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INNOVATION & EMPLOYMENT**  
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**LABOUR, SCIENCE  
AND ENTERPRISE**  
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# **Non-Confidential Final Report:**

**Review of anti-dumping duties on  
preserved peaches from China**

**Dumping and Countervailing Duties Act 1988**

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## ABBREVIATIONS AND ACRONYMS

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The following abbreviations and acronyms are used in this Report:

Act, the	<i>Dumping and Countervailing Duties Act 1988</i> (the principal Act prior to amendment)
Amended Act, the	<i>Trade (Anti-dumping and Countervailing Duties) Act 1988</i> (the principal Act after amendment, commencing 29 November 2017)
AD Agreement, the	WTO Agreement on Implementation of Article VI of the GATT 1994
Chief Executive	Chief Executive of the Ministry of Business, Innovation and Employment. Note that the Act refers to ‘the Secretary’ but in practice this is interpreted as the Chief Executive.
CNY	Chinese Renminbi (Yuan)
Customs	New Zealand Customs Service
FOB	Free on Board
HWL	Heinz Wattie’s Limited
kg	kilogram
MBIE	the Ministry of Business, Innovation and Employment
Minister, the	the Minister of Commerce and Consumer Affairs (the Minister responsible for New Zealand’s trade remedies legislation)
NZD	New Zealand dollars
preserved peaches	Peaches in preserving liquid, in containers up to and including 4.0kg
review	A review of the imposition of anti-dumping duties on preserved peaches from China (also known as ‘sunset review’). Authorised under section 14(8) of the <i>Dumping and Countervailing Duties Act 1988</i>
USD	United States dollars
VAT	Value Added Tax
VFD	Value for Duty
WTO	World Trade Organisation

### Confidential information

Information that is considered confidential in terms of section 10(7) of the Act has been removed and is indicated by grey panels over the text.

## EXECUTIVE SUMMARY

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**This report provides final conclusions on the review of anti-dumping duties on imports of preserved peaches from China.**

1. The Ministry of Business, Innovation and Employment (MBIE) has conducted a review of anti-dumping duties on preserved peaches from China, under section 14(8) of New Zealand's *Dumping and Countervailing Duties Act 1988* (the Act). The Act requires that a duty ceases to be payable five years after it was imposed or last reviewed unless the investigating authority (MBIE) finds in a review that the expiry of the duty would be likely to lead to continuation or recurrence of dumping causing injury to the domestic industry.
2. MBIE provided an Interim Report to interested parties to indicate its preliminary conclusions in December 2017. Two interested parties, Heinz Wattie's Limited (HWL), the sole New Zealand manufacturer, and Chic Foods, a Chinese manufacturer, submitted comments on the Interim Report. MBIE has considered both submissions in the Annex to this report. MBIE has modified the body of the report from the Interim Report, following consideration of the points in these submissions, but has not changed its conclusion that the continued imposition of anti-dumping duties is not warranted.
3. In conducting the review, MBIE has investigated four Chinese manufacturers. Together, these manufacturers accounted for 86 per cent of exports of preserved peaches from China to New Zealand in the year ended 30 June 2017. MBIE has assessed whether goods from each manufacturer were dumped in New Zealand in the year ended 30 June 2017 by determining a normal value and export value, and any subsequent dumping margin. For the manufacturers that were found to not have dumped, MBIE assessed whether it was likely that they would recommence dumping if the anti-dumping duties expire. For the manufacturers that were found to have dumped, MBIE assessed their levels of dumping and whether these goods would be capable of materially injuring the domestic industry, if anti-dumping duties expire.
4. MBIE has found that two of the manufacturers, Kangfa Foodstuffs and Countree Food, are not currently dumping preserved peaches. MBIE considers that these two manufacturers are not likely to recommence dumping if anti-dumping duties expire, because to do so would require reducing their export prices significantly and MBIE has no positive evidence to indicate that this would occur to the extent that would constitute dumping.
5. MBIE has found that the other two manufacturers investigated are currently dumping preserved peaches from China to New Zealand, but that neither is capable of causing injury to HWL. The first manufacturer, Chic Foods, exports preserved peaches in plastic pottles [REDACTED] and therefore MBIE considers it to be incapable of causing injury. MBIE has calculated a *de minimis* dumping margin for Chic Foods, whereby it is below the required two per cent threshold necessary under the AD Agreement for anti-dumping duties to be imposed. The second manufacturer, Tianle Food, exports preserved peaches in plastic pottles to a New Zealand charity which distributes them for the purpose of serving to children in schools to be consumed in packed breakfasts and lunches. MBIE does not consider these pottled peaches to be substitutable, for this purpose, for the 410g cans which HWL manufactures, since cans are impractical to provide to children in schools. In its submission, HWL agreed with the conclusions MBIE reached regarding these two manufacturers.

6. MBIE has considered a range of information and evidence to assess whether it is likely that the Chinese manufacturers investigated will resume exports to New Zealand at dumped prices to an extent capable of injuring the domestic industry, if the anti-dumping duties expire. MBIE has taken into account information on current normal values in China and export prices to New Zealand; Chinese export prices to other countries that do not have anti-dumping duties in place; and the extent to which export prices to New Zealand and other countries would need to decrease, in the absence of duties, for dumping causing injury to be found in New Zealand. Based on the information and evidence available to it, MBIE is not able to conclude that Chinese exporters would be likely to recommence exports to New Zealand at dumped prices in a manner capable of causing injury to the domestic industry, if the duties expire.
7. On the basis of MBIE's conclusion that dumping causing injury is not currently occurring while duties are in place and is not likely to recur if duties expire, MBIE concludes that anti-dumping duties should be terminated.
8. MBIE has reached this conclusion following consideration of all information available to it, which includes:
  - a. Information provided by HWL,
  - b. Information provided by manufacturers of preserved peaches in China,
  - c. Information provided by importers of the subject goods in New Zealand,
  - d. Information provided by the New Zealand Customs Service (Customs) including import data,
  - e. Information provided in submissions on the Interim Report received before the cut-off date, and
  - f. All other relevant information available to MBIE, for example, information available online or through consultation.

# 1. Introduction

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## 1.1 Background to review

9. On 18 May 2017 MBIE received an application from HWL requesting that MBIE conduct a review of anti-dumping duties on preserved peaches from China to assess whether they are still necessary. MBIE initiated this review on 14 July 2017. In accordance with the statutory timeframe, MBIE had to conclude the review by 1 February 2018.
10. HWL claims that if anti-dumping duties on preserved peaches from China expire, exporters will dump preserved peaches from China into the New Zealand market, and that this will cause a recurrence of material injury to HWL. HWL is the only manufacturer of preserved peaches in New Zealand and is therefore the New Zealand industry for the purposes of this review.
11. New Zealand first imposed anti-dumping duties on preserved peaches from China on 21 August 2006. Anti-dumping duties expire five years after they are imposed unless MBIE finds that, if the anti-dumping duties expire, then dumping of the subject goods will continue or recur, and such dumping will cause a recurrence of material injury to the domestic industry. If MBIE finds that duties are still necessary to prevent such dumping causing injury, the Minister may reassess the duty rates and impose duties for a further five years.
12. The Minister last reassessed the duties on 18 July 2012 following a review by the Ministry of Economic Development. These duties were due to expire on 17 July 2017 but because MBIE initiated this current review, the duties remained in place pending its outcome. As the review has found that dumping causing injury is not likely to recur, MBIE recommends that the duties be terminated.

**Diagram 1.1: Timeline of anti-dumping duties on preserved peaches from China**



## 1.2 Legislative framework

13. MBIE conducts reviews in accordance with New Zealand's *Dumping and Countervailing Duties Act 1988*<sup>1</sup> (the Act) and informed by the World Trade Organisation (WTO) Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the AD Agreement).
14. A review under section 14(8) of the Act assesses whether the removal of the anti-dumping duties would be likely to lead to a continuation or recurrence of dumping causing injury to the New Zealand industry. Section 14(9)-(9A) requires that a duty cease being payable five years after it was imposed or last reviewed unless an investigating authority finds in a review that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury.

## 1.3 MBIE's approach to reviews

15. When investigating whether anti-dumping duties "would be likely" to lead to a continuation or recurrence of dumping causing injury, MBIE takes guidance from the New Zealand Court of Appeal. The New Zealand Court of Appeal has interpreted the phrase "would be likely" to mean "a real and substantial risk; a risk that might well eventuate."<sup>2</sup> MBIE also takes guidance from WTO jurisprudence; including for example *United States – Sunset Reviews of Anti-dumping Measures on Oil Country Tubular Goods from Argentina*,<sup>3</sup> and in *United States Anti-dumping Duty on Dynamic Random Access Memory Semi-Conductors from Korea*.<sup>4</sup>
16. For example, in *Oil Country Tubular Goods*, the Appellate Body stated (at paragraph 308) "[W]e agree with Argentina that, in *US – Corrosion – Resistant Steel Sunset Review*,<sup>4</sup> the Appellate Body equated 'likely', as it is used in Article 11.3, with 'probable'. We also agree with Argentina that this interpretation of 'likely' as 'probable' ... applies equally to dumping and injury." The Appellate Body also noted in *Oil Country Tubular Goods* (at paragraph 340) that an investigating authority's likelihood determinations under Article 11.3 must be based on "positive evidence" and quoted with approval the following statement by the Appellate Body in *US – Hot Rolled Steel*:

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<sup>1</sup> MBIE initiated this investigation under the *Dumping and Countervailing Duties Act 1988* (the Act). The *Trade (Anti-dumping and Countervailing Duties) Act 1988* (the Amended Act), which contains amendments to a number of the provisions of the Act, entered into force on 29 November 2017, but under clause 2 of Schedule 1 of the Amended Act, an investigation or review initiated before the commencement of the Amended Act must be continued, completed, determined and enforced as if the provisions of the Act (as in force immediately before commencement) were still in force.

<sup>2</sup> *Pearce v Thompson*, CA37/85 [1988] NZCA 211; [1988] 1 NZLR 385; (1988) 3 CRNZ 268 (11 November 1988)

<sup>3</sup> Report of the Panel – *United States – Sunset Reviews of Anti-Dumping Measures on Oil Country Tubular Goods from Argentina* – WT/DS268/R – Circulated 16 July 2004. Report of the Appellate Body – WT/DS268/AB/R – Adopted 17 December 2004.

<sup>4</sup> Report of the Panel – *United States – Anti-Dumping Duty on Dynamic Random Access Memory Semi-Conductors (DRAMs) of One Megabit or Above from Korea* – WT/DS99/R – Adopted 19 March 1999.

“The term “positive evidence” relates . . . to the quality of the evidence that authorities may rely upon in making a determination. The word “positive” means . . . that the evidence must be of an affirmative, objective and verifiable character and must be credible.”

