



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

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AND ENTERPRISE  
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# Non-Confidential Interim Report:

Review of anti-dumping duties on  
preserved peaches from China

**Dumping and Countervailing Duties Act 1988**

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## ABBREVIATIONS AND ACRONYMS

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.
CIF	Cost, Insurance and Freight
CNY	Chinese Renminbi (Yuan)
Customs	New Zealand Customs Service
EBIT	Earnings Before Interest and Tax
FOB	Free on Board
FTE	Full time equivalent employees, considered to be 40 hours per week
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)
NA	Not applicable
NSV	Net Sales Value
NZD	New Zealand dollars
preserved peaches	Peaches in preserving liquid, in containers up to and including 4.0kg
review	A full 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

### Disclosure of information

MBIE makes non-confidential versions of all information relating to the review available through its public file system to meet its obligations under section 10(6)(b) of the Act. The public file for this review is available to all interested parties on request. Items highlighted in grey in the confidential version of this report contain commercial information which will be redacted in the non-confidential version.

## EXECUTIVE SUMMARY

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

1. The Ministry of Business, Innovation and Employment (MBIE) is conducting a review of anti-dumping duties on preserved peaches from China, in accordance with section 14(8) of New Zealand's *Dumping and Countervailing Duties Act 1988* (the Act). The Act requires that a duty be terminated five years after it was imposed or last reviewed unless the investigating authority (MBIE) determines 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 provides this Interim Report to interested parties to indicate its preliminary conclusions at this stage of the review. Interested parties are welcome to comment on the Interim Report until **Friday 26 January 2018**. MBIE will consider all submissions received on or before this date, and will take them into account when compiling its Final Report. MBIE must make a final determination by Thursday 1 February 2018.
3. In conducting the review, MBIE has analysed a sample of four 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.
4. MBIE has preliminarily found that two of the manufacturers, Kangfa Foodstuffs and Countree Foods, 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.
5. MBIE has preliminarily found that the other two manufacturers in the sample *are* currently dumping preserved peaches from China to New Zealand, but that neither is capable of causing injury to the New Zealand industry, Heinz Wattie's Limited (HWL). The first, Chic Foods, exports preserved peaches [REDACTED], and therefore MBIE considers it to be incapable of causing injury. The second, Tianle Food, exports preserved peaches in plastic pottles to a New Zealand charity which distributes them free of charge to children in schools. MBIE does not consider these potted peaches to be substitutable, for this purpose, for the 410g cans which HWL manufactures.
6. Despite its preliminary conclusions on dumping, MBIE has conducted an analysis of the likelihood of recurrence of injury to HWL if duties expire. MBIE has conducted this analysis in order to give interested parties the opportunity to respond to the injury arguments before MBIE publishes the Final Report, in case new information leads MBIE to change its analysis of the likelihood of continuation or recurrence of dumping causing injury.
7. On the basis of MBIE's preliminary conclusions that dumping causing injury is not currently occurring while duties are in place and is not likely to recur if duties expire, MBIE preliminarily concludes that anti-dumping duties should be allowed to expire.
8. MBIE has reached this preliminary conclusion following consideration of the best information available to it at this stage of the investigation, which includes:
  - a. Information that HWL provided in its application and during MBIE's verification visit at HWL's premises in Parnell, Auckland

- 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, and
- e. All other relevant information available to MBIE, for example, information available online or through consultation.

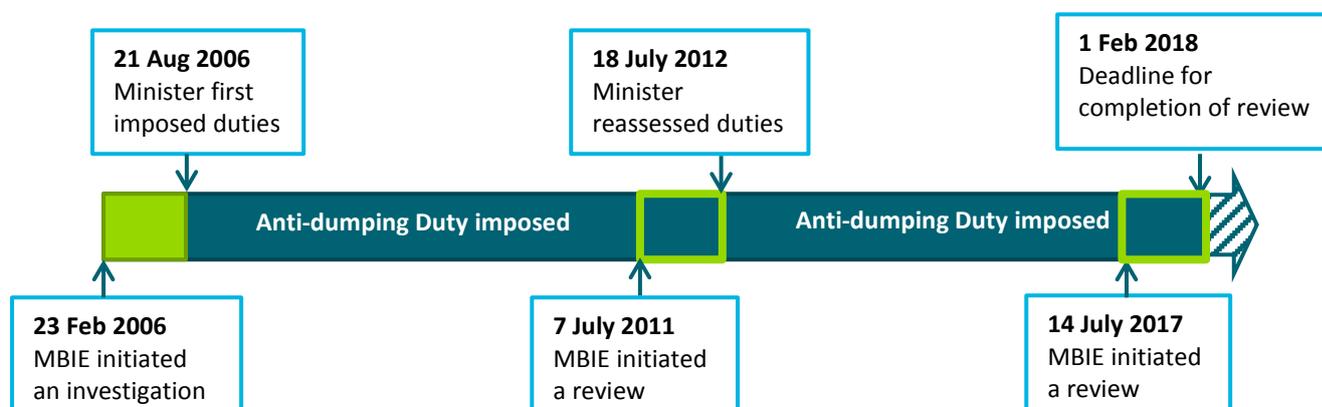
# 1. Introduction

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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 must make a final determination on the necessity of continuation of duties 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 producer 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 determines that, if the anti-dumping duties expire, then dumping of the subject goods will recur or continue, and such dumping will cause a recurrence of material injury to the domestic industry. If MBIE determines that duties are still necessary to prevent such dumping causing injury, then the Minister can reassess the duty rates and re-impose duties for a further five years.
12. The Minister last reassessed these duties on 18 July 2012 following a review by MBIE. These duties were due to expire on 17 July 2017 but because MBIE initiated this current review, the duties remain in place pending its outcome. If this review finds that dumping causing injury is likely to continue or recur, then New Zealand will continue to impose duties for a further five years, following a reassessment of the rates. If the review finds that dumping causing injury is not likely to continue or recur, then duties will expire.

**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 determines 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 be terminated five years after it was imposed or last reviewed unless an investigating authority determines in a review that '... the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury' (quoted from Article 11.3 of the AD Agreement).

## 1.3 MBIE's approach to reviews

15. When interpreting the phrase in the AD Agreement that 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. MBIE also refers to the approaches that the European Union, United States, Canada and Australia take towards reviews.
17. 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 and the AD Agreement, MBIE adopts the following general principles in considering injury in reviews:

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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.

- 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. 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 determination on the likelihood of recurrence of injury.

## **1.4 Details in this Report**

18. The period under review is the year ended 30 June 2017.
19. 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

20. 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.*

21. 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.

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

23. 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  
plastic  
pottles**

### 2.2 Like Goods produced by the domestic industry

24. 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.

25. 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.

26. 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 producer of preserved peaches in New Zealand, and that it makes ‘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.
27. However, in the case of this review, MBIE has preliminarily concluded that, in certain situations, 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 preliminary conclusion is explained in more detail in Section 4.5.

## 2.3 Current duties

28. New Zealand currently imposes no normal rate of customs duty on preserved peaches from China.
29. New Zealand imposes the current anti-dumping duties in the form of reference prices, where a duty is payable only when the export price is lower than the reference price. The amount of an anti-dumping duty payable is the difference between the two prices. New Zealand assigns specific reference prices to identified exporters, with an additional 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 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 take account of exchange rate movements. Customs compares the reference price and the cap rate to find the lowest rate, which Customs compares with the VFD/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.
30. Reference prices for individual exporters and other exporters on a per-kilogram basis 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 Foodstuffs Drinkable Company Limited	CNY [REDACTED]	NA
Qingdao Huaci Metal & Porcelain (Industries) Company	CNY [REDACTED]	NA

Limited			
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

32. HWL submitted the application for this review. HWL remains the only New Zealand producer of preserved peaches, and therefore is the domestic industry for the purpose of this review.
33. 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.
34. 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.
35. Article 4.1(i) of the AD Agreement provides that when producers are themselves importers of the allegedly dumped product, the term ‘domestic industry’ may be interpreted as referring to the rest of the producers. 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

36. The Government of China is an interested party for the purposes of the Act, in accordance with the WTO AD Agreement.

#### 3.3 Importers

37. 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 they imported over 80 per cent of the preserved peaches from China in the year ended 30 June 2017. All four importers responded to MBIE’s Importers Questionnaire in varying levels of depth.

**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

38. Bidfood Limited (Bidfood NZ) imports preserved peaches to New Zealand from [REDACTED], which sources the product 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 questionnaire including details of the type of preserved peaches sourced from China, its terms of trade (FOB) and the price paid (in USD).

### 3.3.2 Foodstuffs New Zealand

39. 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 questionnaire including details of the type of preserved peaches sourced from China, its terms of trade (FOB) and price paid (in USD).

### 3.3.3 HWL

40. HWL imports preserved peaches in 120g pottles from Chinese manufacturer and exporter [REDACTED]. HWL provided a response to MBIE's importer questionnaire including details of the type of preserved peaches sourced from China, its terms of trade (FOB) and price paid (in USD).

### 3.3.4 KidsCan Charitable Trust

41. KidsCan Charitable Trust (KidsCan) imports preserved peaches direct 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 for free. KidsCan provided a response to MBIE's importer questionnaire including details of the type of preserved peaches sourced from China (diced peaches in plastic pottles), its terms of trade (FOB) and price paid (in USD).

