



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

LABOUR, SCIENCE AND ENTERPRISE
Trade and International



Preserved Peaches from China - Reconsideration of Sunset Review

Final Report

Dumping and Countervailing Duties Act 1988

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Non-confidential

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Abbreviations

The following abbreviations are used in this Report:

Act (the)	Dumping and Countervailing Duties Act 1988
AD Agreement (the)	WTO Agreement on Implementation of Article VI of the GATT 1994
AUD	Australian dollars
CIF	Cost, Insurance and Freight
COGS	Cost of goods sold
EBIT	Earnings Before Interest and Tax
EDI	Electronic data interchange
FOB	Free on Board
FTE	Full time equivalent
GOC	the Government of China
HWL	Heinz Wattie's Ltd
MBIE	Ministry of Business, Innovation and Employment
MT	Metric ton/tonne
NIFOB	Non-injurious Free on Board
NZCS	New Zealand Customs Service
NZD	New Zealand dollar
POR(D)	Period of Review for Dumping – 1 January 2018 to 31 December 2018
POR(I)	Period of Review for Injury – 1 January 2015 to 31 December 2018
RMB	Chinese Renminbi
RFI	Request for Information
Secretary	Chief Executive of Ministry of Business, Innovation and Employment
USD	United States dollars
VAT	Value Added Tax
VFD	Value for Duty
WTO	World Trade Organization

EXECUTIVE SUMMARY

This Final Report summarises MBIE's reconsideration of a sunset review as the basis for recommendations to the Minister.

MBIE undertook a sunset review in 2017 of the continued need for the imposition of anti-dumping duties on preserved peaches from China, concluding that duties were not warranted. The Minister terminated the duties.

HWL challenged MBIE's conclusion and the Minister's decision through judicial review.

MBIE and HWL agreed to seek directions from the High Court, which quashed the Minister's decision, and directed MBIE to reconsider its sunset review.

MBIE consulted with HWL and the GOC on the proposed approach to the reconsideration. Both parties agreed with the proposal.

The purpose of the reconsideration is to establish whether the absence of anti-dumping duties is likely to lead to a continuation or recurrence of dumping, and whether such dumping is likely to cause a

This **Final Report** summarises the reconsideration by the Ministry of Business, Innovation and Employment (MBIE) of a sunset review and provides the basis for MBIE's recommendations to the Minister of Commerce and Consumer Affairs (the Minister).

In 2017 MBIE undertook a **sunset review** (2017 Review) of the continued need for imposition of anti-dumping duties on preserved peaches from China, following an application by Heinz Wattie's Ltd (HWL).

In February 2018, MBIE completed its sunset review, resulting in the Minister terminating the anti-dumping duties with effect from 17 July 2017, based on the finding that there was not likely to be a continuation or recurrence of injury caused by dumping following the removal of duties.

HWL challenged, through **judicial review** in the High Court of New Zealand:

- MBIE's conclusion that the anti-dumping duties should be terminated, on grounds of unreasonableness, error of law, irrelevant consideration and breach of legitimate expectation.
- The Minister's decision to terminate the anti-dumping duties imposed on preserved peaches from China, on grounds that it was made in reliance on recommendations tainted by errors of law and unreasonableness, on the basis of inadequate advice and in the absence of an essential fact.

MBIE and HWL conferred on the issues and agreed to seek directions from the High Court which subsequently issued a **Court Order** which:

- quashed the Minister's decision to terminate the anti-dumping duty
- directed MBIE to reconsider the sunset review, under the Dumping and Countervailing Duties Act 1988 (the Act) as it stood at the time of the review and on terms that consider past, present and future conduct in the import of the relevant products
- directed that any anti-dumping duty is only to be restored once a decision justifying such duty is made and then only prospectively from the date of such decision.

Following the High Court's ruling, MBIE developed a **proposed approach** to undertaking the reconsideration, and consulted on this proposal with HWL and the Government of China (GOC). MBIE proposed, in light of the Court order:

- to reconsider whether the absence of anti-dumping duties is likely to lead to a continuation or recurrence of dumping;
- to reconsider whether such dumping is likely to cause a continuation or recurrence of material injury to the New Zealand industry;
- that the period of reconsideration for dumping (POR(D)) would be 1 January 2018 to 31 December 2018, and the period of reconsideration for injury (POR(I)) would be 1 January 2015 to 31

continuation or recurrence of material injury to the New Zealand industry.

The reconsideration was initiated on 31 May 2019.

Anti-dumping duties were originally imposed on 21 August 2006.

The subject goods are peaches in preserving liquid, in containers up to and including 4.0 kg.

Heinz Wattie's Ltd is the New Zealand industry producing preserved peaches.

MBIE has addressed the requirement to consider past, present and future conduct in the information used.

MBIE has established export prices and normal values for preserved peaches, and made a fair comparison between them.

MBIE's judgement of the likelihood of events occurring in the foreseeable future is based on the circumstances of the case.

December 2018;

- to set out the reconsideration of these matters in two reports: an Interim Report and a Final Report; and
- that duties would not apply during the reconsideration, and would only be restored prospectively if and when a decision applying the duty is made. If the duties are restored, they may be applied at a reassessed rate to take account of changes in circumstances since the duties were last calculated.

HWL and the GOC agreed with the proposed approach.

The **reconsideration** was initiated, on 31 May 2019, with notice of the initiation published in the Gazette. The 180-day period for the expected completion of the reconsideration ends on 27 November 2019.

The anti-dumping duties under review have been in place since 21 August 2006. Subsequent sunset reviews took place in 2011 and 2017, the latter being the subject of this reconsideration.

The **goods under review** are described as:

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

The 2017 Review was initiated following an application by HWL, the sole New Zealand producer of preserved peaches, and the **New Zealand industry** for the purposes of the review.

MBIE has relied on **information** from the 2017 Review, and consistent with the High Court's direction to "consider past, present and future conduct in the import of the products", MBIE has sought additional information from interested parties for the POR(D), as well as using information from earlier proceedings.

MBIE has also used information from its own research.

MBIE's investigation of **dumping** has used information provided by a Chinese producer and exporter and New Zealand importers to establish export prices and normal values for preserved peaches from Chinese exporters, and to identify any differences that might affect price comparability.

The dumping calculation was made on the basis of a weighted average-to-weighted average comparison for goods exported to New Zealand.

Base prices were established using domestic sales data provided by one Chinese producer and export sales data, including invoices and Customs data. Base prices and the adjustments made to ensure a fair comparison were verified by the review team for one Chinese producer.

The extent to which MBIE is able to make judgements on the likelihood of events occurring in the **foreseeable future** depends on the circumstances of each case and, therefore, the foreseeable future will range from the imminent to longer timeframes. In this case, the foreseeable future is considered to be at least 12 months.

An Interim Report provided interested parties with advice of the essential facts and conclusions likely to form the basis for a determination to be made by the Minister. Parties were invited to provide comments on the Interim Report, and comments received have been taken into account in preparing this Final Report.

This Final Report addresses all matters raised during the reconsideration.

MBIE concludes that it is not likely that there will be a continuation or recurrence of dumping of the subject goods imported from China.

In light of MBIE's conclusion relating to dumping, it is not necessary to consider injury and there is no requirement to assess rates or amounts of anti-dumping duties.

An **Interim Report** was provided to interested parties as written advice of the essential facts and conclusions that were likely to form the basis for a determination to be made by the Minister.

Interested parties had until 11 November 2019 to provide comments on the Interim Report.

Comments were received from HWL and have been taken into account in the preparation of this **Final Report**.

This Final Report addresses all matters raised by interested parties during the reconsideration and in response to the Interim Report.

In considering the likelihood of the continuation or recurrence of **dumping**, MBIE concludes that imports in the POR(D) are not being dumped, and it is not likely that there will be a recurrence of dumping.

In light of its conclusions in relation to dumping, it is not necessary to consider whether the expiry of the duty would be likely to lead to a continuation or recurrence of injury.

In light of its conclusions, there is no requirement for MBIE to calculate reassessed rates or amounts of **anti-dumping duty**.

1. Introduction

1.1 Basis for reconsideration

1.1.1 Previous proceedings

1. A dumping investigation was initiated on 21 February 2006, following receipt of an application providing positive evidence from HWL (Original Investigation). As a result of this investigation anti-dumping duties were imposed on 21 August 2006, following a final determination by the Minister under section 13(1) of the Act.
2. Section 14(9) of the Act provides that an anti-dumping duty applying to goods shall cease to be payable on those goods from the date that is the specified period after the date of the final determination made under section 13 of the Act in relation to those goods, or the date of notice of any reassessment of duty given under section 14(6), following a review carried out under section 14(8). Section 14(9A) of the Act provides that the specified period in this case is 5 years.
3. Section 14(8) of the Act provides that the Secretary (MBIE Chief Executive) may, on his or her own initiative, and shall, where requested to do so by an interested party that submits positive evidence justifying the need for a review, initiate a review of the imposition of anti-dumping duty in relation to goods and shall complete that review within 180 days of its initiation. Where the review relates to the expiry of the specified period it is described as a “sunset review.”
4. Article 11.3 of the World Trade Organization (WTO) Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the AD Agreement), provides:

Notwithstanding the provisions of paragraphs 1 and 2, any definitive anti-dumping duty shall be terminated on a date not later than five years from its imposition (or from the date of the most recent review under paragraph 2 if that review has covered both dumping and injury, or under this paragraph), unless the authorities determine, in a review initiated before that date on their own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time prior to that date, that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury. The duty may remain in force pending the outcome of such a review.
5. On 8 June 2011 MBIE initiated a sunset review (2011 Review) under section 14(8) of the Act of the imposition of anti-dumping duties on peaches in preserving liquid, and found that duties should be continued.

1.1.2 2017 Review

6. The 2017 Review was initiated on 14 July 2017, following the receipt of an application providing positive evidence from HWL, which was still the sole New Zealand producer of preserved peaches.

7. Following the initiation of the review, MBIE requested information from identified importers, intermediary exporters, and a sample of Chinese producers. Of the four producers identified, only two provided a response.
8. MBIE advised interested parties of the essential facts and conclusions that were likely to form the basis for the Minister to make a determination through an Interim Report released in December 2017. Two interested parties, HWL, the sole New Zealand producer, and Chic Foods, a Chinese producer, submitted comments on the Interim Report. MBIE took these comments into consideration in the drafting of its Final Report.
9. In the Final Report, MBIE considered the likelihood of a continuation or recurrence of dumping causing a continuation or recurrence of material injury, should anti-dumping duties be removed.¹ MBIE concluded that:
 - the expiry of anti-dumping duties on preserved peaches from China would not be likely to lead to a recurrence of dumping capable of causing material injury to the domestic industry
 - the continued imposition of anti-dumping duties on preserved peaches from China was not necessary to prevent a recurrence of dumping causing material injury to the New Zealand industry.
10. In February 2018, MBIE completed its review. This resulted in the termination of the anti-dumping duties with effect from 17 July 2017.

