



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

**TRADE AND
INTERNATIONAL**

Trade (Anti-dumping and Countervailing Duties) Act 1988

Initiation Report: Application for Anti-Dumping Duties Preserved Peaches from China

MBIE/AD/I/2022/001

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Abbreviations and Acronyms

Term	Meaning
2019 Sunset Review	A sunset review in 2017 of the anti-dumping duty on preserved peaches from China
2019 China Reconsideration	A reconsideration by MBIE in 2019 of the decision in the 2017 sunset review to terminate anti-dumping duty on preserved peaches from China
Act, the	The Trade (Anti-dumping and Countervailing Duties) Act 1988
AD Agreement, the	Agreement on Implementation of Article VI of the GATT 1994, part of WTO Agreement
Customs	New Zealand Customs Service
CNY	Chinese yuan
FY	Financial year
GATT 1994	General Agreement on Tariffs and Trade 1994
Harmonised System or HS	The Harmonised Commodity Description and Coding System of tariff nomenclature, administered by the World Customs Organization
HWL	Heinz Wattie's Limited
kg	Kilogram
MBIE	Ministry of Business, Innovation and Employment
MT	Metric ton (tonne)
NZ	New Zealand
NZD	New Zealand dollar
POI(D)	Period of investigation for dumping
POI(I)	Period of investigation for injury
Stats NZ	Statistics New Zealand
TDI	Trade Data International Pty (Ltd)
USD	United States dollar
VAT	Value Added Tax
VFD	Value For Duty
WTO	World Trade Organization
WTO Agreement	Marrakesh Agreement Establishing the World Trade Organization

1. Context

1.1 Summary

1. The purpose of this report is to:
 - assess an application from Heinz Wattie's Limited (HWL) requesting that the chief executive of the Ministry for Business, Innovation and Employment (MBIE) initiate an investigation, under the Trade (Anti-Dumping and Countervailing Duties) Act 1988 (the Act), into the alleged dumping of preserved peaches from the People's Republic of China (China); and
 - provide a recommendation as to whether to start an investigation.
2. Relevantly, Section 10A(1) of the Act provides that the chief executive must start an investigation when satisfied from the evidence in the application that:
 - There is sufficient evidence to justify investigating whether goods imported or intended to be imported into New Zealand are being dumped; and whether the alleged dumping has caused, is causing, or threatens to cause material injury to New Zealand producers of like goods (the New Zealand industry); and
 - The application is supported by the required proportion of New Zealand producers of like goods.
3. MBIE has examined the evidence provided by HWL in its application and concludes that it satisfies the requirements of section 10A(1) of the Act so an investigation should be started.

1.2 Process

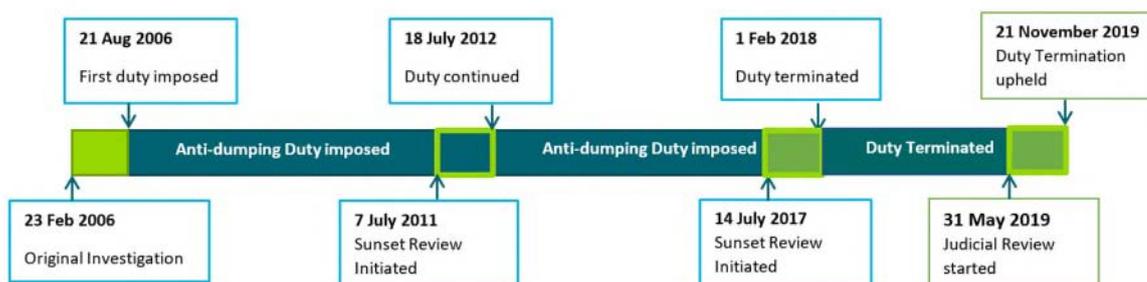
4. On 31 August 2022 HWL submitted an application, pursuant to section 10 of the Act, seeking the initiation of an investigation into the alleged dumping of preserved peaches from China.
5. HWL alleges that preserved peach imports from China are being dumped, causing significant material injury to New Zealand's domestic industry for preserved peaches. HWL seeks the imposition of provisional measures given the alleged magnitude of the material injury.
6. On 28 September 2022 MBIE accepted the application as being properly documented in accordance with the requirements of section 10 of the Act. In coming to this conclusion, MBIE was satisfied that:
 - it had received an application in writing that included evidence of alleged dumping and material injury to the New Zealand industry caused by that alleged dumping as required under section 10(2) of the Act; and
 - the application included as much of the information required by section 10(3) of the Act as was reasonably available to the applicant.
7. MBIE then proceeded to assess the adequacy of the application in justifying the initiation of an investigation as required by section 10A(1) of the Act.

1.3 Previous proceedings

China

8. As depicted on Figure 1 below, an anti-dumping duty on preserved peaches from China was first imposed in 2006. The duty was reviewed in a sunset review in 2011 and continued for a further 5 years, then reviewed in a further sunset review in 2017 (2017 Sunset Review) and terminated in 2018. HWL contested the findings of the 2017 Sunset Review and this led to a reconsideration by MBIE in 2019 (2019 China Reconsideration), which upheld the findings of the 2017 Sunset Review.

Figure 1: Past anti-dumping duties on preserved peaches from China



9. Anti-dumping duties were first imposed on preserved peaches on 21 August 2006. These duties were extended in August 2011, following the conclusion of a first sunset review.
10. In July 2017, MBIE initiated a second sunset review. Duties were terminated in February 2018 on the basis that there was unlikely to be a continuation or recurrence of injury caused by dumping following the removal of duties. HWL challenged this determination through judicial review. Following agreement between the parties, the High Court quashed the determination resulting in a termination of duties and directed MBIE to undertake a reconsideration of the sunset review. In November 2019, following this reconsideration, the anti-dumping duty was again terminated on the basis that the imposition of anti-dumping duties is not necessary to prevent a continuation and recurrence of dumping and a recurrence of material injury attributable to dumping to the New Zealand industry producing the subject goods.
11. Imports of preserved peaches from China are not currently subject to anti-dumping duties in New Zealand, or within the jurisdictions of other World Trade Organisation (WTO) Members.

Other countries

12. Since the mid-1990s, various anti-dumping and countervailing duties have also been applied to canned or preserved peaches from South Africa, Greece and Spain as the result of MBIE investigations initiated after receipt of applications from HWL. Currently, there are anti-dumping duties in place in respect of imports of canned peaches from South Africa and Greece, and of preserved peaches from Spain.

1.4 Legal requirements

Purpose of the Act

13. Section 1A of the Act provides:

The purpose of this Act is to enable New Zealand to apply anti-dumping and countervailing duties in accordance with its obligations as a party to the WTO

Agreement. Anti-dumping and countervailing duties are intended to prevent material injury or the threat of material injury to an industry, or the establishment of an industry being materially retarded, due to dumped or subsidised goods being imported into New Zealand.

14. Because the purpose of the Act is to enable New Zealand to comply with its obligations as a party to the WTO Agreement,¹ MBIE has regard to the WTO Agreement, including the WTO Agreement on the Implementation of Article VI of GATT 1994 (AD Agreement), in interpreting the Act.

Criteria for starting an investigation

15. Section 10A(1) of the Act provides that:

The chief executive must start an investigation if the chief executive is satisfied from the evidence in the application that—

(a) there is sufficient evidence to justify investigating whether—

(i) goods imported or intended to be imported into New Zealand are being dumped or subsidised; and

(ii) the alleged dumping or subsidisation—

(A) has caused, is causing, or threatens to cause material injury to the industry; or

(B) has caused or is causing the establishment of the industry to be materially retarded; and

(b) the collective output of those New Zealand producers who have, in writing, expressed support for the application constitutes—

(i) 25% or more of the total New Zealand production of like goods produced for domestic consumption (as assessed during the most recent representative period of not less than 6 months); and

(ii) more than 50% of the total production of like goods produced for domestic consumption (assessed as referred to in subparagraph (i)) by those New Zealand producers who have, in writing, expressed support for or opposition to the application.

‘Sufficient’ evidence

16. In considering the sufficiency of the evidence provided, MBIE has considered whether the evidence, in its totality, justifies investigating the matters in section 10A(1)(a)(i) and (ii). In undertaking this analysis, MBIE has regard to the requirements set out in Article 5.3 of WTO Agreement on the Implementation of Article VI of the GATT 1994 (AD Agreement):

5.3 The authorities shall examine the accuracy and adequacy of the evidence provided in the application to determine whether there is sufficient evidence to justify the initiation of an investigation.

17. MBIE has also had regard to the requirements of Article 5.2 of the AD Agreement that an application for an anti-dumping investigation “shall include evidence of (a) dumping, (b) injury ... and (c) a causal link between the dumped import and the alleged injury. Simple assertion,

¹ Marrakesh Agreement Establishing the World Trade Organization.

unsubstantiated by relevant evidence, cannot be considered sufficient to meet the requirements of the paragraph.”

18. In MBIE’s view, examining the accuracy and adequacy of the evidence presented in the application in order to assess whether or not it meets the threshold of providing “sufficient evidence” requires an assessment of the quality, quantity and relevance of that evidence, including an assessment of any supporting information in order to ensure that the application is not based on simple assertion, unsubstantiated by relevant evidence.
19. In terms of the information that may be considered in assessing the sufficiency of an application, and the conclusions to be reached, MBIE notes that in *Kerry (New Zealand) Ltd v Taylor*,² Gault J said:

At the initiation stage the decision is made without any necessary investigation but will usually be made on the basis of the complaint. I do not consider that the Comptroller is confined to the complaint. Clearly he would not be acting improperly if he took into account other information already in the possession of the department or information obtained by some preliminary enquiries made before deciding to initiate an investigation.