## 3.4 Trading Intermediaries

42. MBIE identified two trading intermediaries which source product from China and export it to New Zealand. [REDACTED] and [REDACTED] use a trading intermediary to import preserved peaches. [REDACTED] and [REDACTED] both import directly from the Chinese manufacturer without using a trading intermediary.

### 3.4.1 Bidfood Procurement Company Limited

43. Bidfood Procurement Company Limited (Bidfood Procurement) is a Hong Kong exporter/distributor of preserved peaches and other canned products to New Zealand. It 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

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

## 3.5 Manufacturers

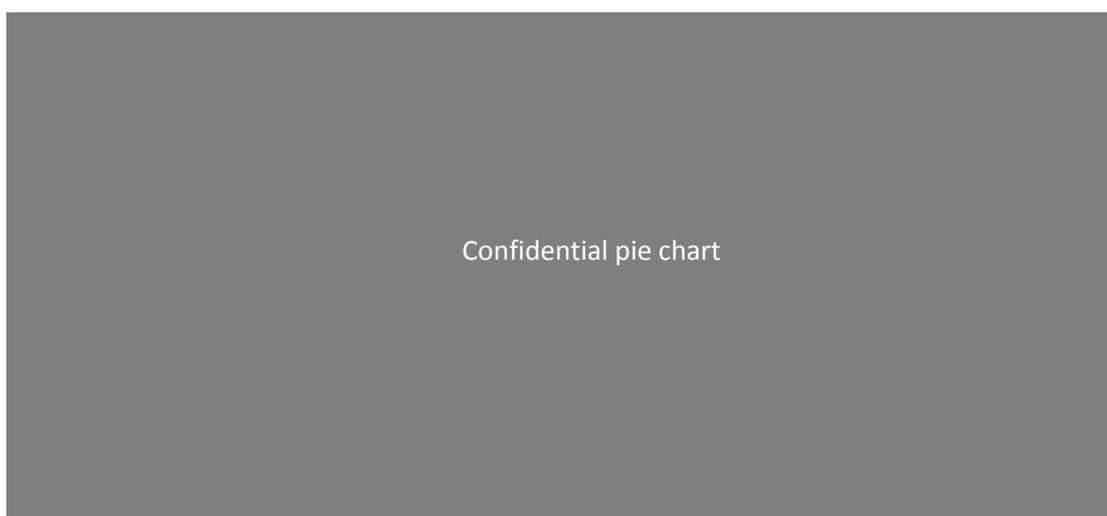
45. Article 6.10 of the AD Agreement states that in cases where there is a large number of manufacturers, the authorities may limit their examination to a reasonable number of interested parties. MBIE identified a total of 16 manufacturers of preserved peaches from China which exported to New Zealand 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 this sample to be sufficient to meet the requirements of Article 6.10 of the AD Agreement.

46. Table 2.3 below lists selected manufacturers which MBIE has identified from Customs import data as manufacturing the subject goods 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 Foodstuffs Drinks Company Limited (Kangfa Foodstuffs)
Qingdao Countree Food Company Limited (Countree Food)
Lianyungang Tianle Food Company Limited (Tianle Food)
Chic Foods Company Limited (Chic Foods)

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



48. 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.



49. MBIE sought information from all parties 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 Foodstuffs Drinks Company Limited (Kangfa Foodstuffs)

50. Linyi City Kangfa Foodstuffs Drinks Company Limited (Kangfa Foodstuffs) is a Chinese manufacturer of preserved peaches, which it provides 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)

51. 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.<sup>6</sup> Countree Food exports preserved peaches to New Zealand through the [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 Foods did not provide a response to MBIE’s manufacturer’s questionnaire. Countree’s factory is in Qingdao, Shandong Province.

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

52. Lianyungang Tianle Food Company Limited (Tianle Food) is a Chinese manufacturer of canned and pottled fruits and vegetables, which it exports to over 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’s 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.

<sup>6</sup> <http://www.countreefood.net>

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

53. 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

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**MBIE preliminarily concludes that preserved peaches from China are not currently being dumped causing injury in New Zealand, and that the expiry of duties would not be likely to lead to recurrence of dumping capable of causing injury to the domestic industry**

### 4.1 Summary of this section

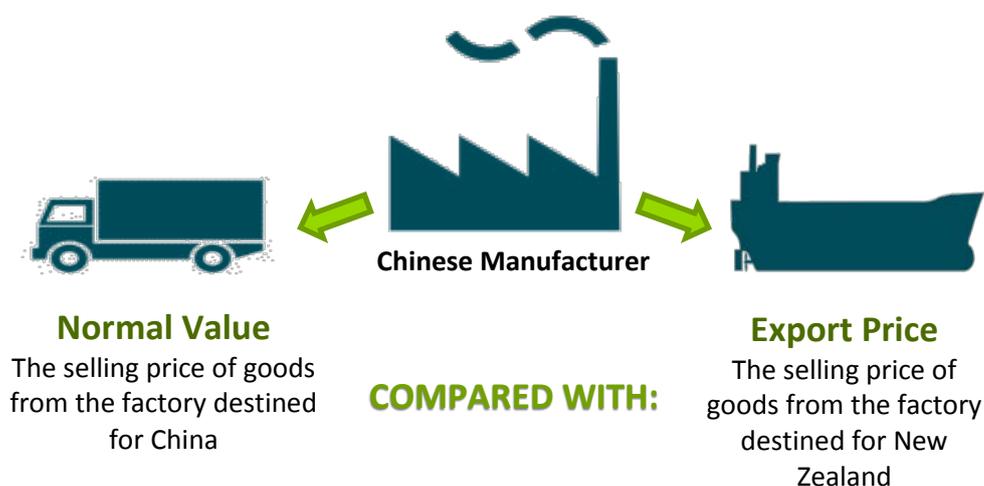
55. MBIE investigated the four selected manufacturers (Kangfa Foodstuffs, Countree Food, Chic Foods and Tianle Food) outlined in Section 3.5 of this report. For each manufacturer, MBIE established an ex-factory export price, an ex-factory normal value, and any subsequent dumping margin. MBIE then analysed the likelihood of dumping continuing or recurring if the anti-dumping duties expire.
56. MBIE found that Kangfa Foodstuffs and Countree Food are not dumping, and instead have 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 large differences between the normal values and export prices, which mean that they would have to reduce the export price substantially to dump in New Zealand.
57. MBIE found that Chic Foods is dumping preserved peaches to New Zealand at a margin of 2.3 per cent of the ex-factory price, which is above the *de minimis* level of two per cent. But as [REDACTED], MBIE considers any dumping of these goods to be incapable of injuring HWL.
58. MBIE found that Tianle Food is dumping preserved peaches to New Zealand at a margin of 2.5 per cent of the ex-factory price, which is above the *de minimis* level of two per cent. But as the potted peaches which Tianle Food exports to New Zealand are imported by the charity sector and provided freely to children, and MBIE considers that they are not substitutable by the canned peaches that HWL manufactures. MBIE preliminarily 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.
59. 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

60. Dumping occurs when an exporter sells preserved peaches to New Zealand at a price lower than they sell them for in China. The price at which preserved peaches are sold in China is the normal value. Dumping is price discrimination between an export and domestic market.
61. 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**



62. The AD Agreement provides for MBIE to undertake a comparison of export prices and normal values on either a weighted-average-to-weighted-average or transaction-to-transaction basis.

### 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, and are adjusted to allow a fair comparison with the normal value (the price products are sold for in China).
64. To calculate 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 value-for-duty amount (VFD), 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 usually 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 domestic sales. MBIE was able to use the information provided by these two manufacturers to compare export prices with normal values.
68. As Countree Foods and Kangfa Foodstuffs did not provide any information, MBIE has determined export prices and normal values using all available information which MBIE can reasonably rely upon. 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 producer and supermarket websites, and
  - f. other information considered reliable and relevant.

69. The sections below outline the export price, normal value, and any consequential dumping margin for each of the four manufacturers. Chic Foods and Tianle Food are introduced first since they provided responses to the manufacturer's questionnaires.

### **4.3 Chic Foods**

70. Chic Foods responded to MBIE's manufacturer's questionnaire. Over 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 exports [REDACTED], so any dumping is incapable of harming 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], which works out at 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 calculated an ex-factory export price of USD [REDACTED] per kg. This matches the figures that Chic Foods provided to MBIE in explaining 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 accepts the figures provided by Chic Foods.
75. Chic Foods sells 3kg cans on the Chinese domestic market in cases of 6 cans (18kg). Each case is sold at an ex-factory price of CNY [REDACTED], before value-added tax (VAT). This works out as 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 accepts these figures. As indicated above, the ex-factory unit price for these preserved peaches is USD [REDACTED] per kg. This price includes a [REDACTED] profit of USD [REDACTED], or [REDACTED] per cent of the total ex-factory unit price.
78. MBIE notes [REDACTED] per cent of the export ex-factory unit price is a [REDACTED] profit margin, at [REDACTED]. However, the profit margin for the 3kg cans that Chic Foods sells on the Chinese domestic market is [REDACTED], at [REDACTED] per cent. Chic Foods has provided invoices to support the pricing and profit figures.
79. 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

80. 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 (2.3 per cent of the export price) with the anti-dumping duties in place. This level of dumping is above the *de minimis* level of two per cent. However, MBIE considers that any dumping by Chic Foods is incapable of harming the domestic industry because [REDACTED]

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

81. 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 are [REDACTED] anti-dumping duties. 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 without duties. Therefore, MBIE considers it likely that if anti-dumping duties expire, Chic Foods will continue dumping at the same [REDACTED] margin. However, 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.