1.1.3 Claim for judicial review

11. On 3 August 2018, HWL lodged a Statement of Claim for judicial review which challenged MBIE's findings in respect of dumping and the termination of anti-dumping duties. In particular HWL challenged:
 - MBIE's conclusion that the anti-dumping duties should be terminated, on grounds of unreasonableness, error of law, irrelevant consideration and breach of legitimate expectation.
 - The Minister's decision to terminate the anti-dumping duties imposed on preserved peaches from China, on grounds that it was made in reliance on recommendations tainted by errors of law and unreasonableness, on the basis of inadequate advice and in the absence of an essential fact.
12. MBIE and HWL conferred on the issues, including the Court's decision in *NZ Steel v Minister of Commerce and Consumer Affairs* [2018] NZHC 2454, and considered that it would be appropriate for MBIE to reconsider the sunset review that formed the basis of the decisions by MBIE and the Minister.

High Court directions

13. Following conferral between the claimant and MBIE, Court directions were sought. The High Court subsequently issued a Court Order based on the directions in *Heinz Wattie's Limited v Ministry of Business, Innovation and Employment*.² The Court Order:

¹ <https://www.mbie.govt.nz/assets/61d16d11c1/final-report-on-preserved-peaches-from-china.pdf>

- Quashed the decision of the Minister of Commerce and Consumer Affairs of 8 February 2017 to terminate the anti-dumping duty
- Directed MBIE to reconsider its sunset review of the justification for an anti-dumping duty against Chinese preserved peaches
- Directed MBIE to conduct the reconsideration of the review on terms that consider past, present and future conduct in the import of the relevant products but any anti-dumping duty was only to be restored once a decision justifying such duty is made and then only prospectively from the date of such decision
- Directed MBIE to conduct the reconsideration on the terms of the Dumping and Countervailing Duties Act 1988 in force as at July 2017 when MBIE initiated the sunset review.

MBIE's undertakings

14. MBIE entered into undertakings with HWL that for the purposes of promoting settlement, and to the extent it was not inconsistent with the Dumping and Countervailing Duties Act 1988 and the AD Agreement, MBIE (in the process of reconsidering the sunset review) would do the following:

- Approach the reconsideration as it would an ordinary sunset review from the point of initiation of the reconsideration onward, investigating matters relevant to whether dumping is occurring or likely to recur;
- Consult with the applicant on the potential for the reconsideration to be undertaken on a similar basis to the separate reconsideration of the sunset review of anti-dumping duties on Spanish peaches, as directed by the High Court in *Heinz Wattie's Limited v Ministry of Business, Innovation and Employment*;
- In the course of the reconsideration, and subject to sections 5 and 6 of the Act:
 - Consider all available sources of information on the sales of preserved peaches in China; and
 - Use appropriate retail pricing information, including that provided by Heinz Wattie's in its application for the sunset review as a permissible relevant consideration for "normal value".

1.1.4 Legal framework for reconsideration

15. The Minister's decision to terminate anti-dumping duties was quashed by the Court. However, no duties were to apply during the reconsideration and anti-dumping duties would only be restored prospectively if and when a decision to apply duties is made.
16. The reconsideration under this process is effectively a continuation of the review that was initiated on 14 July 2017. The quashing of the termination decision by the Court means that no final determinations have yet been made on the need for anti-dumping duties.

² [2018] NZHC 2309.

17. The reconsideration of the review considered all of the information already available in respect of the review, and new information. This resulted in a new Interim Report and Final Report.
18. The reconsideration has been carried out in accordance with the Act as it stood at the time of the 2017 Review, and in light of New Zealand's obligations under the AD Agreement. No public interest test was required as no such test is provided for under that version of the Act.
19. The reconsideration examined whether, taking account of the fact that duties had already been terminated, "the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury" (AD Agreement 11.3).
20. If duties were to be applied, they might be applied at a reassessed rate to take account of changes in circumstances since the duties were last calculated. MBIE considers that, if any duties are to be put in place, they would remain in force for 5 years after the previous duties were due to expire, i.e. 5 years from 17 July 2017, unless a sunset review is initiated before that date. The duties would not be backdated prior to the date of their reinstatement.

1.1.5 Consultation

21. MBIE consulted with HWL and the Government of China (GOC) on the proposed basis for the reconsideration. Both parties agreed with the proposal.

1.2 Proceedings

1.2.1 Matters to be reconsidered

22. In light of the Court Order, and following consultation with HWL and the GOC, the matters to be reconsidered included the following:
 - a) whether the absence of anti-dumping duties would be likely to lead to a continuation or recurrence of dumping;
 - b) whether such dumping would be likely to cause a continuation or recurrence of material injury to the New Zealand industry.
23. If anti-dumping duties were to be applied, a reassessment of the rate or amount of duty may have been required.
24. The reconsideration of these matters has been set out in two reports:
 - an Interim Report, and
 - a Final Report.
25. The Interim Report set out the essential facts and conclusions that were likely to form the basis for any final determination to be made. Parties had a period of 10 working days to make submissions before the Final Report was prepared for the Minister. This Final Report has taken into account comments received on the Interim Report.
26. Where information was made available in response to the Interim Report, MBIE has circulated that information to interested parties. No substantive new material was

provided, although comments made on the Interim Report led MBIE to review and modify some calculations of export prices, normal values and dumping.

27. The reconsideration involved analysis of data in the following periods:
- Dumping analysis – the POR(D) was 1 January 2018 to 31 December 2018 (the 2017 Review analysed dumping over the year ended 30 June 2017).
 - Injury analysis – the POR(I) was 1 January 2015 (the start date in the 2017 Review) to December 2018, where information was available (HWL’s application for the review provided information from 2015).

1.2.2 Information to be used

28. In the 2017 Review, MBIE used the following information:
- information contained in HWL’s application and a subsequent submission (a further submission from HWL was received late in the investigation but was not considered in the Final Report as it was received after the due date for submissions)
 - information obtained during MBIE’s verification visit to HWL
 - information in the responses from the four importers, the two intermediary exporters, and from two of the four selected Chinese producers (all in various degrees of completeness).
 - information provided by the New Zealand Customs Service (Customs), including import data
 - information from MBIE’s independent research into matters arising in the investigation.
29. Information used in the reconsideration has consisted of all relevant information available and used during the 2017 Review or subsequently made available, in order to recognise the High Court’s direction that MBIE “consider past, present and future conduct in the import of the relevant products.” The information includes the following:
- HWL’s application relevant to the review and subsequent submissions
 - information obtained from a questionnaire to HWL
 - information obtained during MBIE’s verification visit to HWL
 - responses to importer/exporter/manufacture questionnaires to the extent they were provided
 - information from MBIE’s verification visit to a Chinese producer
 - submissions by interested parties
 - information from the 2017 Review
 - relevant information arising from MBIE’s independent research into matters arising during the course of the reconsideration
 - information provided by Customs, including import data
 - relevant information subsequently made available and projected information, to recognise the High Court’s requirement that MBIE “consider past, present and future conduct in the import of the relevant products.”

30. MBIE agreed to use appropriate retail pricing information, including that provided by HWL in its application for the sunset review, as a permissible relevant consideration for assessing normal value.
31. The information relied on in the reconsideration is summarised in this Final Report. It outlines MBIE's considerations as the basis for recommendations to the Minister in relation to determinations to be made by the Minister concerning any new rate or amount of anti-dumping duty or the termination of the duty.

1.3 Sunset Reviews

1.3.1 New Zealand legislation

32. For the purposes of this reconsideration, MBIE has carried out a sunset review under the provisions of section 14(8) of the Act, which states as follows:

The Secretary may, on his or her own initiative, and shall, where requested to do so by an interested party that submits positive evidence justifying the need for review, initiate a review of the imposition of anti-dumping duty or countervailing duty in relation to goods and shall complete that review within 180 days of its initiation.

1.3.2 AD Agreement

33. In applying the provisions of Section 14(8), in the absence of any specific provisions relating to sunset reviews, MBIE has had regard to the provisions of Article 11.3 of the AD Agreement. In interpreting Article 11.3, MBIE took guidance from New Zealand legal reports, WTO Panel reports and approaches taken by other WTO member countries.
34. Article 11.3 requires that a duty be terminated 5 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" [emphasis added]. Some guidance regarding the interpretation of the phrase "would be likely" has been provided by the New Zealand Court of Appeal which (in a different context) interpreted the phrase to mean "a real and substantial risk..., a risk that might well eventuate".³

Guidance can also be found in WTO jurisprudence, e.g. US – Oil Country Tubular Goods Sunset Reviews,⁴ and US DRAMS.⁵ For example, in US – Oil Country Tubular Goods Sunset Reviews, the Appellate Body stated (at paragraph 308) "[W]e agree with Argentina that, in US – Corrosion-Resistant Steel Sunset Review, the Appellate Body equated 'likely', as it is used in Article 11.3, with 'probable'. In that case the Appellate Body stated (at paragraph 111), "... an affirmative likelihood determination may be made only if the evidence demonstrates that dumping would be probable if the duty were terminated – and not simply if the evidence suggests that such result might be possible or plausible." We also agree with Argentina that this interpretation of 'likely' as 'probable' is authoritative in relation to injury as well, given that the term 'likely' in Article 11.3 applies equally to dumping and injury."

³ *Commissioner of Police v Ombudsman* [1988] 1 NZLR 385.

⁴ *US – Oil Country Tubular Goods Sunset Reviews*, Report of the Panel, WT/DS268/R, Report of the Appellate Body, WT/DS268/AB/R.

⁵ *US – DRAMS*, Report of the Panel, WT/DS99/R.

35. MBIE also referred to the approaches to sunset reviews taken by the European Union, United States, Canada and Australia.

1.3.3 Methodology

36. MBIE noted that the consideration of whether duties should be removed does not exist in isolation but is dependent on whether the evidence shows that the expiry of duty would be likely to lead to a continuation or recurrence of dumping and injury. In determining “likelihood”, MBIE considers that regard should be had to the timeframe within which an event may occur. Article 11.3 of the AD Agreement makes no express reference to the length of time within which a continuation or recurrence of injury has to take place.
37. Mindful of the particular factors relating to this reconsideration, and taking guidance from the sources referred to above, MBIE approaches all investigations and reviews on a case-by-case basis. Based on its interpretation of the Act and the AD Agreement, and in light of the situation of this reconsideration, MBIE adopts the following general principles in considering dumping and injury in sunset reviews:
- The legal requirement was for MBIE to investigate whether the expiry of the duty would be likely to lead to a continuation or recurrence of dumping and injury.
 - In order to investigate whether a duty was required to offset dumping, MBIE established whether there is current dumping, and whether dumping is likely to continue or recur.
 - The investigation of current dumping was based on the provisions of the Act relating to the determinations of export price (section 4) and normal value (section 5) and the ascertainment of export price and normal value when sufficient information had not been furnished or is not available (section 6).
 - When determining whether dumping was likely to continue or recur MBIE needed to be satisfied that certain events were likely to occur, and that those events meant that dumping was likely to continue or recur.
 - The investigation of the material injury to an industry was based on an examination of the matters set out in section 8 of the Act
 - When determining whether the expiry or removal of the anti-dumping duty would be likely to lead to a continuation or recurrence of injury, MBIE needs to be satisfied that material injury to the industry is likely to continue or recur if the anti-dumping duties expire or are otherwise removed or varied.
 - Interpretation of the phrase “would be likely” is guided by a New Zealand Court of Appeal judgment⁶ referring to “a real and substantial risk..., a risk that might well eventuate” and by relevant WTO dispute settlement findings.
 - In considering whether removal of the duty would be likely to lead to a recurrence of dumping and 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

⁶ *Commissioner of Police v Ombudsman* [1988] 1 NZLR 385

events occurring in the foreseeable future will depend on the circumstances of each case and, therefore, the foreseeable future will range from the imminent to longer timeframes. In this case the foreseeable future is at least 12 months.