20. Gault J went on to note that while agreeing that a decision to initiate is essentially administrative:

I consider there is also to be borne in mind the significance to those engaged in the relevant industry and trade of a dumping investigation. Such an investigation, with its international consequences, is not to be embarked on lightly.

I consider that the Comptroller should satisfy himself that there is evidence going beyond mere assertion and of a nature and extent that indicate a likelihood of dumping and material injury, and requiring investigation. The evidence should be scrutinised with due scepticism, bearing in mind the commercial context.

De minimis

21. Section 11(2)(a)(ii) of the Act sets out a *de minimis* margin of dumping that must be met in order to continue an investigation. Where that threshold is not met, the Minister is required to terminate the investigation. In the case of goods other than goods of Singaporean origin, this threshold is reached where the margin of dumping is less than 2 per cent of the export price.
22. Article 5.8 of the AD Agreement requires that authorities shall reject an application and terminate an investigation if they are satisfied that there is not sufficient evidence of dumping or injury to justify proceeding with the case. There shall be immediate termination if the authorities determine that the margin of dumping is *de minimis*, or that the volume of dumped imports is negligible.
23. In determining whether there is sufficient evidence to justify investigating dumping and injury caused by the dumping, MBIE has regard to this threshold. More particularly, MBIE does not consider that sufficient evidence of dumping has been provided where evidence does not *prima facie* show a margin of dumping that meets the threshold.

² *Kerry (New Zealand) Ltd v Taylor* [1988] NZHC 595.

Negligibility requirements

24. Section 11(2)(c) the Act provides, for the purposes of terminating an investigation, evidence of dumping will be insufficient where:
- ...the volume of imports of dumped or subsidised goods, expressed as a percentage of total imports of like goods into New Zealand, is negligible, having regard to New Zealand's obligations as a party to the WTO Agreement.*
25. Section 11(2A) provides that, in the case of goods of non-Singaporean origin, evidence of dumping is negligible where the volume of dumped goods is less than 3 per cent of the total imports of like goods into New Zealand.
26. In determining whether there is sufficient evidence to justify initiating an investigation into whether any dumping is causing injury, MBIE has regard to whether this negligibility threshold has been met. More particularly, MBIE does not consider that sufficient evidence of injury to have been provided where the evidence *prima facie* shows a level of imports that is negligible.

1.5 Report details

27. In this report, unless otherwise stated, financial years (FY) are years ending 30 June and dollar values are New Zealand dollars (NZD). Other currencies used are US dollars (USD) and Chinese Yuan (CNY). In tables, column totals may differ from the sum of individual figures because of rounding.
28. All volumes are expressed on a metric ton (MT) basis unless otherwise stated. The exchange rates used are the New Zealand Customs Service (Customs) exchange rates, or the rate provided by the applicant, or whichever other rate MBIE considers most appropriate in the circumstances, as indicated in the text.
29. On the basis of the information provided by HWL, MBIE's assessment of the application is based on information for the year ending May 2022 for dumping. In any investigation, MBIE's assessment of dumping will cover the year ended June 2022 (POI(D)), which matches the period for the investigation of injury, which is the years ending June 2019-22 (POI(I)). The basis for using this POI(I) is set out in more detail in section 4.2.

2. Subject goods, Like Goods and the New Zealand Industry

2.1 Subject goods

30. The goods that are the subject of HWL's application are preserved peaches from China, described as:

Peaches in preserving liquid, in containers up to and including 5.0kg

31. The subject goods are currently classified under Tariff Item No. 2008.70.09 and Statistical Key 00L in the New Zealand Customs Tariff, defined as "Fruit; peaches, including nectarines, prepared or preserved in ways, not elsewhere classified, in heading number 2007 and 2008, whether or not containing added sugar, other sweetening matter or spirit".

32. The tariff classification is provided for convenience and Customs purposes only, the written description being dispositive.

2.2 Import data

Application

33. HWL has identified China as the source of the subject goods and has provided import data from data from the Infoshare database of Statistics New Zealand (Stats NZ) and from Trade Data International Pty (Ltd) (TDI). In its application HWL noted that data from both these sources included goods that are not covered by the subject goods description (e.g. nectarines). Figure 2 sets out import data for all countries supplying preserved peaches with the percentage share of the volume of imports.

Figure 2: Imports under Tariff Item 2008.70.09.00 Year End May 2022 (Infoshare)

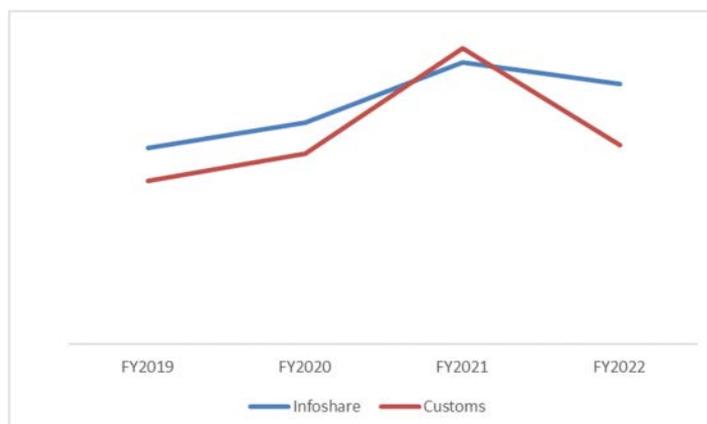
Country	Quantity (KG)	Cost including insurance and freight	Value for duty (VFD)	Percentage share of imports
Australia	660	1,570	1,334	0.02%
China	1,379,729.00	3,260,190	2,853,272	41.56%
Fiji	102	230	227	0.00%
France	232	2,204	1,969	0.01%
Greece	85,113	181,519	130,331	2.56%
Italy	4,830	16,935	9,005	0.15%
Japan	20	496	447	0.00%
Korea	2,072	6,708	6,069	0.06%
New Zealand	1,328	25,616	24,725	0.04%
North Macedonia	596	3,635	3,409	0.02%
South Africa	1,799,494	3,987,462	3,793,323	54.21%
Spain	35,198	85,276	68,048	1.06%
Taiwan	9,805	68,357	60,022	0.30%
United Kingdom	41	731	680	0.00%
United States	361	1,574	1,376	0.01%
Total	3,319,581	7,642,503	6,954,237	100.00%

34. HWL also provided data on historical imports:
- The TDI data provided by HWL (Appendix 10.3 of the application) covered Chinese exports under tariff items 20087090 and 20087010 of peaches, including nectarines, in airtight containers. The information covered exports of subject goods to New Zealand and the rest of the world from January 2016 until May 2022. The data provided information on the volume and value of Chinese exports and the destination of the exports on a monthly and annual basis at the HS 6-digit level.
 - The Infoshare data provided by HWL (Appendix 10.2 of the application) covered New Zealand's imports of preserved peaches under tariff item 20087009000 for the period starting January 2016 until May 2022. This data provided information on a monthly basis on the volume and value of imports.
35. The use of Stats NZ and TDI data raises a number of issues affecting the accuracy and adequacy of the data, and hence its sufficiency as evidence. These are:
- The inclusion of non-subject goods for data from both sources as there are other products such as nectarines imported under this tariff item.
 - The completeness of the data from TDI, noting that this data reflects exports from China (rather than imports to New Zealand) which may give rise to discrepancies.
36. The data from both sources was aggregated at the tariff heading levels which made it impossible for HWL to separately identify subject goods from non-subject goods. For this reason, as described below, MBIE has undertaken its own analysis of data available to it in order to test whether there is sufficient evidence of dumping

Customs data

37. In order to check the sufficiency of the evidence, MBIE has used data from Customs to check the accuracy and adequacy of the information provided by HWL regarding import volumes. In particular, in order to assess negligibility, MBIE has examined data obtained confidentially from Customs covering the tariff item under which the subject goods are imported. This data is available at the import entry line level, covers a wide range of data fields and identifies individual transactions including the parties to them, which is essential information for undertaking an effective investigation. On this basis, MBIE established actual import volumes and values for the subject goods.

Figure 3: China import volumes as share of total imports - %
[In order to respect information provided on a Commercial-in-Confidence basis, Y-axis values and gridlines have been deleted]



38. MBIE has compared Customs data for the subject goods with data provided by HWL based on TDI and Infoshare import data. This comparison, illustrated by Figure 3 above, shows that the data provided by HWL over-estimated the share of imports of subject goods from China over the period shown but accurately identified China as the second largest exporter of preserved peaches to New Zealand.
39. MBIE's analysis of Customs data helped identify that the subject goods were imported in different types of packaging such as cans, glass [jars] and plastic [pottles], and that a significant volume of these imports were canned.
40. The import data provided by HWL is information that is available to the applicant regarding imports from China, and is the basis for its claims that imports of the subject goods are dumped and are causing injury to the domestic market.

Negligibility

41. The Infoshare data provided by HWL indicates that for the tariff item as a whole (i.e. including non-subject goods) imports from China are not negligible. This is confirmed by MBIE's analysis of Customs data as it relates to imports of subject goods. MBIE concludes that imports of the subject goods from China during FY2022 were not negligible.

