether the removal of the anti-dumping duty would be likely to lead to a continuation or recurrence of injury. MBIE concluded that, if the anti-dumping duty was removed, dumped imports of preserved peaches from Spain are likely to result in the recurrence of material injury to HWL, the domestic industry. MBIE's injury analysis considered the situation which would arise if the anti-dumping duty were to cease compared with the situation where anti-dumping duty was continued.

147. During stage 1, HWL indicated that if the anti-dumping duty were to cease, it would consider defending its market share by increasing its consumer and trade marketing activities and compete at the depressed price. A decision to defend its market share would likely increase HWL's cost base (as a result of the increased trade spend) which, when combined with lower prices, is likely to have an injurious effect on the business.

148. HWL did not claim injury from current imports by Alcornia as Alcornia does not compete directly with HWL. In the absence of dumping, the review in relation to imports from Alcornia was terminated at the end of stage 1.

149. In its response to the Stage 2 Questionnaire, HWL again stated that the removal of the anti-dumping duty would result in dumping of the subject goods causing a recurrence of material injury to the industry, particularly in the forms of price depression, price undercutting and price suppression. HWL submitted that this would in turn result in a decline in the domestic industry's profits.

150. MBIE did not receive further submissions from other parties on the effect of the continuation or non-imposition of the duty on the financial performance of the domestic industry.

151. MBIE has used the injury analysis from stage 1 as the basis for assessing the effect of the duty on the financial performance of the domestic industry for stage 2. The relevant financial effects considered by MBIE are summarised below.

### *Volume effects*

152. With the current anti-dumping duty in place, import volumes of preserved peaches from Spain have been minimal since 2012. During stage 1, MBIE found that previous behaviour and the competitive pricing of preserved peaches from Spain indicates that, in the absence of an anti-dumping duty, importers will likely revert to importing increased volumes of preserved peaches from Spain.

### *Price effects*

153. During stage 1, MBIE concluded that the likely prices for dumped imports from Spain, in the absence of the duty, will hold a significant price advantage over the New Zealand industry's prices which would result in price undercutting and price suppression.

### *Sales volumes and revenue*

154. During stage 1, MBIE concluded that if the anti-dumping duty is removed HWL is likely to experience a reduction in sales revenue but not sales volume.

### *Market share*

155. During stage 1, MBIE concluded that it is unlikely that there will be a significant effect on HWL's market share if the anti-dumping duty is removed, at least in the foreseeable future, on the basis HWL would protect its market share by reducing prices.

### *Profits*

156. In its injury analysis during stage 1 MBIE concluded that, in the absence of an anti-dumping duty, EBIT is likely to decline as HWL aims to compete on price with the lower priced imports.

### *Other financial indicators*

157. During stage 1, MBIE concluded that any effect on productivity, return on investments and growth will be the outcome of other negative effects that can be attributed to the recurrence of dumping and injury that would eventuate in the absence of the duty. Potential negative effects on cash flow and growth will likely arise from the impact on sales revenue and profits.
158. MBIE concluded that utilisation of production capacity is unlikely to decline. MBIE was unable to reach any meaningful conclusions on inventories, employment, wages, and ability to raise capital and investments, in the absence of the duty.

## **2.5.2 Conclusion on the effect of the duty on the financial performance of the domestic industry**

159. MBIE concludes that the financial performance of the domestic industry is likely to be adversely affected if the anti-dumping duty is removed. The continuation of an anti-dumping duty at the rate determined by the Minister will prevent these adverse effects and the recurrence of material injury.

## **2.6 Effect of the duty on employment levels**

160. MBIE is required to consider the effect of the duty on employment levels. In assessing this, MBIE has had regard to the extent to which the continued imposition or the removal of the duty would likely have a negative effect on employment levels in the domestic industry and in downstream industries.

### **2.6.1 Employment effects on the domestic industry**

161. In its application, HWL claimed that the removal of the duty would have an adverse effect on its employment levels.

162. MBIE did not receive submissions from downstream industries on the effect the continued imposition of the duty or its removal would have on their employment levels.

163. During stage 1, MBIE noted that it was unable to reach any meaningful conclusions on employment, but considered that, in the absence of an anti-dumping duty, it was unlikely that there would be any adverse effects on employment by HWL, noting the following factors:

- Previous reviews show that HWL employs permanent and seasonal staff on an “as required” basis, and that year-on-year the number of seasonal staff required for peach processing depends on the volume of peaches to be processed.
- HWL depends on seasonal labour to process the entire peach crop procured from its contracted growers within the first quarter of the calendar year. For the rest of the year some employees are re-assigned to other production lines as per the scheduled production of other products depending on their seasons and the contracts for seasonal employees come to an end.
- HWL indicated in its application that, in the absence of an anti-dumping duty, it may have to decrease its prices when competing with dumped imports in order to maintain its sales volume and market share.

### **2.6.2 Employment effects on downstream industries**

164. MBIE is not aware of preserved peaches forming a significant part of the production costs for downstream products that use preserved peaches as a production input. In any case, preserved peaches are available from sources other than Spain, should downstream industries wish to avoid the cost of anti-dumping duty imposed on Spanish imports. MBIE has no basis to conclude that there would be adverse impacts on employment levels in downstream industries if the duty were continued.

### **2.6.3 Conclusion on the effect of the duty on employment levels**

165. MBIE notes that if the anti-dumping duty is continued, HWL will benefit by being able to maintain current employment levels. MBIE concludes there is unlikely to be an adverse effect on the domestic industry’s employment levels and those of downstream industries if the duty were continued or removed.

## **2.7 Alternative supply (domestically or internationally) of like goods available**

166. MBIE is required to consider whether there is an alternative supply (domestically or internationally) of like goods available. In this assessment, MBIE has had regard to whether the domestic industry is able to meet domestic demand; whether the imported goods from Spain are covering any demand that the domestic industry is unable to supply; whether there are any alternative sources of supply, competitive in price and quality and capable of accommodating additional demand; whether there are any product and conformance standards required by New Zealand that might restrict importation of the subject goods from other international sources that may restrict



import possibility; the extent to which there is a risk of monopolisation of the supply of goods to New Zealand; and whether there are any non-price, non-supply factors to consider, such as contract terms and speed of delivery.

### **2.7.1 Domestic supply**

167. HWL submits that it expects that, if the anti-dumping duty is continued, the injurious effects of dumped preserved peaches from Spain would be removed, while importers would have the choice of sourcing preserved peaches from Spain or other countries of origin, including but not limited to Australia, the United States, South Africa, China and Greece as well as from New Zealand.
168. During stage 1 HWL explained that it has, over recent years, been working with local growers to ensure a supply of fresh peaches at the level that supports HWL to produce enough preserved peaches to meet domestic demand. It also stated that, in the face of any shortfalls in locally grown peaches, it would import preserved peaches to maintain its market share and customer goodwill. HWL expects that in the long run its investment in fresh peach production will eliminate the need to import.
169. In its response to the Stage 2 Questionnaire HWL stated that, in the event that it will need to import, it will engage past and present suppliers to evaluate the best option available in terms of price, country of origin and consumer perception of that country of origin, quality and existing arrangements in place (in no particular order).
170. During stage 1, some of the importers indicated that they are currently, and have been for several years, sourcing non-dumped imports from alternative suppliers and that they would be reluctant to change their source given their existing relationships. Other importers indicated that on the basis of competitive pricing and/or quality they are open to sourcing preserved peaches from alternative sources.
171. MBIE did not receive submissions from downstream industries or consumers on whether there is an alternative supply of like goods available.

### **2.7.2 Alternative supply**

172. The global market for preserved peaches provides sources of alternative supply of like goods for New Zealand importers. These sources are competitive in price and quality, and are capable of accommodating additional demand. MBIE also notes that while the applied Customs rate of duty for the subject goods is 5%, the availability of preferential rates at zero duty (Duty Free) means that for some sources of the subject goods (such as Australia and China) there are no tariffs. For other sources of the subject goods (i.e. some South African producers and Greece) anti-dumping duties apply at rates explained in section 1.8 of this Report.
173. China and South Africa provide alternative sources of significant supply of preserved peaches. Australia has been a significant source of supply in the past. South Africa has continued to remain a significant source of supply of preserved peaches for New Zealand importers, including from the suppliers subject to an anti-dumping duty.

### **2.7.3 Technical specifications**

174. There are no product and conformance standards required by New Zealand that might restrict importation of the subject goods from other international sources.