- To gauge the extent to which the removal of the anti-dumping duties will likely 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 the duties. MBIE examines these projections in light of the company's past performance (with the duties in place to prevent injurious dumping) and projected future performance (both with the presence and absence of duties) in order to assist it in making a determination of the likelihood of recurrence of injury.

1.4 Treatment of information

1.4.1 Disclosure of information

38. Any interested party providing confidential information has been required to show good cause to MBIE as to why the information should be treated as confidential, and was required to furnish a non-confidential summary of the information in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. Where, in exceptional circumstances, the information was not susceptible of summary, a statement of the reasons why summarisation is not possible must be provided.

39. The treatment of confidential information is provided for in section 10(7) of the Act:

Where a party has submitted information to the Secretary, and has shown good cause for the Secretary to believe—

(a) that the information would be of significant competitive advantage to a competitor of, or the disclosure of the information would otherwise have a significant adverse effect upon,—

(i) the party who submitted the information; or

(ii) the party from whom the information was acquired by the party who submitted the information; or

(iii) any party to whom the information relates; or

(b) that the information otherwise should be treated as confidential,—

the Secretary shall not disclose the information without the express permission of any such party that would be adversely affected by its release.

40. In seeking information from interested parties, MBIE points out that where a party requests that information be treated as confidential it should provide a non-confidential version, or a non-confidential summary of the information, or if the information is not susceptible to summarisation, an explanation of the reasons why not, and provide justification for the information being treated as confidential. MBIE points out to parties that section 10(8) of the Act allows the Secretary to disregard any information for which a satisfactory non-confidential version (or summary or satisfactory statement of why such a summary cannot be given) is not provided.

41. A recent report from the WTO Appellate Body noted:

Under Article 6.5, an investigating authority is required to assess objectively whether the request for confidential treatment has been sufficiently substantiated such that "good cause" has been shown. The fact that the investigating authority has conducted this objective assessment must be discernible from its published report or related supporting documents.

42. The Appellate Body also upheld the Panel's findings with regard to summaries of confidential information:

In the present dispute, the Panel found that, "[i]n the complete absence of data, and with no narrative summary with respect to the deleted information, the 'Disclosed' versions of the three communications identified by Japan cannot be said to contain a summary in sufficient detail to 'permit a reasonable understanding of the substance of the information submitted in confidence'."

43. MBIE has made available all non-confidential information via the public file for this investigation. Any interested party has been able to request both a list of the documents on this file and copies of the documents on it. In addition, MBIE provided all interested parties with the document listing at regular intervals throughout the reconsideration.

1.4.2 Assessment of information

44. The foundation of MBIE's approach to the assessment of information is the relevant provisions of the Act and the AD Agreement, assisted by the interpretation of the AD Agreement provided in WTO dispute findings.

45. Sections 4 and 5 of the Act set out the bases for establishing export prices and normal values for the purposes of determining the existence and extent of dumping, while section 6 of the Act provides as follows:

(1) Where the Secretary is satisfied that sufficient information has not been furnished or is not available to enable the export price of the goods to be ascertained under section 4, or the normal value of goods to be ascertained under section 5, the normal value or export price, as the case may be, shall be such amount as is determined by the Secretary having regard to all available information.

(2) For the purposes of subsection (1), the Secretary may disregard any information that the Secretary considers to be unreliable.

46. Article 6.6 and 6.8 of the AD Agreement provide as follows:

6.6 Except in circumstances provided for in paragraph 8, the authorities shall during the course of an investigation satisfy themselves as to the accuracy of the information supplied by interested parties upon which their findings are based.

...

6.8 In cases in which any interested Member or interested party refuses access to, or otherwise does not provide necessary information within a reasonable period or significantly impedes the investigation, preliminary and final determinations, affirmative or negative, may be made on the basis of the facts available. The provisions of Annex II shall be observed in the application of this paragraph.

47. Annex II to the AD Agreement sets out basis on which investigating authorities can use the best information available in terms of Article 6.8. Article 11 of the AD Agreement, which addresses reviews, provides in Article 11.4, that "The provisions of Article 6

- regarding evidence and procedure shall apply to any review carried out under this Article.”
48. Information relating to those parties who have not provided information is based on the facts available that MBIE considers to be reliable according to the provisions of the Act and the AD Agreement.
49. In an investigation or review MBIE seeks and obtains information directly relevant to that proceeding, and satisfies itself as to the accuracy of the information provided. Such primary information includes questionnaire responses from interested parties; laws, regulations and other official documents; relevant WTO documents, such as notifications; Customs and statistical data; and other relevant data such as exchange rates, interest rates and prices. MBIE can use verification visits and the review of evidence available to substantiate the information provided by interested parties and to assess its reliability.
50. Where MBIE is not satisfied as to the accuracy of the information provided, or where information is not available, other primary information can be used, or secondary information can be used as “facts available”. The use of “facts available”, including secondary information, is limited to instances where information is not available because an interested party refuses access to, or otherwise does not provide the necessary information within a reasonable period or significantly impedes the investigation. In such circumstances, the normal value and export price are to be ascertained having regard to all available information that MBIE considers to be reliable. MBIE is required to take due account of any difficulties experienced by interested parties, in particular small companies, in supplying information requested.
51. In considering “facts available” MBIE can take into account secondary information, such as the application (in relation to dumping); information from previous MBIE investigations or reviews; information from investigations undertaken by counterpart authorities in other jurisdictions; and information from reports and publications covering matters related to the subject matter of the investigation or review. In using secondary information, MBIE undertakes a process of reasoning and evaluating which “facts available” constitute reasonable replacements for missing information that can be considered reliable. In this context, MBIE notes that secondary information that is not based on positive evidence but relies on inferences and assumptions may not be considered to be reliable.
52. Where information is not available because a party has not provided information requested, and where that information is required in order to make a determination of the existence and extent of dumping or injury, MBIE can have recourse to secondary sources of information to replace the missing information.

Interim Report

53. An Interim Report was sent to parties on 25 October 2019, and interested parties were invited to make written submissions to MBIE on the essential facts and conclusions contained in the Interim Report.

54. Submissions were received from HWL. A summary of the submission and MBIE's response to it are set out in Annex 1 of this Final Report. The comments made have been taken into account in the preparation of this Final Report.

1.5 Report details

55. In this report, unless otherwise stated, years for evaluating injury are calendar years ending 31 December. Monetary values are in New Zealand Dollars (NZD) or Renminbi (RMB) unless otherwise specified. In tables, column totals may differ from individual figures due to rounding, and negative numbers are shown in parentheses. The term VFD refers to value for duty for NZCS purposes.
56. The POR(D) is from 1 January 2018 to 31 December 2018, while the period of review for injury (POR(I)) involves an evaluation of actual data submitted by HWL for financial years 2015 to 2018 (HWL's financial year is the year to 31 December). The company also provided forecast information for 2019, 2020 and 2021, in terms of the impact on HWL's domestic operation, for the scenarios that duties are imposed to meet the margin of price undercutting and that duties continue to be removed. It should be noted that in a review, involving as it does the consideration of the likelihood of the continuation or recurrence of dumping and injury, MBIE has had need to have regard to any dumping that may have been occurring prior to the POR(D).
57. All volumes are expressed on a metric ton/tonne (MT) basis unless otherwise stated. Exports to New Zealand were generally invoiced in Australian dollars (AUD) or United States dollars (USD). The exchange rates used are those relating to specific transactions, where available, or the Customs exchange rates for the relevant time or shipment, or the rate that MBIE considers most appropriate in the circumstances.

2. Subject Goods and New Zealand Industry

2.1 Subject goods

58. The imported goods that are the subject of the reconsideration are described as:

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

Included goods

59. The goods which HWL produces were confirmed to be “like goods” to the subject goods in the original investigation in 2006.

60. MBIE considers that the subject goods description includes preserved peaches in juice, as well as in various concentrations of sugar syrup. MBIE considers that preserved peaches packaged in cans, plastic or glass jars or plastic cups are covered by the goods description.

Excluded goods

61. MBIE’s 2011 review of anti-dumping duties on preserved peaches from Spain (2011 Spanish Peaches Review) considered the same subject goods description as in this case. In that 2011 review, the Final Report noted that there were some goods imported under the same tariff item as preserved peaches which were excluded from the investigation, namely “goods such as nectarine pulp or puree, preserved peaches suspended in jelly and preserved peaches in containers exceeding 4.0 kg.” MBIE considers that these exclusions also apply to the subject goods for preserved peaches from China. In addition, MBIE considers that frozen fruit, pastes and purees are excluded.

2.2 Tariff description

62. During the POR(D), the subject goods entered under the Customs tariff item and statistical key set out below. The tariff description is broader than the description of the subject goods.

Figure 2.1: Tariff Heading

20.08 Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included:					
Number	Statistical key		Goods	Rate of Duty	
	Code	Unit		Normal	Pref.
2008.70			– Peaches, including nectarines:		
2008.70.09	00L	Kg	– Other [than cooked and preserved by freezing, not containing added sugar]	5	Free *See Below CA Free
*Unless otherwise indicated, AAN, AU, CN, CPT, HK, KR, LLDC, MY, Pac, SG, TH, TPA and TW rates in the Preferential Tariff are Free.					

63. The subject preserved peaches from China have attracted a preferential rate of duty of Free since 2012. Some importers of preserved peaches from China did not claim the preferential rate and have paid duty, but none of those shipments were from the suppliers in the sample for this reconsideration.

64. Previous tariff concessions, requested by HWL, provided for concessional entry of preserved peaches during particular periods when there was a shortfall of fresh peaches for its canning operation. There have been no tariff concessions of this nature for preserved peaches since 2008, and no concessions were therefore used by importers of the subject goods.
65. There are no tariff concessions under tariff item 2008.70.09 applying to goods of the description of the subject goods.

2.3 Imports of subject goods

66. Table 2.2 shows total imports of preserved peaches from 2014-2018. South Africa is a significant exporter of peaches to New Zealand (by quantity), and is currently subject to anti-dumping duties. Australia, Spain and Greece were minor suppliers in 2018.

**Table 2.2: Imports of preserved peaches
(Customs data, tonnes)**

	2015	2016	2017	2018
Australia	56	91	156	77
China	1,573	1,125	1,204	1,021
Spain	52	17	52	37
Greece	34	34	33	32
South Africa	2,411	2,890	2,393	2,476
Other	26	117	17	2
Total	4,152	4,273	3,855	3,645

67. The values reported in this table may differ from those that were presented for the 2017 Review and in the Interim Report for this reconsideration. This is because some imports included in the figures for the 2017 Review and the Interim Report were not subject goods. These included peaches in jelly and frozen peaches, as well as imports in larger containers. Some imports of preserved peaches by one small importer were entered under an incorrect tariff item, so those volumes have been added to the import volumes.
68. Imports from China made up 28 per cent of total imports in the POR(D).
69. During the POR(D), imports of the subject goods from China included peaches in 113g, 120g and 125g plastic cups and in 410g, 820g and 3kg (A10) sized cans.