17. MBIE also refers to the approaches that the trade remedies authorities of the European Union, United States, Canada and Australia take towards reviews.
18. MBIE approaches all reviews on a case-by-case basis, taking guidance from the above sources, due to the different factors involved in each case. Based on its interpretation of the Act as informed by the AD Agreement, MBIE adopts the following general principles in considering injury in reviews:
  - a. MBIE is required to establish whether the expiry of the anti-dumping duty would be likely to lead to a continuation or recurrence of dumping causing injury.
  - b. Interpretation of the phrase “would be likely” is guided by a New Zealand court judgement referring to “a real and substantial risk; a risk that might well eventuate” and by relevant WTO jurisprudence.
  - c. MBIE requires positive evidence of the likelihood of continuation or recurrence of dumping causing material injury.
  - d. In considering whether removal of duties will be likely to cause a recurrence of dumping causing injury, MBIE considers what is likely to happen in the foreseeable future. The extent to which MBIE is able to make judgements on the likelihood of events occurring in the foreseeable future depends on circumstances of each case, and therefore, the foreseeable future ranges from imminent to longer timeframes.
  - e. To gauge the extent to which the removal of anti-dumping duties is likely to cause material injury to the domestic industry in the foreseeable future, MBIE generally requires the domestic industry to provide projections or forecasts of the injury it considers it will suffer as a result of the removal of duties, as part of the positive evidence justifying the need for a review. MBIE examines these projections in light of the domestic industry’s recent performance (with duties in place to prevent dumping causing injury), and projected future performance (both with and without the imposition of duties) in order to assist it in making a conclusion on the likelihood of recurrence of injury.

## **1.4 Details in this Report**

19. The period under review is the year ended 30 June 2017.
20. All exchange rates used in this report have been taken from the websites [www.exchange-rates.org](http://www.exchange-rates.org) and [www.x-rates.com/average](http://www.x-rates.com/average).

## 2. Goods Description

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### 2.1 Subject Goods

21. The imported goods that are subject to the review (the subject goods) are:

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

22. The subject goods enter New Zealand under tariff item and statistical key 2008.70.09.00L. The subject goods are not separately defined because the tariff item also includes preserved nectarines.

23. MBIE considers the goods description to include preserved peaches in all types of containers, including cans, plastic pottles and glass.

24. MBIE considers the description to include peaches preserved in water, juice or syrup, but not peaches preserved in jelly.



**Wattie's brand  
preserved  
peaches in a  
410g can**



**Example of  
diced  
peaches in a  
plastic pottle**

### 2.2 Like Goods produced by the domestic industry

25. Section 14(8) of the Act states that the Chief Executive<sup>5</sup> may initiate a review “when requested to do so by an **interested party**” (emphasis added). Article 11.3 of the AD Agreement requires that a request for a review prior to expiry of anti-dumping duties “must be made by or on behalf of the **domestic industry**” (emphasis added). Section 3A of the Act defines the term “domestic industry” to mean:

- 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.

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

- a. Other goods that are like those goods in all respects, or
- b. In the absence of goods referred to in paragraph (a), goods which have characteristics closely resembling those goods.

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<sup>5</sup> Note that the Act itself refers to ‘the Secretary’, but in practice MBIE interprets this to mean the Chief Executive of MBIE.

27. The goods which HWL produces were confirmed to be “like goods” to the subject goods in the original investigation in 2006. HWL has confirmed that it continues to be the only manufacturer of preserved peaches in New Zealand, and that it manufactures “like goods” to the goods imported from China under the tariff item and statistical key above, as they have the same form, function and usage. Based on the statement by HWL in its application and the evidence from the original investigation, and other investigations into like goods from other origins, MBIE considers that there is sufficient evidence to conclude that the preserved peaches produced by HWL are “like goods” to the goods subject to anti-dumping duties.
28. However, in the case of this review, MBIE has concluded that, in certain situations and for certain purposes, imports of preserved peaches in plastic pottles cannot be considered to be substitutable for the canned peaches that HWL manufactures. MBIE found that one manufacturer, Tianle Food, is exporting peaches in plastic pottles solely to an importer in New Zealand’s charity sector, which provides the peaches to children in schools for their breakfasts and lunches. MBIE does not consider the use of preserved peaches packaged in this way to be substitutable by the canned peaches which HWL manufactures. This conclusion is explained in more detail in Section 4.4.

## 2.3 Current duties

29. New Zealand currently imposes no normal rate of customs duty on preserved peaches from China.
30. New Zealand imposes the current anti-dumping duties in the form of reference prices, where a duty is payable when the export price is lower than the reference price. The amount of anti-dumping duty payable is the difference between the two prices. New Zealand assigns specific reference prices to identified exporters, with a standard reference price for new or unidentified exporters. Two forms of reference prices are applicable to preserved peaches from China:
- a. Normal Value (value for duty (VFD) equivalent) amounts in Chinese Renminbi (CNY)
  - b. Non-injurious Free on Board (FOB) amounts in New Zealand dollars (NZD) applied to one exporter (Chic Foods). There is also an alternative cap expressed in CNY for this exporter to account for exchange rate movements. Customs compares the reference price and the alternative cap price to find the lowest rate, which Customs compares with the VFD per kg of the imported preserved peaches. This is in order to comply with the ‘lesser duty rule’ which stipulates that the amount of anti-dumping duty is not greater than is necessary to prevent the material injury to an industry.
31. Reference prices for individual exporters and other exporters calculated per-kilogram are outlined below.

**Table 2.1: Duty rates following 2012 review**

Name of Manufacturer	Reference Price/kg	Alternative cap/kg
Chic Foods Company Limited	NZD [REDACTED]	CNY [REDACTED]
Linyi City Kangfa Foodstuff Drinkable Company Limited	CNY [REDACTED]	NA

Qingdao Huaci Metal & Porcelain (Industries) Company Limited	CNY		NA
Sino-every Green Foodstuffs Company Limited	CNY		NA
Zhejiang Iceman Foods Company Limited	CNY		NA
Residual duty (all other manufacturers)	CNY	12.34	NA

### 3. Interested Parties

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#### 3.1 New Zealand Industry and Applicant

33. HWL submitted the application for this review. HWL remains the only New Zealand manufacturer of preserved peaches, and is therefore the domestic industry for the purpose of this review.
34. HWL also produces other processed and canned fruits and vegetables, including pears and fruit salad, at its Hastings plant. HWL sometimes imports preserved peaches to [REDACTED], and sometimes imports peaches in plastic pottles to complement its range.
35. HWL is a limited liability company with its shareholding held by HJ Heinz Company (New Zealand) Limited. HJ Heinz Company (New Zealand) Limited is ultimately owned by Kraft Heinz Company, based in the United States.
36. MBIE notes Article 4.1(i) of the AD Agreement which provides that when manufacturers are themselves importers of the allegedly dumped product, the term “domestic industry” may be interpreted as referring to the rest of the manufacturers. HWL imported subject goods during the year ended 30 June 2017, but has advised that these imports were of preserved peaches in plastic pottles, which HWL does not produce. MBIE does not consider that the level and nature of the imports of HWL mean it should be excluded from the definition of “domestic industry.”

#### 3.2 The Government of China

37. The Government of China is a notifiable party for the purposes of this review, and an interested party in accordance with the AD Agreement.

#### 3.3 Importers

38. Table 2.1 below lists alphabetically the New Zealand importers which MBIE has identified during this review. MBIE used data provided by the New Zealand Customs Service (Customs) to identify these importers as having imported the subject goods over the year ended 30 June 2017. Together these importers imported 86 per cent of the preserved peaches exported from China to New Zealand in the year ended 30 June 2017. All four importers responded to MBIE’s Importer’s Questionnaire in varying detail.

**Table 3.1: Importers**

<b>Importers of preserved peaches from China, year ended 30 June 2017</b>
Bidfood Limited
Foodstuffs New Zealand (including North Island and South Island divisions)
HWL
KidsCan Charitable Trust

### 3.3.1 Bidfood Limited

39. Bidfood Limited (Bidfood NZ) imports preserved peaches from [REDACTED], which sources the subject goods from Chinese manufacturer [REDACTED]. Bidfood NZ wholesales and distributes foodservice products throughout New Zealand to foodservice and manufacturing businesses. The company provided a response to MBIE's Importer's Questionnaire including details of the type of preserved peaches sourced from China, its terms of trade (FOB) and the prices paid (in USD).

### 3.3.2 Foodstuffs New Zealand

40. Foodstuffs South Island and Foodstuffs North Island (Foodstuffs) import preserved peaches from [REDACTED], which sources the subject goods from Chinese manufacturer [REDACTED]. Foodstuffs provided a limited response to MBIE's Importer's Questionnaire including details of the type of preserved peaches sourced from China, its terms of trade (FOB) and prices paid (in USD).

### 3.3.3 HWL

41. HWL imports preserved peaches from Chinese manufacturer and exporter [REDACTED]. HWL provided a response to MBIE's Importer's Questionnaire including details of the type of preserved peaches sourced from China, its terms of trade (FOB) and prices paid (in USD).

### 3.3.4 KidsCan Charitable Trust

42. KidsCan Charitable Trust (KidsCan) imports preserved peaches from the Chinese manufacturer and exporter [REDACTED]. KidsCan does not participate in the New Zealand retail market for preserved peaches. It provides pottled peaches to children in low-decile schools free of charge. KidsCan provided a response to MBIE's Importer's Questionnaire including details of the type of preserved peaches sourced from China, its terms of trade (FOB) and prices paid (in USD).

## 3.4 Trading Intermediaries

43. MBIE identified two trading intermediaries which source product from China and export it to New Zealand. Bidfood NZ and Foodstuffs use a trading intermediary to import preserved peaches. HWL and KidsCan both import directly from the Chinese manufacturer without using a trading intermediary.

### 3.4.1 Bidfood Procurement Company Limited

44. Bidfood Procurement Company Limited (Bidfood Procurement) is a Hong Kong-based exporter/distributor of preserved peaches and other canned products to New Zealand. Bidfood Procurement buys preserved peaches from [REDACTED]. Over the year ended 30 June 2017 it exported preserved peaches to the New Zealand importer, [REDACTED]. Bidfood Procurement invoices then on-charges [REDACTED] with a [REDACTED] per cent handling fee. Bidfood Procurement provided a partial response to MBIE's Exporter's Questionnaire.

### 3.4.2 Directus International Limited

45. Directus sources preserved peaches from the Chinese manufacturer [REDACTED] and on-sells them to [REDACTED]

## 3.5 Manufacturers

46. Article 6.10 of the AD Agreement allows trade remedies authorities to limit an examination to a reasonable number of interested parties in cases where there is a large number of manufacturers. MBIE identified a total of 16 manufacturers of preserved peaches from China which exported to New Zealand in the year ended 30 June 2017. From these manufacturers, MBIE selected the four which exported the largest volumes of preserved peaches from China to New Zealand over that year. Together they manufactured 86 per cent of the preserved peaches exported from China to New Zealand in the year ended 30 June 2017. MBIE considers use of a sample in the current review to be reasonable and appropriate.