2.3 Like goods and New Zealand industry

42. MBIE must assess whether the application is made with a specified level of support from the New Zealand industry producing like goods to the subject goods (per section 10A(1)(b) of the Act).
43. Section 3A of the Act provides that the term 'industry' (referred to in this report as the New Zealand industry), in relation to any goods, means –
 - (a) *the New Zealand producers of like goods; or*
 - (b) *such New Zealand producers of like goods whose collective output constitutes a major proportion of the New Zealand production of like goods.*
44. Section 3(1) of the Act provides that 'like goods', in relation to any goods, means—
 - (a) *other goods that are like those goods in all respects; or*
 - (b) *in the absence of goods referred to in paragraph (a), goods which have characteristics closely resembling those goods.*

Application

45. The application identifies the applicant as HWL, which is a subsidiary of the Kraft Heinz Company, USA. HWL is the only producer of preserved peaches in New Zealand, which it markets under the brand names Wattie's and Oak.
46. In its application HWL states that it produces a range of styles of preserved peaches (halves, slices and pieces), packed in various media (such as syrup, fruit juice and lite) in various can sizes, as part of its product range.
47. In support of its claim that it produces like goods to the subject goods, HWL made the following submissions:

- Physical characteristics: HWL produces preserved peaches in the form of halves, slices or pieces, packed in cans with a preserving liquid. It states that these preserved peaches are very similar, if not identical, to the subject goods imported from China.
 - Functions and Usage: HWL produces preserved peaches for retail and food service sale in New Zealand. It states that these have the same function and application as the subject goods, i.e., for consumption from a retail purchase or consumed through a hospitality channel.
 - Pricing: HWL claims that its preserved peaches compete at the same price point as the imported subject goods. HWL states that this level of trade is HWL's wholesale price versus the imported ex-wharf cost of the subject goods as has been established in previous investigations.
 - Marketing: HWL considered that the distribution channels (retail and foodservice), customers and means of advertising for the subject goods are similar to those for its preserved peaches.
 - Other: HWL noted that its preserved peaches, if imported into New Zealand, would be classified under the same tariff item, No. 2008.70.09 and Statistical Key 00L, as the subject goods.
48. HWL submits that it produces goods that have characteristics which closely resemble the subject goods and are like goods to the subject goods.
49. HWL advised that there are no other producers of preserved peaches in New Zealand.

MBIE's assessment

50. On the basis of the information provided, MBIE considers HWL produces like goods to the subject goods and makes up the New Zealand industry producing like goods. Consequently, the application meets the requirements of section 10A(1)(b) of the Act regarding the level of support for the application from New Zealand producers of like goods.
51. MBIE notes that in relation to pricing as a factor in considering the likeness of goods, the relevance of prices is not limited to the comparison point used in the assessment of dumping or injury. Rather, it will generally reflect the pricing point for the goods as sold to the ultimate customers.
52. While not relevant to the decision to initiate an investigation, MBIE notes that its analysis of import data identified that preserved peaches from China enter under a range of different types of packaging, potentially with different pricing points and customers. This may have implications for the investigation of both dumping and injury.

3. Evidence of Dumping

3.1 Introduction

53. MBIE is required to consider whether HWL's application contains sufficient evidence to justify starting an investigation, including whether the subject goods are being dumped (section 10A(1)(b)(i) of the Act).
54. The basis for considering the sufficiency of the evidence provided is set out in section 1.4 above. With regard to the evidence of dumping, MBIE has examined the accuracy and adequacy of the evidence. In particular, in order to ensure that the application is not based on simple assertion, unsubstantiated by relevant evidence, MBIE has examined the supporting evidence provided in the application for export prices and normal values and whether that evidence does, in fact, support the values established.
55. Section 3(1) of the Act provides that dumping, in relation to goods, means the situation where the export price of goods imported into New Zealand or intended to be imported into New Zealand is less than the normal value of the goods as determined in accordance with the provisions of the Act, and dumped has a corresponding meaning.

3.2 Evidence of dumping

56. The application provided information in relation to dumping relating to the period from 1 June 2021 to 31 May 2022.
57. The evidence submitted by HWL consisted of the following information:
- Import data from InfoShare.
 - TDI data on China's exports of preserved peaches covering the period from January 2016 until May 2022.
 - Chinese retail prices from online stores.
 - New Zealand retail prices from Information Resource Inc. (IRI) Data.
 - New Zealand Industry data i.e., HWL's own production, costs and export data.
58. In the absence of publicly available information disaggregated to the product level to allow for the use of data specific to the subject goods, HWL has used information reasonably available to it to estimate export prices and normal values.

3.3 Export prices

59. Section 4 of the Act sets out how export price is to be determined for the purposes of the Act. In summary, section 4 provides that the export price shall be the price paid by the importer other than any additional costs, charges and expenses incurred in preparing the goods for shipment to New Zealand, and any other costs, charges and expenses arising after the shipment. The determination also differs depending on whether or not the purchase of the goods by the importer was an arm's length transaction, and whether or not the purchaser is known.

Application

60. HWL used Infoshare data for values (NZD) and volumes (kg) of imports from China for the period starting June 2021 until May 2022 to calculate an export price for the subject goods. It

used exchange rates from www.x-rates.com for the year ending May 2022 to convert the Value For Duty (VFD) from NZD to CNY.

61. In HWL's calculation of the export price, adjustments were made to account for freight costs based on available industry data. HWL noted that this estimate was based on a distance that is likely to be shorter than the transit distance to the Chinese ports which leads to an underestimation of the amount adjusted for freight, and therefore a slight over-estimation of the export price.
62. The ex-factory export price for China, estimated by HWL on the basis outlined above, was 9.05 CNY/kg.
63. In its application HWL also calculated the export prices for Chinese exports to the rest of the world, using TDI data, and estimated this at 8.21 CNY/kg. HWL further analysed export prices for markets of various sizes and claimed that markets with export volumes of 100-300t, approximately the same size as the New Zealand market, had the lowest export prices.
64. HWL recalled its argument from its applications in the original China 2006 investigation and a 2011 Spain anti-dumping investigation, in which stated that it only takes a relatively small volume of exports to cause injury to the domestic industry. It also highlighted that for this application material injury is being caused by all the exports to New Zealand from China and is not by any specific brand of canned peaches in a particular retailer and region of New Zealand. It also claimed that its analysis of China's sales to other markets shows that there is a threat to HWL in that the dumping margin could be greater than that applicable to current exports to New Zealand.

MBIE's assessment

65. In order to check the sufficiency of the evidence, MBIE has assessed the accuracy and adequacy of the evidence used by HWL to calculate export prices. This included assessing the base information used to estimate the export price and the estimated adjustments made to this base price.
66. MBIE agrees that the freight rates used may not accurately reflect the actual rates due to the distance estimated by HWL being shorter than the actual distance from the factory to the port in China. This difference over-estimates the export price but MBIE considers that it will not have a significant effect on the resulting dumping margins, for the purpose of assessing whether or not there is sufficient evidence to justify an investigation.
67. MBIE notes that the values HWL used to obtain base prices aggregate the values of products with different packaging and other characteristics that normally would have different export prices. However, MBIE accepts that the calculations presented by HWL accurately reflect the information available to HWL, and represent the best information available to HWL for calculating the weighted average export price for subject goods imported from China.
68. HWL made adjustments to the base prices only for inland freight, using actual costs derived from its knowledge of the New Zealand market, but information that may shed light on other adjustments was not provided. MBIE considers that by its nature such information may not have been reasonably available to HWL.
69. MBIE notes that HWL also provided an alternative estimated export price for subject goods from China, based on exports to other countries. The estimation of exports to third countries can be used in calculating an export price if there are no or very low volumes of exports to New Zealand. This is typically done in a review, where there is an existing duty on imports

from the source country that discourages exports to the domestic market. In such circumstances the investigating authority will be seeking to estimate the export price for the purpose of reviewing the existing duty. The information provided by HWL on this point is not relevant or required for the purposes of any investigation that may be initiated in response to the current application, as there are significant volumes of the subject goods currently being imported from China. For this reason, this information has been disregarded for the purpose of MBIE's consideration of whether or not the criteria in section 10A of the Act have been met.

70. Taking into consideration the discussion in section 2.2 above, MBIE used Customs data to check the claims made by HWL. Customs data provides a more accurate indication than the information provided by HWL of average values of imports of subject goods from China, which form the base prices of imports over the year to May 2022.
71. MBIE calculated a weighted average export price of 8.77 CNY/kg using Customs data and compared the resulting export price with the information provided by HWL. The average export price for China established by MBIE based on corrected data but using HWL's framework, is slightly lower than the level estimated by HWL.
72. MBIE is satisfied that the weighted average export price estimated by HWL is based on the information provided in the application.

3.4 Normal values

73. Section 5 of the Act sets out how normal values are to be determined for the purpose of the Act. In summary, section 5(1) provides that the normal value shall be the price paid for like goods sold in the ordinary course of trade for home consumption in the country of export in sales that are arm's length transactions by the exporter or, if like goods are not so sold by the exporter, by other sellers of like goods. If the chief executive is satisfied that normal values cannot be determined under section 5(1) for reasons outlined in section 5(2), then section 5(2) provides for normal values to be based on constructed values or on prices to third countries.

Application

74. HWL has provided some evidence of prices in China in the form of prices for subject goods available from online retailers in China. These prices were for canned peach halves of drained sizes (weight) ranging from 200g to 3kg with an average price of 21.09 CNY/kg. Information on these products was obtained from two online retailers and covered seven brands.
75. In the application HWL calculated the normal value in two ways, with one approach not including distributor margins, while the other reflected the distribution chain identified by MBIE in the 2019 China Reconsideration.
76. Using the first approach, HWL made adjustments for retailer's margin and freight to customer. The adjustments for the retailer's margin and freight to customer were made on the basis of information from the New Zealand market. HWL considered the adjustment for VAT of 13% a nil deduction as HWL understood there to be an export rebate on VAT. Using this approach HWL obtained a normal value of 17.79 CNY/kg.
77. Using the second approach, HWL made adjustments for retailer margin, distributor margin, and freight charges. The basis for the distributor margin used by HWL was obtained from the 2019 China Reconsideration where the distributor supply chain model was analysed, and an appropriate estimate of this margin was established. For the reasons noted above, HWL did not deduct VAT from the retail price. Using this approach HWL obtained a normal value of 11.13 CNY/kg.