#### **2.7.4 Risk of monopolisation of the supply of goods to New Zealand**

175. HWL is the sole producer of preserved peaches in New Zealand. However, New Zealand is a small open economy, and competition is introduced to the market through international trade. HWL states that it does not set monopolistic prices, as importers compete by sourcing like goods internationally.
176. If the imposition of an anti-dumping duty were to discourage the importation of preserved peaches, there could be a consequent risk of monopolisation of the supply of preserved peaches to New Zealand. However, the anti-dumping duty applies only to suppliers found to be dumping, or likely to be dumping. MBIE notes that, apart from some imports from South Africa and Greece, preserved peaches from the rest of the world can still enter the New Zealand market free of an anti-dumping duty. Further, the continued imposition of an anti-dumping duty on imports of preserved peaches from Spain at the rates determined by the Minister is not intended to divert trade away from Spain, but to address the material injury caused by dumping. If the duty is not continued and, in a worst-case scenario, if HWL ceased its production of preserved peaches, there would be no local production to compete in the market.
177. MBIE considers that there is no risk of monopolisation of the supply of preserved peaches to New Zealand arising from the continued imposition of anti-dumping duty on preserved peaches from Spain. The continued imposition of the anti-dumping duty will support continuing production by the New Zealand industry and reduce the risk of monopolisation by a dominant foreign producer.

#### **2.7.5 Other factors**

178. MBIE is aware that there can be other relevant factors which affect supplies to the market. Preserved peaches are typically contracted for on an annual basis based on the exporting country's production season, and therefore a lag in contract timing may contribute to a short-term delay in shifting to alternative markets for supply.

#### **2.7.6 Conclusion on alternative supply (domestically or internationally) of like goods**

179. MBIE notes that there are several countries other than Spain which are available to supply preserved peaches to the New Zealand market to meet demand for imported preserved peaches in addition to product supplied by the domestic industry. There have been relatively low levels of import volumes from Spain in recent years. MBIE concludes that continuation of the anti-dumping duty determined by the Minister is not likely to have any significant effect on alternative sources of supply of like goods.

### **2.8 Other factors essential to ensure the existence of competition in the market**

180. MBIE is required to consider the effect of the duty on any factors the chief executive considers essential to ensure the existence of competition in the market. In this assessment, MBIE has had regard to the current situation in the market; whether the market may be influenced by consumers purchasing substitute goods; the extent to which there are any complementary goods that may be affected, whether there is risk of monopolisation; how accessible the market is to new entrants, and any existing protection of the domestic industry.

## 2.8.1 Current market situation and risk of monopolisation

### *Current market situation*

181. HWL expects that the continuation of the anti-dumping duty would not result in any changes to the market for preserved peaches in New Zealand, but that the removal of the duty would result in a recurrence of material injury.
182. During stage 1, HWL used NZ retail data to identify fourteen brands produced by six manufacturers that are currently in the New Zealand market, including Wattie's and Oak. In the year ended June 2021, all of those brands had a presence on the New Zealand market and the top seven, which included Wattie's and Oak, held 99.7% of market share by volume. Domestically produced and imported preserved peaches each hold significant proportions of the New Zealand market and are both represented in major supermarkets.
183. In the 2019 Full Review Final Report on the anti-dumping duty on preserved peaches from South Africa, MBIE noted that the New Zealand market for preserved peaches is sensitive to variations in import price, and the domestically produced and internationally sourced goods are substitutable. MBIE has no reason to consider this situation has changed.
184. As noted in section 2.4.1, there are no standards or technical specifications demanded by the domestic market that might restrict import possibilities from international sources of supply.
185. MBIE did not receive submissions from downstream industries or consumers on factors affecting the existence of competition in the market.
186. MBIE notes that, in the context of the New Zealand grocery market, HWL is one of the major producers of brands that are well established in the domestic market. It also notes that it is likely that HWL, as the major supplier of preserved peaches (and a wide range of other food products) in the domestic market, is in a position to offer competitive wholesale prices to the grocery sector – this will in turn provide local brands to consumers at competitive prices. MBIE also notes that in terms of supplier market share HWL brands are closely followed by private label brands which are mostly imported from China and South Africa at competitive prices.
187. As noted in sections 1.5.3, 2.1.2 and 2.2.3 above, the supermarket chains play a major role in the distribution of preserved peaches in New Zealand, as the main distributors of the goods from HWL and as major importers of private label goods from primarily China and South Africa.
188. For insights into the structure and operation of the domestic market at the retail level MBIE has noted the findings of the Market Study into The Retail Grocery Sector Report<sup>6</sup> (the Market Study), released by the Commerce Commission on 8 March 2022. The Market Study examined the effectiveness and impacts of competition in the grocery sector and identified ways to improve aspects of competition that were found lacking. This report identified a number of issues that shed light on the current situation of the New Zealand grocery market, which includes the market for goods subject to this review.

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<sup>6</sup> Commerce Commission New Zealand (2022). [Market-Study-into-the-retail-grocery-sector-Final-report-8-March-2022.pdf \(comcom.govt.nz\)](https://www.comcom.govt.nz/Market-Study-into-the-retail-grocery-sector-Final-report-8-March-2022.pdf)

189. The Market Study found that some conduct by the retailers suggests that they favour private labels over supplier brands, which could harm competition in this highly concentrated market. The Market Study noted that “[s]ome conduct in relation to private labels could harm competition – particularly given the New Zealand retail grocery sector is highly concentrated. For example, there is a risk of retailers favouring their private label products over other supplier branded products when making ranging decisions or allocating shelf space.” However the Market Study also noted that the benefits of private labels to consumers come in the form of lower prices and greater choice, while also stating that the long-term impact of the private labels remains unknown. MBIE considers that in the absence of an anti-dumping duty the domestic market could face stiff competition and could lose market share to lower priced private labels, if it does not reduce prices to meet that competition.

*Risk of monopolisation of the market for preserved peaches in New Zealand*

190. HWL is the sole domestic producer of preserved peaches. However, HWL does not set monopolistic prices, as importers compete by sourcing the subject goods internationally. During stage 1, HWL provided information showing that the market is competitive rather than monopolised, with numerous brands competing for market share and several brands holding significant market share. HWL reaffirmed this view in its response to the Stage 2 Questionnaire. The company noted that imports from Spain have been at low levels while these brands have been competing for market share so, HWL says, there is no risk of monopolisation if a duty were imposed on canned peaches from Spain.
191. If an anti-dumping duty were to discourage the importation of preserved peaches from all global sources, MBIE considers there could be a risk of monopolisation of the New Zealand preserved peach market. However, New Zealand is a small open economy, and competition is introduced to the market through international trade. Imports are available from several sources that are not subject to anti-dumping duties, including Australia, the United States, China, and one supplier from South Africa. The effect of the continuation or removal of anti-dumping duty on the place of imports from Spain in the New Zealand preserved peaches market will be driven by the extent to which such imports replace imports from other sources, which is a matter addressed in sections 2.3 and 2.7 above.
192. The removal of the anti-dumping duty from imports of the subject goods from Spain would be unlikely to result in the restriction of the New Zealand market for preserved peaches to supply from imports only. Even if this was to be the case, the result would not be the monopolisation of the New Zealand market for preserved peaches, given that imports from a variety of sources are undertaken by a number of importers, including the competing supermarket chains.

**2.8.2 Substitutability and Complementarity**

193. MBIE considers that there is a high degree of substitutability between the domestically produced and internationally sourced goods, and has concluded above that the continued imposition of anti-dumping duty is not likely to affect the choice or availability of goods in the market. HWL considers that preserved peaches are substitutable regardless of the source.
194. In terms of complementarity, HWL has noted that it is unaware of any complementary goods whose market might be affected by a price increase on the subject goods from

Spain. MBIE considers the continued imposition of anti-dumping duty may also protect the domestic industry against the potential loss of production of preserved fruit salad and preserved pears due to dumped pricing of preserved peaches. During stage 1, HWL stated that its production of preserved peaches also serves to provide a key ingredient in the production of fruit salad, depending on the availability of another key ingredient, pears. Although HWL prioritises the production of fruit salad the production of these products is complementary to the production of preserved peaches.

195. MBIE notes that the continued imposition of an anti-dumping duty would support the domestic industry to continue domestic production and is not likely to result in any decrease of supply of the internationally sourced like goods, and is likely to maintain competition at current levels.