47. Table 2.3 below lists selected manufacturers which MBIE has identified using Customs import data as manufacturing the majority of subject goods imported to New Zealand from China in the year ended 30 June 2017.

**Table 3.3: Selected Manufacturers**

<b>Manufacturers of preserved peaches from China imported to New Zealand, year ended 30 June 2017</b>
Linyi City Kangfa Foodstuff Drinkable Company Limited (Kangfa Foodstuffs)
Qingdao Countree Food Company Limited (Countree Food)
Lianyungang Tianle Food Company Limited (Tianle Food)
Chic Foods Company Limited (Chic Foods)

48. The pie chart below indicates the distribution of import market share between these manufacturers.

**Percentage of exports by volume of preserved peaches from China to New Zealand, year ended 30 June 2017, by manufacturer**



49. The factories of the four identified manufacturers are located near each other in Shandong and Jiangsu provinces on the northeast coast of China, as indicated in the maps below.



50. MBIE sought information from the sample manufacturers but only Chic Foods and Tianle Food responded. A brief synopsis of the activities of the Chinese manufacturers is set out below.

### 3.5.1 Linyi City Kangfa Foodstuff Drinkable Company Limited (Kangfa Foodstuffs)

51. Linyi City Kangfa Foodstuff Drinkable Company Limited (Kangfa Foodstuffs) is a Chinese manufacturer of preserved peaches, which it sells to [REDACTED]. It cans a variety of fruits and vegetables, with the main products being mushrooms, asparagus, peaches, strawberries and gherkins. Kangfa Foodstuffs was the largest exporter of the subject goods to New Zealand during the year ended 30 June 2017. Kangfa Foodstuffs did not respond to MBIE's Manufacturer's Questionnaire.

### 3.5.2 Qingdao Countree Food Company Limited (Countree Food)

52. Qingdao Countree Food Company Limited (Countree Food) is a Chinese manufacturer of processed vegetables and fruit, including preserved peaches which it sells both in China and internationally, in a variety of containers such as glass jars and cans. Countree Food exports preserved peaches to New Zealand through [REDACTED], which on-sells to the New Zealand importer, [REDACTED]. Countree Food was the second largest exporter of the subject goods to New Zealand during the year ended 30 June 2017. Countree Food did not provide a response to MBIE's Manufacturer's Questionnaire. Countree Food's factory is in Qingdao, Shandong Province.

### 3.5.3 Lianyungang Tianle Food Company Limited (Tianle Food)

53. Lianyungang Tianle Food Company Limited (Tianle Food) is a Chinese manufacturer of canned and pottled fruits and vegetables, which it exports to more than 50 countries and regions. Lianyungang supplies the New Zealand importer [REDACTED] with preserved peaches in 113g pottles. Tianle Food provided a partial response to MBIE's Manufacturer Questionnaire. Tianle Food does not sell preserved peaches on the Chinese domestic market. Tianle Food's exports to New Zealand represent approximately [REDACTED] per cent of total New Zealand imports over the year ended 30 June 2017.

#### **3.5.4 Chic Foods Company Limited (Chic Foods)**

54. Chic Foods Company Limited (Chic Foods) grows, processes, packs and distributes prepared fruits, including peaches. Chic Foods supplied [REDACTED] with 120g pottles of preserved peaches over the year ended 30 June 2017. Chic Foods' headquarters is in Shanghai, and its factory is in Yantai City, Shandong Province. Chic Foods partially responded to MBIE's Manufacturer's Questionnaire.

## 4. Evidence of continuation or recurrence of dumping causing injury

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MBIE concludes on the available evidence that the expiry of duties would not be likely to lead to recurrence of dumping causing injury to the domestic industry.

### 4.1 Summary of this section

56. MBIE investigated the four sample manufacturers (Kangfa Foodstuffs, Countree Food, Chic Foods and Tianle Food) outlined in Section 3.5 of this report. For each manufacturer, MBIE established an ex-factory export price, an ex-factory normal value, and any subsequent dumping margin. MBIE then analysed the likelihood of dumping continuing or recurring if the anti-dumping duties expire.
57. MBIE found that Kangfa Foodstuffs and Countree Food are not dumping, with a reasonably high export price premium over the normal value. MBIE concludes that if anti-dumping duties expire, these manufacturers are not likely to recommence dumping because of the differences between the normal values and export prices, which mean that they would have to reduce the export price significantly to dump in New Zealand.
58. MBIE found that as [REDACTED], these goods are incapable of injuring HWL. Chic Foods is dumping preserved peaches to New Zealand at a margin of [REDACTED] per cent of the ex-factory price, which is below the *de minimis* level of two per cent, and therefore should not be subject to anti-dumping duties in accordance with the AD Agreement.
59. MBIE found that Tianle Food is dumping preserved peaches to New Zealand at a margin of [REDACTED] per cent of the ex-factory price, which is above the *de minimis* level of two per cent. The potted peaches which Tianle Food exports to New Zealand are imported by the charity sector and provided to children to be consumed in packed breakfasts and lunches. Therefore, MBIE considers that they are not substitutable for this purpose by the canned peaches that HWL manufactures. MBIE concludes that although it has found that Tianle Food is dumping, if anti-dumping duties expire then these dumped goods are not likely to injure HWL.
60. This section outlines the methodology MBIE used to reach these conclusions relating to dumping, including:
- a. MBIE's approach to assessing likelihood of dumping
  - b. Chic Foods' export price, normal value, dumping margin, and likelihood of continuing dumping
  - c. Tianle Food's export price, normal value and dumping margin, and likelihood of continuing dumping
  - d. Kangfa Foodstuffs' export prices, normal value, dumping margin, and likelihood of recommencing dumping
  - e. Countree Food's export price, normal value, dumping margin, and likelihood of recommencing dumping

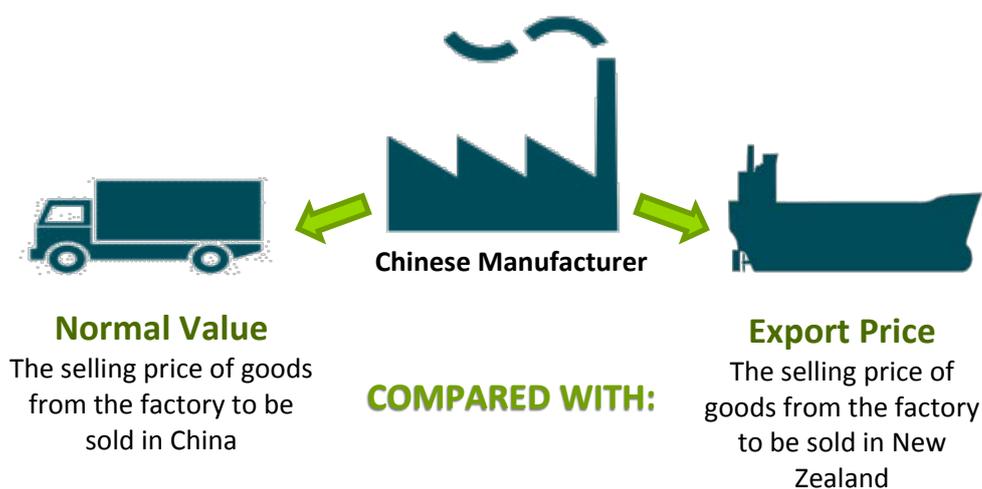
- f. Additional information provided by HWL to assess likelihood of dumping
- g. MBIE's conclusions on dumping.

## 4.2 MBIE's approach to assessing likelihood of dumping

### 4.2.1 Explanation of dumping

61. Dumping occurs when an exporter sells preserved peaches to New Zealand at a price lower than the price at which they sell like goods in China. The price at which preserved peaches are sold in China is the normal value. Dumping is price discrimination between the export and domestic market.
62. Comparisons are made at the same level of trade. In this case, MBIE compares the ex-factory normal value for goods destined for the Chinese domestic market with the ex-factory export price for goods destined for New Zealand. MBIE can conclude that dumping is occurring if the export price is lower than the normal value, as indicated in the illustration below.

**Diagram 4.1: Illustration depicting dumping margin calculation**



### 4.2.2 Explanation of export prices

63. Export prices are determined in accordance with section 4 of the Act. Export prices are the prices at which products are exported from China to New Zealand, that are arm's length transactions, adjusted to allow a fair comparison with the normal value (the price at which like goods are sold in China).
64. To determine the ex-factory export prices for each manufacturer, MBIE has made a number of deductions or allowances from the base export prices at the FOB level, which is equivalent to the VFD amount, where sufficient information is available. This is to ensure a fair comparison between export sales of preserved peaches and sales for domestic consumption in China.

### 4.2.3 Explanation of normal values

65. MBIE determines normal values in accordance with section 5 of the Act. The normal value is typically the price at which foreign manufacturers of a product sell that product in their

domestic market. The types of sales that MBIE uses to determine normal values can generally be described as arm's length sales of like goods in the ordinary course of trade for home consumption in the country of export, in this case China. If a Chinese exporter does not sell in China, MBIE can use sales by other sellers of like goods in China to establish normal values.

66. In the absence of relevant and suitable sales in China, MBIE can establish normal values on the basis of either:
- a. the sum of cost of production, and on the assumption that the goods had been sold for home consumption in the ordinary course of trade in China, reasonable amounts for administrative and selling costs and other costs incurred in the sale, and a rate of profit normally realised on sales of goods of the same generally category in the Chinese domestic market, or
  - b. selling prices of preserved peaches for export to a third country.

#### **4.2.4 MBIE's methodology**

67. Chic Foods and Tianle Food provided information to MBIE including a build-up of the costs involved for the various types of preserved peaches they produce, and evidence of invoices for export and (with regards to Chic Foods) domestic sales. MBIE was able to use the information provided by these two manufacturers to compare export prices with normal values.
68. Countree Food and Kangfa Foodstuffs did not provide any information. MBIE has determined export prices and normal values using all available information upon which MBIE can reasonably rely. MBIE uses information provided in:
- a. questionnaire responses (including from other manufacturers, exporters and importers)
  - b. Customs import data
  - c. previous dumping investigations concerning imports of preserved peaches
  - d. information provided by the applicant, HWL
  - e. information sourced from foreign manufacturer and supermarket websites, and
  - f. other information considered reliable and relevant.
69. The sections below outline the export price, normal value, and any dumping margin for each of the four manufacturers.

### **4.3 Chic Foods**

70. Chic Foods responded to MBIE's Manufacturer's Questionnaire. Using invoices provided by both Chic Foods and [REDACTED], its importer, MBIE found that for the year ended 30 June 2017, Chic Foods exported to New Zealand [REDACTED] shipments, each weighing [REDACTED] kg, of preserved peaches in plastic pottles, for a total weight of [REDACTED] kg. Chic Foods exported preserved peaches (in plastic pottles) [REDACTED] so MBIE considers that any dumping is incapable of materially injuring the New Zealand domestic industry.