2.4 Like goods and New Zealand industry

70. Section 3A of the Act provides that for the purposes of the Act, the term **industry**, in relation to any goods, means:
- the New Zealand producers of like goods, or
 - such New Zealand producers of like goods whose collective output constitutes a major proportion of the New Zealand production of like goods.
71. Section 3(1) of the Act defines **like goods**, in relation to any goods, as:
- other goods that are like those goods in all respects, or
 - in the absence of goods referred to in paragraph (a), goods which have characteristics closely resembling those goods.

2.4.1 Like goods

72. To establish the existence and extent of the New Zealand industry for the purposes of an investigation into injury, and having identified the subject goods, it is necessary to determine whether there are New Zealand producers of goods which are like those goods in all respects, or have characteristics which closely resemble the subject goods.
73. The scope of the subject goods is defined in section 2.1 above.
74. HWL's preserved peaches are mostly sold under brand names Wattie's, Oak or Weight Watchers, of halves or slices in net weights of 410g, 820g and A10 cans. Based on a previous like goods determination, the Weight Watchers branded preserved peaches are not considered to be like goods to the imported goods.
75. HWL has not produced any new peach products that need to be addressed in relation to a like goods determination.
76. The Original Investigation and the 2017 Review concluded that HWL produced like goods to the subject goods.
77. To determine whether the goods produced in New Zealand are like goods to the imported preserved peaches from China, MBIE considers physical characteristics, function and usage, pricing structures, marketing and any other relevant considerations, with no one of these factors being necessarily determinative.
78. In the 2017 Review, MBIE concluded that, in certain situations and for certain purposes, imports of preserved peaches in plastic cups cannot be considered to be substitutable for the canned peaches that HWL manufactures. MBIE found that one producer was exporting peaches in plastic cups solely to an importer in New Zealand's charity sector, which provides the peaches to children in schools for their breakfasts and lunches. As peaches packaged in cans are not suitable to be distributed to children in schools, MBIE considered that the plastic cups which that producer exports are not substitutable by those produced by HWL. HWL agreed with this finding in its 2017 questionnaire response. This situation continued in the calendar year 2018, the POR(D), with the same producer supplying the same charity.
79. HWL, and other importers, also import plastic cups. MBIE notes that while preserved peaches in plastic cups are considered to be like goods to the subject goods, this product presentation is not produced by the New Zealand industry. However, plastic cups have been addressed in the analysis of dumping.

2.4.2 New Zealand industry

80. MBIE considers that HWL continues to produce like goods and is the sole New Zealand producer of preserved peaches, and therefore remains the New Zealand industry in terms of section 3A of the Act.

3. Interested parties

3.1 Legal requirements

81. Interested parties are those who are to be given notice for the purpose of section 9 of the Act, and include the Government of the country of export; exporters and importers known to have an interest in the goods; and the applicant in relation to the goods. Article 6.11 of the AD Agreement describes interested parties who shall be included, covering the same parties but adding trade associations of importers, exporters or domestic industry. Article 6.12 provides opportunities for some other parties, such as industrial users of the product under investigation and representative consumer organisations, to participate.
82. In the 2017 Review the interested parties included the New Zealand producer, HWL; the Government of China; a sample of four Chinese producers of the subject goods making up 86 per cent of imports over the POR(D); two trading intermediaries; and four importers. In calendar year 2018, Customs data showed twelve suppliers of the subject goods.

3.2 New Zealand industry

83. HWL submitted the application for the 2017 Review. HWL remains the only New Zealand producer of preserved peaches, and is therefore the domestic industry for the purpose of this review, as set out in section 2.4.2.
84. HWL also produces other processed and canned fruits and vegetables, including pears and fruit salad, at its Hastings plant. HWL sometimes imports preserved peaches in cans and also imports peaches in plastic cups to complement its range.
85. 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.
86. MBIE notes Article 4.1(i) of the AD Agreement which 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 from China during the year ended 31 December 2018, but has advised that these imports were of preserved peaches in plastic cups, which HWL does not produce. MBIE is satisfied that under the AD Agreement HWL’s imports do not exclude it from the definition of “domestic industry”.

3.3 The Government of China

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

3.4 Chinese producers

88. Section 3(1) of the Act defines “exporter” as having the same meaning as section 2(1) of the Customs and Excise Act 1996, which states an “exporter means a person by or for

whom goods are exported; and includes a person who is or becomes the owner of or entitled to the possession of or is beneficially interested in goods on or at any time after entry for export and before they are exported”.

89. MBIE considers it appropriate to consider some associated entities as the exporter. For example, a factory and an export sales company may form a group where each has functions that are substantially similar to organisations which are just one entity where production and selling functions might be for example separate divisions or departments of that same company. The fact that a producing arm and a selling arm are separate entities does not alter the fact that they can collectively comprise an “exporter” for the purposes of the Act. In this report, MBIE’s references to Chinese producers reflects that they are treated as exporters under the Act.
90. Article 6.10 of the AD Agreement allows trade remedies authorities to limit an examination to a reasonable number of interested parties in cases where there is a large number of producers. MBIE identified a total of 12 suppliers of preserved peaches from China which exported to New Zealand in the year ended 31 December 2018. From these producers, MBIE selected the six which exported the largest volumes of preserved peaches from China to New Zealand over that year. Together they produced 98 per cent of the preserved peaches exported from China to New Zealand in the year ended 31 December 2018. MBIE considered use of a sample in the current review to be reasonable and appropriate.
91. Four of the six selected producers comprised the producers selected for the 2017 Review. The two additional producers selected for this reconsideration are Shandong Tiantong Food and Dalian Luxe Foods International Sales Co Ltd. Both of these companies also supplied New Zealand importers in the 2017 period of review (the year ended 30 June 2017).
92. MBIE sought information from these selected producers but only three responded, namely Chic Foods Co Ltd, Qingdao Countree Food Co Ltd and Shandong Tiantong Food Co Ltd.
93. MBIE notes that only two of the selected producers exported preserved peaches in cans. All of the others, and also one of the two producers of cans, exported plastic cups.

3.4.1 Chic Foods Co Ltd (Chic Foods)

94. Chic Foods grows, processes, packs and distributes prepared fruits, including peaches in factories at Xiaoxian, Anhui, and Penglai City, Shandong. Chic Foods’ headquarters is in Shanghai. Chic Foods supplies the food service industry, wholesalers and retailers. During the POR(D), Chic Foods exported to New Zealand preserved peaches in 120g plastic cups.
95. Chic Foods partially responded to MBIE’s manufacturer’s questionnaire and a follow up questionnaire. The importer it supplies provided information and invoices. Chic Foods advised that, in the Chinese domestic market, it only sells preserved peaches in A10 cans to one customer at a wholesale level. Chic Foods does not sell preserved peaches in plastic cups to the Chinese domestic market. Chic Foods supplied a domestic customer’s name but provided no domestic pricing information.

96. Chic Foods advised that it did not have the resources available to be able to accommodate a verification visit.

3.4.2 Dalian Luxe Foods International Sales Co Ltd (Luxe Foods)

97. Luxe Foods did not reply to an exporter's questionnaire sent by MBIE. The New Zealand importer it supplies provided some information about its shipments from Luxe Foods. Information on Luxe Foods' website⁷ shows that it is an exporter of food products with over 20 years of processing and sales experience, supplying the food service and retailing sectors. The website refers to the company's main facility being in Dalian with a capacity of 30,000 MT, co-packers with a capacity of 50,000 MT and a yearly export volume of 20,000 MT.
98. The website's references to processing experience and having a main facility indicate that Luxe Foods is an exporter with manufacturing facilities. A link on Luxe Foods' website to Dalian Leasun Food Company indicates a relationship with that company as does reference to an exposition⁸ which links the two companies as producers and sellers. In the 2006 investigation Dalian Leasun was a cooperating producer which exported directly to a New Zealand importer.
99. The website of Luxe Foods shows that it produces fruit in cans, glass jars and pouches. During the POR(D), Luxe Foods exported to New Zealand preserved peaches in 125g plastic cups.
100. MBIE considered Luxe Foods to be a non-cooperating producer.

3.4.3 Lianyungang Tianle Food Co Ltd (Tianle Food)

101. Tianle Food is a Chinese producer of canned and potted fruits and vegetables, which it exports to more than 50 countries and regions. During the POR(D), Tianle Food exported to New Zealand preserved peaches in 120g plastic cups for a charitable trust.
102. Tianle Food did not respond to MBIE's manufacturer's questionnaire, nor did the importer it supplies. During the 2017 Review, Tianle Food advised in a partial questionnaire response that it did not sell preserved peaches on the Chinese domestic market.
103. In the 2017 Review, MBIE noted that Tianle Food's exports to a charitable trust which provides peaches in plastic cups to school children for their breakfasts and lunches. The New Zealand domestic industry (HWL) only manufactures preserved peaches in cans. As peaches packaged in cans are not suitable to be distributed to children in schools, the plastic cups which Tianle Food's exports are not substitutable for canned goods produced by HWL. Therefore, MBIE considered that Tianle Food's exports of preserved peaches to New Zealand are not likely to cause injury to HWL.

⁷ <http://www.luxefoods.com/>

⁸ http://catalog.expoentr.ru/catalog_e.php?wyst_id=100&stand_id=41084

104. For this reconsideration, MBIE confirmed its view that imports for the charity are not likely to cause injury. HWL also agrees that imports of 120g cups for the charity could not cause injury.
105. As noted in the 2017 Review, while it is possible that Tianle Food may begin exporting to a new importer, MBIE considered this to be unlikely because Tianle Food is not actively advertising to the New Zealand market and its pricing at that stage indicated importers would be unlikely to switch to it as a supplier. MBIE's analysis of Customs data for 2018 indicates Tianle Food is pricing competitively to the charity it supplies, but there is no evidence Tianle Food is seeking to supply other New Zealand importers, or to supply with other forms of packaging.

3.4.4 Linyi City Kangfa Foodstuffs Drinkable Co Ltd (Kangfa Foodstuffs)

106. Kangfa Foodstuffs is a Chinese producer of preserved peaches. It cans a variety of fruits and vegetables, with the main products being mushroom, asparagus, peaches, strawberries and gherkins. During the POR(D), Kangfa Foodstuffs exported to New Zealand preserved peaches in 410g, 820g and A10 cans.
107. In the 2017 Review, Kangfa Foodstuffs did not provide information about its exports or domestic sales.
108. Kangfa Foodstuffs did not respond to MBIE's manufacturer questionnaire, and was regarded as a non-cooperating producer. The importers it supplied provided questionnaire responses and invoices.

3.4.5 Qingdao Countree Food Co Ltd and Heze Sanqing Co Ltd (Countree Food Group)

109. Countree Food Co Ltd (Countree Food) is the sales office for its factory Heze Sanqing Food Co Ltd (Sanqing Food), which is a Chinese producer 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, plastic cups and cans. Countree Food is responsible for the Group's export sales, whereas the Group's domestic sales of canned peaches are made by Sanqing Food.
110. In the 2017 Review, the Countree Food Group did not respond to MBIE's manufacturer questionnaire.
111. The Countree Food Group provided a response to MBIE's manufacturer questionnaire. One importer provided information and invoices, but another did not respond.
112. During the POR(D), the Countree Food Group exported to New Zealand preserved peaches in A10 cans and 125g plastic cups.
113. The Countree Food Group made sales of preserved peaches in 820g and A10 cans on the Chinese domestic market.