### **2.8.3 Market accessibility**

196. The ability of new players to enter the market affects the level of competition. To the extent that there are few formal barriers to trade, new suppliers can freely enter the market.
197. In its application, HWL considered that the market for preserved peaches in New Zealand is highly competitive, noting that there are no long-term supply contracts in place for customers, house brand supply contracts are up for constant tender and all supermarkets stock brands of preserved peaches other than those supplied from HWL. HWL considers that the New Zealand market for preserved peaches is accessible to new entrants.
198. MBIE notes that there do not appear to be any significant barriers to entry to the New Zealand market for preserved peaches, resulting in a high degree of price competition. The market appears to be responding to normal market factors, and although demand currently exceeds domestic supply, it is being met by importers sourcing goods internationally. Entry to the market can be considered to be relatively easy, depending on the extent to which the market entrant has access to existing distribution channels in the New Zealand market and whether they are able to offer competitive prices and meet consumer preferences.
199. In the Stage 1 Final Report, MBIE concluded that the Spanish exporters have sufficient capacity to supply preserved peaches to New Zealand. MBIE considers that, given Spain is a significant supplier of preserved peaches globally, Spanish producers and exporters would be able to increase their supply of preserved peaches to New Zealand. In the absence of an anti-dumping duty, exporters in Spain could easily meet the New Zealand demand for preserved peaches as this demand is low compared to Spanish production volumes.
200. However, MBIE also notes that it appears that the demand for Spanish preserved peaches in the New Zealand market is driven more by demand from particular importers and retailers than by any particular effort by Spanish producers to focus on the New Zealand market.

### **2.8.4 Existing protection of domestic industry**

201. The Normal rate of Customs duty for preserved peaches is set at 5%, but some current or potential sources of imports have preferential access free of duty under the relevant free trade agreements.

202. Recent reviews of the anti-dumping duties on canned peaches from South Africa and Greece have resulted in continuation of the anti-dumping duties on some, but not all, imports from those countries as set out in section 1.8 of this PIP Report.
203. South African producers continue to export preserved peaches to New Zealand and import volumes have been relatively steady for the past eight years. Greek imports have continued at relatively low levels for the past seven years. Imports from Australia cannot be subject to anti-dumping duty, but Australia has not been a major supplier for the past seven years.

### **2.8.5 Conclusion on other factors essential to ensure the existence of competition in the market**

204. Significant competition exists in the current New Zealand market for preserved peaches and given the low level of imports from Spain it is unlikely to be affected by the continued imposition of a duty or its removal.
205. There is no risk of monopolisation of the New Zealand market for preserved peaches arising from the continued imposition of an anti-dumping duty on preserved peaches from Spain, given the availability of sources other than Spain, the ease with which established importers can switch supply and the potential for new entrants, particularly if they have established food distribution channels.
206. The continued imposition of the anti-dumping duty will address the likely injury attributable to likely dumping of preserved peaches from Spain and will support continued production by the New Zealand industry, resulting in the maintenance of current levels of competition.
207. There is existing protection of the domestic industry in terms of normal tariffs, while there are anti-dumping duties on preserved peaches from some South African suppliers, and on all suppliers from Greece.
208. MBIE therefore concludes that the continuation of anti-dumping duty is unlikely to reduce competition in the New Zealand market for preserved peaches.

## **2.9 Other Matters**

### **COVID-19**

209. MBIE has considered the effect of the COVID-19 pandemic when assessing the likely effect of anti-dumping duty over the period for which it would be applied, namely 2022 - 2026.
210. The effect of the COVID-19 pandemic on the market for preserved peaches in New Zealand has been felt in different ways by the domestic industry and importers at different levels of economic activities. The main effects have stemmed from lockdowns, travel restrictions, disruption of broader economic activities and the flow on effects of the impact on the international economy.
211. During stage 1, HWL reported the following main effects of the COVID-19 pandemic on its operations:
- Travel restrictions resulted in a shortage of seasonal workers for HWL during the fruit picking and processing season. This resulted in a lower volume of fresh peaches available for processing as some of the crop could not be harvested.

- A decline in the volume of fresh peaches for processing resulted in a lower level of output for canned peaches.
- Labour shortages caused HWL to shut down less critical parts of its processing facility and shift its focus to peach production as opposed to the production of other product lines during the harvesting and processing period.
- A temporary uplift in demand each time a lockdown was imposed due to panic buying. This resulted in excess demand for preserved peaches from the domestic industry. HWL considered that it would have to supplement production by importing preserved peaches to meet the excess demand.
- HWL had to postpone scheduled upgrades to its factory by a season due to delays in the shipping of the new equipment and restricted entry into New Zealand for key personnel.

212. MBIE considers that the factors causing these impacts may have changed as the New Zealand government's approach to the management of the pandemic has shifted away from the imposition of lockdowns and towards opening of the borders for the movement of people including seasonal labourers. As a result, these factors are less likely to manifest in the foreseeable future, particularly as effects of the COVID-19 pandemic continue to wane, giving way to the normal operation of this market. This, however, does not exclude other effects from the pandemic that may emerge as the result of the effect of COVID-19 in other areas of the of the economy.
213. Submissions from importers during stage 1 noted that they considered the main effects of COVID-19 involved higher total costs of imports driven by factors such as high costs of inputs and increasing freight costs.
214. MBIE notes that, as with other sectors of the economy, all participants in the New Zealand market for preserved peaches would have experienced disruptions in broader economic activity due to the COVID-19 pandemic including those caused by significant increases in freight costs and shipping lead times. MBIE also notes that the COVID-19 related effects do not appear to be as significant for trade in preserved peaches as they are for other goods that MBIE has recently investigated, such as coated steel and frozen potato products.
215. As shown elsewhere in this Stage 2 Final Report, there is a stable supply of like goods from the domestic industry and other exporters including South Africa and China. MBIE has concluded that the continuation or removal of the anti-dumping duty is not likely to affect prices to consumers. In light of these considerations there would appear to be no reason to assume that COVID-19 is significantly impacting consumers of preserved peaches. By now, it is clear that the COVID-19 pandemic is a constantly changing situation which requires corresponding changes in the policies and measures put in place to mitigate health and economic risks, manage public health and safety, and enable economic recovery. As a result, forecasting the impacts of COVID-19 is a complex exercise, given the levels of uncertainty arising from constant changes in the information required for decision-making. MBIE considers that some forecasts made on the developments expected in the market for preserved peaches have already become redundant or may be relevant for a shorter period than was originally envisaged by their authors.

216. While noting the uncertainty can create difficulties in forecasting the effects of COVID-19 both in general terms and in terms of the effect on trade in preserved peaches, MBIE has taken the potential impact of the COVID-19 pandemic into account in assessing the likely effect of anti-dumping duty over the period for which it would be applied, namely 2022 - 2026.



### 3. Findings

217. As set out in section 17H(2) of the Act, continuing to impose the duty is in the public interest unless the cost to downstream industries and consumers of imposing the duty is likely to materially outweigh the benefit to the domestic industry of imposing the duty. As required under section 17H(3), MBIE has assessed each factor set out in section 10F(3) of the Act in light of the test in section 17H(2), and has also assessed the effect of the COVID-19 pandemic.
218. MBIE has addressed the question in section 17H on the basis of the whole of the period for which any anti-dumping duty would be applied, being the five-year period 2022-2026 and has reached the following conclusions:
- It is unlikely that continuing or removing the anti-dumping duty will have any effect on the prices paid by consumers for the subject goods, given MBIE's finding that there appears to be no correlation between any movements in import prices resulting from movements in anti-dumping duty and the price to consumers of preserved peaches. Any pass on of anti-dumping duty is also unlikely to have an effect on downstream industries as preserved peaches comprise a relatively small part of the total cost of any finished products. Accordingly, MBIE is satisfied that there are no costs to consumers and downstream industries as regards the price of the subject goods to be weighed against the benefits to the domestic industry of continuing the duty.
  - The removal of the anti-dumping duty is likely to result in a decrease in the prices of like goods produced in New Zealand by the level of injury established in stage 1, as HWL seeks to match the prices of dumped imports. This would affect HWL's ability to recover any increased costs of production. The continuation of the duty at rates that are not higher than the current level applicable to dumped imports is unlikely to lead to any changes in import prices that would lead to changes in prices of like goods produced in New Zealand.
  - MBIE is satisfied that, irrespective of whether the duty is removed or continued, the choice and availability of like goods will likely remain unchanged from that in recent years, in particular noting the availability of like goods imported from other sources.
  - MBIE is satisfied that there will not be any adverse impacts on product or service quality in New Zealand resulting from either the continued imposition or removal of the anti-dumping duty on the dumped goods.
  - The financial performance of the domestic industry will likely be adversely affected if the anti-dumping duty is removed. The continuation of an anti-dumping duty at the rate determined by the Minister is intended to remove any significant adverse effects on the financial performance of the domestic industry.
  - It is unlikely that there will be an adverse effect on the domestic industry's employment levels and those of downstream industries either if the duty were continued or removed.
  - The anti-dumping duty determined by the Minister is not likely to have any significant effect on alternative sources of supply of like goods.

- The continuation of anti-dumping duty is unlikely to reduce competition in the New Zealand market for preserved peaches.
- There would appear to be no reason to assume that COVID-19 is significantly impacting consumers of preserved peaches.