#### 4.3.1 Calculation of export price

71. The FOB price for each of the [REDACTED] shipments was USD [REDACTED], or USD [REDACTED] per kg.
72. Chic Foods said its distribution costs from the factory to the port in China were USD [REDACTED] per kg. This is [REDACTED] per cent of the base FOB price.
73. From the base price and adjustment outlined above, MBIE has determined an ex-factory export price of USD [REDACTED] per kg. This matches the figures that Chic Foods provided to MBIE to explain the cost build-up for preserved peaches exported to New Zealand.

#### 4.3.2 Calculation of normal value

74. Chic Foods does not produce preserved peaches in plastic pottles for sale on the Chinese domestic market. However it does sell 3kg cans to the Chinese domestic market. Chic Foods provided a cost build-up for both the plastic pottles and 3kg cans as well as some invoices for sales of 3kg cans to the Chinese domestic market. MBIE assessed the cost build-up against all other relevant information available to it and accepted the figures provided by Chic Foods.
75. Chic Foods sells 3kg cans on the Chinese domestic market in cases of 6 cans (18kg total). Each case is sold at an ex-factory price of CNY [REDACTED], before value-added tax (VAT). This is CNY [REDACTED] per kg, or USD [REDACTED] per kg using the exchange rate at January 2017. This includes a [REDACTED] profit of [REDACTED] per cent of the ex-factory unit price before VAT. However, MBIE considers that preserved peaches in 120g plastic pottles are sufficiently different from preserved peaches in 3kg cans so that their normal values cannot be compared.

##### Constructed normal value for plastic peach pottles

76. To accurately calculate whether dumping is occurring, MBIE considers it more accurate to construct a normal value for peaches in plastic pottles, as if they were to be sold by Chic Foods in China.
77. Chic Foods provided a cost build-up for the preserved peaches in plastic pottles which it sells to the New Zealand market. MBIE assessed this cost build-up against other evidence including copies of invoices, and accepted these figures. As part of the cost build-up, MBIE included the profit margin that Chic Foods cited for its sales of 3kg cans to the domestic market of [REDACTED] per cent, rather than its profit margin for export sales of peaches in plastic pottles of [REDACTED] per cent of the ex-factory unit costs. MBIE used this figure because it considers it more accurate to construct a normal value using the usual profit margins for domestic sales, rather than the usual profit margins for export sales. The resulting ex-factory price is USD [REDACTED]
78. Manufacturers of preserved peaches in China must pay a VAT of 17 per cent on domestic sales. Exporters of preserved peaches can claim a VAT rebate of 15 per cent from the Chinese government on exported goods, effectively meaning that exporters pay a 2 per cent VAT tax on exports of preserved peaches. In order to preserve price neutrality with export sales, MBIE has adjusted the normal value to account for these differences in VAT. The resulting ex-factory normal value is USD [REDACTED] per kg.

### 4.3.3 Calculation of dumping margin

79. As the ex-factory export price for preserved peaches in 120g plastic pottles is USD [REDACTED] per kg, and the constructed ex-factory normal value is USD [REDACTED] per kg, MBIE concludes that Chic Foods is dumping preserved peaches in New Zealand by USD [REDACTED] per kg (1.9 per cent of the export price) with the anti-dumping duties in place. This level of dumping is below the *de minimis* level of two per cent. Additionally, as mentioned above, MBIE considers that any dumping by Chic Foods is incapable of harming the domestic industry because [REDACTED] and imports the product in plastic pottles (which it does not manufacture) in order to supplement its range.

### 4.3.4 Likelihood of continuation of dumping if duties expire

80. Chic Foods is currently exporting preserved peaches to New Zealand [REDACTED] reference price that New Zealand established for the company following the last review. Therefore importers of preserved peaches from Chic Foods [REDACTED]. There is a chance that Chic Foods is 'pricing up' its exports in order to avoid the anti-dumping duties, and that if anti-dumping duties expire, the export price would decrease further and increase the dumping margin. However MBIE considers this unlikely because the profit margins for the peaches Chic Foods exports and the peaches it sells within China [REDACTED] indicating a low likelihood that Chic Foods could export its preserved peaches to its New Zealand customers at lower prices than it is currently. Therefore, MBIE considers it likely that if anti-dumping duties expire, Chic Foods will continue dumping at the same [REDACTED] margin. Additionally, since [REDACTED] MBIE considers these imports to be incapable of causing injury to the domestic industry, and therefore cannot be addressed by the continued imposition of anti-dumping duties.

81. There is a possibility that, regardless of whether anti-dumping duties remain in place or expire, Chic Foods may [REDACTED], and that any such imports may cause injury to HWL if unremedied. However, MBIE considers this to not be likely because Chic Foods is not actively advertising to New Zealand importers; and the imports from Chic Foods are priced [REDACTED] than other preserved peach products from China.

## 4.4 Tianle Food

82. Tianle Food provided a partial response to MBIE's Manufacturer's Questionnaire. Over the year ended 30 June 2017, Tianle Food exported to New Zealand [REDACTED] shipments of preserved peaches in plastic pottles, totalling [REDACTED] kg. The pottles weighed 113g each and were shipped in cases containing 96 pottles (10.85kg total in each case).

### 4.4.1 Calculation of export price

83. At the FOB level, the cases were priced on average at USD [REDACTED] per kilogram.

84. To reach an ex-factory export price, MBIE subtracted a cost for freight from Tianle Food's warehouse to the port in China from which it ships to New Zealand. Tianle Food specified that the cost of transferring the goods from warehouse to port is USD [REDACTED] per full container load. This consists of USD [REDACTED] for inland transportation costs, USD [REDACTED] for insurance and USD [REDACTED] for handling, loading and ancillary expenses.

85. Considering Tianle Food sent [REDACTED] roughly equal shipments totalling [REDACTED] kg over the year ended 30 June 2017, and assuming each shipment (approximately [REDACTED] kg) consists of one full container load, this equals a total cost of USD [REDACTED] per kg for transferring preserved peaches from warehouse to port. This is [REDACTED] per cent of the resulting ex-factory export price.
86. From the base price and adjustment outlined above, MBIE has determined an ex-factory export price of USD [REDACTED] per kg for the preserved peaches exported to New Zealand by Tianle Food. This matches the export price information and cost build-up which Tianle Food provided to MBIE.

#### 4.4.2 Calculation of normal value

87. In its questionnaire response, Tianle Food said that while it exports peaches in plastic pottles to New Zealand such product is not popular in China, and instead there is demand for preserved peaches in cans or glass jars. Tianle Food does not supply the Chinese market.
88. Tianle Food provided details on the cost build-up to selling price for the potted peaches it exports to New Zealand. The cost build-up includes profit margin of [REDACTED] per cent. MBIE constructed a normal value using this cost build-up, including a profit margin of [REDACTED] per cent. This results in an ex-factory domestic price of USD [REDACTED] per kg.
89. MBIE has made an upward adjustment for VAT due to the difference in treatment between export and domestic sales of the basis set out in paragraph 78 above. The resulting ex-factory normal value is USD [REDACTED] per kg.

#### 4.4.3 Calculation of dumping margin

90. An ex-factory export price of USD [REDACTED] per kg and an ex-factory normal value of USD [REDACTED] per kg results in a dumping margin of USD [REDACTED] per kg, or 2.04 per cent of the export price. Therefore MBIE can conclude that Tianle Food is dumping preserved peaches above the *de minimis* level of two per cent of the export price.

#### 4.4.4 Likelihood of continuation of dumping if duties expire

91. The price at which Tianle Food is exporting preserved peaches to New Zealand [REDACTED] current reference price, and the information confirms that New Zealand Customs is currently [REDACTED] these imports. This indicates that Tianle Food is not 'pricing up' to meet the reference price and suggests that the expiry of the anti-dumping duty would not motivate Tianle Food to price their goods lower than they currently are. On this basis, MBIE concludes that if anti-dumping duties expire, Tianle Food is likely to continue dumping at the same margin since there would be no incentive to decrease its prices.
92. However, the expiry of the anti-dumping duty would mean the potted peaches themselves would enter the New Zealand market at slightly lower prices, as importers will not be required to pay the current anti-dumping duty. On average, over the year ended 30 June 2017 imports of preserved peaches from Tianle Food [REDACTED] duty per kg. This means that they entered the New Zealand market [REDACTED] reference price of CNY 12.34, which, for Tianle Food's exports to New Zealand over that year was on average NZD [REDACTED]. With the duty removed, and given that there is

no incentive for Tianle Food to further decrease its prices, imports of preserved peaches would enter the New Zealand market at approximately NZD [REDACTED] per kg.

93. MBIE does not consider that any price decrease will impact the New Zealand market since Tianle Food exports to [REDACTED], which provides peaches in plastic pottles to school children for their breakfasts and lunches. The New Zealand domestic industry (HWL) only manufactures preserved peaches in cans. As peaches packaged in cans are not suitable to be distributed to children in schools, the pottles which Tianle Food exports are not substitutable by those produced by HWL. Therefore, MBIE considers that Tianle Food's exports of preserved peaches to New Zealand are incapable of causing injury to HWL.
94. It is possible that, regardless of whether duties on imports from Tianle Food remain in place, Tianle Food may begin exporting to a new importer. However, MBIE considers this to not be likely because Tianle Food is not actively advertising to the New Zealand market, and additionally the price at which Tianle Food exports pottled peaches is significantly [REDACTED] than the price of other exporters.

## 4.5 Kangfa Foodstuffs

95. Kangfa Foodstuffs did not respond to MBIE's Manufacturer's Questionnaire. According to Customs data, over the year ended 30 June 2017, Kangfa Foodstuffs exported [REDACTED] shipments of preserved peaches from China to New Zealand, totalling [REDACTED] kg, primarily in 410g cans. Kangfa Foodstuffs was the largest exporter of Chinese peaches to New Zealand over the dumping investigation period.

### 4.5.1 Calculation of export price

96. The shipments were paid for in USD and totalled USD [REDACTED]. This is the FOB price and does not include the cost of insurance and freight to New Zealand. The FOB price works out as USD [REDACTED] per kg.
97. MBIE does not have access to information on the cost of transporting these preserved peaches from Kangfa Foodstuffs' factory in Linyi City to the port. Therefore, the best information available is the information provided by Chic Foods on the cost of transporting peaches in pottles from the factory to the port. MBIE used the value provided by Chic Foods as an approximate distribution cost for Kangfa Foodstuffs. [REDACTED] per cent of the base price for Kangfa Foodstuffs is USD [REDACTED] per kg.
98. From the base price and adjustment outlined above, MBIE has determined an ex-factory export price of USD [REDACTED] per kg.