3.4.6 Shandong Tiantong Food Ltd (Tiantong Food)

114. Tiantong Food produces fruit, including preserved peaches, in cans, glass jars and plastic cups. Tiantong Food exported to New Zealand, preserved peaches in 113g and 125g plastic cups.
115. Tiantong Food provided a response to MBIE's manufacturer's questionnaire for this reconsideration, and was considered to be a cooperating producer, and the importers responded to importers questionnaires.

3.5 Trading intermediaries

116. MBIE sent questionnaires to three companies which it understands are trading intermediaries, namely Bidfood Procurement Community Ltd (BPC) and Directus International Ltd (Directus International) who were intermediaries in the 2017 Review, and Qingdao Medallion Import and Export Co Ltd (Qingdao Medallion). MBIE also sought information from Woolworths Food Company HK Procurement Ltd (Woolworths HK) and General Distributors Ltd, both companies within the Woolworths Group.
117. MBIE understands that Qingdao Medallion exported only peaches in jelly to New Zealand in the POR(D), so it was not included in this reconsideration.
118. Directus International is not listed in Customs data as exporting Chinese preserved peaches in the POR(D) to New Zealand and did not reply to the exporters questionnaire. The importer who previously sourced through Directus International did not mention Directus International in its questionnaire response for this reconsideration and has advised that its vendor of Chinese peaches was changed from Directus International for the 2018 supply of peaches.
119. BPC is a Hong-Kong-based exporter/distributor of preserved peaches and other canned products to New Zealand. BPC did not reply to MBIE's questionnaire and gave a partial response in the 2017 Review.
120. General Distributors, part of the Woolworths Group, did not respond to an importers questionnaire but Woolworths HK provided some information. MBIE understands that Woolworths Food Company HK Procurement Ltd now handles sourcing of preserved peaches from China for Woolworths Group companies in New Zealand.

3.6 Importers

3.6.1 Bidfood Ltd (Bidfood NZ)

121. Bidfood NZ is a national wholesale food distributor supplying the foodservice and hospitality industries.
122. Bidfood NZ provided a response to MBIE's importer questionnaire, including copies of invoices and other price and cost information for its imports over the POR(D).

3.6.2 General Distributors Ltd (General Distributors)/Woolworths New Zealand Ltd (Woolworths NZ)

123. Woolworths NZ owns and operates Countdown supermarkets in New Zealand. Woolworths NZ is part of Woolworths Group Limited, and is also the franchisor of the Super Value and FreshChoice supermarkets.
124. Woolworths NZ did not provide a response to MBIE's importer questionnaire.

3.6.3 Heinz Wattie's Ltd (HWL)

125. Heinz Wattie's imports preserved peaches in plastic cups from China. In its response to MBIE's Request for Information (RFI), HWL provided responses to MBIE's questions about its imports from China.

3.6.4 Foodstuffs North Island Ltd and Foodstuffs South Island Ltd (Foodstuffs)

126. Foodstuffs comprises two co-operatives (Foodstuffs North Island Ltd and Foodstuffs South Island). Foodstuffs supplies supermarkets, such as New World, PAK'nSAVE, Four Square, and various other stores.
127. Foodstuffs provided a response to MBIE's importer questionnaire including details of the type of preserved peaches sourced from China, its terms of trade, price build up and costing.

3.6.5 KidsCan Charitable Trust (KidsCan)

128. KidsCan imports preserved peaches from China in plastic cups, but does not participate in the New Zealand retail market for preserved peaches. It provides peaches in plastic cups to children in schools free of charge. Although KidsCan responded to MBIE's importer questionnaire in the 2017 Review, KidsCan declined to participate in this reconsideration.
129. 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 cups which KidsCan imports are not substitutable for those produced by HWL. MBIE considered, and HWL agreed, that these imports by the charity sector were not a cause of injury to HWL.

3.6.6 Walter & Wild Ltd (Walter & Wild)

130. Walter & Wild is a food manufacturing company and importer. Walter & Wild did not provide a response to MBIE's importer questionnaire but did provide customs entries and invoices, which showed that Walter & Wild's imports of preserved peaches from China were in 125g plastic cups.

4. Dumping Reconsideration

4.1 Dumping

131. This section of the report explains the method of comparing export prices with normal values and how these prices have been established over the POR(D), in order to determine whether preserved peaches from China are being imported into New Zealand at dumped prices.
132. This section also addresses the likelihood of a continuation or recurrence of dumping if anti-dumping duties expire, taking into account information relating to the past, present and future.

4.1.1 Purpose

133. As set out in section 1.4, MBIE must investigate whether the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury to the domestic industry.
134. In order to investigate whether a duty is required to offset dumping, MBIE establishes whether there is current dumping, and whether dumping is likely to continue or recur.
135. The investigation of current dumping is based on an examination undertaken in accordance with the provisions of the Act relating to the determinations of export price (section 4), normal value (section 5) and the ascertainment of export price and normal value when sufficient information has not been furnished or is not available (section 6).
136. When determining whether dumping is likely to continue or recur, MBIE needs to be satisfied that certain events are likely to occur, and that those events mean that dumping is likely to continue or recur.

4.1.2 Current dumping

137. Section 3 of the Act defines dumping as:
- dumping**, in relation 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 this Act, and **dumped** has a corresponding meaning*
138. A review of dumping establishes the export price in accordance with section 4 of the Act, and the normal value in accordance with section 5 of the Act, with adjustments made to ensure that there is a fair comparison, in order to determine the existence and extent of any dumping.
139. **Export prices** are determined in accordance with section 4 of the Act. Export prices are the prices at which preserved peaches are exported from the country of export to New Zealand, that are arm's length transactions.
140. In accordance with section 4(1)(a) of the Act, deductions are made from transaction prices where appropriate to cover costs, charges and expenses incurred in preparing the

goods for shipment to New Zealand that are additional to those costs, charges, and expenses generally incurred on sales for home consumption in the country of export, and any other costs, charges and expenses resulting from the exportation of the goods, or arising after shipment from the country of export.

141. **Normal values** are determined in accordance with section 5 of the Act. The normal value is usually the price at which the preserved peaches producers sell preserved peaches in their domestic market. The types of sales that can be used 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. Where an exporter makes no such sales, sales by other sellers of like goods in China can be used to establish normal values.
142. Footnote 2 to Article 2.2 of the AD Agreement provides that sales of the like product destined for consumption in the domestic market of the exporting country shall normally be considered a sufficient quantity for the determination of the normal value if such sales constitute 5 per cent or more of the sales of the product under consideration to the importing Member, provided that a lower ratio should be acceptable where the evidence demonstrates that domestic sales at such lower ratio are nonetheless of sufficient magnitude to provide for a proper comparison.
143. Section 5(6) of the Act read in conjunction with Article 2.2.1 of the AD Agreement provides that sales of the like product in the domestic market of the exporting country or sales to a third country at prices below per unit (fixed and variable) costs of production plus administrative, selling and general costs may be treated as not being in the ordinary course of trade by reason of price and may be disregarded in determining normal value only if the authorities determine that such sales are made within an extended period of time (normally be one year but in no case be less than six months) in substantial quantities (not less than 20 per cent of the volume sold in transactions under consideration for the determination of the normal value) and are at prices which do not provide for the recovery of all costs within a reasonable period of time. If prices which are below per unit costs at the time of sale are above weighted average per unit costs for the period of investigation, such prices shall be considered to provide for recovery of costs within a reasonable period of time.
144. Section 5(2) of the Act provides that in the absence of relevant and suitable sales in the ordinary course of trade, normal values can be either: (a) constructed on the basis of the sum of cost of production and, on the assumption that the goods had been sold for home consumption in the ordinary course of trade in 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 general category in the Chinese domestic market; or (b) established on the basis of selling prices to a third country.
145. Export prices and normal values are **compared** at the same level of trade, normally at the ex-factory level, and in respect of sales made at as nearly as possible the same time. In making the comparison, due allowance is to be made, as appropriate, for differences which affect price comparability, including differences in conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics, and any other differences which are also demonstrated to affect price comparability.

146. Article 2.4.2 of the AD Agreement requires that the existence of margins of dumping shall normally be established on the basis of a comparison of a weighted average normal value with a weighted average of prices of all comparable export transactions or by a comparison of normal value and export prices on a transaction-to-transaction basis. MBIE determines which comparison method it will use based on the circumstances of each case. For the current review, MBIE has chosen to use the weighted average-to-weighted average approach in light of the number of transactions involved and the nature of the goods traded.
147. The general principles concerning MBIE's approach to sunset reviews are set out in Chapter 1 of this report. A sunset review is intended to determine whether the expiry of the existing anti-dumping duties after five years (or in this case, the continued absence of duties) would likely lead to a continuation or recurrence of dumping and injury and therefore whether there is a continued need for the imposition of anti-dumping duties (in this case, the re-imposition of duties).
148. In respect of dumping, MBIE's approach is to establish if preserved peaches from China are currently being dumped into New Zealand, the extent of any dumping and then analyse whether there is a likelihood of a continuation or recurrence of dumping, if the anti-dumping duties remain absent.

4.2 Previous proceedings

149. Anti-dumping duties applied to imports of preserved peaches from China from 21 August 2006 until 16 July 2017. The original duties were based on confidential reference prices calculated as Normal Value (Value for Duty Equivalent) (NV(VFDE)) prices for 410g and 820g container sizes for particular exporters. For other exporters NV(VFDE) amounts per kilogram of RMB 8.02 for 410g and 7.54 for 820g containers applied. No duty applied to preserved peaches in 120g or A10 sizes, because peaches in those container sizes were not being dumped.
150. In July 2012, following a sunset review, the anti-dumping duties were reassessed and reassessed confidential NV(VFDE) reference prices were set in RMB per kilogram for each named exporter, except for Chic Foods where the reference price was a Non-injurious Free on Board (NIFOB) value in NZD. A reference price of RMB 12.34 was set for all exporters other than those named. For Chic Foods an alternative NV(VFDE) reference price cap in RMB per kilogram was set for application instead of the reference price where, due to exchange rate fluctuations, the reference price exceeded the cap amount calculated in New Zealand dollars. In all cases, no distinction was made between different container sizes.

4.3 Current reconsideration

4.3.1 Scope of dumping analysis

151. During the POR(D), imports of the subject goods from China included peaches in 113g, 120g and 125g plastic cups and in 410g, 820g and A10 sized cans. The imported peaches were in juice, light syrup and syrup media.

152. HWL produces preserved peaches in 410g, 820g and A10 cans in juice and syrup and does not have the production capability to produce preserved peaches in cups. HWL imports preserved peaches in cups from China because of this lack of production capability.