MBIE's assessment

78. MBIE can accept evidence of online retail prices as base prices for the calculation of normal value, but notes that the use of only two online retailers by HWL provides a limited basis for assessment. At this point MBIE does not have any evidence indicating the extent to which these two sources are representative of domestic prices in China. However, MBIE has accepted that it is information available to the applicant for the purposes of estimating a normal value.
79. MBIE considers that HWL's treatment of VAT in calculating the normal values was not correct since the retail price in the domestic market includes the VAT, and any adjustment for exemption of export sales from VAT is to be applied at a different point in the calculation of dumping margins. The result of HWL's approach is an overestimated normal value for both approaches presented in the application.
80. MBIE notes that the first approach used by HWL to calculate normal value was labelled as a 'notional' normal value in the application. MBIE notes that a notional or constructed normal value would normally be used in the absence of actual prices for the subject goods in the exporting country. In this case the normal value estimated by HWL is based on an actual prices in the exporting country that were obtained from online retail stores.
81. MBIE considers that the second approach used by HWL to calculate normal value is more realistic and reflective of the costs incurred by business during the ordinary course of trade by including the adjustment for the distribution margins established in previous proceedings.
82. MBIE undertook an analysis using information provided by HWL for its second approach, but deducted the cost of VAT of 13 per cent. MBIE considers that this is necessary to establish the VAT exclusive base price, and ensures that the normal value and export price are properly comparable, in that neither include VAT. MBIE found a normal value of 9.85 CNY/kg which is lower than that estimated by HWL.
83. MBIE also noted that the normal value provided by HWL is based only on canned peaches and does not include the domestic market prices of subject goods in other types of packaging. MBIE also notes that the subject goods sold on the domestic market used in this calculation were canned peach halves of drained sizes (weight) ranging from 200g to 3kg. While not relevant to a decision to initiate an investigation, in any investigation MBIE would need to examine the extent to which these differences affect the comparability of subject goods to the like goods and the adjustments that would be required to ensure a fair comparison.

3.5 Dumping margins

84. The dumping margins calculated on the basis of the application and on the basis of the values identified by MBIE following its examination of the accuracy and adequacy, and hence the sufficiency, of the information provided in the application, are shown below.

	Dumping Margins	
	HWL Application	MBIE Examination
Normal value CNY/kg	11.13	9.85
Export price CNY/kg	9.05	8.77
Margin CNY/kg	2.08	1.07
Margin % of export price	23%	12%

85. On the basis of the evidence provided by HWL above on the export price and the normal value, HWL found a dumping margin of 23% for subject goods
86. MBIE considers Customs data to be a better indicator of export prices to New Zealand for the subject goods and with the corrections indicated by MBIE's assessment of the evidence of normal values, the analysis does support HWL's claim that the goods are dumped.
87. MBIE's assessment of the margins after reviewing the accuracy and adequacy, and hence the sufficiency, of the information provided, found a dumping margin of 12% when all subject goods are considered. This takes into account the fact that the export price was calculated from base prices that included all subject goods and the normal value was calculated from base prices that reflected the prices of canned peaches only from a limited number of online retail stores.

***De minimis* assessment**

88. As explained in section 2.2 of this report, section 11 of the Act reflects Article 5.8 of the AD Agreement which requires that authorities shall reject an application and terminate an investigation if they are satisfied that there is not sufficient evidence of dumping or injury to justify proceeding with the case.
89. The dumping margins assessed by MBIE are in excess of the *de minimis* levels set out in the Act.

3.6 Conclusions on evidence of dumping

90. In considering the requirements of section 10A(1)(a)(i) of the Act MBIE is satisfied that there is evidence of dumping of imports of the subject goods from China.

4. Evidence of Material Injury Caused by Dumping

4.1 Legal requirements

91. MBIE is required to consider whether HWL's application contains sufficient evidence to justify investigating whether dumping of the subject goods has caused or is causing material injury to the New Zealand industry (section 10A(1)(a)(ii) of the Act).

92. Section 8 of the Act defines 'material injury'. Section 8(1) sets out the test for material injury, stating:

In determining for the purposes of this Act whether or not any material injury to an industry has been or is being caused or is threatened...by means of the dumping...of goods imported or intended to be imported into New Zealand from another country, the chief executive shall examine—

(a) the volume of imports of the dumped or subsidised goods; and

(b) the effect of the dumped or subsidised goods on prices in New Zealand for like goods; and

(c) the consequent impact of the dumped or subsidised goods on the relevant New Zealand industry.

93. Section 8(2) sets out a number of specific factors the chief executive is required to consider in applying the section 8(1) test, without limiting the generality of section 8(1) or other matters that may be considered:

(a) 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:

(b) 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:

(c) the extent to which the effect of the dumped...goods is or is likely significantly to depress prices for like goods of New Zealand producers or significantly to prevent price increases for those goods that otherwise would have been likely to have occurred:

(d) the economic impact of the dumped...goods on the industry, including—

(i) actual and potential decline in output, sales, market share, profits, productivity, return on investments, and utilisation of production capacity; and

(ii) factors affecting domestic prices; and

(iii) the magnitude of the margin of dumping; and

(iv) actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investments:

(e) factors other than the dumped...goods that have injured, or are injuring, the industry, including—

(i) the volume and prices of goods that are not sold at dumped prices or that are not subsidised; and

(ii) contraction in demand or changes in the patterns of consumption; and

(iii) restrictive trade practices of, and competition between, overseas and New Zealand producers; and

(iv) developments in technology; and

- (v) *the export performance and productivity of the New Zealand producers:*
- (f) *the nature and extent of importations of dumped...goods by New Zealand producers of like goods, including the value, quantity, frequency, and purpose of any such importations.*

94. The material injury analysis is normally assessed by comparing data for an injury factor against data in a period unaffected by dumping (a coincidence analysis). This approach takes account of the clear wording in section 8(2)(d) of the Act (economic impact of the dumped goods on the industry) which refers to “actual and potential decline” in a series of factors, but also considers the trend experienced over the period for the factors concerned, and is not simply a binary comparison of the beginning and end points of the period investigated. In considering the extent of the effect of dumped imports in contributing to an “actual or potential decline,” the analysis can also be undertaken on the basis of the position that the industry would have been in but for the dumping, requiring inferences to be drawn as to the counterfactual situation.
95. In undertaking a counterfactual analysis of injury, an investigating authority would assess the claims relating to the level of prices or profits or other factor that would otherwise have been achieved, and seek to identify and quantify the extent to which the effects attributable to the dumped goods have had an economic impact on the industry in the areas identified in the Act. In undertaking this assessment MBIE needs to consider the influence of factors other than the dumped goods in preventing expectations from being achieved, as well as the level of dumping established. The assumptions derived as reasonable inferences from a credible basis of facts need to be identified and explained.
96. The evidence provided in HWL’s application is assessed below against each of factors set out above in order to reach an overall conclusion as to whether there is evidence that there is material injury being caused to the New Zealand industry by the alleged dumping.

4.2 Application

97. MBIE notes that HWL’s application has been structured similarly to previous applications that have sought the initiation of sunset reviews on goods subject to anti-dumping duties. The present application is for a new investigation where no duties are currently in place on the subject goods. The application is made on the basis that New Zealand’s preserved peach industry is suffering current injury as a result of alleged dumping. In addition to evidence of current injury, however, the application includes projections of performance indicators for FY2023 and FY2024 based on scenarios of whether or not dumping is taking place at that time.
98. In assessing an application requesting the initiation of an anti-dumping investigation on the basis of current injury, MBIE is required to determine whether there is sufficient evidence of current injury, which in this case is based on a POI(I) of FY2019 to FY2022. MBIE does not understand HWL to be making an application regarding a threat of injury. An application relating to injury being threatened in the near future is predicated on the assumption that while there may be no current injury there is a threat that injury will be caused if anti-dumping duties are not imposed.
99. HWL also made claims regarding the extent to which injury in FY2022 would be less but for the alleged dumping. In an anti-dumping investigation based on current injury, MBIE may undertake a counterfactual analysis to determine the existence and extent of current injury by considering the position that the domestic industry would have been in but for the alleged dumping. In undertaking such a counterfactual analysis, MBIE is required to assess the

applicant’s claims about the level of performance that the domestic industry would have achieved, with reference to specific factors such as prices or profits, had the alleged dumping not taken place. In undertaking such an assessment, MBIE needs to consider the influence of factors other than the dumped goods in preventing expectations from being achieved, as well as the level of dumping established.

100. MBIE’s assessment of the evidence provided by HWL in its application relating to injury has not taken account of the projections provided by HWL for years beyond FY2022, since MBIE is seeking to establish whether there is sufficient evidence of current injury. MBIE’s evaluation of the effect of the alleged dumping on the relevant injury factors is based first on an assessment of whether there is an actual decline or other impact on those factors, and secondly, if necessary, whether the analysis should consider the position but for the dumping, i.e. a counterfactual approach, as it relates to the period FY2019-FY2022.

4.3 Import volume effects

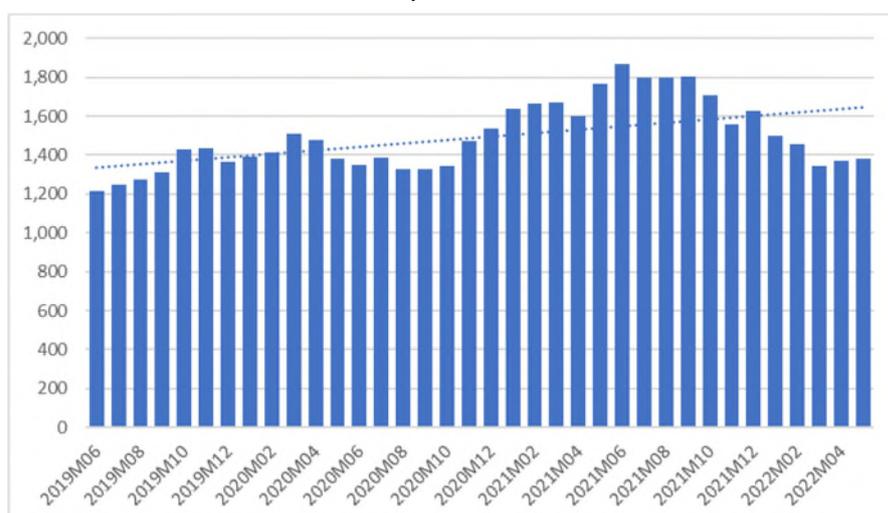
101. Section 8(2)(a) of the Act provides that the chief executive shall have regard to:

(a) 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.