### 4.5.2 Calculation of normal value

99. Kangfa Foodstuffs did not provide MBIE with information on the cost of producing cans either for export to New Zealand or for selling on the Chinese domestic market, or with domestic pricing information. In the absence of information provided by Kangfa Foodstuffs itself, the information sourced from Chic Foods is considered the best information available to establish normal values for Kangfa Foodstuffs. As noted above, the information provided by Chic Foods is cost of production information and domestic selling price for preserved peaches in 3kg cans. Chic Foods' cost build-up reveals an ex-factory unit price before VAT of USD [REDACTED] per kg. MBIE notes that the cost of producing 3kg cans (per Chic Food's

information) may differ from the cost of producing 410g cans and 820g cans, but given this is the best information available, MBIE is comfortable using this information.

100. In its submission on the Interim Report, HWL provided evidence to show that the cost of producing 410g cans is (per kg) higher than the cost of producing 3kg cans. Therefore MBIE has used information relating to the difference in cost build-up for 3kg and 410g cans provided by HWL and verified during the verification visit to make an upwards adjustment to the normal value for Kangfa Foodstuffs, to account for the fact that 410g cans were a majority of Kangfa Foodstuffs' exports. MBIE assessed the difference between production cost of 3kg and 410g cans of the same brand produced by HWL, and using a weighted average calculated that the cost of producing 410g cans is [REDACTED] per cent higher than the cost of producing 3kg cans, per kg. Therefore MBIE made an upward adjustment to the figure calculated above of [REDACTED] per cent, to reach an ex-factory unit price before VAT for 410g cans of USD [REDACTED] per kg.
101. MBIE has made an upward adjustment to the normal value for VAT due to the difference in treatment between export and domestic sales of the basis set out in section 4.3.2 above. The resulting ex-factory normal value is USD [REDACTED] per kg.

#### **4.5.3 Calculation of dumping margin**

102. An ex-factory export price of USD [REDACTED] per kg and an ex-factory normal value of USD [REDACTED] per kg results in a negative dumping margin of USD [REDACTED]. Therefore MBIE concludes that Kangfa Foodstuffs is not currently dumping preserved peaches in New Zealand.

#### **4.5.4 Likelihood of recurrence of dumping if duties expire**

103. Preserved peaches imported by Kangfa Foodstuffs to New Zealand are currently being imported [REDACTED] and therefore [REDACTED] anti-dumping duty. There is a chance that Kangfa Foodstuffs is 'pricing up' the export price of preserved peaches to be above the reference price, and that if anti-dumping duties are removed, the export price would drop below the normal value.
104. The Ministry of Economic Development investigated Kangfa Foodstuffs in the 2011 review and assigned a reference price anti-dumping duty based on a non-dumped price out of China. The reference price was [REDACTED] than those assigned to other Chinese exporters investigated at the time because the Ministry of Economic Development established a [REDACTED] for the company. Information that MBIE sourced from Customs statistics in the current review indicates that Kangfa Foodstuffs is exporting preserved peaches to New Zealand at prices which are [REDACTED] established in the 2011 review. This indicates that if Kangfa Foodstuffs wanted to decrease its export prices, it could do so currently, without incurring anti-dumping duty. In other words, the current duty in place is unlikely to be the reason why the company is exporting to New Zealand at [REDACTED]. It follows, therefore, that the expiry of the anti-dumping duty would not be likely to cause Kangfa Foodstuffs to decrease its export prices to New Zealand below its current prices and low enough to constitute dumping.

## 4.6 Countree Food

105. Countree Food did not respond to MBIE's Manufacturer's Questionnaire. According to Customs data, Countree Food exported [REDACTED] shipments of preserved peaches to New Zealand in the year ended 30 June 2017, totalling [REDACTED] kg. These shipments were in the form of 3kg cans of preserved peaches.

### 4.6.1 Calculation of export price

106. [REDACTED] of the shipments were paid for in USD (for a total of USD [REDACTED]), and one was in CNY (at CNY [REDACTED]). MBIE converted the FOB price from CNY to USD at the exchange rate at the date of import to reach an FOB of USD [REDACTED]. Therefore the total FOB price for all exports by Countree Food to New Zealand over that year was USD [REDACTED], which is USD [REDACTED] per kg.

107. MBIE does not have access to information on the cost of transporting the subject goods from Countree Food's factory to the port. Therefore, MBIE used the value provided by Chic Foods as an approximate internal distribution cost for Countree Food. [REDACTED] per cent of the base price for Countree Food is USD [REDACTED] per kg.

108. From the base price and adjustment outlined above, MBIE has determined an ex-factory export price of USD [REDACTED] per kg.

### 4.6.2 Calculation of normal value

109. Countree Food did not provide MBIE with pricing information or information relating to the cost of production for preserved peaches in China. However, the peaches which Countree Food provides to New Zealand are in 3kg cans. Therefore, MBIE has used the cost and pricing information provided by Chic Food for 3kg cans that Chic Foods provides to China to establish a normal value for the peaches Countree Food sells on the Chinese domestic market. In the absence of information provided by Countree Food itself, MBIE considers the information sourced from Chic Foods to be the best information available.

110. The information provided by Chic Foods reveals an ex-factory (excluding internal freight costs) price before VAT of USD [REDACTED] per kg.

111. MBIE has made an upward adjustment for VAT due to the difference in treatment between export and domestic sales. The resulting ex-factory normal value is USD [REDACTED] per kg.

### 4.6.3 Calculation of dumping margin

112. An ex-factory export price of USD [REDACTED] per kg and an ex-factory normal value of USD [REDACTED] per kg results in a negative dumping margin of USD [REDACTED] per kg. Therefore MBIE concludes that Countree Food is not currently dumping preserved peaches in New Zealand.

### 4.6.4 Likelihood of recurrence of dumping if duties expire

113. As the FOB value is [REDACTED] the reference price, Countree Food [REDACTED] to avoid paying anti-dumping duty. However, MBIE considers it unlikely that the expiry of the anti-dumping duty would motivate Countree Food to price their goods lower to the extent that they may in future dump preserved peaches. This is because in order for the goods to be dumped, they

would have to be exported to New Zealand at [REDACTED] lower prices than they are currently. The export price exceeds the normal value by [REDACTED].

114. MBIE considered four invoices provided by [REDACTED], which show purchases of 3kg cans of preserved peaches from Countree Food by [REDACTED]. Using these invoices, MBIE calculated an average ex-factory export price of USD [REDACTED] per kg which is below the ex-factory export price of the same peaches to New Zealand at USD [REDACTED] per kg. This figure provides lends credence HWL's hypothesis that Countree Food is pricing up to avoid paying anti-dumping duties in New Zealand (if prices to Australia are reflective of prices Chinese exporters would achieve in New Zealand in the absence of duties), and that if the anti-dumping duties expire, Countree Food may reduce its prices to its New Zealand customers to match the prices provided to this one Australian customer. However, the Australian ex-factory export price figure calculated above is still above the normal value (of USD [REDACTED] per kg), so even if Countree Food does reduce its price to match the Australian price, there is no evidence that this would constitute dumping.

#### 4.7 HWL submission on Export Price

115. After MBIE initiated the review, HWL provide a submission on what it considered would be the likely export price of preserved peaches from China to New Zealand in the absence of anti-dumping duties. This price was based on export prices to New Zealand and the Rest of World sourced from the [REDACTED]. HWL submits that the Rest of World price is likely to be a good reflection of actual exports from China.
116. Using this information, HWL provided an indicative export price for imports of preserved peaches from China. The indicative export price was provided in the form of a VFD/kg (or FOB/kg) amount which was NZD 1.65 per kg. HWL compares this indicative export price with the average FOB value of Chinese imports into New Zealand, over the period of review, of NZD [REDACTED] per kg. HWL considers NZD 1.65 per kg is more indicative of the likely export price to New Zealand, in the absence of dumping, because the NZD [REDACTED] per kg value includes the effects of the anti-dumping duty being in place, in that certain Chinese exporters may have 'priced up' to the reference price anti-dumping duties which New Zealand has set.
117. When converted from NZD to USD (using an exchange rate in January 2017), the indicative export price which HWL provided results in an ex-factory export price of USD [REDACTED] per kg. A comparison of the ex-factory prices calculated above shows that HWL's indicative export price is lower than the export prices determined for three of the four exporters investigated. HWL acknowledged that the indicative export price figure includes a range of products and sizes of preserved peaches. MBIE considers the indicative export price has limited usefulness when comparing it to the normal values established for the specific Chinese manufacturers noted above. That is because these Chinese manufacturers exported specific product types to New Zealand, and there is danger in comparing a general export price based on a range of different product types and sizes with normal values for specific product types. HWL was unable to provide the source data behind its calculation of its indicative export price, noting that it does not have access to this data.
118. In calculating the current dumping margins and establishing the likelihood of a continuation or recurrence of dumping, in the absence of duties, MBIE prefers to rely on the information

sourced from the Chinese manufacturers, as outlined above, rather than relying on an indicative export price calculated by HWL. The information relied on by MBIE includes detailed normal value and export pricing information sourced from the Chinese manufacturers, precise information (sourced from Customs) on whether they are pricing above or below the current reference prices in place, and the extent to which the export prices are higher than the current normal values.

## 4.8 Conclusion of findings relating to dumping causing injury

The following table compares the export prices with the normal values and shows any subsequent dumping margins for the four Chinese manufacturers that MBIE investigated.

**Table 4.2: Current Dumping Margin (USD per kg)**

	Kangfa Foodstuffs	Countree Food	Tianle Food	Chic Foods
Export price	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Normal value	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Dumping margin	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Dumping margin as % of export price	No dumping	No dumping	2.04%	1.91%

119. MBIE has found that Kangfa Foodstuffs and Countree Food are not dumping preserved peaches from China to New Zealand.
120. Both of these manufacturers are selling preserved peaches [REDACTED] and therefore are [REDACTED] anti-dumping duties. These two manufacturers may decrease their export prices if anti-dumping duties expire. However, MBIE considers there is only a low likelihood of any decrease in export prices resulting in a recurrence of dumping, because there is a [REDACTED] difference between their current export prices and normal values; large enough that even if Countree Food exports to New Zealand at the same price it exports to Australia it would not constitute dumping. For Kangfa Foodstuffs, information shows that it is pricing [REDACTED] so has no incentive to reduce its prices if anti-dumping duties expire. A low likelihood is not sufficient to meet the standard necessary under the AD Agreement for the continuation of duties. The AD Agreement states that duties must be allowed to expire unless their expiry “would be likely” to lead to a continuation or recurrence of dumping causing injury to the New Zealand industry.
121. The analysis shows that Chic Foods and Tianle Food did dump preserved peaches in New Zealand over the year ended 30 June 2017. MBIE considers the dumping by Chic Foods insignificant because these peaches are [REDACTED], and therefore cannot injure the domestic industry. MBIE has no evidence that Chic Foods is likely to begin exporting to other New Zealand importers in the absence of anti-dumping duties. Additionally, in accordance with New Zealand’s obligations as a party to the AD Agreement, anti-dumping duties should not be imposed on imports from Chic Foods because the dumping margin is below *de minimis* levels. MBIE considers that the dumping by Tianle Food is also insignificant because the imports are of preserved peaches in plastic pottles which enter the charity sector to be donated to children for packed breakfasts and lunches. MBIE does

not consider peaches packaged in this way to be substitutable for this purpose by the canned peaches which HWL manufactures. MBIE has no evidence that Tianle Food is likely to begin exporting to other New Zealand importers in the absence of anti-dumping duties.