4.3.2 Information used

153. MBIE has information from three Chinese producers who exported preserved peaches to New Zealand during the POR(D) – the Countree Food Group, Kangfa Foodstuffs and Tiantong Food. The Countree Food Group responded to MBIE’s questionnaire and cooperated in a verification visit. Kangfa Foodstuffs, as in the 2017 Review, did not respond to questionnaires and otherwise did not provide information. A questionnaire response was received from Tiantong Food, which related to exports in plastic cups only, but did not provide information on prices for domestic sales.
154. MBIE received information on normal values on preserved peaches only from the Countree Food Group. Information available to MBIE on export prices of preserved peaches from China consists of invoices and information provided by the Countree Food Group and its New Zealand importer of canned peaches, information obtained from the Countree Food Group at the verification visit, and Customs importation data.
155. MBIE has also considered all available information which can reasonably be relied upon, including information provided by the applicant (HWL), and information sourced from retail stores during the verification visit in China.
156. In its application for the 2017 Review, HWL made an assessment of normal value for a 410g can based on retail price information it had obtained from retailers in China, with adjustments made for VAT and a retailer’s margin (based on HWL’s knowledge of the margin and distribution of peaches applying in New Zealand), and an adjustment for freight from the producer to the customer. For this reconsideration, HWL provided more up-to-date prices from several retailers from several provinces in China. MBIE has commented on the use of retail prices in the establishment of normal values in section 4.7.
157. MBIE has examined other information on domestic sales in China provided for the 2017 Review and this reconsideration. Chic Foods was the only producer exporting to New Zealand which disclosed that it sold canned peaches on the domestic market in China, namely A10 cans. Information from Chic Foods in relation to domestic sales and cost build up for canned peaches sold was provided only for 2017 and not the POR(D) for this reconsideration. Information from Chic Foods also indicated that its domestic selling prices may not be in the ordinary course of trade due to its pricing being influenced by its relationship with its sole domestic customer.
158. MBIE is satisfied that the information provided by the Chinese producer the Countree Food Group, which was verified by MBIE, is reliable, and provides the most reliable basis for determining export prices and normal values.
159. A number of other Chinese producers exported to New Zealand only preserved peaches in plastic cups. However, sufficient information was not furnished by these exporters or was not available to enable the Ministry to calculate reliable and accurate export prices and normal values for these goods. MBIE has therefore used all available information.

4.3.3 Price comparisons

160. The price comparisons were undertaken on the basis of weighted average prices, by container size, at the ex-factory level. Adjustments were also made to take account of differences in terms and conditions of sale, such as freight costs, and payment terms where applicable. Prices are compared net of any taxation. No allowance was made for differences between forms such as slices or halves, since it had been established that these differences have not affected price comparability.
161. The container sizes and product weights are as follows:

Figure 4.1: Container sizes

Standard Description	Nominal Net Weight
N1M	410g
A2.5	820g
A10	3kg
Plastic cups	113g/120g/125g

4.4 Countree Food Group

162. The detailed considerations relating to the Countree Food Group for the establishment of export prices and normal values, and any due allowances made to ensure a fair comparison are at Confidential Attachment 1.

4.4.1 Export prices

163. The Countree Food Group provided a response to the questionnaire, including details of its export sales. The information used for establishing export prices was verified by MBIE at the Countree Food Group's premises.

Base prices

164. MBIE is satisfied that on the basis of the information available, subject goods were exported to New Zealand by the Countree Food Group in arm's length transactions, and that prices charged to New Zealand customers provided base prices for the calculation of export prices.

Adjustments

165. Adjustments to the base price were made as necessary by deducting cost of credit, a difference in VAT treatment, additional selling costs for export (being Countree Food's selling costs), inland freight, customs and port handling charges and inland transport, arising from exportation, to determine the export price on an ex-factory basis.

4.4.2 Normal values

166. The Countree Food Group provided a response to the questionnaire, including details of its domestic sales. The information used for establishing normal values was verified by MBIE at the Countree Food Group's premises.

Base prices*Peaches in cans*

167. In determining whether the Countree Food Group's domestic sales were in the ordinary course of trade, MBIE checked whether sales were profitable. On the basis of information provided by the Countree Food Group regarding its costs to produce the domestic products to be used in the price comparison, and information from the Countree Food Group's financial records for the POR(D), MBIE has established that domestic sales were made within an extended period of time – one year; in substantial quantities – well in excess of 20 percent; at prices that provided for the recovery of all costs within a reasonable period of time.
168. In light of these findings, MBIE has established normal values on the basis of the Countree Food Group's sales to its domestic customers.
169. MBIE has established that the volume of sales used in the determination of normal value constitutes more than 5 per cent of the volume of the export sales being investigated. For the sales compared, domestic sales were well in excess of 5 per cent of export sales to New Zealand (excluding sales of peaches in plastic cups to New Zealand).

Peaches in plastic cups

170. The Countree Food Group did not sell plastic cups on the domestic market in China, so there were no sales in the ordinary course of trade to provide a basis for normal values. Reliable information was not available to allow MBIE to make physical difference adjustments to prices for cans. In these circumstances, MBIE constructed normal values in accordance with section 5(2)(d) of the Act, on the basis of verified costs, provision for reasonable amounts for administrative and selling costs, other charges and a reasonable amount for profit based on the rate of profit MBIE estimated was achieved by the Countree Food Group on its domestic sales of goods in the same general category.

Adjustments

171. Adjustments to the base price, in order to effect a fair comparison with export prices, were not necessary in the determination of normal values as there were none applicable.

4.4.3 Dumping margin

172. MBIE has compared the export prices and normal values established for the Countree Food Group for the can and cup sizes exported on a weighted average-to-weighted average basis, with any necessary adjustments made in each case for differences affecting price comparability and to ensure a fair comparison, and with appropriate exchange rates used. MBIE established that during the POR(D) the weighted average export price for cans was higher than the normal value, so these goods were not dumped. With regard to plastic cups, MBIE has established that these goods had a dumping margin of 2%. However, the total weighted average export price for preserved peaches was higher than the total weighted average normal value, so overall preserved peaches were not dumped by the Countree Food Group.

4.5 Kangfa Foodstuffs

173. The detailed considerations relating to Kangfa Foodstuffs for the establishment of export prices and normal values, and any due allowances made to ensure a fair comparison are at Confidential Attachment 2.

4.5.1 Export price

174. Kangfa Foodstuffs did not respond to MBIE's questionnaire. MBIE has used Customs data, information from importers of Kangfa Foodstuffs' products and information from a cooperating Chinese producer to establish export prices for Kangfa Foodstuffs.

Base prices

175. MBIE understands, on the basis of the information available, that subject goods were exported to New Zealand by Kangfa Foodstuffs in arm's length transactions. The prices charged to New Zealand customers provided base prices for the calculation of export prices.

Adjustments

176. Adjustments to the base price were made as necessary for a difference in VAT treatment, inland freight, customs and port handling charges, and inland transport, based on information from a cooperating exporter, to determine the export price on an ex-factory basis. Values for these adjustments were based on information provided by a cooperating producer.

4.5.2 Normal value

Base prices

177. In the absence of information from Kangfa Foodstuffs, MBIE has used information from a cooperating Chinese producer to establish base prices.

Adjustments

178. MBIE had no information on domestic sales of 410g cans. In order to make a fair comparison for 410g cans, MBIE adjusted the per kg domestic values for 820/822g cans by the relative difference in fixed and variable costs between 410g and 820g cans using information from another party.

179. The information from a cooperating producer that was used in the absence of information from Kangfa Foodstuffs indicated that no other adjustments were required, so no further adjustments to base prices have been made.

4.5.3 Dumping margin

180. MBIE has compared the export prices and normal values established for Kangfa Foodstuffs for the can sizes exported on a weighted average-to-weighted average basis, with any necessary adjustments made in each case for differences affecting price comparability and to ensure a fair comparison, and with appropriate exchange rates used. MBIE has established that exports of 3kg cans of sliced peaches in juice and light

syrup are not dumped. The weighted average dumping margin for other can sizes is 3.8 per cent.

181. MBIE has established that, on an overall weighted average basis, exports by Kangfa Foodstuffs, with the non-dumped cans included to avoid the possibility of zeroing, are not dumped.

4.6 Other Producers

182. All other producers exported plastic cups. MBIE has used the constructed normal value established for a cooperating Chinese producer to compare with export prices for each of the other producers based on Customs data or invoice data where available, with appropriate adjustments derived from the cooperating producer's data to ensure a fair comparison at the ex-factory level.
183. The outcome in respect of all other producers was that there was no dumping of plastic cups that they exported to New Zealand.

4.7 Retail prices

184. In the 2011 review of anti-dumping duties on preserved peaches from China, MBIE determined normal values based on retail pricing information provided by HWL, in the absence of any information provided by the Chinese producers. Amounts for wholesale and retail margins were derived from trade statistics of margins in New Zealand.
185. In its 2017 application for review, HWL provided Chinese retail pricing information in its calculation of normal values, and later criticised MBIE for not preferring this information over information provided by a Chinese producer, Chic Foods, the reliability of which HWL expressed concerns about. As a result of the judicial review process following the 2017 Review, MBIE undertook to use retail prices as a permissible relevant consideration for establishing normal values, and has assessed retail prices in the context of a voluntary cross-check on normal values established in the reconsideration.
186. In its RFI response for the reconsideration, HWL provided updated retail pricing information which it sourced from Researchandmarkets.net for February 2018. This covered a range of brands, sizes and stores in several provinces in China, although most of the products were in 425g packaging.

4.7.1 Analysis

187. Retail prices were also verified by MBIE to the extent possible in China. MBIE officials also discussed with Countree Food the company's understanding of the retail market in China for canned peaches. The company explained that there are usually one or two wholesalers in the supply chain between the factory and retail shelf, and each of these intermediaries would aim to add a 30 per cent to 45 per cent margin on each sale. The company stated that from there they would expect a retailer to add a margin of 25 per cent of that price. MBIE considered that this information was a more reasonable indicator of wholesaler and retail margins in China than the information provided by HWL of its knowledge of retail margins in New Zealand. MBIE took the retail price data provided by

HWL as its base data, which was confirmed by MBIE's own verified retail prices sourced in China. MBIE deducted VAT amounts to reach VAT exclusive base retail prices.

188. MBIE carried out two parallel calculations to derive a normal value range based on different margins charged by wholesalers. It first deducted a 25 retail margin from the VAT exclusive retail prices, and then deducted a 30 per cent wholesaler margin in one case and a 45 per cent wholesaler margin in the other. For the 425g product, the weighted average normal range was consistent with the normal value calculated by MBIE using Countree Food's information.