### **Section 13B**

219. Section 13B(3) of the Act provides for the suspension or termination of an anti-dumping duty if the Minister considers that users of the goods subject to that duty have been significantly impacted by a natural disaster or emergency. In such an event, the Minister may terminate or suspend, in whole or in part, the imposition of the duty.
220. In order for there to be sufficient grounds to suspend the proposed anti-dumping duty on preserved peaches from Spain, the Minister would need to be satisfied that users of the goods have been significantly impacted by an emergency. In this case, the “emergency” would be the COVID-19 pandemic and users of the goods (i.e. the goods on which the duty would be imposed) would be consumers and downstream industries (as defined in section 1.6 of this Report) for Spanish preserved peaches.
221. While the potential users of preserved peaches from Spain have been impacted by an emergency, the impact of that emergency on the subject goods is not expected to continue. MBIE also notes that, in this instance, because this review relates to the continuation of an existing duty rather than the imposition of a new duty, any decision not to defer or suspend the duty, will not increase the cost of the subject goods for those users beyond what they are already paying.
222. The findings in this Stage 2 Final Report are that, as with other sectors of the economy, all participants in the New Zealand market for preserved peaches would have experienced disruptions in broader economic activity due to the COVID-19 pandemic. The COVID-19 related effects do not appear to be as significant for trade in preserved peaches as they are for other goods that MBIE has recently investigated.
223. MBIE has found that consumers and downstream industry users of preserved peaches have not been specifically affected in terms of prices or availability of preserved peaches because of the COVID-19 pandemic and has shown that there is a stable supply of like goods from the domestic industry and other exporters including South Africa and China. MBIE has concluded that the continuation or removal of the anti-dumping duty is not likely to affect prices to consumers; accordingly, there would appear to be no reason to assume that COVID-19 is significantly impacting consumers of preserved peaches.
224. MBIE considers that, in relation to section 13B of the Act, consumers and downstream industries using preserved peaches from Spain have not been significantly impacted by the emergency due to the COVID-19 pandemic, and that the circumstances do not warrant consideration of the termination or suspension of the determined anti-dumping duty.

## 4. Conclusion

225. Section 17H of the Act requires that the Minister must, within 90 days of the start of a stage 2 investigation, determine whether imposing anti-dumping duty is in the public interest.
226. MBIE’s overall conclusion on the matters on which the Minister is required to make determinations under section 17H(1) of the Act are that any cost to downstream industries and consumers of imposing the duty is not likely to materially outweigh the benefit to the domestic industry of imposing the duty. MBIE’s finding is, therefore, that continuing to impose the anti-dumping duty is in the public interest.
227. The rates of duty which the Minister determined at the end of stage 1 are set out in the table below.

**Figure 7: Proposed rates of anti-dumping duty**

Producers	Goods	Duty
All producers other than excluded producer	Subject goods not exceeding 1kg	7.2%
All producers other than excluded producer	Subject goods exceeding 1kg	7.1%
Excluded producer	Alcurnia Alimentacion SL	

Trade and International  
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May 2022



## ANNEX 1: Context

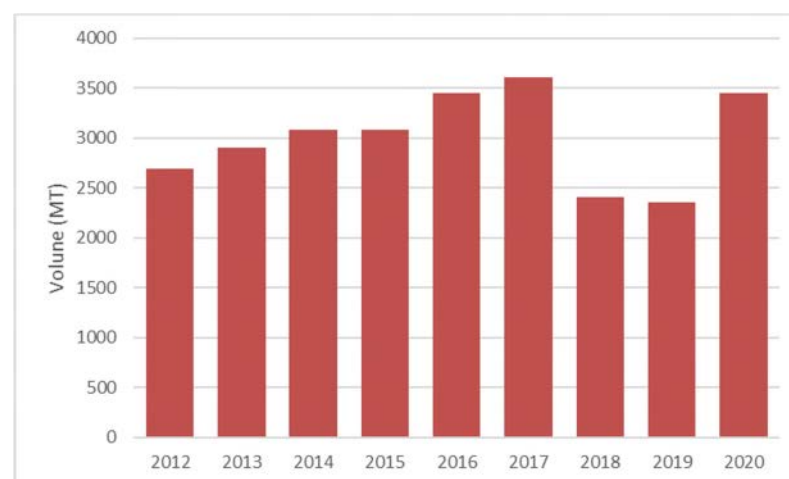
A1.1. This Annex provides information relating to the market for preserved peaches. The market factors discussed, which can be inter-related, include the New Zealand market situation and the international market for preserved peaches. The summaries below are derived from a range of sources and are indicative and representative rather than exhaustive. They provide context around the matters under consideration in the review.

### New Zealand Market

#### Preserved peaches in New Zealand

- A1.2. The New Zealand market for preserved peaches consists of products produced by the domestic industry and those imported from foreign producers. Regardless of their source, the products on the domestic market consist primarily of peaches that are sliced, diced, halves and sometimes whole; preserved in media containing any amount of sugar or juice; and packaged in cans, glass jars or plastic packaging.
- A1.3. Most retail sales on the New Zealand market are in cans of 400/410/415g and 820/825/850g and are sliced in syrup or juice. Sales to the food service or downstream industry sector will normally be in larger containers of 2.95/3.00 kg or larger containers, or in different forms of packaging that are outside the scope of the subject goods in this review.
- A1.4. HWL's production facility is in the Hawke's Bay region, where the majority of peaches grown are for use in processing. Figure 9 shows that fresh peach production in New Zealand has been growing steadily since 2012, experienced a decline in the 2018 and 2019 seasons and recovered in 2020. HWL has stated that, following its investment into fresh peach production, it expects a stable annual intake of fresh peaches for processing that produces an output level that meets the domestic demand for preserved peaches.

Figure 10: New Zealand Peach Production<sup>7</sup>



<sup>7</sup> The New Zealand Institute for Plant & Food Research Ltd (New Zealand Horticulture). (2021) *Fresh Facts*. <http://www.freshfacts.co.nz/>

## Operation of the New Zealand market

- A1.5. The main participants in the New Zealand market for preserved peaches are HWL, the supermarket chains which distribute HWL's goods as well as imported goods, other retailers, independent importers and food service distributors, as well as downstream industries and consumers.
- A1.6. The domestic market can be described as mature with reasonably stable demand. It is supplied by a single domestic industry producer, HWL, whose products are generally sold through the retail and food service sectors to consumers and downstream industries. Imports, mainly from South Africa and China, are sold as private label brands to supermarkets, or to the food service sector and downstream industries. Since the last review, imports from Spain have generally been imported for sale through niche retail stores that market and sell the subject goods partly based on their origin and customer preference, amongst other factors.
- A1.7. In its application, HWL stated that the wholesale market for preserved peaches is highly competitive and that the New Zealand market is always open to new sources of supply. It explained that there are no long-term contracts for customers, private label supply contracts are by tender and that all supermarkets carry brands, mainly private labels, in addition to those produced by the domestic industry.
- A1.8. Submissions by past importers for the present review indicate that there has not been a significant change in the behaviour of parties involved in the importation of subject goods. Some past importers consider that, in the absence of an anti-dumping duty, they would consider resuming importing from Spain if the prices were competitive. Since the imposition of an anti-dumping duty, import volumes of preserved peaches from Spain have been low. Importers who sourced from other countries have not had any justification for changing suppliers in favour of the Spanish producers. In relation to imports from Spain, there have been no new entrants in the market.

## International Peach Market

### Fresh peaches markets

- A1.9. The production of fresh peaches can be used as an indicator of expected levels of output of preserved peaches that are likely to be available on the global market each season. A 2021 US Department of Agriculture (USDA) report, USDA (2021)<sup>8</sup> on the fresh peaches world market and trade, forecast an overall increase in the global production of fresh peaches in the 2021/22 growing season. USDA (2021) forecast that an increase in peach production in China, based on an expected recovery from a bad season, is expected to compensate for the losses in production expected from the EU and Turkey due to declines in harvests following two successive years of bad weather.
- A1.10. USDA (2021) also forecast that production in the US, Japan and Australia would increase over the 2021/22 period, while production in Chile would decline due to a water shortage in production areas. The Report also stated that Australian production and export may be

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<sup>8</sup> United States Department of Agriculture (USDA). (2021). Fresh Peaches and Cherries: World Markets and Trade. <https://apps.fas.usda.gov/psdonline/circulars/StoneFruit.pdf>

impacted by the effects of COVID-19, including high freight costs and the reduced availability of labour.