122. On this basis, MBIE concludes that exports of preserved peaches from China are not currently being dumped causing injury in New Zealand, and that dumping causing injury is not likely to recur if the anti-dumping duties expire.

## 5. Final Conclusions

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123. On the basis of the information available to it at this point in the review, MBIE has concluded that the expiry of anti-dumping duties on preserved peaches from China would not be likely to lead to a recurrence of dumping capable of causing material injury to the domestic industry.
124. Therefore, MBIE has concluded that the continued imposition of anti-dumping duties on preserved peaches from China is not necessary to prevent a recurrence of dumping causing material injury to the New Zealand industry, HWL, and recommends that the Minister of Commerce and Consumer Affairs terminates the duties

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1 February 2018

## Annex: Response to submissions on the Interim Report

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1. MBIE considered the two submissions on the Interim Report received by 26 January 2018 for this review. These submissions were made by:
  - a) HWL, the applicant and domestic industry, and an importer
  - b) Chic Foods, a manufacturer and exporter
2. In this annex, MBIE addresses the comments made in each of these submissions.
3. MBIE received a third submission on the Interim Report, also from HWL. However, HWL sent this submission on 30 January 2018, two days before the statutory deadline for the review and four days after the cut-off date MBIE which MBIE had set for the consideration of submissions from interested parties. Therefore, MBIE did not consider this submission in its compilation of the Final Report.

### A1. Submission by Heinz Wattie's Limited

#### A1.1 Use of cost build-up for 3kg cans to construct a normal value for Kangfa Foodstuffs' 410g cans

4. In its submission, HWL expressed concern that when constructing a normal value for Kangfa Foodstuffs, MBIE used cost build-up information for 3kg cans rather than for 410g cans. In the year ended 30 June 2017, Kangfa Foodstuffs primarily exported 410g cans to New Zealand. HWL stated that based on the evidence available to it, the difference between the cost structures of 3kg cans and 410g cans "can be as much as [redacted] per cent" per kg, and that this should be accounted for when constructing a normal value for cans of preserved peaches sold by Kangfa Foodstuffs in China. HWL also referred MBIE to Euromonitor<sup>6</sup> information that MBIE used in the 2011 review of anti-dumping duties on preserved peaches from China, which showed that there was a significant difference in prices per kg between 3kg and 410g can sizes. HWL claimed that if MBIE took into account the cost differences between the two can-sizes of preserved peaches, it would have concluded that Kangfa Foodstuffs was dumping into New Zealand.
5. HWL emphasised the importance of calculating an accurate dumping margin for Kangfa Foodstuffs because, according to HWL, its exports are currently causing material injury to HWL. The brand associated with Kangfa Foodstuffs' exports to New Zealand has been [redacted], now re-branded [redacted]. HWL claims that retail market prices in New Zealand (using AC Neilson data) have decreased since the 2011 review with

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<sup>6</sup> Euromonitor International's website states that it is the world's leading independent provider of strategic market research. It collates data and analysis on thousands of products and services around the world (<http://www.euromonitor.com>).

prices decreasing from NZD [REDACTED] per kg to NZD [REDACTED] per kg which, in turn, has resulted in [REDACTED].

### **MBIE's Position**

6. In constructing a normal value for preserved peaches from Kangfa Foodstuffs, MBIE would have preferred to have used cost information directly related to the cost build-up for 410g cans, bearing in mind that the majority of Kangfa Foodstuffs' exports to New Zealand in the year ending 30 June 2017 were 410g cans. However, as neither Kangfa Foodstuffs nor any other Chinese manufacturer provided cost build-up information for 410g cans sold in China, the next best information was Chic Foods' cost build-up information for 3kg cans. MBIE considered this costing information was the best information available and that it represented an accurate and reliable indication of Kangfa Foodstuffs' cost build-up for 410g cans.
7. From information sourced at the HWL verification visit, MBIE has been able to calculate the percentage weighted average cost difference between 3kg and 410g cans (comparing like brands) to be [REDACTED] per cent, which is considerably lower than the [REDACTED] percent figure referenced by HWL in its submission on the Interim Report (HWL stated cost difference between the two products "can be as much as [REDACTED] per cent"). MBIE recalculated the constructed normal value for Kangfa Foodstuffs using the [REDACTED] percent cost difference sourced from HWL's cost information. While on this basis the normal value for Kangfa Foodstuffs increased to USD [REDACTED] per kg, from the USD [REDACTED] per kg originally calculated for Kangfa Foodstuffs, this was still below the export price of USD [REDACTED] established for Kangfa Foodstuffs, and therefore still does not constitute dumping for Kangfa Foodstuffs. The new figures, assuming that producing 410g cans in China costs [REDACTED] per cent more than 3kg cans (as it does in New Zealand), have been incorporated into section 4.5.2 of this Final Report.
8. As an additional check, MBIE also recalculated the constructed normal value for Kangfa Foodstuffs Foods using a [REDACTED] per cent adjustment which, according to HWL's maximum estimates, was the cost difference between producing 410g cans and 3kg cans. The normal value thus calculated for Kangfa Foodstuffs was USD [REDACTED] per kg, rather than the USD [REDACTED] per kg originally calculated. Again, this is still below the export price of USD [REDACTED] for Kangfa Foodstuffs, and therefore still does not constitute dumping for Kangfa Foodstuffs.

### **A1.2 Level of evidence required to construct a normal value**

9. HWL claimed that while MBIE requires a high level of evidence from an applicant to identify normal values in any new application for trade remedies, it did not use those same standards when conducting the review. HWL referred to MBIE's requirement that HWL provide normal values based on at least six prices from a minimum of three retailers in a

range of locations and market segments when submitting its application,<sup>7</sup> and compared this requirement with the evidence which MBIE used to establish normal values in the Interim Report. This evidence, according to HWL, consisted of what was essentially one Chinese domestic selling price and a cost build-up provided by Chic Foods. HWL claimed that this difference in standard and the fact that MBIE favoured information presented at face value by the Chinese exporters (i.e. invoices and cost build-ups) without substantiating it through a verification visit, amounted to a lack of impartiality by MBIE. Furthermore, HWL claimed that the retail prices provided by HWL in its application are more reflective of normal values in China than the sale and cost data provided by Chic Foods.<sup>8</sup>

### **MBIE's Position**

10. MBIE considers that its requirement that an applicant provide certain evidence of normal values in a review application is consistent with investigating authorities world-wide. If the applicant's evidence on normal values is based on retail selling prices, MBIE expects the applicant to provide a reasonable number of selling prices (usually by way of commercial invoices or receipts) to reflect the different types of goods the application is in respect of, to a range of different customers within the exporting country. This is to ensure that, if a review is initiated, the initiation standard meets the tests laid out in the Act and the AD Agreement. Both the Act and the AD Agreement state that a review can only be initiated upon "positive evidence" provided that the goods are dumped or that dumping is likely to recur if anti-dumping duties expire, and that such continuation or recurrence of dumping would be likely to cause material injury to the domestic industry.
11. Section 6 of the Act states that where sufficient information has not been furnished or is not available to enable the export price and normal value to be ascertained under section 4 and section 5 of the Act, the investigating authority can determine a normal value or export prices, as the case may be, shall be determined having regard to "all available information."
12. MBIE must assess each and every piece of information and evidence obtained from a secondary source in a review on export prices and normal values. MBIE then considers whether that information or evidence is better and more reliable than other information obtained. In the present case, MBIE considered that the price and cost build-up information provided by Chic Foods was a more accurate and reliable representation of normal values in China (for both Chic Foods and other investigated Chinese manufacturers) than the invoiced retail prices submitted by HWL in its application and which were used by MBIE to initiate the review. The reasons for this are as follows:

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<sup>7</sup> HWL referred specifically to correspondence, dated 9 July 2017, between it and MBIE where MBIE provided direction to HWL (as the applicant) to provide specific information on normal values (including evidence of Chinese selling prices) for the purpose of submitting an application.

<sup>8</sup> As evidence of normal values, HWL provided copies of three receipts showing selling prices of 12 preserved peach products purchased from Carrefour, RT-Mart and WalMart as an annex in its application for this review.



- f. In considering if a [REDACTED] per cent profit margin on domestic sales is high enough for calculating a constructed normal value for both Chic Foods and other Chinese manufacturers (bearing in mind that MBIE was required to construct normal values to compare with the closest equivalent models to those exported) MBIE took direction from section 5(2)(d)(ii)(B) of the Act which provides that an appropriate profit rate when constructing a normal value is "...the rate of profit normally realised on sales of goods (where such sales exist) of the same general category in the domestic market of the country of export of the goods". MBIE considers the [REDACTED] per cent profit margin achieved by Chic Foods is the rate of profit normally achieved by this company for preserved peaches sold domestically in China. Chic Foods acknowledged this point in email exchanges with MBIE. In the absence of information provided by the other Chinese manufacturers investigated, MBIE considers that a [REDACTED] per cent profit margin is the best information available for calculating an appropriate profit margin for other Chinese manufacturers.
- g. In considering if domestic sales by a foreign manufacturer are sufficient in volumes to be considered for the determination of normal values, MBIE takes guidance from footnote 2 of the AD Agreement which states that sales can be considered for the determination of normal values if "such sales constitute 5 per cent or more of the sales of the product under consideration to the importing Member." Footnote 2 also provides that "a lower ratio should be acceptable where the evidence demonstrates that domestic sales at such lower ratio are nonetheless of sufficient magnitude to provide for a proper comparison." Chic Foods noted that about [REDACTED] per cent of its sales of preserved peaches are destined to be sold on the Chinese market (as opposed to exported overseas). As Chic Foods' domestic sales volume are well above the five per cent threshold test stipulated in the AD Agreement, MBIE considers that the sales were made in the ordinary course of trade, in China, and therefore that its pricing and cost information is sufficient for establishing normal values in China.

13. On the basis of the consideration above, MBIE considers that the price and costing information provided by Chic Foods is the best information available to establish normal values in China for Chic Foods and the other Chinese manufacturers investigated (see also section A1.7 of this annex).

### **A1.3 Price depression and suppression of HWL products due to Kangfa Foodstuffs products since last review**

14. HWL noted that the products imported from Kangfa Foodstuffs are sold as the [REDACTED], and that Nielsen Corporation (previously AC Nielsen)<sup>9</sup> has reported that the prices of preserved peaches in this brand have [REDACTED] since the 2011 review. Consequently, HWL claims [REDACTED]

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<sup>9</sup> Nielsen Corporation is a global marketing research firm which provides market research, insights and data about consumer habits.