82. There is a possibility that, regardless of whether anti-dumping duties remain in place or expire, Chic Foods may [REDACTED], and therefore those 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

83. 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 of 96 pottles (10.8kg each).

#### 4.4.1 Calculation of export price

84. At the FOB level, the cases were priced on average at USD [REDACTED], which works out at USD [REDACTED] per kilogram.

85. To reach an ex-factory export price, MBIE subtracts an estimated 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.

86. 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.
87. From the base price and adjustment outlined above, MBIE has calculated 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

88. 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.
89. 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 hypothetical normal value using this cost build up, including a profit margin of [REDACTED] per cent. This results in an ex-factory normal value of USD [REDACTED] per kg.
90. 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 79 above. The resulting ex-factory normal value is USD [REDACTED] per kg.

#### 4.4.3 Calculation of dumping margin

91. 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 2.5 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

92. 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.
93. 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]

██████████ per kg. This means that they entered the New Zealand market at the reference price of CNY 12.34, which, for Tianle Food's exports to New Zealand over that year was on average NZD ██████████. 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 ██████████ per kg.

94. MBIE does not consider that any price decrease will impact the New Zealand market since Tianle Food exports to ██████████, which provides peaches in plastic pottles to school children free of charge. 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.
95. 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 that Tianle Food exports pottled peaches at is significantly ██████████ than the price of other exporters.

## 4.5 Kangfa Foodstuffs

96. Kangfa Foodstuffs did not respond to MBIE's manufacturer questionnaire. According to Customs data, over the year ended 30 June 2017, Kangfa Foodstuffs exported ██████████ shipments of preserved peaches from China to New Zealand, totalling ██████████ kg. Kangfa Foodstuffs was the largest exporter of Chinese peaches to New Zealand over the dumping investigation period.

### 4.5.1 Calculation of export price

97. The shipments were paid for in USD and totalled USD ██████████. 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 ██████████ per kg.
98. MBIE does not have access to information on the cost of transporting these preserved peaches from Kangfa Foodstuff's 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. ██████████ per cent of the base price for Kangfa Foodstuffs is USD ██████████ per kg.
99. From the base price and adjustment outlined above, MBIE has calculated an ex-factory export price of USD ██████████ per kg.

### 4.5.2 Calculation of normal value

100. 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, or other information relating to the cost of production of 410g cans in China, 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. MBIE notes that the cost of producing 3kg cans may differ from the cost of producing 410g cans, but given this is the best information available, and MBIE considers that the cost difference is likely to be minimal, MBIE is comfortable using this information. Chic Foods' cost build up reveals an ex-factory unit price before VAT 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 paragraph 79 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. Kangfa Foodstuffs was investigated in the 2011 sunset 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 suggesting that MBIE 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] the reference prices 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 above the reference price. 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 calculated 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. The price at which Countree Food is exporting preserved peaches to New Zealand [REDACTED] the current reference price for a majority of the shipments, so Countree Food is currently [REDACTED] anti-dumping duties on a majority of its exports. [REDACTED] of Countree Food's shipments, which comprised [REDACTED] per cent of Countree Foods exports over that year by volume, were exported [REDACTED] reference price and therefore [REDACTED] anti-dumping duties.
114. As the FOB value is currently [REDACTED] reference price, Countree Foods may be 'pricing up' to meet the reference price 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 significantly lower prices than they are currently. The export price exceeds the normal value by a considerable margin. Countree Food would need to [REDACTED] in order to dump preserved peaches in New Zealand.

## 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 to New Zealand in the absence of anti-dumping duties. The export 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 [REDACTED] 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 [REDACTED] 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 calculated 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. These Chinese manufacturers exported specific product types to New Zealand, and there is danger in comparing an 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 producers, 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

The following table compares the export prices with the normal values and the 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				
Dumping margin				
Dumping margin as % of export price	<i>No dumping</i>	<i>No dumping</i>	2.5%	2.3%

119. MBIE preliminarily finds that Kangfa Foodstuffs and Countree Foods are not dumping preserved peaches from China to New Zealand.
120. Both of these manufacturers are selling preserved peaches and therefore are 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 substantial difference between their current export prices and normal values. 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 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. MBIE preliminarily 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 Foods is likely to begin exporting to other New Zealand importers in the absence of anti-dumping duties.
122. On this basis, MBIE preliminarily concludes that exporters of preserved peaches from China are not currently dumping causing injury in New Zealand, and that dumping causing injury is not likely to recur if the anti-dumping duties expire.

## 5. Evidence of recurrence of injury

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**MBIE has preliminarily concluded that the expiry of duties on preserved peaches imported from China would not be likely to lead to recurrence of dumping capable of causing injury to the domestic industry. Therefore MBIE can preliminarily conclude that any injury alleged to be caused to HWL if anti-dumping duties expire cannot be attributed to dumping of preserved peaches from China, and cannot be addressed by the continued imposition of anti-dumping duties on these goods.**

### 5.1 Summary of this section

123. MBIE's preliminary conclusions on injury are as follows:

- a. Current dumping from China cannot be causing injury to the domestic industry due to the presence of anti-dumping duties.
- b. Even in the absence of the current anti-dumping duties, current dumping from China (including exports from Tianle Food and Chic Foods) would be incapable of causing injury to the domestic injury for the reasons outlined in Section 4.
- c. MBIE preliminarily concludes that it is not likely that dumping causing injury will recur if anti-dumping duties expire.
- d. Consequently, any injury alleged to HWL, now or in the foreseeable future, caused by price undercutting cannot be attributed to dumping of preserved peaches from China, and therefore cannot be addressed by the continued imposition of anti-dumping duties on these goods.

124. However, MBIE has proceeded with analysing HWL's argument that if the duties expire, imports of preserved peaches from China would undercut HWL's prices and therefore injure HWL. MBIE has conducted this analysis in order to give interested parties the opportunity to respond to the injury arguments before MBIE publishes the Final Report, in case new information leads MBIE to change its analysis of the likelihood of continuation or recurrence of dumping causing injury.

125. This section addresses HWL's arguments, and includes:

- a. MBIE's approach to assessing likelihood of injury
- b. Injury information submitted by HWL
- c. Analysis of volume effects (including market share by both Chinese exporters and HWL)
- d. Analysis of price effects (including the possibility that dumped imports would undercut, suppress and depress HWL's prices)
- e. Analysis of economic effects (including the impact of any dumped imports on HWL's output, sales volume and revenue, market share, profits, productivity, return on investments, and production capacity)

- f. Analysis of other adverse effects (including cash flow, inventories, employment and wages, growth, and ability to raise capital and investments)
- g. Analysis of whether there is a causal link proving that any injury would be a direct result of dumped imports if anti-dumping duties expire
- h. MBIE's conclusions relating to injury.

## **5.2 MBIE's consideration of injury in a review**

126. In considering injury in a review MBIE examines whether the removal of duties would be likely to lead to the continuation or recurrence of material injury to the domestic industry; in this case, HWL. In considering the likelihood of a continuation or recurrence of injury, MBIE applies the legislative framework set out in Section 1.2.
127. MBIE carries out its injury analysis for reviews in accordance with section 8 of the Act and informed by Article 11 of the AD Agreement. MBIE interprets these provisions to mean that the likelihood of a continuation or recurrence of injury is to be considered in the context of the likely consequential impact on the industry, arising from the likely volume of the dumped goods and their likely effect on prices.
128. Section 8 of the Act sets out a number of factors and indices which MBIE shall have regard to, although noting that this is without limitation as to the matters MBIE may consider. These factors and indices are considered under the relevant headings below. Furthermore, MBIE must base its analysis of a causal relationship between the dumped imports and any current or likely injury on an examination of all relevant evidence and any known factors other than the dumped imports which are causing injury, or are likely to cause injury to the domestic industry. MBIE must not attribute to dumped imports any likely continuation or recurrence of injury caused by factors other than dumping, including those factors outlined in Section 5.8 of this report.

## **5.3 Injury information submitted by HWL**

129. HWL is still the only New Zealand producer of like goods and therefore HWL constitutes the New Zealand industry for the purpose of this review.
130. HWL provided financial information to assist MBIE in conducting an injury analysis. The information provided is in line with HWL's financial year, which is the calendar year. HWL provided information for 2015, 2016 and 2017 (actual data until April 2017 and budgeted data to the end of December 2017). HWL also provided forecasts for 2018 and 2019 for the scenarios that duties either remain in place or expire.
131. The projected figures in the absence of duties are the figures sourced by MBIE during a visit to HWL's premises rather than updated projections provided by HWL in a submission after the verification visit. MBIE considers the projected figures sourced at the verification visit to be more credible, also bearing in mind that the projected figures which HWL provided after the verification visit have been based on unsubstantiated figures sourced by HWL from the [REDACTED] (see Section 4.7 above).