- A1.11. As a backdrop to USDA (2021), the USDA Foreign Agricultural Service, (USDA (2020))<sup>9</sup>, forecast a decline in the production of fresh peaches in the EU over the 2020/21 season due to adverse weather conditions and a reduction in the total area planted. According to USDA (2020), 95% of Spain's fresh peach production is exported to the EU and accounts for 40% of EU's total fresh peach production. USDA (2020) did not attribute the decline in production to the Spanish lockdown, from 14 March to 21 June 2020, in response to the COVID-19 pandemic, as the whole crop was harvested. USDA (2020) identified Greece as the main processor of preserved peaches in the EU and forecast a decline in Greece's production of fresh peaches, also due to the impact of adverse weather.
- A1.12. Over the 2020/21 and 2021/22 periods, USDA reports noted that the EU's major producers of fresh peaches<sup>10</sup> were subject to adverse weather conditions that affected their production levels. USDA (2020) also noted that over-production in the 2019/20 season had put downward pressure on the prices of fresh peaches which had resulted in a reduction of the planted area for the following season. However, this was not linked to reduced productivity as new crop varieties were still productive despite the reduced planting area.
- A1.13. USDA (2020) also identified Ukraine, Belarus, and Switzerland as the main markets for fresh peaches from the EU, and noted that the loss of the Russian market for fresh peaches in 2014 following an embargo had been compensated for by increased demand from other European countries.

#### *Global preserved peaches market trends*

- A1.14. In the section above we have observed trends in the volume of fresh peaches available to processors in the main preserved peach producing countries. Allowing for diversion of fresh peaches to other uses, this gives an indication of some of the trends that will affect the international market for preserved peaches. This information however does not indicate the levels of stock carried over by the processors and exporters from the previous season and this can affect the pricing of exports of preserved peaches depending on market conditions.

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<sup>9</sup> United States Department of Agriculture (USDA), Foreign Agricultural Service. (2020). Stone Fruit Annual. *Global Agricultural Information Network* (E42020-0052)  
[https://apps.fas.usda.gov/newgainapi/api/Report/DownloadReportByFileName?fileName=Stone%20Fruit%20Annual\\_Madrid\\_European%20Union\\_08-26-2020](https://apps.fas.usda.gov/newgainapi/api/Report/DownloadReportByFileName?fileName=Stone%20Fruit%20Annual_Madrid_European%20Union_08-26-2020)

<sup>10</sup> United States Department of Agriculture (USDA), Foreign Agricultural Service. (2020). Stone Fruit Annual. *Global Agricultural Information Network* (E42020-0052)  
[https://apps.fas.usda.gov/newgainapi/api/Report/DownloadReportByFileName?fileName=Stone%20Fruit%20Annual\\_Madrid\\_European%20Union\\_08-26-2020](https://apps.fas.usda.gov/newgainapi/api/Report/DownloadReportByFileName?fileName=Stone%20Fruit%20Annual_Madrid_European%20Union_08-26-2020).

- A1.15. A 2020 report by the Observatory of Economic Complexity (OEC)<sup>11</sup> based on work by Simoes and Hidalgo (2011)<sup>12</sup> valued the trade of preserved peaches falling under HS200870 at USD 775 million comprising 0.0046% of total world trade. Global export growth for preserved peaches was estimated at 4.3%, with Greece (net export earnings USD 301 million), China, Spain, Chile, and South Africa being the top exporters by value. It also identified the US (a net importer spending USD 124 million in 2020), Germany, Japan, Mexico, and the UK as the top importers by value. This report found that between 2019 and 2020, Greece, China, and Bulgaria experienced the fastest growth in exports of preserved peaches by value whilst Chile, US, Thailand, UK, and Germany were the fastest growing importers. A measure of the concentration of global trade estimated by the OEC indicated that most of these exports were attributed to seven source countries. This report also estimated that the average import tariff was 25.8%.
- A1.16. Industry Growth Insight (2022)<sup>13</sup> considered the factors driving growth in the global market for canned fruit, based on 2020 data, and forecast that growth in the demand for canned fruit including canned peaches in the period up to 2028 is expected to be driven by factors including the demand for convenience foods, awareness of the health benefits of consuming canned fruits, rising disposable incomes allowing expenditure on premium products and the proliferation of supermarkets and retail stores which has led to the increase in shelf space for processed food including canned fruit.
- A1.17. In contrast to the trends forecast by Industry Growth Insight (2022), in stage 1 HWL reported that in New Zealand domestic demand for preserved peaches is driven by seasonality and convenience, but also noted that in 2020 there was a prolonged period of panic buying during COVID-19 lockdowns. It also explained that it had observed a shift in consumer preferences towards preserved peaches in media with lower sugar content or juice which left no functional difference between its Weight Watchers brand<sup>14</sup> and other brands.

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<sup>11</sup> The Observatory of Economic Complexity (OEC) is an online data visualization and distribution platform focused on the geography and dynamics of economic activities. It is based on the work by Simoes and Hidalgo (2011) and integrates data from various sources including country data at subnational level sourced from public customs records.

<sup>12</sup> AJG Simoes, CA Hidalgo. (2011). The Economic Complexity Observatory: An Analytical Tool for Understanding the Dynamics of Economic Development. Workshops at the Twenty-Fifth AAAI Conference on Artificial Intelligence. <https://oec.world/en/profile/hs92/peaches-otherwise-prepared-or-preserved>

<sup>13</sup> Industry Growth Insight. (2022, April 7). Global Canned Fruits Market by Type (Canned Peaches, Canned Mandarin Oranges, Canned Pineapple, Canned Pears, Others,), By Application (Below20 Year Old, 20-40 Year Old, 40-50 Year Old, Above50 Year Old,) And By Region (North America, Latin America, Europe, Asia Pacific and Middle East & Africa), Forecast To 2028. <https://industrygrowthinsights.com/report/canned-fruits-market/>. Industry Growth Insight is a market research company that provides market intelligence reports, data analytics and research on various industries including the canned fruit sector and information at a product level specific to preserved peaches.

<sup>14</sup> This brand was produced for the Weight Watchers franchise targeting customers on the Weight Watchers “weight loss” programme and marketed through different channels to the subject goods. For this reason, this product was not considered a subject good. As of the 2020/21 season HWL ceased production of this brand.



## Annex 2: Comments received on the PIP Report

Comments on the PIP Report were received from HWL and the EC.

A. HWL	
Submission	MBIE Comment
<p>In an email dated 19 April 2021, HWL noted that it did not consider the fresh peaches market information referred to in the Annex to the PIP Report to be very relevant. The company submitted that in the significant majority of cases, there is a difference between the varieties of peach consumed fresh and processed . HWL therefore questioned the relevance of this information to this review, noting the significant majority of the fresh peaches in question are not used as raw material for the products that fall under the like goods definition.</p>	<p>MBIE notes that the information on fresh peaches in the Annex to the PIP Report was intended to provide context around the matters under consideration in the review. In the absence of data on the supply of fresh peaches produced for the peach processing industry in Spain, MBIE considers that the information provided in the Annex to the PIP Report is indicative of the general market for fresh peaches which provides input for peach processors. MBIE also considers that some of the factors identified as having affected the production of fresh peaches (adverse weather conditions, reduction in area planted and exports of fresh peaches that can be further processed to preserved peaches) are likely to have generally affected the supply of all peach varieties regardless of the end use. Differences may arise if Spanish growers were to have particular preferences in prioritising certain peach varieties when allocating planting area or if the farming methods used, for example the use of greenhouse technology, provided an advantage to the production of certain varieties in the event of bad weather. However, MBIE has not found information supporting this line of enquiry.</p>

<b>B. European Commission (EC)</b>	
<b>Submission</b>	<b>MBIE Comment</b>
The EC submits that none of the observations it made in its comments regarding the initiation of this review on 19 August 2021, nor its comments on the EFC Report on 28 January 2022, were taken into account by MBIE.	MBIE has addressed the EC’s submissions at various stages of this review, including in the Stage 1 EFC Report and the Stage 1 Final Report. In particular, Annex 1 of the Stage 1 Final Report contains a detailed description of the EC’s comments and MBIE’s responses to those comments in the context of MBIE’s overall findings at that stage of the review.
The EC submits that this is already the second expiry review, and a further extension of the measures is clearly not warranted.	MBIE’s review has found that the continuation of anti-dumping duty on preserved peaches from Spain is warranted. The Stage 1 Final Report detailed the findings relating to dumping, injury and a causal link and this Stage 2 Final Report details the findings in relation to whether the imposition of duty is in the public interest.
<b>1. Findings of Stage 1 of the review</b>	The EC has raised the following issues in relation to MBIE’s findings on stage 1 of the review. These matters were considered and addressed in the Stage 1 Final Report. For ease of reference, MBIE has referred to the sections in the Stage 1 Final Report in addressing these issues below.
<p><b>A. Likelihood of recurrence of dumping</b></p> <p>The EC calls into question the validity of MBIE’s conclusions on dumping, and the dumping margins, on the basis that that the sole exporting producer of preserved peaches from Spain, Alcurnia, was found not to be dumping during the period of review, nor was it likely to dump should the measures lapse, and there are currently no subject goods from Spain being imported into New Zealand.</p>	<p>MBIE’s findings on current dumping and the likelihood of a continuation or recurrence of dumping were clearly laid out in Section 3 of the Stage 1 Final Report. In reaching its findings, MBIE recognised that Alcurnia was not dumping or was unlikely to dump in the absence of the duty and that currently there were very few imports of the subject goods from Spain. However, MBIE also assessed the likelihood that in the absence of anti-dumping duty there would be an increase in imports from other Spanish sources, and analysed information regarding prices of Spanish exports to other markets in order to establish the likelihood of dumping.</p>