[REDACTED]

**MBIE’s Position**

- 15. MBIE considers this claim to constitute part of the ‘injury’ claim, regarding whether the domestic industry is being injured by low-priced imports from China. However, as MBIE has concluded that dumping capable of causing injury to HWL is not occurring and is not likely to recur, any injury that HWL incurs as a result of low-priced imports from China is not attributable to dumping and therefore cannot be addressed by the continued imposition of anti-dumping duties.

**A1.4 Validity of 2011 Kangfa Foodstuffs’ reference price to current exports**

- 16. HWL noted that the name of Kangfa Foodstuffs was slightly different between the 2011 review’s Final Report and the 2017 review’s Interim Report. MBIE has corrected this error in the body of the Final Report and can confirm that it is the same company and there has not been a name change.<sup>10</sup>
- 17. HWL also noted that the reference price in MBIE’s 2012 reassessment of duties was heavily weighted towards 3kg cans, as that is what Kangfa Foodstuffs exported at that time, and that therefore the reference price is relatively low. As Kangfa Foodstuffs now exports primarily 410g cans, HWL considers the reference price to be too low.

**MBIE’s Position**

- 18. MBIE reassesses the level of reference prices for each exporter during reassessments, which occur after a review has found that there is a continued need for duties. As this review has found that there is no current dumping capable of causing injury to HWL, there is no need for a reassessment of duty reference prices.

**A1.5 Likelihood that Countree Food is ‘pricing up’ to meet reference prices**

- 19. MBIE has found, with the information available to it, that Countree Food is not dumping preserved peaches to New Zealand. However, HWL claimed that Countree Food is pricing its exports above the current reference price set for the company to avoid payment of anti-dumping duties. HWL suggested that if the anti-dumping duties were removed the company would then decrease its export prices to New Zealand to levels which would constitute dumping. HWL referred to evidence it had previously supplied including trade statistics (i.e. export prices for preserved peaches) supplied by the [REDACTED] and a supply

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<sup>10</sup> In the 2011 Final Report, the company’s name was cited as Linyi City Kangfa Foodstuff Drinkable Company Limited, whereas in the 2017 Interim Report, it was cited as Linyi City Kangfa Foodstuffs Drinks Company Limited.

agreement between Australian company H.J. Heinz Company Australia (H.J. Heinz) and Countree Food.

20. The supply agreement between [REDACTED] and Countree Food showed a lower export price for the same 3kg can size exported to New Zealand, and the comparable prices of preserved pears in the Australian market. HWL claimed both sources of information provide an indicative export price to New Zealand in the absence of anti-dumping duties (as outlined in section 4.7 of the report). HWL claimed the information provided on Countree Food export prices to [REDACTED] implies that Countree Food prices its goods lower to a market that does not impose anti-dumping duties (i.e. Australia), and that it is likely that these lower prices would be offered to importers in New Zealand if anti-dumping duties expire. HWL therefore claimed that Countree Food's export prices to New Zealand are inflated (due to the imposition of anti-dumping duties above a set reference price) and that MBIE's analysis is flawed as a result.
21. To reinforce this point, HWL noted that generally preserved peaches are priced around three per cent higher than preserved pears; and that therefore the price of preserved pears can be a useful proxy for the price of preserved peaches. HWL noted that the FOB for 3kg cans of preserved pears is approximately USD [REDACTED] per kg. This is significantly less than the FOB calculated by MBIE for imports of preserved peaches from Countree Food to New Zealand of USD [REDACTED] per kg.

#### **MBIE's Position**

22. MBIE is not convinced that either Countree Food or the other Chinese exporters are pricing up when exporting to New Zealand (as a result of the reference price anti-dumping duties). While HWL claims it has provided clear evidence that Countree Food and its New Zealand importer are pricing up to avoid anti-dumping duty, the information is speculative and hypothetical and based on export prices of Chinese preserved peaches to other markets (i.e. Australia<sup>11</sup> and to the world).<sup>12</sup>
23. In the current review, no information was sourced from either the Chinese exporters or the New Zealand importers themselves indicating that preserved peaches were being exported to New Zealand at prices above the reference prices with the intention of avoiding the payment of anti-dumping duty, and that, if the anti-dumping duties were removed, they would in turn reduce their export prices. None of the Chinese exporters or New Zealand importers that provided questionnaire responses stated they would change their pricing behaviour to New Zealand in the absence of anti-dumping duties (although it is doubtful they would admit this if they had such intentions).

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<sup>11</sup> Countree Food exports to [REDACTED] Australia, sourced from [REDACTED] Australia.

<sup>12</sup> Chinese export prices to all global markets sourced from the [REDACTED]

24. MBIE also notes that prices achieved by exporters in Australia (and other markets) are not necessarily indicative of prices those same exporters would achieve in New Zealand (even in the absence of anti-dumping duties in the New Zealand market). There are numerous reasons why exporters will price differently into different foreign markets, including different levels of demand for product in different countries, the level of competition in the importing market from various import sources, and whether there is a domestic industry already supplying that market.
25. In any event, MBIE has analysed the invoices provided from [REDACTED], which show that the export price from Countree Food to Australia was USD [REDACTED] per kg. This compares with the USD [REDACTED] per kg FOB price achieved by Countree Food to New Zealand over the dumping review period. MBIE made adjustments to the Australian FOB price for internal distribution costs in China of USD [REDACTED] per kg ([REDACTED] per cent of the average FOB price, sourced from the cost build-up information provided by Chic Foods), resulting in an ex-factory export price of USD [REDACTED] per kg. When compared with the normal value which MBIE has calculated for Countree Food (USD [REDACTED] per kg), the result is an export price which is still higher than the normal value, leading to the conclusion that Countree Food would not be dumping even if its export prices fall to the current level offered to H.J. Heinz Company in Australia.

#### **A1.6 Verification visits and impartiality of MBIE**

26. HWL has expressed concern that MBIE has not been impartial in its application of the Act with regards to the level of evidence required from the applicant and other parties, and subsequent verification.

##### **MBIE's Position**

27. MBIE has provided a detailed explanation above of what information and evidence it used in the review and why it used this information.
28. MBIE is committed to conducting a fair and impartial review. When reviewing information and evidence, MBIE considers the merits of each and every piece of information and evidence sourced, especially when compared to other information at its disposal, in assessing the accuracy, sufficiency and reasonableness of that information and evidence. Further details of MBIE's position in this respect are at section A1.7 below. MBIE decides on a case-by-case basis whether an on-site verification visit is warranted.

#### **A1.7 Use of the 'best information available'**

29. In accordance with Article 6.8 of the AD Agreement, where any interested party refuses access to or otherwise does not provide necessary information within a reasonable period, or significantly impedes an investigation, investigating authorities may make conclusions on the basis of the facts available. The AD Agreement also includes an annex (Annex II) titled "Best information available in terms of paragraph 8 of Article 6" which sets out provisions to be observed in applying Article 6.8 and specifically the type of information

investigating authorities can use when interested parties do not provide certain information.

30. HWL claimed that the information supplied by Chic Foods which MBIE used to construct normal values for Kangfa Foodstuffs and Countree Food is not the best information available. The information MBIE relied upon were three invoices for the same product [REDACTED], as Chic Foods [REDACTED] supplies preserved peaches to [REDACTED] in the domestic market. HWL noted that different customers have varying levels of profit expectations, and that Chic Foods' profit expectations are [REDACTED]. [REDACTED]
31. HWL referred to the Panel findings in *US – Hot-Rolled Steel from Japan*<sup>13</sup> and *Egypt - Steel Rebar from Turkey*,<sup>14</sup> in that if necessary information is not provided by interested parties, investigating authorities must use the next best facts available, and that the investigating authority must ensure that all facts used are reliable. HWL also referred to Article 6.8 of the AD Agreement and Annex II (which addresses the type of information which can be relied on when deciding what is the best information in terms of Article 6.8 of the AD Agreement). HWL suggested that rather than relying on the information provided by Chic Foods, MBIE should rely upon the information provided by HWL or on information available from previous investigations and reviews.

### **MBIE's Position**

#### ***Introduction***

32. In a dumping investigation or review, MBIE will request information from interested parties in order to assist it in making certain calculations, and in reaching a final conclusion in the investigation or review. Interested parties will include foreign manufacturers and exporters from the country where the allegedly dumped goods originate, and importers and domestic producers in New Zealand. For instance, in order for MBIE to calculate each exporter's individual dumping margin, information will be sought from these exporters on their domestic sales and costs and their export prices.
33. In many cases, MBIE may not be able to obtain all the information necessary to make these calculations, but nevertheless must undertake this process and complete it within the specific timeframes outlined in the Act. As explained by the Panel in *United States – Hot-*

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<sup>13</sup> *United States – Anti-dumping Duties on Certain Hot-Rolled Steel Products from Japan* (28 February 2001) WT/DS184/R (Panel, WTO) [*US - Certain Hot-Rolled Steel*]

<sup>14</sup> *Egypt – Definitive Anti-dumping Measures on Steel Rebar from Turkey* (8 August 2002) WT/DS211/R (Panel, WTO).

*rolled Steel from Japan*,<sup>15</sup> the objective in using “facts available” is to balance the need to calculate the dumping margins for each exporter and foreign manufacturer with the need to complete the dumping investigation or review within the timeframes prescribed in the AD Agreement.

34. The “facts available” can include information provided by other parties to the proceedings or other information to which MBIE has access. While it is common practice for some investigating authorities to treat as “facts available”, under Article 6.8 of the AD Agreement, information submitted in the domestic industry’s application for an investigation or review, on which the allegation of dumping is based, this is not prescribed in the AD Agreement nor is it expected in each and every case where a foreign exporter has not cooperated with the authorities. Like most investigating authorities, MBIE will decide on a case-by-case basis what information is the most accurate and reliable to use in the absence of information provided by the foreign exporter from which the information has been sought.
35. The problem of non-cooperation in dumping investigations and reviews can be due to a number of reasons, including the authorities requesting parties to submit large amounts of information within a relatively short period of time (usually 30 days). Often these parties will not be able to submit all the requested information, in the format requested, within the time limits. Sometimes they will not provide any information at all. In New Zealand this problem is often exacerbated by the exporter in question having to expend a large amount of time and cost providing the information requested by MBIE when its exports to New Zealand are small (at least in comparison with its other export markets). Under these circumstances, some trade remedies authorities have used this provision in Article 6.8 of the AD Agreement as a reason to treat information provided by exporters as only partial, or even, full, non-cooperation, leading to the information provided by the exporters being disregarded entirely.
36. It is not surprising, therefore, that Panels and the Appellate Body have ruled against the abuse of Article 6.8 in past WTO dispute settlement decisions and made a number of observations when doing so. In *Mexico – Anti-dumping Measures on Rice*<sup>16</sup> the Appellate Body examined the relevant provisions (Article 6.8 and Annex II of the AD Agreement and Article 12.7 of the SCM Agreements) related to the use of “facts available”. With respect to the AD Agreement, the Appellate Body said that an investigating authority may rely on facts available in appropriate circumstances, but subject to the conditions in Annex II (titled “Best Information Available in Terms of Paragraph 8 of Article 6”) of the AD Agreement. For instance, “Paragraph 3 obliges an investigating authority to “take into account” the information supplied by a respondent,<sup>17</sup> even if *other* information requested has not been

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<sup>15</sup> *US - Certain Hot-Rolled Steel*, para 7.51.