4.7.2 Conclusion

189. MBIE has carried out a cross-check on the normal values it has established on the bases outlined above, with retail prices as requested by HWL. MBIE is satisfied that this cross-check indicates that there is a reasonable degree of consistency between the normal values established on the basis of the Countree Food Group's sales to its domestic customers in China, and values derived from retail prices.
190. MBIE emphasises that the calculation of normal values based on producer price and cost information as verified by MBIE is the best information for determining normal values in this reconsideration. Section 5(1) of the Act states that "the normal value of any goods imported into New Zealand 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." Section 5(3) of the Act requires that to effect a fair comparison normal values and export prices are to be compared at the same level of trade. While retail sales can come within the requirement of section 5(1) regarding sales by other sellers, the base prices so established would need to be adjusted by a range of factors, including margins and distribution costs, for which reliable information is often not available.
191. In the present reconsideration, the conditions in section 5(1) of the Act are met, as sales by the Countree Food Group are verified to be in the ordinary course of trade and arm's length transactions made at a profit. These sales also provide a reasonable basis for determining normal values for Kangfa Foodstuffs, on the basis that they are prices of another seller of like goods. Given that this information allowed the determination of normal values at the ex-factory level, there was no further need for adjustments to ensure comparison with export prices at the ex-factory level.
192. This differs from MBIE's reconsideration of its review of anti-dumping duties on preserved peaches from Spain (2019 Spanish Peaches Review) and the 2011 Review in that, in those cases, a lack of cooperation from producers of preserved peaches in Spain and China meant that the best information available for MBIE was retail pricing information.
193. Aside from the requirements in section 5 of the Act, MBIE has other reservations as to the accuracy of retail pricing information where there is more reliable information available from producers of like goods in the country of export. As in this case, it is difficult to apply precision to margins charged by retailers, as well as identifying

intermediaries in the supply chain between factory and retail to determine which adjustments should be made to base retail prices. In particular, using information from one market, New Zealand, on distribution margins and costs for application in another market, China, is unlikely to be reliable unless there is other information available. For this reason, where there is better information, based on actual transactions, available from the Chinese producers themselves, MBIE prefers to calculate normal values based on their selling prices to domestic customers where possible to best reflect an ex-factory situation.

4.8 Findings relating to current dumping

194. MBIE has found that on a weighted average-to-weighted average basis there is no dumping.

Table 4.2: Dumping Margins

	Dumping Margins
<i>Countree Food</i>	
Plastic cups 125 g	2%
A10 cans	No dumping
Weighted Average	No dumping
<i>Kangfa Foodstuffs</i>	
A10 cans	No dumping
Other cans	3.8%
Weighted Average	No dumping
<i>All other</i>	
Weighted Average	No dumping

4.9 Likelihood of continuation or recurrence of dumping

195. A sunset review normally determines whether the expiry of the existing anti-dumping duties after five years would likely lead to a continuation or recurrence of dumping and injury and therefore whether there is a continued need for the imposition of anti-dumping duties.
196. This reconsideration of the sunset review of preserved peaches from China follows Orders by the High Court which reflect those in the separate decision relating to Spanish preserved peaches of *Heinz Wattie's Ltd v the Ministry of Business, Innovation and Employment* [2018] NZHC 2309 [4 September 2018] which quashed the Minister's decision to terminate the duties.
197. The situation of the reconsideration is that anti-dumping duties have not been in place since 17 July 2017 so the examination of the likelihood of a recurrence of dumping and injury must take that factor into account.
198. In considering the likelihood of the recurrence of dumping, MBIE has applied the general principles set out in the description of MBIE's approach to sunset reviews set out in section 1.4 above. In particular, MBIE notes that the extent to which it is able to make judgements on the likelihood of events occurring in the foreseeable future depends on the circumstances of each case.

199. The events that MBIE needs to consider in order to determine the likelihood that dumping will continue or recur, include:
- whether dumping is currently occurring and the magnitude and the scope of the dumping in terms of the goods affected
 - recent behaviour in terms of pricing in the context of any existing reference prices and the payment of anti-dumping duties
 - the commercial arrangements governing the pricing of exports to New Zealand from China
 - possible developments in the market in China which could affect the normal values of the goods and their availability for export to New Zealand.

4.9.1 Current dumping

200. MBIE has determined that, taken on a can size basis, exports of A10 cans are not dumped, while exports of other can sizes of canned peaches (which were from one producer) have a weighted average dumping margin of 3.8% per cent. Exports of some plastic cups from one producer have a 2% dumping margin. The weighted average dumping comparison for the subject goods for each of the producers, including non-dumped goods in order to avoid zeroing, indicates that there is no dumping by any of the producers examined.

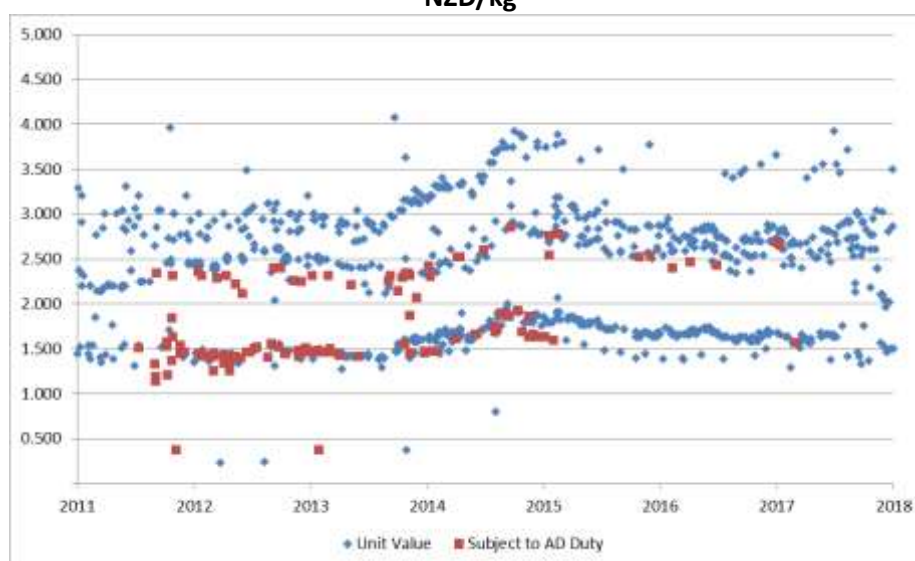
201. The conclusion is that there is no current dumping.

4.9.2 Price behaviour

202. MBIE has reviewed the pricing of imports of the subject goods from China by using Customs data from the period 2011-2018 to identify trends in pricing behaviour. It should be noted that the data used in this analysis provides broad indications only.

203. Figure 4.3 indicates that the general price trends indicate two broad tiers of prices, both of which have remained relatively static in NZD terms.

**Figure 4.3: Price behaviour
NZD/kg**



204. The current VFD equivalent (VFDE) amounts, based on Free on Board (FOB) levels, are below the reference prices based on normal values established in the 2011 Review on the basis of retail prices. However, the normal values established in the current reconsideration, based on verified transaction information, are significantly lower than those on which the reference price duties were based. Given this situation, any comparison of current prices with the previous reference price levels is unlikely to be relevant in assessing the likelihood of a recurrence of dumping.
205. The conclusion to be drawn is that price behaviour does not provide a basis for concluding that a recurrence of dumping is likely.

4.9.3 Commercial arrangements

206. Prices for exports to New Zealand are negotiated with the importers for each season's crop, with the negotiation led largely by the importers. Information from a Chinese producer indicated that an importer will tender for a price, and the producer would determine if the price was acceptable, based on its costs and a reasonable margin of profit. The Chinese producer noted that it would continue to seek a reasonable profit on sales to New Zealand, whether or not anti-dumping duties were in place.
207. The conclusion is that the commercial nature of the price negotiations affecting exports of the subject goods to New Zealand means that it is unlikely that prices will decrease if anti-dumping duties are not in place.

4.9.4 Chinese market

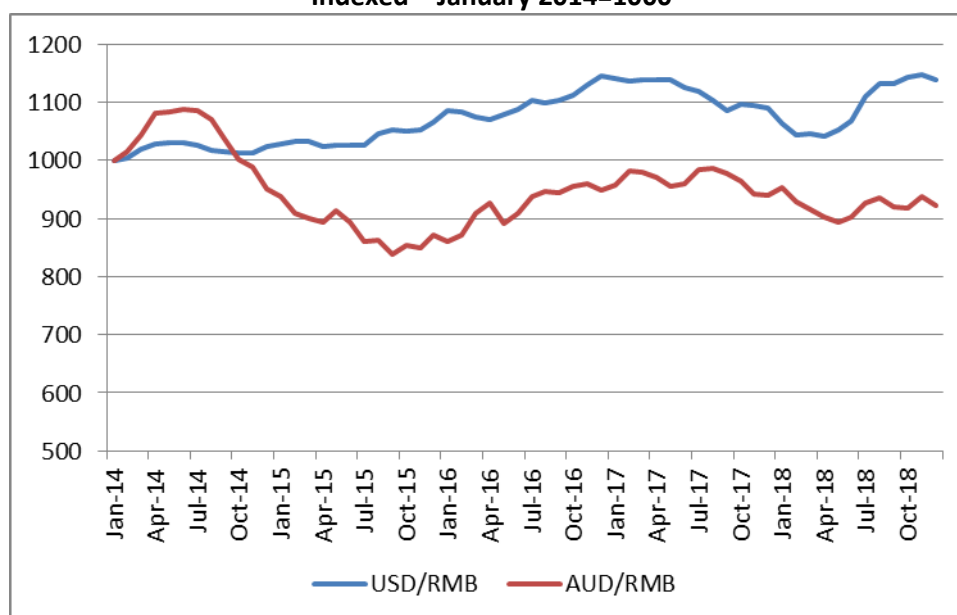
Costs and returns

208. Normal values in China are also part of the equation in a dumping determination. The normal value levels established by MBIE for canned peaches are based on sales in the Chinese market in the ordinary course of trade, while normal values for peaches in cups have been constructed.
209. Any changes in normal values would require changes to production costs and administrative, selling and general costs and/or profit. There is no evidence indicating that producers will significantly alter their costs in the near future, nor (based on historic trends) that their profit levels will change significantly to cause a change in normal values. MBIE considers it unlikely therefore that normal values will change and contribute to a continuation or recurrence of dumping.

Exchange rates

210. The determination of dumping is also affected by movements in exchange rates. The effect of exchange rate movements for AUD and USD in relation to the NZD is shown in Figure 5.4 in section 5.2.1.5 of this Interim Report. This suggests that it is not possible to conclude that these exchange rate movements involving the NZD will encourage an increase in imports.
211. A similar analysis is shown below in a chart of the RMB/USD and RMB/AUD exchange rate movements indexed from January 2014.

Figure 4.4: Monthly exchange rates Indexed – January 2014=1000



212. The analysis indicates that the RMB has generally decreased in value against the USD over the period 2014-2018, but within a band of close to 0-15 per cent. The RMB has fluctuated against the AUD, but after an increase in early 2014, has generally remained at a higher value than in 2014. This indicates that exports in USD are likely to be more attractive in that the return in RMB will be higher, or alternatively, that prices denominated in USD can be reduced while maintaining RMB levels of return. The reverse would be the case for AUD-denominated sales.

Product availability

213. The other factor in relation to the Chinese market is the availability of subject goods. MBIE had understood that there is a global decline in consumption of canned peaches, but a Chinese producer noted that while the retail market may have stabilised or decreased, there had been an increase in demand by downstream industries, including the food service and bakery sectors.
214. Industry data for Chinese production shows that the output of preserved peaches increased from 706,000 MT in 2016 to 766,000 MT in 2018, while exports increased from 134,000 MT to 142,000 MT in the same period.
215. The cooperating Chinese producer noted that it is currently running its peach production at full capacity and has no plans to increase capacity in the foreseeable future. It is unlikely, therefore, that efforts will be made to expand export sales by reducing prices.
216. MBIE does not consider that product availability is a significant indicator of the extent to which dumping of canned peaches exported to New Zealand is likely to continue or recur.

Conclusion

217. MBIE concludes that any significant changes in costs or returns to Chinese producers are not likely to affect normal values in the near future; exchange rate movements tend to favour an increase in exports at prices that are the same or higher than current prices in

RMB. MBIE considers that it is unlikely that there will be any significant changes to normal values and export prices that would result in the continuation or recurrence of dumping by Chinese exporters.