Application

102. In Table 18 of its application, HWL states that there has been an increase in imports of the subject goods from China since the removal of duties following the 2019 China Reconsideration of anti-dumping duties on preserved peaches from China. HWL draws on import data from Infoshare and TDI to support its position, comparing import volumes from China to import volumes from other countries. MBIE notes that this data, collected under Tariff Item 2008.70.09.00, includes goods that are not covered by the subject goods description (for example, nectarines, and preserved peaches in containers outside the subject goods description).
103. Figure 4 below is derived from the Infoshare data provided by HWL and shows 12-month rolling totals of import volumes from China, for all goods (not just subject goods). A trend line has been added.

**Figure 4: Imports from China, Rolling annual totals 2019-2022
MT, Infoshare**

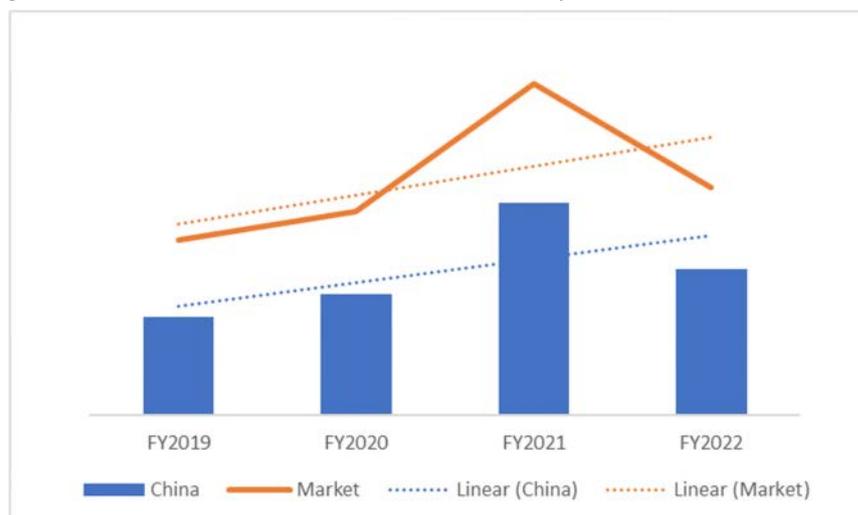


MBIE's assessment

104. In evaluating HWL's evidence, MBIE has compared trends present in HWL's evidence to trends present in Customs data. MBIE's analysis was of imports of subject goods only, and while there are some differences in the values, the overall trend is similar. The evidence indicates that over the period FY2019-FY2022 imports from China have fluctuated but the overall trend is an increase.
105. In order to assess whether imports from China have increased relative to production or consumption in New Zealand, MBIE has used Customs data for imports of subject goods from China and other countries, and the sales data provided by HWL, to establish the size of the market. As shown on Figure 5 below, which has trend lines added, imports of subject goods from China increased over the period in absolute terms, and relative to consumption in New Zealand.

Figure 5: Increased imports from China, in absolute and relative terms, subject goods, Customs data

[In order to respect information provided on a Commercial-in-Confidence basis, axis values and gridlines have been deleted, and the X axis may not cross the Y axis at 0.]



106. This evidence shows that while there have been some fluctuations over the period, imports from China have increased in absolute terms and relative to the New Zealand market.

Conclusions relating to import volumes

107. MBIE is satisfied that there is evidence to show that imports of the subject goods from China have increased in absolute and relative terms.

4.4 Price effects

108. Sections 8(2)(b) and (c) of the Act provide that the chief executive shall have regard to the extent to which 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, and the extent to which the effect of the dumped goods is or is likely significantly to depress prices for like goods of New Zealand producers or significantly to prevent price increases for those goods that otherwise would have been likely to have occurred (price suppression).

4.4.1 Price undercutting

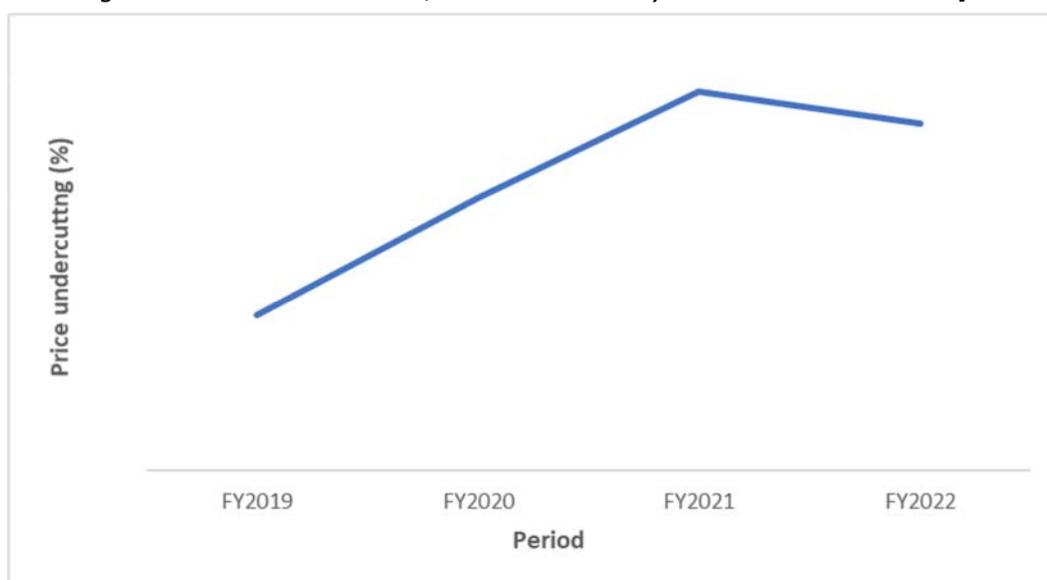
109. Price undercutting refers to the extent to which the prices of the subject goods are lower than prices in New Zealand for like goods of New Zealand producers.
110. Prices are compared at the point that the imported goods first compete with the goods made in New Zealand, generally at the ex-wharf level. Price undercutting is not in itself a determinant of the existence or extent of injury.
111. The extent to which price undercutting by dumped imports must occur before it should be considered significant is assessed on a case-by-case basis taking into account the degree of undercutting and the volume of imports where price undercutting has occurred relative to total dumped imports, as well as the timing and frequency of price undercutting.

Application

112. To calculate the level of price undercutting, HWL has compared the import price of the subject goods with the price of like goods produced in New Zealand. HWL undertook this comparison at an ex-warehouse (for like goods) to ex-wharf (for imports) level. The ex-warehouse price was calculated as HWL's net sales value per tonne for the Oak and Wattie's brands respectively. The ex-wharf import price was calculated as the average sales values, including insurance and freight, of Infoshare data for imports from China.
113. The evidence provided by HWL indicates that price undercutting has continued across both the Oak and Wattie's brand since 2017. As shown in Figure 6 below, year-on-year analysis shows increases from FY 2019 to FY2021. Price undercutting decreased slightly in FY2022, but still remained above FY2019 levels.

Figure 6: Price undercutting – all brands (HWL evidence)
Undercutting margin as % of HWL price

[In order to respect information provided on a Commercial-in-Confidence basis, axis values and gridlines have been deleted, and the X axis may not cross the Y axis at 0.]



MBIE's assessment

114. MBIE has undertaken its own price undercutting calculations using Customs data for the subject goods and has compared the outcome with HWL's price undercutting levels for all goods.

115. Like HWL, MBIE undertook this comparison at an ex-warehouse (for like goods) to ex-wharf (for subject goods) level. The ex-warehouse price was calculated as HWL's net sales value per tonne for the Oak and Wattie's brands respectively, using HWL's internal data. The ex-wharf import price was calculated based on Customs import data for subject goods at the ex-wharf level -- transaction data in currency of transaction is converted to NZD using the average Customs exchange rate for the date of import period plus insurance, freight, and any Customs duty then added to the total.
116. MBIE's calculations, which related to the POI(I), yielded slightly higher levels of price undercutting than the levels identified by HWL, across the Oak and Wattie's brands. The significantly higher level of undercutting for the Wattie's brand compared with the Oak brand reflects the premium enjoyed by the Wattie's brand.
117. In considering the extent to which dumping may be contributing to the price undercutting, MBIE notes that its assessment of the dumping margin and the price undercutting margin for the Oak brand in FY2022 are very similar, indicating the likelihood of a causal linkage.
118. MBIE considers that HWL has provided evidence to show the existence of price undercutting attributable to the alleged dumping.