132. The information HWL provided includes details of production, revenue, cost of production, gross profit (contribution margin), fixed costs (including selling and administration costs) and earnings before interest and tax (EBIT).

### 5.3.1 Forecast if duties are extended

133. HWL's forecasts with duties remaining in place assume that anti-dumping duties remain at their current levels. HWL's sales volume and revenue forecasts for its 2018 and 2019 financial years (if anti-dumping duties remain) are based on HWL's budgeted sales figures. The budgeted sales figures are themselves based on forecast pricing strategy information.

### 5.3.2 Forecast if duties expire

134. HWL's forecast if duties expire includes the assumption that duties will remain until early 2018, when this review is due to conclude, and when the duties may expire. HWL therefore claims that the impact of cheaper Chinese imports would be felt immediately in February 2018 and continue into 2019. The forecast scenario sees HWL reducing the price of its Oak brand to meet the estimated ex-wharf price of imported Chinese peaches, and reducing its Wattie's price

## 5.4 Volume effects

### 5.4.1 Summary of volume effects

135. Section 8(2)(a) of the Act provides that MBIE shall have regard to the extent to which there has been or is likely to be a significant increase in the volume of imports of dumped goods either in absolute terms or in relation to production or consumption in New Zealand.

136. The volume of imports of preserved peaches from China is high in terms of the New Zealand market. Chinese producers and exporters of preserved peaches are likely to have capacity to increase exports of preserved peaches to New Zealand in volumes that would be significant relative to New Zealand production and the New Zealand market size.

### 5.4.2 MBIE's assessment of current and previous import volumes

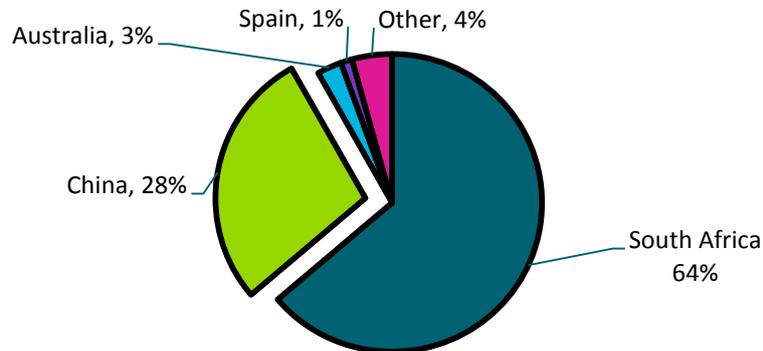
137. Table and Graph 5.1 shows import volumes of preserved peaches into New Zealand in the year ended 30 June 2017. The figures show the goods imported into New Zealand under the tariff item and statistical key 2008.70.09 00L. China and South Africa are significant exporters of preserved peaches to New Zealand.

**Table and Graph 5.1: Preserved peaches from China as a percentage of NZ market, year ended 30 June 2017**

Country of origin	Quantity (kg)	% of Total imports	% of Total NZ market
Australia	110,843	3%	
China	1,167,109	28%	
South Africa	2,652,705	64%	
Spain	50,756	1%	
All other imports	178,991	4%	
<b>Total imports</b>	<b>4,160,403</b>	<b>100%</b>	

<b>Sales of HWL production</b>			
<b>Total New Zealand market</b>			

**Import Volume by origin, year ended 30 June 2017**



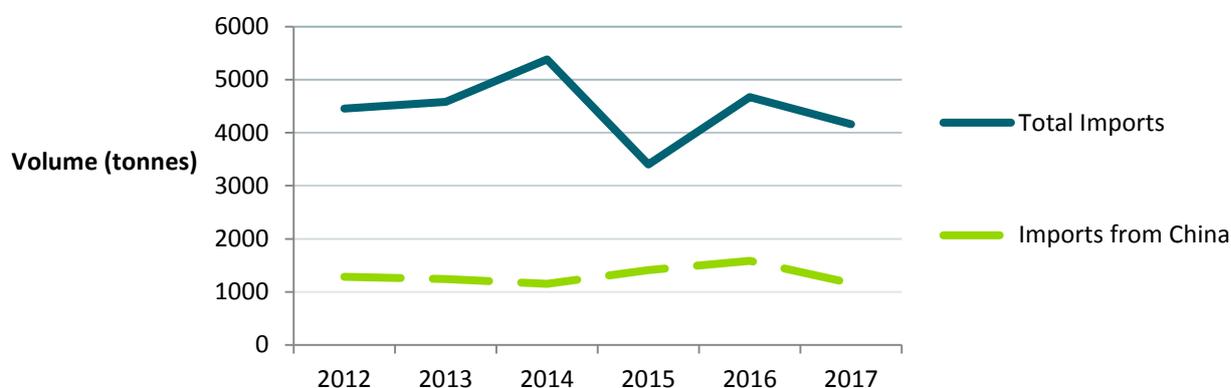
138. The table and graph 5.2 below show that with anti-dumping duties in place, imports of preserved peaches from China have remained relatively steady since the last review in 2012.

**Table and Graph 5.2: New Zealand preserved peach market, 2012 to 2017 (year end 30 June, kg)**  
**Customs Data**

Country of origin	2012	2013	2014	2015	2016	2017
China	1,285,958	1,241,358	1,152,954	1,412,613	1,584,084	1,167,109
Total Imports	4,453,930	4,579,690	5,381,791	3,404,078	4,670,095	4,160,403
HWL sales*						
Total NZ market						
China peaches as % of NZ market						
HWL sales as % of NZ market						

\* HWL sales figures are calendar year figures in line with its financial year.

### New Zealand Preserved Peach Market, 2012-2017



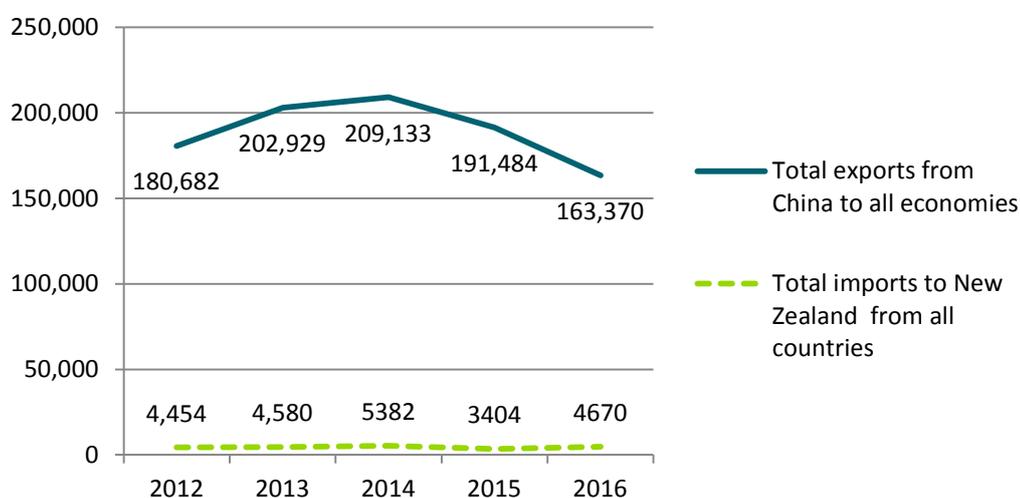
#### 5.4.3 MBIE's assessment of likely import volume if duties are removed

139. The likelihood of a recurrence of significant volumes of dumped imports sufficient to cause material injury is related to factors such as:
- the price advantage (in the absence of duties) which such imports may hold
  - the capacity and intent of the Chinese preserved peach industry to substantially increase its exports to New Zealand
  - the ease of entry into the New Zealand market
  - the ability of importers to handle a significant increase in imports from China
  - the ease of distribution of goods within New Zealand, and
  - exchange rates.
140. HWL provided MBIE with reports from the Global Agricultural Information Network (GAIN) of the United States Department of Agriculture Foreign Agricultural Service, which analyse the production of canned deciduous fruit (including peaches) in China. MBIE has considered the GAIN reports that HWL provided, including the fact that they are four years old. Between the two periods that the GAIN reports consider, there is evidence of China growing its preserved peach manufacturing capacity. According to the GAIN reports, Chinese production of preserved peaches increased from 370,000 tonnes in 2010/11 to 420,000 tonnes in 2012/13.
141. However, the GAIN reports also note that exports of preserved peaches from China fell from 143,000 tonnes in 2010/11 to 130,000 tonnes in 2012/13, reflecting an increase in Chinese domestic consumption over the period rather than an increase in export volumes.
142. After MBIE initiated the review, HWL provided a submission on likely import volumes and available capacity of the industry in China.

#### 5.4.4 Capacity and intent of the Chinese industry

143. HWL considers that China has plenty of capacity to increase exports of preserved peaches to New Zealand.
144. The extent to which export volumes of preserved peaches from China have been increasing since 2012 is shown in the graph below. MBIE sourced this export data from Trade Map, a website providing global information on imports and exports. The graph below shows annual exports from China to all destinations, at the six digit tariff level covering preserved peaches. The graph shows that since 2012, the Chinese industry gradually increased, then decreased its total exports from 180,682 tonnes, to 209,133 tonnes, and back to 163,370 tonnes. Total imports to New Zealand from all countries have remained roughly stable from 2012 to 2016.