<p>The EC notes that, according to article 6.5.1 of the WTO Anti-dumping Agreement (AD Agreement) <i>“The authorities shall require interested parties providing confidential information to furnish non-confidential summaries thereof. These summaries shall be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. In exceptional circumstances, such parties may indicate that such information is not susceptible of summary. In such exceptional circumstances, a statement of the reasons why summarization is not possible must be provided.”</i></p> <p>The EC submits that most of the information in the complaint as well as in MBIE’s reports is redacted or missing and does not allow for a reasonable understanding of the substance. The EC submits, therefore, that interested parties cannot exercise their rights of defence. The EC remains concerned that the essential data, such as the calculations of the normal value as well as dumping margin, were not revealed and has requested the Ministry to deliver summaries of the information provided in confidence, for example in the form of indexes or ranges, and that they are made available on the public file.</p>	<p>Section 3 of the Stage 1 Final Report clearly detailed the pertinent information that MBIE relied on in making its findings subject to the requirement to maintain confidentiality under Article 6.5 of the AD Agreement and Section 3F of the Act. Section 3.4 of the Step 1 Final Report set out detailed information relating to dumping margins, including those relating to the one Spanish exporter which exported to New Zealand over the POR(D) and the notional dumping margins for other suppliers.</p> <p>MBIE notes that following a submission by the EC on 20 August 2021, MBIE engaged with HWL over the non-confidential version of its application requesting a revised version in light of the complaint made by the EC. HWL provided a revised non-confidential version of its application on 8 September 2021 (Public File #022) and parties were notified of this document’s availability through an updated public file document list that was circulated on 13 September 2021.</p>
<p><b>B. Likelihood of recurrence of injury</b></p> <p>The EC notes that MBIE has found there is no dumping by the only Spanish producer exporting to New Zealand and that it is unlikely that dumping would recur. Consequently, in the absence of dumping and recurrence of dumping, there can be no injury or recurrence of injury either.</p>	<p>MBIE acknowledges that for the particular Spanish producer, Alcornia, it found that there was no dumping nor a likelihood of a recurrence of dumping. However, as detailed in Section 3 of the Stage 1 Final Report, MBIE analysed the extent to which other exporters of the subject goods from Spain would likely dump into New Zealand in the absence of the duty. MBIE found that there was a likelihood of dumping by other Spanish producers, if the duty on the subject goods were not continued, and that this dumping would result in a recurrence of material injury to the domestic industry.</p>
<p>The EC notes that the original measures were based on threat of injury. Therefore, the domestic industry has never actually suffered any material injury, so it is difficult to argue that it would recur.</p>	<p>The EC’s comments might be taken to suggest a view that where anti-dumping duty is imposed on the basis of threat of injury, there can be no subsequent sunset review of the need for the continuation of the duty or, at least, that no such review can reach a finding that duty needs</p>

	<p>to continue to be imposed. Such a position would not be consistent with the Act or the AD Agreement.</p> <p>This point was raised by the EC in response to MBIE’s Stage 1 EFC Report, and was addressed by MBIE in the Annex to the Stage 1 Final Report, addressing interested parties’ comments on the EFC Report and MBIE’s responses. MBIE concluded that the issue addressed in a sunset review is whether the non-imposition of the duty would be likely to lead to a continuation or recurrence of dumping and injury or threatened injury.</p>
<p>The EC submits that an expiry review is essentially a prospective analysis of what the likely development of facts will be. It states that although the AD Agreement gives no methodological guidance on how to conduct the likelihood analysis, the WTO jurisprudence is sufficiently clear - a likelihood analysis has to be based on positive evidence. The EC cites the Panel in <i>US corrosion resistant steel</i><sup>15</sup> where it notes that the Panel underlined the importance of the need for sufficient positive evidence on which to base the likelihood determination.</p>	<p>MBIE agrees that an expiry review is a prospective analysis of what the likely development of facts will be and that, while the AD Agreement gives no methodological guidance on how to conduct the likelihood analysis, the WTO jurisprudence is sufficiently clear in that a likelihood analysis must be based on positive evidence. MBIE also agrees with the EC in its interpretation of the WTO jurisprudence in that an investigating authority must have a sufficient factual basis to allow it to draw reasoned and adequate conclusions concerning the likelihood of such continuation and recurrence of dumping and injury. In this respect, MBIE refers to section 4 of the Stage 1 Final Report where it examined in detail (and section 4.8 where it sets out its conclusions) on the likelihood of a recurrence of material injury to the domestic industry, in the absence of anti-dumping duty. MBIE is satisfied that it used the relevant available information as positive evidence in undertaking its analysis in stage 1 of the review and that the test required under the Act and the AD Agreement, that the non-application of an anti-dumping</p>

<sup>15</sup>Panel Report, *US – Corrosion-Resistant Steel Sunset Review*, para. 7.271. The Appellate Body agreed with this view. Appellate Body Report, *US – Corrosion-Resistant Steel Sunset Review*, para. 114.

	<p>duty would likely lead to a recurrence of injury to an industry, has been met.</p>
<p>Based on Eurostat data, the EC submits that imports from Spain have been decreasing, while prices are increasing. The EC provides a table to illustrate this point and states that this data clearly indicates that Spanish exports to New Zealand are not likely to increase in the future and contradicts MBIE’s allegations (sic), namely “[...] MBIE concluded that there is sufficient capacity for Spanish exporters to supply preserved peaches to New Zealand. MBIE considers that, given Spain is a significant supplier of preserved peaches globally, Spanish producers and exporters would be able to increase their supply of preserved peaches to New Zealand.”</p>	<p>The Eurostat import volume data referenced by the EC is consistent with the data provided by MBIE in its Stage 1 Final Report. In that report, MBIE noted that imports from Spain make up less than 1% of total imports over the POR(D), but also notes that the provisions of Article 5.8 of the AD Agreement relating to the termination of an investigation where imports are negligible (less than 3% of total imports) do not apply to full reviews. MBIE also noted that the Act, like the AD Agreement, does not provide for a negligibility assessment as part of a review. Indeed, MBIE considers that it would not be appropriate to apply the negligibility exclusion for reviews because the volume of dumped imports assessed when a duty is already imposed does not indicate what those volumes will be if the duty were removed. In assessing the likelihood of a continuation or recurrence of dumped imports, MBIE examined other factors, including the capacity for Spanish exporters to supply preserved peaches to New Zealand, before concluding in its Stage 1 Final Report that Spanish export volumes to New Zealand would likely increase in the absence of duty. The Stage 1 Final Report details the factors MBIE examined and why it reached its findings in respect of likely import volumes in the absence of anti-dumping duty.</p>
<p>The EC submits that a forward-looking analysis, based on the EC’s Medium-Term Outlook<sup>16</sup> estimates a stable production of fruit and vegetables by 2031. “By 2031, the production of both fresh tomatoes and peaches and nectarines is due to decrease (by -0.4% and -0.5% respectively per year). The decline in tomato</p>	<p>MBIE addressed the issue of likely import volumes of Spanish preserved peaches into New Zealand in the absence of anti-dumping duty in Section 4.4 of the Stage 1 Final Report. As part of this exercise MBIE examined a number of factors including the current and likely future EU</p>

<sup>16</sup> EC (2021), EU agricultural outlook for markets, income and environment, 2021-2031. European Commission, DG Agriculture and Rural Development, Brussels.  
[https://ec.europa.eu/info/sites/default/files/food-farming-fisheries/farming/documents/agricultural-outlook-2021-report\\_en.pdf](https://ec.europa.eu/info/sites/default/files/food-farming-fisheries/farming/documents/agricultural-outlook-2021-report_en.pdf)