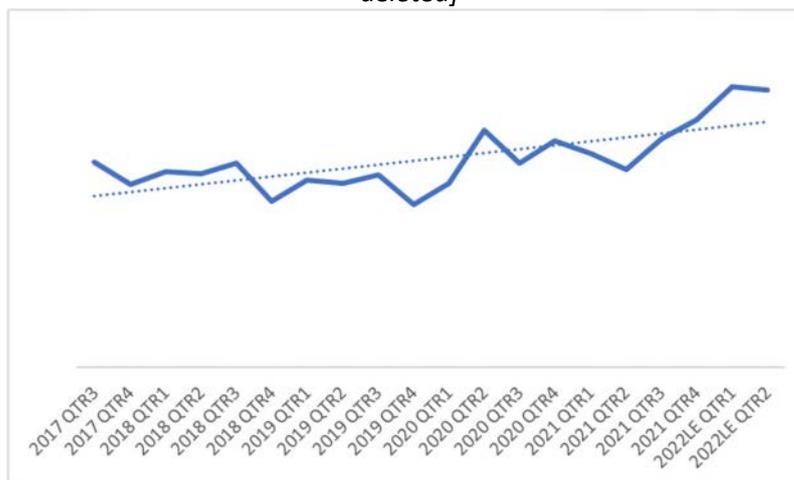
4.4.2 Price depression

119. Price depression occurs where prices achieved by the New Zealand manufacturers are lower than those achieved in a period unaffected by allegedly dumped goods. MBIE does not have any quantitative guidelines about the extent to which price depression must occur before it should be considered significant.
120. Where the evidence indicates that the price at the end of the period is lower than prices at previous points, even if there has been an increase in the interim, this may still allow a finding that there has been price depression compared with the period prior to the commencement of the dumping. Where the evidence indicates no price depression, for example where there is no declining trend in prices, then it would be difficult to attribute price depression to any cause, including dumped goods.

Application

121. In its application, HWL states that it has experienced price depression due to the level of price undercutting in the New Zealand market. It notes that it has increased the price of like goods across both its brands to offset increases in input costs, but has not been able to increase prices as much as it would have otherwise been able to in order to offset these cost increases.
122. HWL also raises the importance of ensuring that its premium brand, Wattie's is priced at a level that does not create such a price differential between the two brands that consumers resist paying the Wattie's price. HWL asserts that prices for the Wattie's brand have been forced downwards due to the entry of allegedly dumped imports into the New Zealand market causing a loss of volume and market share.
123. HWL has provided quarterly net sales values for FY2018-FY2022. As shown in Figure 7 below, to which a trend line has been added, this data shows that there has been an increase in actual net sales value (per kilogram) in the POI(I).

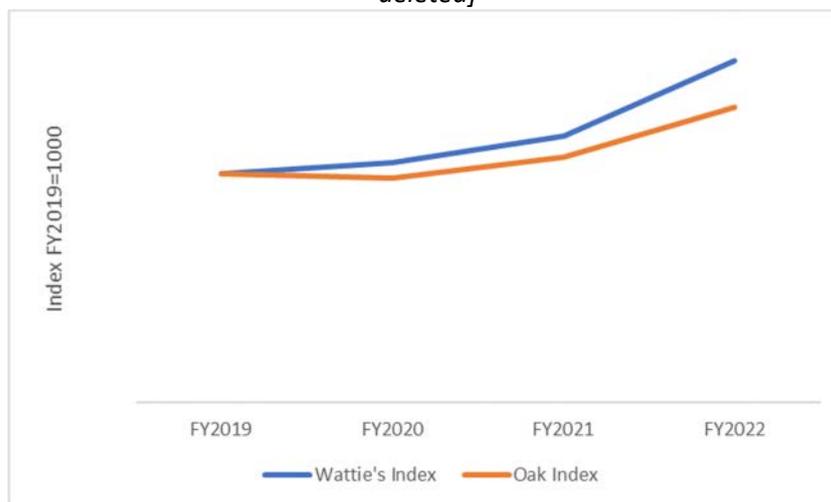
Figure 7: Price depression: Net sales value per kg (HWL evidence)
[To protect Commercial-in-Confidence information Y-axis values and grid lines have been deleted]



MBIE’s assessment

124. As depicted on Figure 8 below, MBIE’s analysis of the evidence for Oak and Wattie’s brand prices, confirms that there has been no price depression for the period FY2019-2022. Figure 8 below shows indexed movements for Wattie’s and Oak brands prices over the POI(I), which confirms that prices increased over the period for both brands.

Figure 8: Price depression: FY2019-FY2022, indexed FY2019=1000
[To protect Commercial-in-Confidence information Y-axis values and grid lines have been deleted]



125. Since there is no current price depression, the use of data showing the price that might have been achieved in the absence of dumping would simply accentuate the lack of any price depression.

126. MBIE considers that HWL has not provided evidence of price depression attributable to the alleged dumping.

4.4.3 Price suppression

127. Price suppression occurs when New Zealand producers are unable to increase prices, for example, to recover cost increases. The approach to considering price suppression takes into account the pricing policies of the New Zealand industry and other relevant information. The

measure of price suppression can take into account the extent to which cost increases which otherwise would be reflected in prices, have not taken place. Price increases may be in response to increases in costs, or changes in supply or demand of a product. Cost increases that are not able to be recovered by price increases will be reflected in an increased ratio of costs to sales revenue.

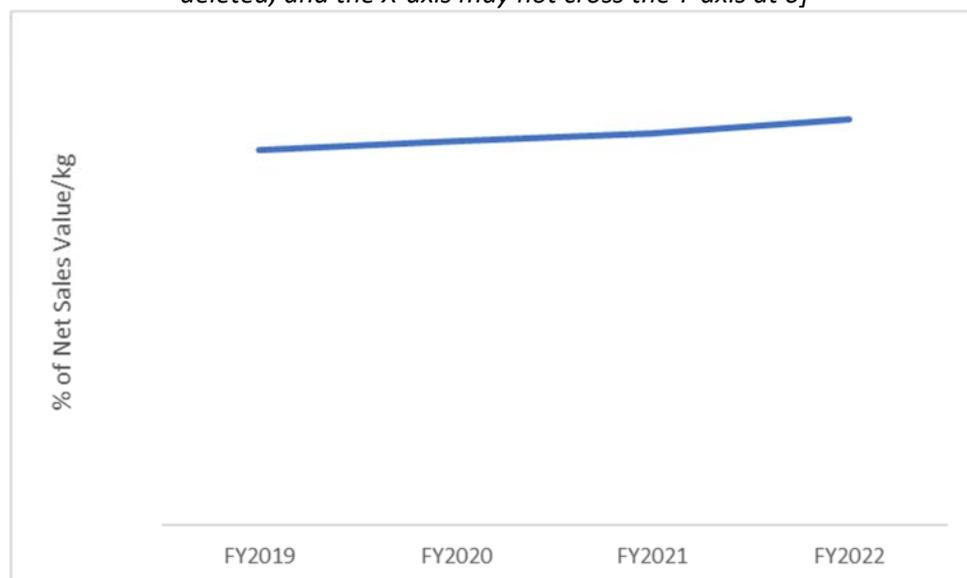
Application

128. HWL states that it has experienced price suppression as it has been unable to offset the difference in price undercutting by means of cost savings and price increases elsewhere. HWL has provided supporting evidence through data on its financial performance between FY2018 and FY2022, in situations with and without the alleged dumping, for the Oak and Wattie's brands.

MBIE's assessment

129. As shown in Figure 9 below, HWL saw a slight increase in manufacturing and selling costs (excluding distribution) relative to net sales value across both its brands through the POI(I).

Figure 9: Manufacturing and selling costs as a percentage of net sales value
[To protect Commercial-in-Confidence information, Y-axis values and grid lines have been deleted, and the X-axis may not cross the Y-axis at 0]



130. The information shows that costs increased slightly as a percentage of sales value over the POI(I).
131. Since there is current actual price suppression, the use of data showing the prices that might have been achieved in the absence of dumping would simply confirm that there is actual price suppression, and could also be taken as evidence that dumping has contributed to price suppression.
132. MBIE considers that HWL has provided evidence of price suppression attributable to the alleged dumping of subject goods.

Conclusions relating to price effects

133. MBIE is satisfied that on the basis of the information reasonably available to HWL:
- HWL has provided evidence to show the existence of price undercutting attributable to the alleged dumping of the subject goods.

- HWL has not provided evidence of price depression attributable to the alleged dumping of the subject goods.
- HWL has provided evidence of price suppression attributable to the alleged dumping of subject goods.

4.5 Economic impact of dumping

134. Section 8(2)(d) of the Act provides that the chief executive shall have regard to the economic impact of the dumped goods on the industry, including—

- (i) *actual and potential decline in output, sales, market share, profits, productivity, return on investments, and utilisation of production capacity; and*
- (ii) *factors affecting domestic prices; and*
- (iii) *the magnitude of the margin of dumping; and*
- (iv) *actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investments*

4.5.1 Actual and potential decline in performance indicators

Application

135. HWL does not comment on the effects of the alleged dumping of subject goods on its output levels.
136. HWL states that alleged dumping of the subject goods has resulted in an:
- Actual decline in market share.
 - Actual decline in sales.
 - Actual and potential decline in profits.
137. With regards to market share, as set out in Table 15 of its application, HWL states that it has suffered an overall loss of market share since mid-2020 due to the removal of anti-dumping duties on preserved peaches from China as a result of the 2019 China Reconsideration.
138. HWL states that the loss of sales revenue is directly attributable to HWL's loss of market share and to price undercutting leading to price depression. HWL sets out a summary of its loss of sales revenue in Table 18 of its application.
139. HWL states that a decline in sales revenue directly results in a decline in profits, and sets out a summary of its loss of profits in Table 19 of its application.
140. HWL states that the alleged dumping does not have an injurious effect on its productivity, on the basis that it sources all of the peach raw material available for processing in Hawkes Bay and converts this into canned preserved peaches. HWL gave advice on its contractual arrangements with peach growers.
141. HWL states that the decline in its profits has a negative impact on HWL's return on investment. However, as with previous proceedings, HWL notes that it is too difficult to provide meaningful data due to the significant number of shared resources with other products. An example would be the labelling production lines which are used across all canned products.

142. HWL also states that the alleged dumping does not have an injurious effect on its production capacity, on the basis that its production capacity is constrained by the crop its contracted orchardists can deliver.