**Graph 5.3: Annual preserved peaches (tonnes, to 6-digit tariff level, year ended 30 June)**



145. After MBIE initiated the review, HWL provided a submission on likely import volumes and available capacity of the industry in China. HWL made the following comments:
- Current imports of preserved peaches from China are of significant volume with over 1,000 tonnes being imported in the year ended 30 June 2017.
  - The price effects of any removal of duty are likely to be immediate given existing supply is in place.
  - A volume in the region of [REDACTED] tonnes dumped is significant enough to cause material injury to the New Zealand industry.
  - Whether an exporting country can 'saturate' the New Zealand market is irrelevant given the relatively low volume required to cause material injury of [REDACTED] tonnes
  - HWL's affiliate HJ Heinz Australia has recently [REDACTED] with [REDACTED] which would indicate there are canned peaches available for export.

146. The New Zealand market for processed peaches is not large compared to other international markets. China is already contributing a significant portion of supply to the New Zealand preserved peach market, and those exports are small relative to other markets that China supplies. This indicates an intention by the Chinese exporters to continue supplying the New Zealand market and suggests that Chinese producers would be likely to find it easy to supply the New Zealand market with more product if the demand arises. HWL suggests that just a small increase in imports from China could cause significant injury to the New Zealand industry.
147. Based on the totality of information collected in respect of the freely disposable production capacity of the Chinese preserved peach industry, MBIE is satisfied that Chinese preserved peach manufacturers and exporters have sufficient freely disposable capacity and intent to continue to supply the New Zealand market (whether the anti-dumping duties remain or expire) and that other export markets are unlikely to absorb that capacity to such an extent that it would prevent exports to New Zealand from increasing.

#### **5.4.5 Ease of entry into the New Zealand market**

148. MBIE has consistently found in other preserved peach reviews and investigations that the New Zealand market is easy to access, as are its distribution systems.<sup>7</sup> There do not appear to be any changes to the market that would change these conclusions.
149. Previously, MBIE has considered the preserved peach market to be highly competitive. HWL does [REDACTED], and the market is always open to new sources of supply. MBIE has concluded in previous investigations and reviews concerning preserved peaches that barriers to entry to the New Zealand market are extremely low for reasons such as the ability of house brand customers to terminate contracts and switch suppliers at short notice, the lack of contractual agreements between supermarkets and suppliers, and the ability of brokers to source the subject goods from anywhere in the world to take advantage of market opportunities.
150. HWL says that small brands such as Delish, Trident or Cinderella, will source from China if anti-dumping duties are removed, and on-sell these products to PAK'nSAVE supermarkets. These brands tend to not be locked into contracts, so it would be easy for them to move to a cheaper source of supply.
151. New Zealand has well developed distribution channels for preserved peaches, giving widespread access to the New Zealand market.

#### **5.4.6 Exchange rates**

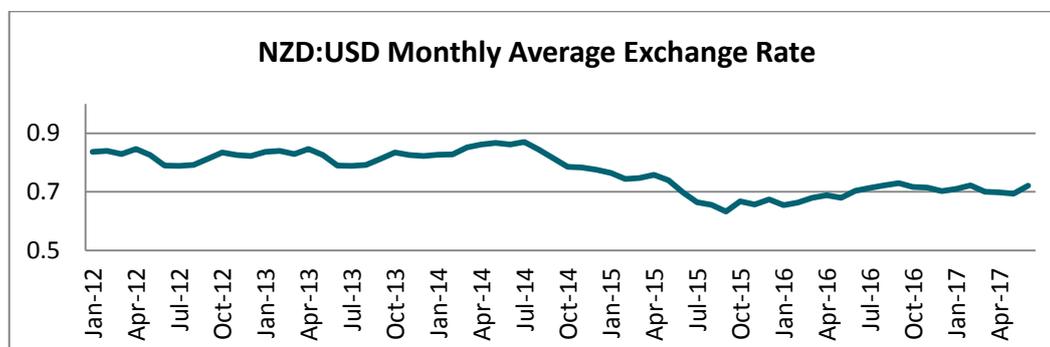
152. A further consideration in assessing the likelihood of an increase in import volumes of preserved peaches from China, in the absence of anti-dumping duties, is the movement of the NZD against the CNY and USD. In most cases, shipments from China are invoiced in USD.

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<sup>7</sup> Reports from MBIE's previous reviews and investigations can be found here: <http://www.mbie.govt.nz/info-services/business/trade-tariffs/trade-remedies/dumping-of-imported-goods/investigations-into-goods-dumping-or-subsidisation/completed-investigations>

153. MBIE has analysed the change in the NZD:USD exchange rate from 2012 to 2017. The graph below shows the change in the value of NZD against USD over this period.

**Graph 5.4: NZD:USD exchange rate, sourced from x-rates.com/average, January 2012 to June 2017**



154. The information shows that the value of the New Zealand dollar has decreased against the United States dollar since 2012, suggesting that conditions are less favourable for New Zealand importers looking to purchase goods from overseas with the payment method being USD.

#### 5.4.7 Conclusion on import volumes

155. In respect of the likely import volumes of preserved peaches from China, if the anti-dumping duties expire, MBIE has preliminarily found that:
- The Chinese industry for preserved peaches has the capacity to increase exports of preserved peaches to New Zealand in volumes that would be significant relative to HWL's production and New Zealand's consumption.
  - It is easy for imports of preserved peaches to enter the New Zealand market and there are available distribution systems that could be used if imports from China increase substantially. Importers are likely to have the ability to manage a significant increase of imports of preserved peaches from China.
  - Exchange rates to source from China are currently less favourable for importers than they were during the last review.
156. Chinese exporters do not consider New Zealand to be a priority export market because of its market size and geographic distance. However, MBIE does not consider these factors would prevent New Zealand importers from continuing to import preserved peaches from China at the volumes currently.
157. However, in light of MBIE's preliminary conclusion that it is not likely that dumping causing injury will recur if anti-dumping duties expire, MBIE preliminarily concludes that any increase in imports from China cannot be attributed to continuation or recurrence of dumping of preserved peaches from China, and therefore cannot be addressed by the continued imposition of anti-dumping duties on these goods.

## 5.5 Price Effects

### 5.5.1 Summary of Price Effects

158. There is evidence of some price undercutting even with the duties in place. However, as Tianle Food is the only manufacturer whose exports are consistently incurring anti-dumping duties, it is likely that only the price of Tianle Food's exports entering the New Zealand market would decrease if anti-dumping duties expire, and only by the margin which it is currently paying as anti-dumping duties. Since Tianle Food's exports enter the charity sector to be provided freely to children in schools, and are therefore not substitutable by the canned peaches which HWL manufactures, it is unlikely that any decrease in the price of Tianle Food's exports would injure HWL.
159. HWL has not experienced price depression or suppression with the duties in place but may experience these if duties expire. Although imports of preserved peaches from China may be undercutting HWL peaches, since anti-dumping duties are currently in place, any current injury cannot be attributed to dumping. As MBIE has preliminarily concluded that it is not likely that dumping causing injury will recur if anti-dumping duties expire, MBIE preliminarily concludes that any injury alleged to be caused to HWL as a result of price undercutting, price depression or price suppression cannot be attributed to dumping of preserved peaches from China, and therefore cannot be addressed by the continued imposition of anti-dumping duties on these goods.

### 5.5.2 Price advantage held by imported products

160. HWL considers that preserved peaches from China would be the cheapest import option if duties expire.
161. HWL considers that if the duties are removed, supermarkets such as PAK'nSAVE will buy preserved peaches from China in bulk. HWL claims this situation will force it to [REDACTED] to remain competitive.
162. To assess whether preserved peaches from China would hold a price advantage over preserved peaches from other sources if anti-dumping duties expire, MBIE has used Customs data to calculate a Cost, Insurance and Freight (CIF) price for the three main sources. This is the price at which New Zealand importers buy preserved peaches once they have landed at the port in New Zealand and is the FOB price plus the cost of insurance and freight. The CIF price for imports from China is the price HWL considers it needs to match with its Oak brand in order to compete with the Chinese imports.
163. The four largest sources of supply for preserved peaches to New Zealand are South Africa, China, Australia and Spain. The actual CIF prices for South Africa, Australia and Spain, calculated on the basis set out above, are shown in the table below, along with the average CIF price for preserved peaches from China and HWL's ex-factory price.

**Table 5.5: Likely price advantage held by imports from China, based on prices in year ended 30 June 2017 (NZD)**

Country <sup>8</sup>	CIF price per kilogram	HWL ex-factory price	% undercutting
China	[REDACTED]	[REDACTED]	[REDACTED]%
Spain	[REDACTED]	[REDACTED]	[REDACTED]%
South Africa	[REDACTED]	[REDACTED]	[REDACTED]%
Australia	[REDACTED]	[REDACTED]	[REDACTED]%

164. The figures in the table above show that imports from Spain, China and South Africa are undercutting HWL’s prices by similar amounts. HWL estimates that in the absence of anti-dumping duties, China would undercut HWL prices and prices of the other imports, but by only small margins in respect of Spain and South Africa. This suggests that if anti-dumping duties expire on imports of preserved peaches from China, these goods would likely hold a small price advantage over imports from all other sources.