<p><i>production is mainly driven by the strong drop of winter production in Spain and a shift to small-sized tomatoes which have a lower volume but higher added value. Spanish producers are also switching to other, more profitable crops in winter due to strong competition from Morocco. For peaches and nectarines, the continued decrease in the area under cultivation is pushing production down.”</i></p> <p>The EC provided a table to show that production of fresh and processed peaches and nectarines will decrease until 2031 in terms of area of cultivation and production volume.</p>	<p>peach harvest, production volumes and inventory levels, and the capacity and intent of Spanish exporters to increase exports to new markets and New Zealand.</p> <p>MBIE noted that the New Zealand market for processed peaches is not large compared to many other international markets, which suggests that the Spanish producers would not find it difficult to supply the New Zealand market with sufficient product at short notice if demand arises.</p>
<p>The EC concludes its submission on the findings of stage 1 of the review by stating that in the absence of any dumping, material injury, threat of injury or recurrence of dumping and injury to the domestic industry, it should be concluded, that the only possible outcome is, again, the termination of the anti-dumping duty in line with WTO rules and jurisprudence.<sup>17</sup></p>	<p>MBIE does not consider the information provided by the EC in its submission on the Stage 2 PIP Report provides any basis to review MBIE’s findings in stage 1.</p>
<p><b>2. Public Interest Consideration</b></p>	
<p><b>A. General matters</b></p> <p>The EC states that while MBIE continues to shelter HWL (the domestic industry), anti-dumping duty is having significant effects on other parts of the domestic economy, particularly on importers and downstream users of the product under investigation.</p> <p>The EC comments that the anti-dumping measures represent a burden for consumers, while the sole producer of preserved peaches in New Zealand continues to benefit from unwarranted trade defence measures.</p>	<p>New Zealand’s public interest test asks whether the cost to downstream industries and consumers of imposing the duty is likely to materially outweigh the benefit to the domestic industry of imposing the duty.</p> <p>MBIE found that it is unlikely that continuing or removing the duty will have a significant effect on the prices paid by consumers and downstream industries for the subject goods, and that there were unlikely to be additional costs to consumers and downstream industries from continuing the duty.</p> <p>MBIE also assessed the benefits to the domestic industry from continuing the duty and concluded that the costs to consumers and</p>

<sup>17</sup> Appellate Body Report, *US – Oil Country Tubular Goods Sunset Reviews*, para. 178

	<p>downstream industries of imposing the duty do not materially outweigh the benefits to the domestic industry of doing so.</p> <p>On this basis, therefore, and contrary to the EC’s claim, MBIE considers that the decisions to continue to apply the anti-dumping duty is made consistent with the requirements of the Act and AD Agreement. This does not “shelter” the domestic industry beyond the level provided for in the Act and the AD Agreement, and in particular, the duty does not represent a “burden” for consumers.</p> <p>MBIE must consider the full range of factors listed in section 10F(3) of the Act, as well as any other relevant factors, and reach a conclusion on the basis of its consideration of all of the factors. The test is whether any costs to consumers and downstream industries of imposing the duty materially outweigh any benefits to the domestic industry of doing so. MBIE is confident that it has examined all of the relevant factors in the present case and that its conclusions and findings are robust, and are not based on a single factor. Section 2 of this Step 2 Final Report details MBIE’s findings in this respect.</p>
<p>The EC notes that MBIE reports in the PIP Report that “[...] <i>In the absence of dumped imports over the period of review and without cooperation from the importers and exporters, there is no data on the likely or actual import volumes and prices that would otherwise be affected by the duty to support this analysis</i>”.</p> <p>The EC comments that, nevertheless, MBIE concluded that continuing to impose the anti-dumping duty is in the public interest. Apart from reiterating the claims made by HWL, the EC states that MBIE has provided little evidence to support its investigation as requested by the Trade (Anti-dumping and Countervailing Duties) Act 1988.</p>	<p>The EC makes reference to paragraph 78 of the PIP Report, which sets out comments on the fact that MBIE was unable to apply its PIPES model to support the quantitative assessment of the economic effect of the anti-dumping duty. However, the lack of quantitative data did not prevent MBIE from undertaking its public interest analysis and reaching robust conclusions on the basis of the information that was available and that it did use.</p> <p>While the PIPES model itself has not been used, MBIE’s investigation has included quantitative analysis of trade data and other information, in particular in investigating the effect of the anti-dumping duty on prices of the dumped goods and on prices of the like goods produced in New Zealand. Section 2 of the PIP Report, and section 2 of this Final Report detail at length the public interest analysis undertaken by MBIE</p>

	<p>including the information used, the factors examined and the means by which the test was conducted and conclusions reached. On the totality of the information gathered, MBIE concluded that continuing to impose an anti-dumping duty was in the public interest.</p>
<p>The EC notes that MBIE cannot get cooperation and responses from importers and exporters given that the sole applicant (HWL) has been regularly applying for protection in the form of anti-dumping duty since 1998, which raises concerns about whether the information provided by the downstream users would even be heard.</p>	<p>MBIE has received cooperation and responses from importers and exporters in the current review as well as in past investigations and reviews into canned and preserved peaches Information provided by importers and exporters has been taken into account where appropriate in arriving at the findings in this review.</p>
<p><b>B. Section 10F(3) matters</b></p> <p><b>(a) the effect of the duty on the prices of the dumped or subsidised goods:</b></p> <p>The EC notes MBIE’s statement in the PIP Report that <i>“the price data shown in the chart (Figure 4) does not suggest that the removal of duty led to a general reduction in import prices, although it could be argued that the reimposition of the duty in August 2019 may have contributed to an increase in import prices.”</i></p> <p>The EC comments that the average peach export price from Spain has increased over the last ten years. As a result, it has been estimated that the peak level export price has been reached in 2020; yet the latest market forecasts show that the prices are likely to continue increasing in the immediate term. <i>Profel</i>, the European Association of Fruit and Vegetable Processors<sup>18</sup>, reports that the fruit processing sector has been facing unprecedented production cost increases. The explosion of production costs is further aggravated by raw material supply shortages, which have become a recurring concern due to climatic havoc over recent years. Raw material costs are on the rise as well, since farmers also face increased costs of energy, fertilizers and a shortage of farmworkers.</p>	<p>Section 2 of the PIP Report and Section 2 of this Stage 2 Final Report, address the effect of the duty on prices of the dumped goods as required under section 10F(3)(a) of the Act. In undertaking this analysis, MBIE sought to determine if there had been a pattern of price changes in response to the imposition or removal of duty on Spanish imports, which could inform its section 10F(3)(a) analysis. Specifically, MBIE assessed whether the continuation or removal of the anti-dumping duty will affect import prices of the dumped goods, as well as subsequent prices to consumers and downstream industries. To make this assessment, MBIE reviewed the evolution of prices in relation to the imposition, amendment or removal of anti-dumping duty on imports from Spain since 2005.</p> <p>In response to the PIP Report, the EC has provided information which shows that the average peach export price from Spain has increased over the last 10 years, and that production costs are also on the rise, indicating (according to the EC) that export prices will continue to increase and that consumers will also have to bear the effect of the</p>

<sup>18</sup> European Association of Fruit and Vegetable Processing Industries (PROFEL). (6 May 2022). <https://profel-europe.eu>



<p>The increasing costs will undoubtedly result in increasing export prices and, in addition, consumers will have to bear the effect of the continued imposition of anti-dumping duties.</p>	<p>continued imposition of anti-dumping duty. In undertaking its analysis under Section 10F(3)(a) of the Act, as set out in Section 2 of this Stage 2 Final Report, MBIE has taken into account all relevant and pertinent information in examining the effect of the duty on the prices of the dumped goods. MBIE is satisfied that continuing or removing the duty in this case is unlikely to have any effect on the prices paid by consumers and downstream industries for the subject goods. MBIE is satisfied, therefore, that there are no costs to consumers and downstream industries to be weighed against the benefits to the domestic industry of continuing the duty.</p>
<p><b>(b) the effect of the duty on the prices of like goods produced in New Zealand:</b></p> <p>The EC notes MBIE’s statement in the PIP Report that <i>“MBIE considers that the removal of an anti-dumping duty is likely to result in a decrease in the prices of like goods produced in New Zealand as HWL seeks to match lower prices of dumped imports, which would mean that HWL would not be able to recover increased costs of production. [...]”</i></p> <p>The EC comments that Spanish imports are not being dumped; production as well as raw material costs are increasing; the pandemic also resulted in an increase of costs of logistics. Users and consumers continue having to pay higher prices due to the anti-dumping duty, while HWL was unable to improve its competitiveness despite trade remedies protection for over two decades. A further extension of the anti-dumping measures is thus clearly not in the public interest.</p>	<p>At Section 2 of the PIP Report and Section 2 of this Stage 2 Final Report, MBIE has addressed the effect of the duty on prices of like goods produced in New Zealand as it is required to do under section 10F(3)(b) of the Act. MBIE’s analysis considered substitutability, likely price movements, and the operation of market factors, and concluded that the removal of the duty would be likely to result in a decrease of the prices obtained by the domestic industry, whereas the continuation of the duty was unlikely to lead to higher prices for consumers and downstream industries.</p> <p>The EC claims that Spanish imports into New Zealand are not dumped and that various factors have resulted in export price increases for Spanish peaches. The EC says such price increases, together with users and consumers having to pay higher prices in New Zealand due to the imposition of anti-dumping duty, is clearly not in the public interest.</p> <p>In stage 1 of this review, as detailed in Section 3 of the Stage 1 Final Report, MBIE found that there was a likelihood of dumping by Spanish producers other than Alcurnia and that this dumping would result in a recurrence of material injury to the domestic industry. In Section 2 of this Stage 2 Report, MBIE has analysed in detail the effect of the duty on</p>