MBIE’s assessment

143. In its assessment of the application, MBIE has considered the evidence provided to it on the factors and indices set out in section 8(2)(d)(i) of the Act.

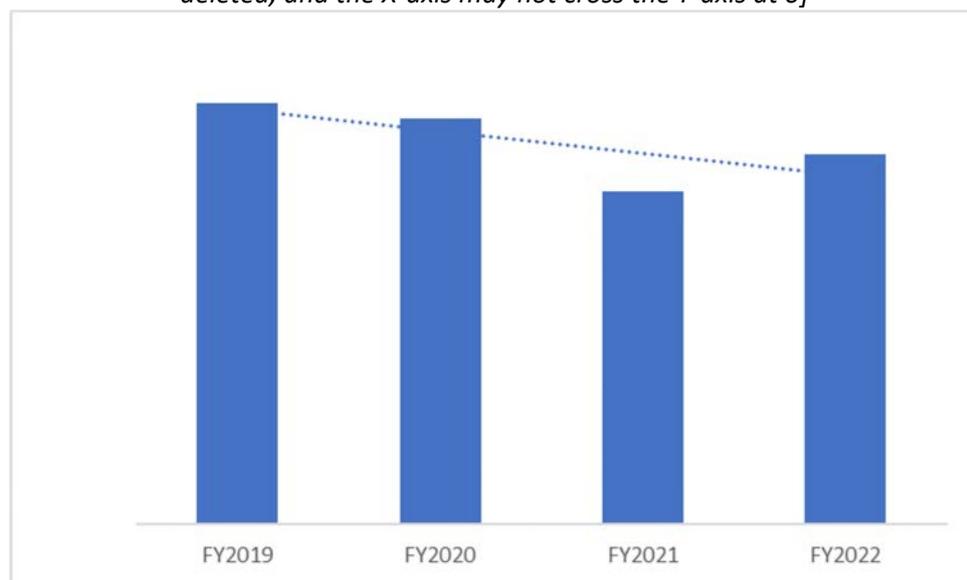
Output

144. As reflected in Figure 10 below, HWL’s data shows a slight decline in total output for the Oak and Wattie’s brands in between FY2020 and FY2021. This is followed by an increase in total output across both brands between FY2021 and FY2022. The 2021/2022 recovery in output levels is still below output levels during FY2019, at which point anti-dumping duties were still in place on imports of the subject goods from China.

145. MBIE notes that the decline in output in FY2021 coincided with an increase in imports of the subject goods from China in that year.

Figure 10: Change in actual output – MT

[To protect Commercial-in-Confidence information, Y-axis values and grid lines have been deleted, and the X-axis may not cross the Y-axis at 0]



146. MBIE is satisfied that there is evidence of an actual decline in HWL’s output.

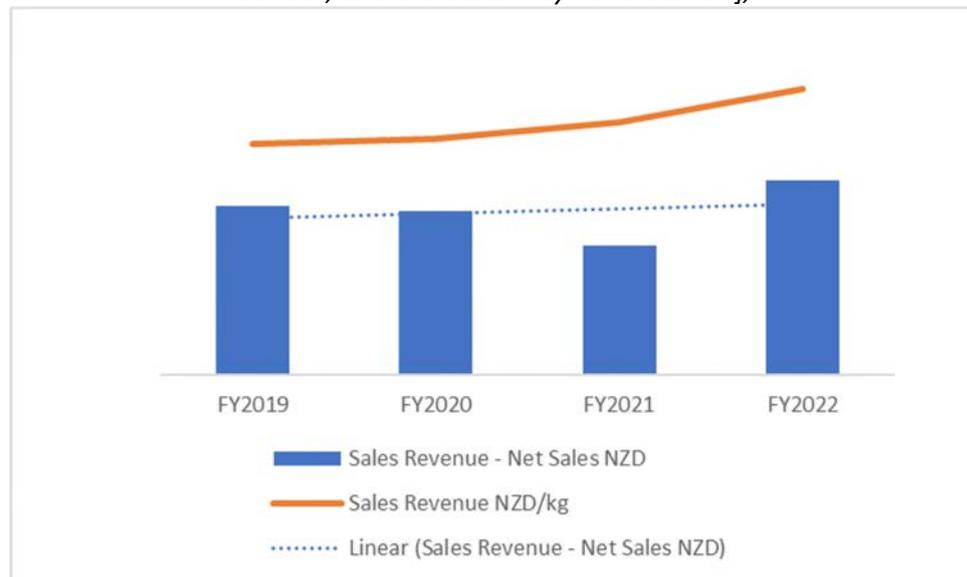
147. Since there is an actual decline in output, the use of data showing the potential output level that might have been achieved in the absence of dumping would not change the conclusion MBIE has reached on the evidence provided to it.

Sales revenue

148. HWL’s evidence shows that there was an actual decline in sales revenue of Wattie’s brand products between FY2020 and FY2021. This was followed by an increase between FY2021 and FY2022 to levels higher than were observed in FY2019, at which time anti-dumping duties were still in place on imports of the subject goods from China. Sales of Oak brand products, however, increased slightly between FY2020 and FY2021, and levelled off between FY2021 and FY2022. As with Wattie’s products, sales of Oak products between FY2021 and FY2022 were observed at higher levels than in FY2019.

149. Figure 11 below confirms that for combined sales of Wattie’s and Oak brands, the overall effect is a small increase, although the per unit sales value has increased to a greater extent.

Figure 11: Sales Revenue: Total net sales (NZD) and unit net sales (NZD/kg)
{To protect commercial-in-confidence information, Y-axis values and gridlines have been deleted, and the X-axis may not cross at 0},



150. Given the recovery in sales revenue of all HWL brands between FY2021 and FY 2022 to levels higher than those observed in FY2019, MBIE considers that there is no evidence of an actual decline in sales revenue over the POI(I).

151. Since there is no actual decline in sales revenue over the POI(I), the use of data showing the potential sales revenue levels that might have been achieved in the absence of dumping would not change the conclusion MBIE has reached, in that level of sales revenue in FY2022 but for the alleged dumping could have been even higher.

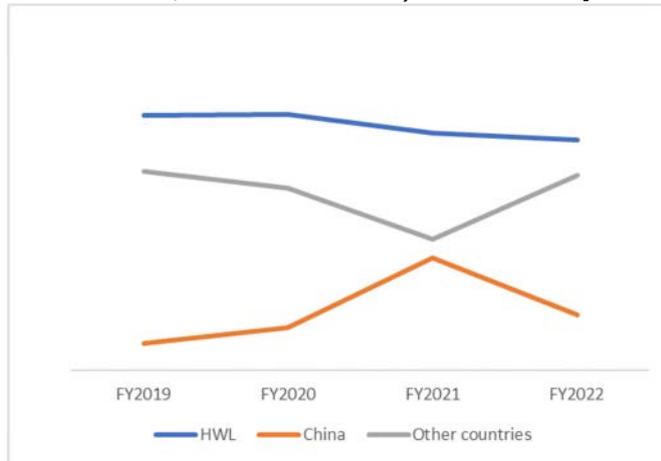
152. MBIE considers that the application does not contain evidence that the alleged dumping has contributed to an actual or potential decline in sales revenue for the like goods.

Market share

153. MBIE has reviewed the evidence available on market share, using Customs data for imports of subject goods from China and other countries.

Figure 12: Market Share - %

[To protect commercial-in-confidence information the Y-axis values and gridlines have been deleted, and the X-axis may not cross at 0]



154. As shown by Figure 12 above, HWL’s market share declined over the POI(I), with the decline in FY2021 coinciding with an increase in imports from China and a decrease in imports from other countries. However, the continuing decline in HWL’s market share in FY2022 appears to reflect the significant increase in the share of other countries rather than that of China.
155. The evidence examined suggests that HWL has experienced some decline in its market share. While it is not clear that this decline can be fully attributed to increases in imports of subject goods from China, there is a degree of coincidence which leads MBIE to consider that there is evidence that HWL’s loss of market share could in part be attributed to the alleged dumping.

Profits

156. HWL’s evidence shows a decline in profits across all brands between FY2019 and FY2020. This is followed by an increase in profits over FY2021 and FY2022, to a point that is still below the profits generated in FY2019 (when anti-dumping duties were still in place on imports of the subject goods from China).

Figure 13: Actual Profits

[To protect commercial-in-confidence information the Y-axis values and gridlines have been deleted, and the X-axis may not cross at 0]



157. MBIE is satisfied that HWL's application contains evidence that there has been an actual decline in profits. In light of the conclusion reached regarding price undercutting and output, MBIE considers that there is evidence that the decline in profit can be attributed to the alleged dumping of subject goods from China.

Other factors and indices

158. HWL notes that with regard to **productivity**, imports of preserved peaches from China are not having an injurious effect on HWL's productivity. This reflects the fact that HWL sources all available peach raw material for processing into preserved peaches.
159. MBIE notes that with regard to **return on investments**, HWL has pointed out that it has invested in new equipment on the basis that existing trade remedies provide a level playing field. HWL has also stated that its ability to make such investments is affected by the levels of profit it can achieve, but has not provided any supporting information.
160. MBIE notes that HWL has advised that its **production capacity** is constrained by the crop its contracted orchardists can deliver.
161. With regard to these other factors and indices, MBIE notes that HWL has not provided any specific evidence of injury attributable to dumping.

4.5.2 Factors affecting domestic prices

Application

162. HWL has not taken a position with regards to the impact of factors affecting domestic prices.

MBIE's assessment

163. MBIE notes that no evidence has been provided with regards to this factor.

4.5.3 Magnitude of the margin of dumping

Application

164. HWL has not taken a position with regards to the impact of the magnitude of the margin of alleged dumping on injury to the domestic industry.