### 5.5.3 Price Undercutting

165. The purpose of the price undercutting comparison is to establish whether or not the prices of preserved peaches from China currently undercut the prices of HWL’s preserved peaches, and whether, if anti-dumping duties expire, this price undercutting would continue or recur. The margin of price undercutting is not a measure of the extent of the economic impact on the industry or a measure of the extent of dumping. Any impact is measured in terms of the factors and indices set out in section 8(2) (d) of the Act.

166. Section 8(2)(b) of the Act provides that the Chief Executive shall have regard to the extent to which the prices of the dumped goods represent significant price undercutting in relation to prices in New Zealand at the relevant level of trade for like goods of New Zealand producers.

167. MBIE will normally seek to compare prices at the first point of competition in New Zealand. This will normally be at the ex-factory and ex-wharf or ex-importer’s store levels, to ensure that differences in distribution costs and margins do not confuse the impact of dumping.

168. HWL’s major customer groups are the [REDACTED]; [REDACTED]; and the [REDACTED]. Sales to [REDACTED] are on a [REDACTED] basis.

169. Preserved peaches may be imported by supermarkets or distributors directly instead of buying from HWL. MBIE considers that the most appropriate level of trade is ex-wharf for imports versus ex-factory for peaches produced by HWL. Ex-factory is the free-into-store

<sup>8</sup> The CIF prices for South Africa do not include customs duty and anti-dumping duty.

price less freight to store from the wharf. Costs included in an ex-wharf price are those incurred to import the goods into New Zealand such as overseas freight, insurance, port service, charges and Customs duty. In the present case, MBIE has used the average cost, insurance and freight (CIF) import price of Chinese preserved peaches over the dumping investigation period. This includes all shipments to New Zealand over the year ended 30 June 2017.

170. HWL provided a schedule of ex-factory prices per tonne for both Wattie’s and Oak brands and MBIE has used this information for the price comparison exercise. As HWL sells on a [REDACTED] basis, MBIE has made adjustments to HWL’s net selling price for freight to customer (NZD [REDACTED]/kg) to ensure the comparisons are made as close to the CIF imported prices as possible.

171. The table below shows the level of price undercutting when the Chinese imported price is compared to the HWL’s ex-factory prices for its Wattie’s and Oak brands. The undercutting is measured as a percentage of HWL’s average ex-factory price.

**Table 5.6: Price undercutting**

Brand	Net sales value/kg (NZD)	Chinese Import price/kg (NZD)	Undercutting/kg (NZD)	Undercutting % of net sales value
Wattie’s	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Oak	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

172. The information shows that Chinese imports continue to undercut both the Wattie’s and Oak brand. There is a much smaller undercutting margin for the Oak brand. HWL notes that it [REDACTED] and uses [REDACTED]. It further notes that it cannot let the [REDACTED].

173. MBIE notes that the import price highlighted above is exclusive of any anti-dumping duties currently being paid. However, only the exports from Tianle Food are incurring anti-dumping duties, and these exports are destined for the charity sector for a function for which HWL’s products are not substitutable, and therefore do not compete with HWL’s products on the retail market. Therefore MBIE considers these price undercutting figures to be roughly accurate even with anti-dumping duties in place.

174. MBIE concludes that preserved peaches from China are currently undercutting HWL’s preserved peaches, and will continue to undercut if anti-dumping duties expire. However, MBIE preliminarily concludes that this undercutting cannot be attributed to dumping and therefore cannot be addressed by continuing to impose anti-dumping duties.

#### 5.5.4 Price Depression

175. Price depression occurs when prices in a market decrease due to the presence of dumping. It is usually calculated by comparing the price in a market affected by dumping to the price in the same market before the dumping occurred.



	With duties		Without duties	
	2018	2019	2018	2019
<b>Average selling price per kg</b>				
<b>As % of 2014</b>	100%	103%	88%	88%

184. The table above shows that HWL forecasts that if anti-dumping duties remain in place, HWL's average prices will gradually increase by a small amount. However, if anti-dumping duties are allowed to expire, HWL's price will decline in 2018 and 2019 in order to match the price of imports from China; with the 2019 price representing 88 per cent of the 2014 price.

185. However, in light of MBIE's preliminary findings that dumping causing injury is not occurring and is not likely to recur if anti-dumping duties expire, MBIE preliminarily concludes any price depression would be unlikely to be caused by dumping and could not be addressed by continuing to impose anti-dumping duties.

### 5.5.5 Price Suppression

186. Price suppression occurs when firms are unable to increase their prices to account for increasing costs.

187. MBIE generally bases its assessment of price suppression on positive evidence, in particular the extent to which cost increases have not been recovered in prices. Cost increases not able to be recovered by price increases will be reflected in an increased ratio of costs to sales revenue.

188. The following table shows HWL's total costs (cost of goods sold plus selling, administration and general expenses) relative to sales revenue over 2014 to 2017.

**Table 5.9: Costs compared to sales revenue**

	2014	2015	2016	2017
<b>Net sales revenue per kg</b>				
<b>Total costs per kg</b>				
<b>Costs as a % of revenue</b>	%	%	%	

189. The table above shows that over the last three years total costs have fluctuated relative to sales revenue, indicating that there has been no suppression of prices over the 2015 to 2017 period.

190. HWL has provided forecasts for costs and average selling prices if the anti-dumping duties are retained and if they are removed. The following table shows these forecasts.

**Table 5.10: Forecast price suppression (per kg; YE December)**

	With duties		Without duties	
	2018	2019	2018	2019
<b>Net sales revenue</b>	██████████	██████████	██████████	██████████
<b>Total costs</b>	██████████	██████████	██████████	██████████
<b>Costs as a % of revenue</b>	██████████%	██████████%	██████████%	██████████%

191. The table above shows that, on the basis of HWL’s forecasts, there will be no price suppression should the duties remain in place. If the duties expire, however, HWL will experience some suppression in 2018 (mainly occurring in the last quarter of the year) and significant suppression in 2019. HWL claims that the price suppression in 2019 will be a direct consequence of HWL having to ██████████ and having to ██████████, resulting in a lower average price.

192. However, in light of MBIE’s preliminary findings that dumping causing injury is not occurring and is not likely to recur if anti-dumping duties expire, MBIE preliminarily concludes any price suppression would be unlikely to be caused by dumping if anti-dumping duties expire and could not be addressed by continuing to impose anti-dumping duties.

### 5.5.6 Conclusion on price effects

193. There is evidence of current price undercutting in respect of certain types and sizes of preserved peach imports from China although no evidence that HWL’s prices have been depressed or suppressed over the last three years. Moreover, based on MBIE’s preliminary conclusions in Section 4 of this report, any current or future price undercutting cannot be a result of dumping and so cannot be addressed by continuing to impose anti-dumping duties.

## 5.6 Economic Impacts

### 5.6.1 Summary of economic impacts

194. Section 8 (2) (d) of the Act requires MBIE to consider the economic impact of dumped goods on the industry, including:

- a. actual and potential decline in output, sales, market share, profits, productivity, return on investments and utilisation of production capacity
- b. factors affecting domestic prices
- c. the magnitude of the margin of dumping, and
- d. actual and potential effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investments.

195. Consequent upon the likely price and volume effects, if duties expire HWL’s ██████████

while its revenue may decline. HWL says it would need to consider whether its claiming that 2019 would . As a result, HWL's profits and profitability may suffer and HWL may experience adverse impacts on return on investments, cash flow and growth.

196. However, since MBIE has preliminarily concluded that dumping causing injury is not likely to recur if duties expire, any economic effects on HWL caused by price undercutting of preserved peaches from China cannot be attributed to dumping and cannot be addressed using trade remedies.

### 5.6.2 Output

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

198. HWL's output is dependent on the size and quality of the peach crop and its contracts with growers. HWL forecasts a peach crop of tonnes annually but since the availability of raw peaches fluctuates because of weather, disease and other factors, so does HWL's domestic output. Not all peaches HWL sources from its growers are for . Because HWL processes the each year from its contracted growers and sometimes needs to import any shortfall in supply of preserved peaches, its output is unlikely to be affected by the presence of dumped preserved peaches from China, and output is unlikely to be a useful indicator of injury caused by dumped goods.

### 5.6.3 Sales volume and revenue

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

200. The following table shows HWL's historical sales volume and sales revenue of preserved peaches over the period 2014 to 2017. The 2017 figures are based on actual figures to April 2017 and budgeted figures from May to December 2017.

**Table 5.11: Sales volume and revenue**

	2014	2015	2016	2017
<b>Sales volume (tonnes)</b>				
<b>As % of 2014</b>		112%	105%	109%
<b>Sales revenue (\$)</b>				
<b>As % of 2014</b>		114%	110%	108%

201. The table shows that both volume and revenue have increased over the last four years. Volume has increased by nine per cent and revenue by eight per cent in 2017 compared to 2014.