	<p>the prices of dumped goods and like goods concluding, as regards prices to consumers and downstream industries, that it is unlikely that continuing the anti-dumping duty will lead to any increases in the prices paid by consumers or downstream industries for the like goods.</p>
<p><b>(c) the effect of the duty on the choice or availability of like goods:</b></p> <p>The EC notes MBIE’s statement in the PIP Report that <i>“the purpose of the anti-dumping duty on preserved peaches from Spain is to remove likely injury to the New Zealand industry and is not meant to prevent trade in preserved peaches from Spain.”</i></p> <p>The EC comments that, bearing in mind that in the absence of dumping and recurrence of dumping there can be no injury or recurrence of injury either, it is difficult to understand how the continuation of measures would benefit the overall public interest. It rather seems that measures favour the sole domestic producer at the expense of consumers. Spanish imports are already negligible and might ultimately, disappear from the shelves in New Zealand. In view of the measures also in place against imports from South Africa, the consumer is left with a limited choice and higher prices. In short, the domestic economy is negatively affected by the lack of competitiveness of HWL.</p>	<p>At Section 2 of the PIP Report and Section 2 of this Stage 2 Final Report, MBIE has addressed the effect of the duty on the choice and availability of like goods as it is required to do under section 10F(3)(c) of the Act. The purpose of doing so was to inform MBIE’s analysis of whether the continuation or removal of duty will affect the choice and availability of preserved peaches in New Zealand.</p> <p>MBIE’s conclusion was that if the duty were continued at the determined rates, which are similar to the current rates, the choice and availability of preserved peaches will likely remain unchanged from what it has been in recent years, in particular noting the availability of like goods imported from other sources.</p> <p>For completeness, MBIE again notes its findings in stage 1 that there is a likelihood of dumping by Spanish producers other than Alcornia and that this dumping would result in a recurrence of material injury to the domestic industry.</p>
<p><b>(d) the effect of the duty on product and service quality:</b></p> <p>The EC notes MBIE’s stage 1 finding that <i>“demand for Spanish peaches in New Zealand is <b>driven by buyer demand</b> and that Spanish producers in the past have not actively sought to promote their products on the New Zealand market”</i>.</p> <p>The EC comments that it appears that MBIE disregarded the customers’ preference as well as the importers’ statement <i>“that they would continue to</i></p>	<p>At Section 2 of the PIP Report and Section 2 of this Stage 2 Final Report, MBIE has addressed the effect of the duty on product and service quality as it is required to do under section 10F(3)(d) of the Act.</p> <p>In undertaking its analysis under section 10F(3)(d) of the Act, as set out in section 2.4 above, MBIE did not disregard any of the importers’</p>

<p><i>import on the basis of consumer preferences regarding the quality of the product imported from Spain. Some of the importers considered that Spanish peaches were of a better quality than other brands available on the domestic market.”</i></p>	<p>statements regarding the quality of Spanish peaches compared to the quality of domestic peaches. MBIE took into account all relevant and pertinent information in examining the effect of the duty on product and service quality in its public interest assessment.</p> <p>As noted at Section 2 of this Final Report, MBIE has not found any information indicating that there will be adverse impacts on product or service quality in New Zealand resulting from either the continued imposition or the removal of the anti-dumping duty on the dumped goods.</p>
<p><b>(e) the effect of the duty on the financial performance of the domestic industry:</b></p> <p>The EC notes that the original measures imposed in 2011 were based on threat of injury and submits that this denotes that HWL has never suffered any injury from Spanish imports and there is no evidence that this would currently be the case. Therefore, the claim that <i>“expiry or removal of the anti-dumping duty would be likely to lead to a continuation or recurrence of injury”</i> remains disputed as HWL never really suffered any injury (there was only a threat of injury in 2011) and continues to enjoy a very comfortable situation.</p>	<p>At Section 2 of the PIP Report and Section 2 of this Stage 2 Final Report, MBIE has addressed the effect of the duty on the financial performance of the domestic industry as it is required to do under Section 10F(3)(e) of the Act.</p> <p>The EC’s claim that an anti-dumping duty cannot be imposed when a domestic industry has never suffered any injury from dumped imports has been addressed above in this Annex. This point was raised by the EU in response to MBIE’s Stage 1 EFC Report and MBIE addressed it in its Stage 1 Final Report. MBIE concluded that, consistent with the Act and the AD Agreement, the issue addressed in a sunset review is whether the removal of a duty would be likely to lead to a continuation or recurrence of dumping and injury including threatened injury.</p>
<p><b>(f) the effect of the duty on employment levels:</b></p> <p>The EC reiterates its claim that there was an excessive use of confidentiality in the application and missing information on employment and submits that it is therefore likely that the HWL claim on adverse effect on the domestic industry remains a mere allegation. No evidence has been provided on closing of factories or decreasing workforce.</p>	<p>At Section 2 of the PIP Report and Section 2 of this Stage 2 Final Report, MBIE has addressed the effect of the duty on employment levels as it is required to do under Section 10F(3)(f) of the Act.</p> <p>In its conclusion on the effect on employment, MBIE has noted that if the anti-dumping duty is continued HWL will benefit by being able to maintain current employment levels. MBIE concluded there was unlikely</p>

	<p>to be an adverse effect on the domestic industry’s employment levels and those of downstream industries if the duty were continued or removed.</p> <p>The EC’s claims regarding the use of confidentially in the application for the review are addressed above.</p>
<p><b>(g) alternative supply (domestically or internationally) of like goods available:</b></p> <p>The EC refers to Figure 2 in the PIP Report, which the EC says shows that the New Zealand market has been supplied mainly with imports of preserved peaches from Australia, China, and South Africa. The EC notes that most of these imports (95%) are available at preferential rates of zero duty. While imports from Spain only represent 1% of total imports and are not being dumped, the EC states that it appears the domestic industry aims at eliminating substitute products as it is not able to develop competitive offers and promote its product on the market. The EC submits that it appears the Spanish imports are of higher quality, thus completing the range of products available on the New Zealand market. It states that the anti-dumping duty on peaches from Spain seems to be used to protect the inefficient domestic producer, with the subsequent costs are being borne by consumers and intermediate users. On the basis of the above, the EC submits that the continued imposition of measures is undoubtedly not in the public interest and should be terminated.</p>	<p>At Section 2 of the PIP Report and Section 2 of this Stage 2 Final Report, MBIE has examined whether there is an alternative supply of like goods available, as it is required to do under section 10F(3)(g) of the Act.</p> <p>In undertaking its analysis under section 10F(3)(g) of the Act, MBIE took into account all relevant factors and pertinent information including the fact that the New Zealand market is supplied with imports of preserved peaches from sources other than Spain, such as Australia, China, and South Africa, and claims that the Spanish importers are of higher quality than the domestic product.</p> <p>MBIE concluded at Section 2 of this Stage 2 Final Report that there are several countries other than Spain which are available to supply preserved peaches to the New Zealand market to meet demand for imported preserved peaches, that the alternative import sources of preserved peaches supplement the product supplied by the domestic industry and that the anti-dumping duty determined by the Minister is not likely to have any significant effect on these alternative sources of supply of like goods. The claims regarding product quality are addressed above.</p>
<p><b>C. Conclusion</b></p> <p>The EC submits that the criteria to prolong these anti-dumping measures for another five years are not met, stating that:</p> <ul style="list-style-type: none"> <li>• There is no dumping and no likelihood of recurrence of dumping.</li> </ul>	<p>MBIE’s conclusions in respect of this review are set out in the Stage 1 Final Report and at Section 3 (“Findings”) and Section 4 (“Conclusions”) of this Stage 2 Final Report. On the basis of these findings and</p>

- The likelihood of recurrence of injurious imports from Spain has not been demonstrated.
- The domestic industry is not suffering material injury or threat of material injury and there is no likelihood of recurrence of injury.
- The continuous imposition of measures is not in the public interest.

The EC therefore states that the present review should be terminated without further delay, noting that any other course of action would be in breach of WTO rules and well-established jurisprudence.

The EC also notes that any preferential trade relationship must be rules based and says that the prolongation of unwarranted measures would also go against the spirit of the ongoing FTA negotiations.

conclusions, MBIE considers there are no grounds for terminating the review, under either the Act or the AD Agreement.