<sup>16</sup> Referenced by HWL in its submission on the Interim Report.

<sup>17</sup> The respondent in this context was the foreign exporter of the product under investigation to Mexico.

provided by the respondent and will need to be supplemented by facts available. Similarly, paragraph 5 prevents an investigating authority from rejecting the information supplied by a respondent, even if incomplete, where the respondent 'acted to the best of its ability'. Finally, paragraph 7 mandates, where an investigating authority relies on data from a secondary source to fill in gaps resulting from a respondent's failure to provide requested information, that the investigating authority examine such data 'with special circumspection'."

37. The Appellate Body continued, noting that "From these obligations, we understand that an investigating authority in an anti-dumping investigation may rely on the facts available to calculate [dumping] margins for a respondent that failed to provide some or all of the necessary information requested by the agency." However, the Appellate Body stated that "... assuming a respondent acted to the best of its ability, an agency must generally use, in the first instance, the information the respondent did provide, if any." The Appellate Body also stated that "With respect to the facts that an agency may use when faced with missing information, the agency's discretion is not unlimited. First, the facts to be employed are expected to be 'the best information available.'" The Appellate Body agreed with the Panel's contention, in this case, that the best information means that the information must be the most fitting or most appropriate information available in the case at hand. The Appellate Body continued by stating, "Secondly, when culling necessary information from secondary sources, the agency should ascertain for itself the reliability and accuracy of such information by checking it, where practicable, against information contained in other independent sources at its disposal, including material submitted by interested parties. Such an active approach is compelled by the obligation to treat data obtained from secondary sources 'with special circumspection.'"

***The information available***

38. Section 6(1) of the Act parallels Article 6.8 of the AD Agreement and provides that "[W]here the Secretary is satisfied that sufficient information has not been furnished or is not available to enable the export price of goods to be ascertained under section 4 of this Act, or the normal value to be ascertained under section 5 of this Act, the normal value or export price, as the case may be, shall be the amount as is determined by the [Secretary] having regard to all available information."
39. The conclusions reached by MBIE in this review (including where certain Chinese producers have not furnished export price and normal value information) are based on all available information that MBIE considers to be accurate and reliable, and the information relied on is explained at each section of this Report.
40. As detailed in Section A1.2 above ("Level of evidence required to construct a normal value"), MBIE has considered all the information available to it and found that the pricing information and cost build-up provided by Chic Foods is the best information available to establish normal values in China (including through the use of constructed normal values) for Chic Foods and the other Chinese manufacturers investigated.

41. Although the information that HWL provided (images of receipts showing the cost of preserved peaches at supermarkets in China) was useful for initiation purposes, it is problematic to use these figures in order to establish normal values once a review has been initiated. The problems arise because the prices are at the retail level in China, so in order to calculate an ex-factory normal value (which is required when comparing normal values with the corresponding ex-factory export prices), MBIE would have needed to estimate the costs from factory to the retailers' shelves, including the retailers' profit margins (and possibly other intermediary profit margins) and other expenses incurred in China to get the goods from factory to retailers' shelves. The costs are difficult to estimate without reliable sources.
42. On the other hand, the information provided by Chic Foods is already at the ex-factory domestic price (normal value) level, so MBIE has not needed to make potentially unjustified assumptions regarding retailers' profit margins and other expenses. MBIE was able to use the Chic Foods ex-factory prices to compare with comparable exports to New Zealand which eliminated the need to estimate Chinese retailers' profit margin and other expenses incurred in China to get the goods from factory to retailers' shelves. Chic Foods also provided a cost build-up to its ex-factory domestic prices which enabled MBIE to calculate what it considered was a reliable profit margin which it was able to use to construct normal values for the other investigated Chinese manufacturers. Where appropriate, costs of production were adjusted to account for the cost differences per kg claimed by HWL between the 3kg can size sold in China and the 410g can size exported to New Zealand (see section A1.1 above for further details).
43. In using the information it did rely on, MBIE considers itself to have investigated in a manner totally consistent with Section 6(1) of the Act and Article 6.8 and Annex II of the AD Agreement and the Panel findings in both *US – Hot-Rolled Steel* and *Egypt Steel Rebar*.

### **A1.8 Likelihood of recurrence of dumping if duties expire**

44. In its submission, HWL stated that importers use preserved peaches to create foot traffic, and that therefore there is high demand for low-priced product.

#### **MBIE's Position**

45. MBIE agrees with HWL that there is high demand for low-priced products in New Zealand, but this in itself is not justification for anti-dumping duties.

## **A2. Submission by Chic Foods**

### **A2.1 Conclusion that Chic Foods is dumping**

46. In its submission on MBIE's Interim Report, Chic Foods disagreed with MBIE's preliminary conclusion that Chic Foods is dumping preserved peaches in plastic pottles at 2.3 per cent of its export price. Its evidence was that export price and normal value cannot differ when they were built up from the same information.

#### **MBIE's Position**



the extent necessary to counteract dumping that is causing injury. Article 11.3 states that any definitive anti-dumping duty shall be terminated on a date not later than five years from its imposition unless the expiry of the duty would be likely to lead to the continuation or recurrence of dumping causing injury.

52. In the present case, HWL claims that if the anti-dumping duties were removed there is no reason to believe that the Chinese exporters would not start exporting dumped peaches to New Zealand. HWL appears to suggest that the duties should remain in place unless evidence is provided to show that the exporters would not start exporting to New Zealand at dumped prices in the absence of the duties. MBIE considers that the test of whether anti-dumping duties should continue is a positive one, i.e. that unless provided with positive evidence to show that certain events are likely to occur, and that those events will cause a continuation or recurrence of dumping and material injury to the domestic industry in the absence of duties, the duties should expire after five years.
53. HWL has provided information in support of its claim that there is no reason to believe that the Chinese exporters would not start exporting dumped peaches to New Zealand, in the absence of duties, including that it has demonstrated in prior investigations the behaviour of retailers in New Zealand to create foot traffic in-store through the sale of dumped canned peaches. HWL claims this behaviour still exists with importing agents in New Zealand importing low margin canned peaches in late 2017 to retail in various [REDACTED] supermarkets, albeit not at a significant level to be causing significant material injury to HWL.
54. MBIE has used actual normal values in China and export prices to New Zealand to establish if dumping occurred over the year ended 30 June 2017. MBIE found, as a result of this analysis, that two of the four Chinese exporters investigated (Kangfa Foodstuffs and Countree Food) are not dumping preserved peaches from China to New Zealand. One of the other producers investigated (Chic Foods) exports [REDACTED] and therefore cannot injure the domestic industry. Furthermore, MBIE calculated that these exports are dumping at *de minimis* levels only (less than 2 percent). MBIE found that the fourth manufacturer, Tianle Food, is dumping, but MBIE considers that such dumping is not capable of causing material injury to HWL because the imports are of preserved peaches in plastic pottles which enter the charity sector to be donated to children for packed breakfasts and lunches. MBIE does not consider peaches packaged in this way to be substitutable for this purpose by the canned peaches which HWL manufactures.
55. However, the issue upon which HWL's claim is based is whether the reference price anti-dumping duties in place have encouraged Kangfa Foodstuffs and Countree Food to "price up" to avoid the payment of duties which may be resulting in non-dumped prices to New Zealand. HWL claims that if the duties expire, these exporters would decrease their prices to New Zealand to dumped levels. The issue, therefore, becomes whether dumping from Kangfa Foodstuffs and/or Countree Food is likely to *recur*, if the duties expire.
56. MBIE has considered a range of information and evidence to assess whether it is likely that Kangfa Foodstuffs and Countree Food will resume exports to New Zealand at dumped prices if the anti-dumping duties expire. MBIE has taken into account information on

current normal values in China and export prices to New Zealand, Chinese export prices to other countries, and the extent to which export prices to New Zealand and other countries would need to decrease, in the absence of duties, for dumping to be found in New Zealand in a manner capable of causing material injury to the domestic industry. Much of the information sourced is hypothetical and other information speculative. For instance, HWL claims that trade in certain commodities including preserved peaches is driven by price and that the removal of duties will cause a strong incentive for new and current exporters to export product to New Zealand at dumped prices in a manner capable of causing material injury to the domestic industry.

57. In respect of the reference prices in place, MBIE notes that a majority of the imports from Kangfa Foodstuffs and Countree Food did not incur anti-dumping duties which may suggest that the import prices have been artificially inflated to above the reference prices to avoid the payment of anti-dumping duties. If so, the question then becomes how likely is it that, if the duties expire, Kangfa Foodstuffs or Countree Food will decrease its prices to New Zealand to dumped levels?
58. As noted in the body of the report, information that MBIE sourced from Customs statistics in the current review indicates that Kangfa Foodstuffs and Countree Food are exporting preserved peaches to New Zealand at prices which are [REDACTED] established in the 2011 review. This indicates that if Kangfa Foodstuffs or Countree Food wanted to decrease its export prices, they could do so currently, without incurring anti-dumping duty. In other words, the current anti-dumping duties are unlikely to be the reason why the Kangfa Foodstuffs and Countree Food are exporting to New Zealand at [REDACTED]. It follows, therefore, that the expiry of the anti-dumping duty would not be likely to cause Kangfa Foodstuffs or Countree Food to decrease their export prices to New Zealand below its current prices and low enough to constitute dumping.
59. The prospective nature of such an assessment (including gauging the intention of exporters to change their future pricing behaviour in both domestic and export markets) makes the assessment of whether or not these exporters are likely to dump their product into New Zealand, in the absence of duties, difficult. This is especially the case when faced with less-than-perfect and often conflicting information and evidence obtained from a variety of sources.
60. However, the established evidential test is that this outcome must be “likely.” As noted in section 1.3 of this report, the Appellate Body equated “likely,” as it is used in Article 11.3 of the AD Agreement, with “probable.” Also, the New Zealand Court of Appeal has interpreted the phrase to mean “a real and substantial risk.” The Appellate Body also noted that any “likelihood” determination under Article 11.3 must be based on positive evidence.
61. MBIE has used the totality of the information and evidence sourced in the review to gauge the likelihood of Chinese exports recurring at dumped prices in the absence of duties bearing in mind the constraints and difficulties noted above. If duties are to continue, MBIE must be satisfied that the expiry of the duties would be likely to be lead to preserved peaches from China being dumped and subsequently causing material injury to HWL.

Based on the information and evidence available to it, MBIE is not able to conclude that either Kangfa Foodstuffs or Countree Food would likely recommence exports to New Zealand at dumped prices, if the duties expire.