202. HWL has forecast its sales and revenue for 2018 and 2019 with and without duties. Its forecasts if duties remain are based on budgeted figures. Budgeted net sales value (revenue) figures are based on forecast pricing strategy information. The forecasts also include a small increase in net sales value to cover the same increase in costs (as the cost of inflation). If duties expire, HWL has forecast a reduction in the prices of the Oak brand to [REDACTED], with a subsequent reduction to the price of Wattie's to [REDACTED].
203. The table below shows HWL's forecasts for the 2018 and 2019 financial years for sales volume and revenue in the presence and absence of duties.

**Table 5.12: Forecast sales volume and revenue**

	With duties		Without duties	
	2018	2019	2018	2019
<b>Sales volume (tonnes)</b>	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<b>As % of previous year</b>		100%		100%
<b>Sales revenue (\$)</b>	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<b>As % of previous year</b>	100%	103%	88%	100%

204. The table shows HWL claims that its volume will remain the same for 2018 and 2019 with or without duties in place. Revenue however varies between the scenarios, as HWL intends to [REDACTED] (and therefore volume). If duties remain in place, HWL forecasts that its revenue will increase in 2018 by three per cent. Without duties in place, HWL forecasts that its 2018 revenue will decrease 12 per cent from 2017 levels and remain at that level for 2019.

#### 5.6.4 Market Share

205. Analysis of market share must consider changes in the size of the total market. A decline in market share when the total market is expanding will not necessarily indicate that material injury is being caused, particularly if the domestic industry's sales are also growing. MBIE notes that the New Zealand industry is not entitled to any particular market share.
206. HWL's sales have increased slightly in the year ended 30 June 2017. If the duties expire, HWL claims that it is likely that importers will take advantage of the potential for cheaper imports from China. HWL expects that importers sourcing from other markets will shift their supply to China as the new cheapest source, if duties are removed.
207. HWL claims that in the initial investigation in 2005 into the dumping of preserved peaches from China, it was found that the [REDACTED] brand grew to [REDACTED] per cent share in PAK'nSAVE South Island supermarkets over four weeks. HWL submits that a similar increase in market share would recur if the anti-dumping duties are removed.
208. The following table shows market share and changes in market share from 2015 to 2017.

**Table 5.13: Market share, year ended 30 June (tonnes)**

	2015	2016	2017
<b>HWL's sales</b>			
<b>Total imports</b>	3,404	4,670	4,160
<b>NZ market</b>			
<b>As % of NZ market:</b>			
- <b>HWL's sales</b>			
- <b>Total imports</b>			

209. The table above shows that HWL maintained its share of a steady market for preserved peaches over 2015 to 2017.

210. If duties expire, HWL says it would need to maintain its market share by reducing prices in order to maintain volumes and market share. HWL says that it will have to consider the [REDACTED] if duties are removed, with [REDACTED].

211. HWL has maintained a relatively consistent market share. Dumped imports from China have not had a significant impact while anti-dumping duties have been imposed. Over the period 2016 to 2017, HWL's market share remained steady. In the short to medium term, it is unlikely that HWL would lose significant market share if duties expire since its strategy is to compete on price. However, HWL has stated that over the longer term increased competition from dumped imports from China would likely [REDACTED].

### 5.6.5 Profits

212. HWL claims that if the duties expire, a recurrence of dumped imports from China entering the retail market would undercut HWL's prices, causing price depression and possible price suppression. These price effects would cause losses in revenue and a decline in profits.

213. HWL has provided the following forecasts for 2018 and 2019 for both scenarios.

**Table 5.14: Forecast EBIT**

	With duties		Without duties	
	2018	2019	2018	2019
<b>EBIT</b>				
<b>% change on previous year</b>	-34%	3%	-183%	-42%
<b>as % of sales revenue</b>				
<b>EBIT per kg</b>				
<b>% change on previous year</b>	-34%	-32%	-183%	-85%

214. If the duties remain in place for another five years, HWL forecasts that EBIT will fall significantly in 2018 and then rise slightly in 2019 when measured both absolutely and on a per kilogram basis. As a percentage of sales revenue, EBIT is forecast to remain steady at [REDACTED] per cent for both 2018 and 2019.
215. If the duties expire, HWL forecasts that EBIT would decline significantly in all measures, in both 2018 and 2019, with the effects being felt more strongly in 2019. HWL forecasts significant negative effects on its profits, if duties expire, resulting directly from its strategy to [REDACTED].
216. HWL forecasts that by 2019, by which time the full effects of the duty expiry will be felt, current annual profits will turn into [REDACTED] losses as a direct result of having to compete with dumped imports on price. HWL further concludes that if duties expire and there is a resumption of dumped imports from China, it is likely to experience significant declines in EBIT.

### 5.6.6 Productivity

217. Productivity is the relationship between goods produced and the inputs required to manufacture them. Productivity is affected by output and capacity utilisation levels.
218. Productivity is not directly affected by whether anti-dumping duties are in place in the short term. Productivity is mainly driven by the amount of seasonal labour employed when the crop is due for processing. Total labour costs are variable depending on total size of the crop, size of the fruit, yield and factory efficiency in processing.
219. At the verification visit, HWL provided information on productivity. The following table shows these productivity figures in relation to domestic production volume per employee and production volume per hours worked from 2014 to 2017.

**Table 5.15: Productivity**

	2014	2015	2016	2017
<b>Domestic production (tonnes)</b>	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<b>Seasonal staff (FTE) per day</b>	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<b>Permanent staff (FTE) per day</b>	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<b>Total staff (FTE) per day</b>	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<b>Total hours</b>	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<b>Production volume per employee (tonnes)</b>	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<b>Production volume per hours worked (tonnes)</b>	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<b>Average rate per hour (NZD)</b>	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

220. The table shows that production volume *per employee* [REDACTED] between 2014 and 2015, then [REDACTED] in 2016 and fell further in 2017. The [REDACTED] in 2015 was due to a [REDACTED]

Production volume *per hours worked* followed a similar path. MBIE notes that production depends on the total size of the crop, yield and finished tonnage. As this causes production volume to vary, productivity is not a particularly useful measure of injury caused by dumped imports.

221. The figures show that productivity has remained steady when measured by volume per employee and volume per hours worked, showing that there has been no adverse effect on productivity over the year ended 30 June 2017. Productivity is not likely to be affected while HWL continues to process the peach crop, whether duties are removed or whether they remain in place, unless HWL decides to stop processing entirely.

#### 5.6.7 Return on investments

222. Return on investments measures profit against the value of the investment in a business. Changes in the return on investments may impact the ability to retain current investment or attract new investment. Declines in return on investments can result from a decline in profit or an increase in the level of investment within the business.
223. HWL says it is difficult to provide meaningful information on return on investments narrowed to preserved peaches, as HWL's assets are used to produce a number of different fruit and vegetable products. However, HWL claims that the removal of anti-dumping duties would result in [REDACTED] which would cause [REDACTED] meaning a reduction in demand not only for canned peaches products [REDACTED].

#### 5.6.8 Production capacity

224. Utilisation of production capacity reflects changes in the level of production, although in some cases it will arise from an increase or decrease in production capacity. In either case, a decline in the utilisation of production capacity will lead to an increase in the unit cost of production, and a consequential loss of profit.
225. HWL's potential production capacity for preserved peaches is determined by the availability of raw peaches from its growers. HWL has previously advised that its capacity to process peaches is [REDACTED] tonnes per day, giving a total production capacity over two months (its processing season) of [REDACTED] tonnes. Peaches for [REDACTED] are processed first according to [REDACTED], and then the [REDACTED] is used for preserved peaches.
226. The current crop is expected to produce [REDACTED] tonnes of raw peach crop per year, with a recovery rate (rate of converting crop to preserved peaches) of [REDACTED]. Approximately [REDACTED] per cent of this crop is devoted to fruit salad.
227. MBIE's view has previously been that production capacity utilisation is not a useful measure of injury, given its dependence on other factors, including the quantity of raw peaches available, competition for parts of the canning line which are common to other fruit and vegetable products, and the storage life of the raw fruit.
228. HWL noted that growers would be negatively impacted if HWL stops production because they would lose their primary customer, and this may cause many to exit the industry, further limiting supply to HWL in the future.

229. While the Act requires utilisation of production capacity to be considered as an injury factor, MBIE does not consider it to be a useful measure in this case since production is dependent on many factors including the supply of raw peaches.

### **5.6.9 Factors affecting domestic prices**

230. HWL said that its behaviour and that of importers and retailers affect prices in the market, but the main influence is from retailers. Competition between retailers wanting to make profit and gain customers is the main driver of prices. Any lower priced preserved peaches or substitutable preserved fruit has a direct effect on prices.

### **5.6.10 Conclusions relating to economic impacts**

231. In the section above, MBIE has cited the information HWL provided relating to economic impacts. However, in light of MBIE's preliminary conclusion that dumping of preserved peaches from China causing injury to the New Zealand domestic industry is not likely to recur if anti-dumping duties expire, any of the economic impacts above cannot be attributed to dumping of preserved peaches from China and therefore cannot be addressed by the continued imposition of anti-dumping duties on these goods.