4.9.5 Conclusions

218. MBIE has assessed the likelihood that there will be a continuation or recurrence of dumping if anti-dumping duties are not continued. There is no current dumping of the subject goods, and in light of the commercial arrangements for pricing of imports and conditions in the Chinese market, MBIE considers that it is unlikely that there will be any significant changes to normal values and export prices which would lead to a recurrence of dumping.
219. In the context of this review and in light of the analysis that MBIE has undertaken, the foreseeable future is considered to be at least 12 months. Should the situation change materially, it is open to the New Zealand industry to apply for a further investigation.

4.10 Conclusions relating to dumping

220. MBIE has established that there is no current dumping of exports of preserved peaches from China, and has concluded that it is **not** likely that the absence of anti-dumping duties will lead to a continuation or recurrence of dumping of preserved peaches from China.
221. In light of these conclusions relating to dumping, MBIE would not be able to conclude that the expiry of the duty would be likely to lead to a continuation or recurrence of injury. A detailed analysis of material injury for the purposes of the Act is therefore not required.

5. Conclusions

222. On the basis of the information available it is concluded that the expiry of the anti-dumping duty on preserved peaches from China is not likely to:
- lead to a continuation or recurrence of dumping and
 - lead to a recurrence of material injury to the domestic industry attributable to dumping.
223. MBIE's conclusion is 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.

6. Recommendations

It is recommended with regard to the imposition of anti-dumping duty on imports of preserved peaches from China, that the Minister:

- a. note that MBIE has completed its reconsideration of the sunset review for anti-dumping duties on preserved peaches from China, as directed by the High Court
- b. note that MBIE has concluded 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
- c. agree, pursuant to section 14(7) of the Dumping and Countervailing Duties Act 1988, to terminate the anti-dumping duties imposed on preserved peaches from China, with effect from 17 July 2017.

ANNEX 1: COMMENTS RECEIVED ON THE INTERIM REPORT

Comments on the Interim Report were received from HWL.

A. HWL Submission	MBIE Comments
A1 Exporter	
<p>HWL noted that Countree Food is a sales office and not a producer and is a related company to Heze Sanqing. HWL submitted that Heze Sanqing is the exporter for establishing an export price, rather than Countree Food. HWL claimed that it was incorrect to treat Countree Food and Heze Sanqing as the same entity, and that treating them as such has resulted in incorrect sales being used to establish a normal value.</p>	<p>As now explained in section 3.4, MBIE has looked at the Countree Food Group as a whole, and has ensured that it has made the appropriate adjustments to get back to an ex-factory export price. This adjustment is consistent with section 5(3)(c) of the Act that requires the normal value and export price to be compared “with due allowances made as appropriate for . . . any other differences that affect price comparability.”</p> <p>In light of HWL’s comments, MBIE has recognised that export sales by the Countree Food Group incur costs of selling for export that are additional to costs it incurs on domestic sales. In order to ensure a fair comparison of export prices and normal values at the same level of trade (i.e. in this case, the ex-factory level), MBIE in this Final Report has decided to deduct from export prices these additional costs of selling for export.</p> <p>The explanation in section 3.4 is intended to clarify the matters raised by HWL.</p>
A2 VAT adjustment	
<p>HWL submitted that an upward adjustment for VAT should have been made to the normal value established for Countree Food.</p>	<p>MBIE made an adjustment for VAT in its dumping analysis in the form of a deduction from the export price instead of being added to the normal value, yielding the same effect. MBIE is satisfied that it has appropriately addressed adjustments for VAT.</p>
A3 Arms’ length sales	
<p>HWL submitted that Heze Sanqing’s sales to Countree Food were incorrectly</p>	<p>As now explained in section 3.4, MBIE has looked at the Countree Food Group as a</p>

<p>excluded from the sales establishing base prices for normal values, and they should have been taken into account for establishing normal values.</p> <p>HWL explained its view that while non-arm's length sales from Heze Sanqing to Countree Food should be discarded, MBIE should have used the downstream sales between Countree Food and the first independent buyer to establish normal values.</p> <p>HWL referred to paragraph 14 of Article 2 of the WTO Analytical Index: Guide to WTO Law and Practice on the Anti-Dumping Agreement which refers to Appellate Body considerations in <i>US – Hot-Rolled Steel</i>. "The US authorities, in calculating the normal value, discarded certain sales by exporters to their affiliates because these sales were not "in the ordinary course of trade", and replaced the discarded sales with downstream sales of the product, transacted between the affiliate and the first independent buyer, which had been made "in the ordinary course of trade". Japan objected to the use of these sales in calculating normal value, arguing that it is implicit in Article 2.1 that a sales transaction may only be used to calculate normal value if the exporter is the seller. The Appellate Body, reversing the Panel, considered that Article 2.1 is silent on this issue and that, if all four explicit conditions in Article 2.1 are satisfied . . . , the identity of the "seller of the 'like product' is not a ground for precluding the use of a downstream sales transaction when calculating normal value"."</p> <p>HWL submitted that excluding sales at internal transfer prices between Heze Sanqing and Countree Food meant that the normal value for Heze Sanqing is much lower than what it would be if the provisions of the Act and the Agreement had been followed.</p>	<p>whole, but has ensured that it has made the appropriate adjustments to get back to an ex-factory normal value. MBIE's discussion in section 3.4 is intended to clarify the matters raised by HWL.</p> <p>When calculating base prices for normal values for canned peaches, MBIE used sales by the Countree Food Group to independent domestic customers on the Chinese market. MBIE excluded any sales within the Countree Food Group, as these were not arm's length transactions for home consumption and therefore not in the ordinary course of trade. The only sales by the Countree Food Group to customers in China were made directly by the factory (Sanqing Food). Therefore, there was no need to look at any downstream sales by Countree Food. MBIE is satisfied that it has information on domestic selling prices by the producer in the ordinary course of trade in sufficient quantities to establish normal values and, in accordance with section 5(1) of the Act, has used those selling prices to establish normal values.</p>
<p>A4 Profits for constructed normal values</p>	
<p>HWL claimed that the rate of profit calculated for Countree Food is inconsistent with the requirements of section 5(2)(d)(ii)(B) the Act, since MBIE used the profit achieved by the company for the same general category on the domestic market, rather than an industry wide profit.</p> <p>HWL also submitted that Heze Sanqing's accounts, which were used to calculate a rate of profit, include Heze Sanqing's sales to Countree Food which are related sales at very little profit, if any. HWL argued that the inclusion of these sales would</p>	<p>In light of HWL's comments, MBIE has re-examined the rate of profit that it used to construct normal values for preserved peaches in plastic cups. MBIE agrees with HWL that the rate of profit it used reflects profits on both domestic sales and those destined for export. Using information from the Countree Food Group, in the preparation of the Final Report MBIE has re-calculated the rate of profit on domestic sales by it which excludes those sales destined for export, and has arrived at a profit rate that is higher than that used in the Interim Report.</p>

<p>affect the overall profitability of the company, and therefore the profit used by MBIE is unlikely to be reliable.</p>	<p>As required by section 5(2)(d)(ii)(B) of the Act, MBIE has had “regard to the rate of profit normally realised on sales of goods . . . of the same general category”. MBIE’s research indicates that profit as a proportion of sales revenue ranged from 2.3% to 6.2%, and averaged 4%, from 2006 to 2015 for vegetable and fruit canning in China⁹. Another source shows profit before tax for the canned fruit and vegetable industry in China of 4.2% in 2011 and 5.2% in 2014¹⁰. MBIE has no information on profit rates on goods of the same general category for 2018. The rate of profit MBIE has calculated is within the range of the figures available until 2015.</p> <p>As required by Article 2.2.2 (iii) of the AD Agreement, the profit margin used by MBIE to construct normal values does “not exceed the profit normally realized by other exporters or producers of products of the same general category in the domestic market of the country of origin.”</p>
<p>A5 Retail and wholesale margins</p>	
<p>HWL submitted that with regards to retail and wholesaler margins in MBIE’s retail price analysis as a cross-check on normal values, the 25, 30 and 45 per cent margins are merely assertions. HWL claimed that the information obtained by MBIE for such margins was based on self-interested comments by Countree Food, and that they are only based on impressions and experience. HWL also asked whether MBIE sought an interview with a retailer or wholesaler to confirm this margin.</p> <p>HWL also referred to the questionnaire response received from Shandong Tiantong, which stated “<i>we are a manufacturer and we sell our products through [redacted] we do not know their retail prices, after all, China has so many retailer (region, location, business, scope, etc) have their own retailing prices... we do not know the margins of the wholesaler distributor and retailer</i>”.</p>	<p>MBIE notes that the information on margins the verification team obtained in China is based on the experience of the Countree Food Group. Countree Food’s information does however approximate the retail profit margins found in MBIE’s research. MBIE’s research indicates that retail profit margins for the supermarket sector in China in 2018 averaged 21.5%.¹¹ MBIE could not access information on wholesale margins in China.</p> <p>MBIE’s research does however show that in Australia, distributors’ gross margins for food and non-alcoholic beverages are about 35%.¹² MBIE understands however that distributor/wholesalers margins may differ between markets.</p> <p>MBIE notes HWL’s comment that the information relating to the margins provided by the Countree Food Group may be self-interested. MBIE comments that in the course of the reconsideration, MBIE has not received from interested parties any</p>

⁹ <https://www.ceicdata.com/en/china/canning-food-vegetable-fruit-canning/cn-vegetable-fruit-canning-profit-ratio-from-sales-revenue>

¹⁰ https://www.gtja.com.hk/UploadFiles/gtja_enReport/2015/09/20150929_CR_6836%20HK.pdf

¹¹ <https://asia.nikkei.com/Business/Retail/Aldi-and-Costco-test-China-s-retail-appetite-with-fresh-approaches>

¹² <https://www.rba.gov.au/publications/bulletin/2012/jun/2.html>

	<p>information on retail and wholesale margins in China which is based on more than assertion, impressions or experience of a party, all of whom have a particular interest in the outcome of this consideration. The information provided by HWL on retail margins is based on HWL's understanding of the New Zealand market. In this case, direct information from Chinese retailers and wholesalers was not available to MBIE.</p> <p>All of HWL's, Shandong Tiantong's and MBIE's comments on this matter emphasise why it is unreliable and unreasonable to use retail pricing information to determine normal values where there is more accurate, reliable and verified information available. For this reason, MBIE has ultimately calculated normal values for canned peaches based on actual selling prices to unrelated Chinese customers or, for peaches in cups, on constructed values using verified cost information.</p>
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CONFIDENTIAL ATTACHMENT 1: DUMPING ANALYSIS: COUNTREE FOOD GROUP

NOTE: This Attachment is Confidential in its entirety because making the information available would give a significant competitive advantage to a competitor of the submitter of the information. Section 4 of this Final Report provides a summary of the confidential information to the extent that information is capable of summary.

CONFIDENTIAL ATTACHMENT 2: DUMPING ANALYSIS: KANGFA FOODSTUFFS

NOTE: This Attachment is Confidential in its entirety because making the information available would give a significant competitive advantage to a competitor of the submitter of the information. Section 4 of this Final Report provides a summary of the confidential information to the extent that information is capable of summary.