MBIE's assessment

165. MBIE notes that no evidence has been provided with regards to this factor.

4.5.4 Other actual and potential negative effects

Application

166. HWL's application did not address the impacts of the alleged dumping on **cash flows**. HWL noted that it was agreed in previous investigations cash flow is not a good indicator of injury due to the shared resources common to both canned preserved peaches and other products HWL manufactures.
167. HWL states that the alleged dumping has had an adverse effect on **inventory**. It notes that its loss of market share has resulted in higher-than-normal inventories. The information included in HWL's application, shows the movements in inventory levels. HWL claims that, with the loss of market share, inventory levels have been higher than they would have been if market share

had been maintained, and that this indicates the market share it lost could have been supplied.

168. HWL notes that the alleged dumping of subject goods from China is not having an adverse effect on **employment and wages** due to that fact that HWL sources the entire peach crop and converts all of this to canned preserved peaches.
169. HWL advises that in terms of its **ability to raise capital and investments**, it has invested significant capital in 2022 due to its favourable view of the industry moving forward. Continued investment will be underpinned by the removal of injurious effects of dumped imports.

MBIE's assessment

170. In its assessment of the application, MBIE must address all of the factors and indices set out in section 8(2)(d)(iv) of the Act, but its overall conclusion will only take account of those matters on which evidence has been provided.

Cash flow

171. MBIE notes that no evidence has been provided with regard to this factor.

Inventories

172. MBIE does not consider that HWL has provided evidence to support its claim that the alleged dumping has had an adverse effect on HWL's inventories. HWL's inventory data shows increases in inventories at the points to be expected in processing a seasonal crop, followed by reductions in inventories during the former half of the following period. While the degree of increases and decreases varies, this pattern has remained consistent between FY2019, when anti-dumping duties were in place on subject goods from China, and the following periods. This suggests that the inventory variances observed may be the result of HWL's production and purchasing patterns, rather than due to the effects of alleged dumping.

Employment and wages

173. MBIE notes that no evidence has been provided with regard to this factor.

Ability to raise capital and investments

174. MBIE notes that no evidence has been provided with regard to this factor.

4.5.5 Factors other than dumping that cause injury

175. Section 8(2)(e) of the Act provides that the chief executive shall have regard to factors other than the dumped goods that have injured, or are injuring, the industry, including—
- (i) *The volume and prices of goods that are not sold at dumped prices or that are not subsidised*
 - (ii) *Contraction in demand or changes in the patterns of consumption*
 - (iii) *Restrictive trade practices of, and competition between, overseas and New Zealand producers*
 - (iv) *Developments in technology*
 - (v) *The export performance and productivity of the New Zealand producers*

Application

176. In its application, HWL states that it is not aware of any goods not being sold at dumped prices, nor of any contractions in demand or changes in consumption patterns, nor of restrictive trade practices of, and competition between, overseas and NZ producers nor of any developments in technology relevant to the consideration of material injury, noting that its method of processing peaches is very similar to that of other processors.
177. HWL also notes that it only exports a small volume of the peaches that it produces, therefore its export performance and productivity have a negligible effect.

MBIE's assessment

178. In its assessment of the application, MBIE must address all of the factors and indices set out in section 8(2)(e) of the Act.

Non-dumped imports

179. This factor requires an assessment of the extent to which prices of imports from other sources might be affecting HWL. MBIE has analysed the evidence of the weighted average landed prices for imports from the main supplying countries, with anti-dumping duties included where relevant. This analysis suggests that, compared with the undercutting levels established for imports of subject goods from China, there is less undercutting by imports from the main supplier, South Africa (which include anti-dumping duties where applicable), but more undercutting by the smaller volumes of imports from Greece.
180. MBIE is satisfied that based on this evidence, any injury caused by imports of the subject goods from other countries, is not being attributed to the allegedly dumped imports from China.

Changes in demand or patterns of consumption

181. MBIE has no evidence of injury to the New Zealand industry arising from changes in demand or in patterns of consumption.

Restrictive trade practices and competition

182. MBIE has no evidence of any injury to the New Zealand industry arising from restrictive trade practices or competition issues.

Developments in technology

183. MBIE has no evidence of any injury to the New Zealand industry arising from developments in technology that could be injuring the New Zealand industry.

Export performance and productivity

184. MBIE has confirmed from Stats NZ data that HWL exports only negligible amounts of the preserved peaches that it produces, and therefore that these exports are unlikely to have a significant effect on the performance and productivity of HWL's peach production arm as a whole.

Conclusions relating to other factors

185. MBIE considers that on the basis of the evidence reviewed, any injury to the New Zealand industry caused by factors other than the alleged dumping has not been attributed to the alleged dumping of imports of subject goods from China.

4.5.6 Imports of dumped goods by the New Zealand industry

186. Section 8(2)(f) of the Act provides that the chief executive shall have regard to the nature and extent of importations of dumped goods by New Zealand producers of like goods, including the value, quantity, frequency, and purpose of any such importations.

Application

187. In its application, HWL states that it is compelled to import preserved peaches in times of short supply, noting that it endeavours to source New Zealand grown fruit for its preserved peach operation. HWL states that the sale of its preserved peach imports, which are labelled the same way and sold at the same price as the New Zealand products, protects the market share, shelf space and consumer goodwill for New Zealand preserved peaches in a time of shortage and does not cause injury to HWL.

MBIE's assessment

188. MBIE has used Customs data to confirm that HWL has not imported the subject goods from China during FY2022.

4.5.7 Other matters

189. In addition to matters set out in section 8(2) of the Act, the chief executive must also consider the existence of any additional factors relevant to the application of the section 8(1) test for material injury. This includes ensuring that sufficient evidence has been provided showing that the material injury to the New Zealand industry is caused by dumping (causal link).

Application

190. HWL refers to comments it made in relation to the impacts of COVID-19 on its operations during the 2021 Review of Anti-Dumping Duties on Preserved Peaches from Spain, noting that these were relevant to the present application. In particular, HWL referred to comments it made that were recorded in paragraphs 411 – 415 in the Review's Stage 1 Final Report. Of particular relevance is its commentary on a short-term increase in demand in 2020, due to panic buying prior to the COVID-19 nationwide lockdown in New Zealand in late March/early April, followed by market fluctuations driven by further regional lockdowns and resulting shopping behaviour and international shipping issues. HWL noted that this can lead to out of stock situations for imported goods, driving the demand for locally produced fruit.

MBIE's assessment

191. MBIE is satisfied that the effects of COVID-19 are not being attributed to dumping of the subject goods from China.

4.6 Conclusion on evidence of material injury

192. In considering the requirements of section 10A(1)(a)(ii) of the Act MBIE has reviewed the evidence of whether alleged dumping of imports of the subject goods from China is causing material injury to the New Zealand industry, and concludes that:

- Imports of the subject goods from China have increased in absolute and relative terms.
- With regard to price effects:

- There is evidence of price undercutting attributable to the alleged dumping of the subject goods.
- There is no evidence of the existence of price depression attributable to the alleged dumping of the subject goods.
- There is evidence of price suppression attributable to the alleged dumping of subject goods.
- In relation to the economic impact of dumped goods there is evidence to indicate that:
 - The alleged dumping has contributed to an actual decline in HWL's output.
 - The alleged dumping has not contributed to an actual or potential decline in sales revenue for the like goods.
 - HWL's loss of market share could in part be attributed to the alleged dumping.
 - The decline in profit can be attributed to the alleged dumping of subject goods from China.
- Any injury to the New Zealand industry caused by factors other than the alleged dumping has not been attributed to the alleged dumping of imports of subject goods from China.
- There is no evidence that any injury attributable to imports by the New Zealand industry has been attributed to the dumped goods.
- The effects of COVID-19 are not being attributed to dumping of the subject goods from China.

5. Conclusions

5.1 Sufficiency of evidence

193. MBIE's overall conclusion is that on the basis of the information provided in the application, and in accordance with section 10A(1)(a) of the Act, there is sufficient evidence to justify investigating whether goods imported into New Zealand are being dumped, and whether the alleged dumping is causing material injury to the New Zealand industry.

5.2 Support from New Zealand producers

194. Section 10A(1)(b) provides that the chief executive must start an investigation if the chief executive is satisfied from the evidence in the application that—

(b) the collective output of those New Zealand producers who have, in writing, expressed support for the application constitutes—

(i) 25% or more of the total New Zealand production of like goods produced for domestic consumption (as assessed during the most recent representative period of not less than 6 months); and

(ii) more than 50% of the total production of like goods produced for domestic consumption (assessed as referred to in subparagraph (i)) by those New Zealand producers who have, in writing, expressed support for or opposition to the application.

195. HWL is the only New Zealand producer of preserved peaches.

196. MBIE accepts that HWL, as the only New Zealand producer of preserved peaches, constitutes the New Zealand industry for the purposes of this application and that the request industry support for the application exists.

6. Recommendations

198. Based on the statutory requirements for starting an investigation, MBIE recommends that you, as the Manager of MBIE's Trade and International Team of MBIE, acting under delegated authority from the Chief Executive:

Confirm that you are satisfied that from the evidence in HWL's application there is sufficient evidence to justify investigating whether imports of preserved peaches from China are being dumped, and the alleged dumping has caused or is causing material injury to the New Zealand industry

Agree/Disagree

Confirm that you are satisfied that from the evidence in HWL's application that the thresholds for support of an application in section 10A(1)(b) of the Act have been met, given HWL is the sole New Zealand producer of like good to the subject goods

Agree/Disagree

Agree that an investigation should therefore be started.

Agree/Disagree

Sign the attached Gazette notice announcing the start of the investigation.

Signed

Note that as required section 10B(2) of the Act, MBIE will give notice of the decision to start investigation step 1 to notified parties.

Noted

Trade Remedies Group
29 November 2022

Matthew Molloy
Manager, Trade and International

29 November 2022