## **5.7 Other adverse effects**

### **5.7.1 Cash flow**

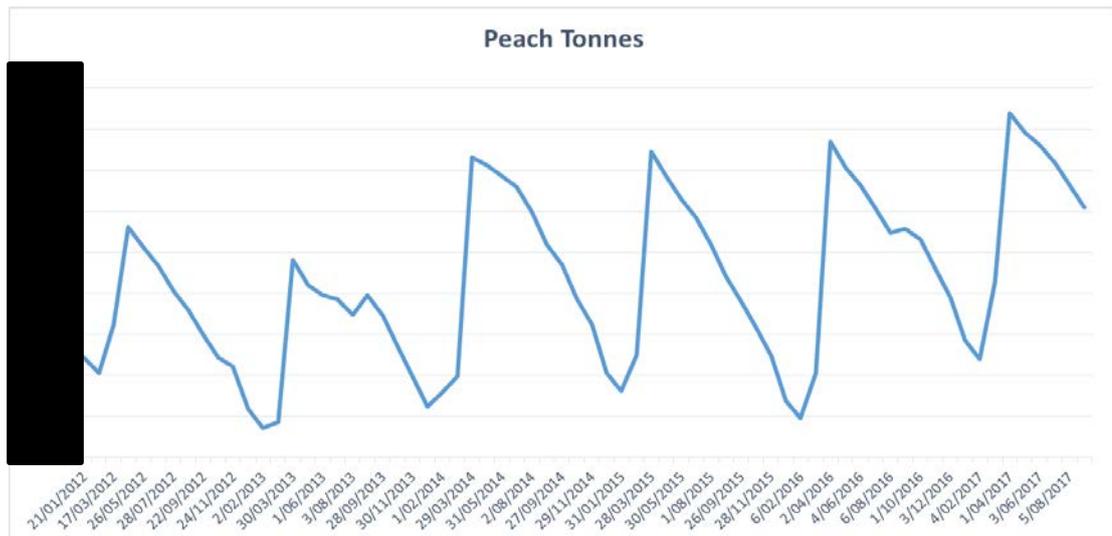
232. HWL says that cash flow continues to be managed at corporate level so cash flow broken down to level of preserved peaches is not meaningful. Furthermore, HWL notes that expenditure and revenue are very uneven given the seasonal nature of preserved peach production.

### **5.7.2 Inventories**

233. Production over a relatively short period once a year means that inventory is at its peak soon after production and then declines as inventory is sold down over the next twelve months. HWL aims to carry about  tonnes of safety stock at the beginning of each production period in case demand outstrips expected sales in the upcoming year.

234. HWL provided a graph (shown below) showing inventories on hand since January 2012, which indicates the seasonal nature of production and inventory levels.

**Table 5.16: HWL Inventory Level, 2012-2017, tonnes**



235. The graph shows the peaks and troughs of HWL's inventory levels throughout the year, with peaks occurring at the end of HWL's processing season.

### 5.7.3 Employment and wages

236. HWL advised that it employs seasonal staff on an as-required basis from [REDACTED], with whom HWL has a contract.
237. HWL calculated the number of full-time permanent seasonal employees that are engaged in the domestic production of preserved peaches for 2015, 2016 and 2017. Total hours worked were divided by the total number of seasonal staff to calculate full time equivalents (FTEs) for these employees. HWL calculated FTEs attributable to canned peaches by allocating the percentage which preserved peach production represents of total production to the total number of employees.
238. The number of staff required is dependent on the volume of peaches processed each year; however, HWL notes that it is relying more on storage to grade and ripen peaches and better management of this to get staff in all at once, running production continuously, rather than stop-starting as it has done in the past.
239. Table 5.15 under Section 5.6.6 above shows both permanent and seasonal staff as FTEs. Total FTEs have raised slightly over the year ended 30 June 2017.
240. HWL provided information on hourly wage rates for staff engaged directly in the production of preserved peaches over the year ended 30 June 2017. Hourly wage rates increased from \$ [REDACTED] per hour in 2014 to \$ [REDACTED] per hour in 2016.
241. HWL has not experienced any adverse effects on employment and wages attributable to dumped imports over the year ended 30 June 2017, considering that anti-dumping duties have been in place. Given that the number of employees and hours worked is dependent on the volume of peaches to be processed, it is not likely that employment and wages will be affected if duties expire. However, there will be an impact if HWL chooses to stop [REDACTED]

#### **5.7.4 Growth**

242. HWL said that it had not experienced any impact caused by dumping on its ability to grow the seasonal business. HWL's peach sales have [REDACTED] since 2006; it was noted in the review of anti-dumping duties on preserved peaches from Spain that this was because the company no longer [REDACTED] but instead focussed on its [REDACTED].
243. HWL has stated that the peach crop is an important part of its business and any significant decline in growth would affect its ability to produce other processed fruit and vegetables and would increase its fixed costs.
244. MBIE considers that any detrimental effects on growth would be reflected in other injury indicators such as sales, profits and return on investment.

#### **5.7.5 Ability to raise capital and investments**

245. HWL confirmed that any proposed capital expenditure has to meet a corporate rate of return before it can be approved. The ability to raise capital is dependent only on whether there is a business case.
246. The extent to which the ability to raise capital would be affected if duties expire is not clear. Any consideration of expenditure would likely include assessment of benefits to other products produced, not just preserved peaches.

#### **5.7.6 Conclusions relating to other adverse impacts**

247. In the section above, MBIE has cited the information HWL provided relating to other adverse impacts. However, in light of MBIE's preliminary conclusion that dumping of preserved peaches from China causing injury to the New Zealand domestic industry is not likely to recur if anti-dumping duties expire, any injury to HWL caused by the economic impacts above cannot be attributed to dumping of preserved peaches from China and therefore cannot be addressed by the continued imposition of anti-dumping duties on these goods.

### **5.8 Causal Link**

248. Sections 8(2)(e) and (f) of the Act provide that MBIE shall have regard to factors other than the dumped goods which may injure the industry, to ensure there is a causal link between any likely recurrence of dumping and likely recurrence of material injury to the domestic industry.
249. MBIE's preliminary conclusions are as follows:
- a. Any current dumping from China cannot be causing injury to the domestic industry due to the presence of anti-dumping duties.
  - b. Even in the absence of the current anti-dumping duties, current dumping from China would be incapable of causing injury to the domestic injury for the reasons outlined in Section 4.

- c. MBIE preliminarily concludes that it is not likely that dumping causing injury will recur if anti-dumping duties expire.
- d. Consequently, any injury alleged to HWL, now or in the foreseeable future, caused by price undercutting cannot be attributed to dumping of preserved peaches from China, and therefore cannot be addressed by the continued imposition of anti-dumping duties on these goods.

250. However, for the same reasons that MBIE conducted an injury analysis, MBIE conducts a preliminary causal link analysis below.

#### **5.8.1 Magnitude of margin of dumping**

251. The magnitude of the margin of dumping can be a useful indicator of the extent to which injury can be attributed to dumping, particularly when it is compared with the level of price undercutting. However, in accordance with MBIE's dumping analysis in Section 4, the dumping margins for preserved peaches from China are currently either non-existent, or very low, at 2.3 and 2.5 per cent of the relevant export price. MBIE preliminarily concludes that preserved peaches from China are not likely to be dumped causing injury if duties expire.

252. In particular, MBIE notes that in light of the significant extent to which some export prices would need to be reduced in order for dumping to recur, it is unlikely that this would eventuate.

#### **5.8.2 Non-dumped imports**

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

254. In Section 5.5.2 above, MBIE analysed imports from significant supplying countries over the year ended 30 June 2017 and undertook a price undercutting analysis by comparing the CIF prices of these imported goods with HWL's 2017 ex-factory price on a per kg basis.

255. This exercise showed that imports from South Africa, Spain and China undercut HWL's price by similar margins. Australian preserved peaches are undercutting HWL's prices but by a much smaller margin. Imports from South Africa and China are respectively the largest and second largest sources by volume and are therefore likely to be causing some injury to HWL, although this injury cannot be attributable to dumping since duties are currently in place.

256. In the absence of anti-dumping duties, it is possible that some exporters would reduce their prices and undercut HWL's prices to a greater extent. However, as the difference between the current export price and normal value is currently substantial, MBIE considers it unlikely that any likely decrease in export price would result in dumping. Therefore, any injury caused cannot be attributed to dumping and therefore cannot be addressed by the continued imposition of anti-dumping duties.

257. HWL says that it has been competing successfully with non-dumped goods for many years, including imports from Australia. Although the presence of Australian preserve peaches in New Zealand has recently decreased, HWL says that these imports are non-injurious. HWL is not aware of any increased competition from other non-dumped sources.



- d. Consequently, any injury alleged to HWL, now or in the foreseeable future, caused by price undercutting cannot be attributed to dumping of preserved peaches from China, and therefore cannot be addressed by the continued imposition of anti-dumping duties on these goods.

## **6. Interim Conclusions**

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265. On the basis of the information available to it at this point in the review, MBIE preliminarily concludes 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 injury to the domestic industry.
266. Therefore, MBIE preliminarily concludes that the continued imposition of anti-dumping duties on preserved peaches from China is not necessary to prevent a recurrence of dumping causing injury to the New Zealand industry, HWL.