MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

TRADE AND INTERNATIONAL

Trade (Anti-dumping and Countervailing Duties) Act 1988

DUMPING INVESTIGATION

Preserved Peaches from China

Step 1 Final Report

MBIE/AD/I/2022/001

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June 2023

New Zealand Government

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Abbreviations and Acronyms

This report contains the following abbreviations and acronyms:

Abbreviation / Acronym	Meaning
2006 China Investigation	The first New Zealand investigation into dumping of peaches from China
2011 Spain Investigation	An investigation into dumping of preserved peaches from Spain
2017 Review	A sunset review by MBIE in 2017 of the anti-dumping duty on preserved peaches from China
2019 Reconsideration	A reconsideration by MBIE in 2019 of the decision in the 2017 sunset review to terminate anti-dumping duty on preserved peaches from China
Act (the)	Trade (Anti-dumping and Countervailing Duties) Act 1988
AD Agreement (the)	WTO Agreement on Implementation of Article VI of the GATT 1994
AUD	Australian dollars
China	People's Republic of China
CIF	Cost, insurance and freight
COGS	Cost of goods sold
CNY	Chinese Yuan
Customs	New Zealand Customs Service
DSB	The WTO Dispute Settlement Body
EBIT	Earnings before interest and tax
EDI	Electronic data interchange
FIS	Free into store
FOB	Free on board
FTE	Full time equivalent
GOC	the Government of China
HWL	Heinz Wattie's Limited
KG	Kilograms
MBIE	Ministry of Business, Innovation and Employment
MT	Metric ton/tonne
NIFOB	Non-injurious Free on Board
NZ	New Zealand
NZD	New Zealand dollar

POI(D)	The period of investigation for dumping is the year from 1 July 2021 to 30 June 2022.
POI(I)	The period of investigation for injury is from 1 July 2018 to 30 June 2022.
RFI	Request for Information
ROI	Return on investment
Statistics NZ	Statistics New Zealand
TDI	Trade Data International Pty (Ltd)
USD	United States dollars
VAT	Value Added Tax
VFD	Value for Duty
WTO	World Trade Organization

1. Summary

1.1 Purpose

1. Section 10C(5) of the Trade (Anti-dumping and Countervailing Duties) Act 1988 (the Act), requires the chief executive of the Ministry of Business, Innovation and Employment (MBIE) to report to the Minister of Commerce and Consumer Affairs (the Minister) on the findings of the investigation into whether dumping of preserved peaches from China has caused or is causing material injury to a New Zealand industry. This Step 1 Final Report summarises the findings of the investigation on the matters to be determined by the Minister under section 10D of the Act.

2. Section 10D(1) of the Act requires that, within 180 days of the start of investigation step 1 (but not less than 30 days after the written advice is given by the chief executive under section 10C(2)), the Minister must determine whether, in relation to the imported goods, the goods are being dumped, and material injury to an industry has been or is being caused because of the dumping.

3. If the Minister makes an affirmative determination under section 10D(1), then section 10D(2) requires the Minister to determine the rate or amount of anti-dumping duty (in accordance with section 10E) that will form the basis for an investigation step 2, and direct the chief executive to immediately start investigation step 2.

4. If the Minister makes a negative determination under section 10D(1), then the Minister must terminate the investigation under section 11 of the Act. Section 11(1) provides that the grounds for termination may apply to some or all of the goods under investigation.

5. In the preparation of this Step 1 Final Report MBIE has considered submissions made by interested parties on the Step 1 Essential Facts and Conclusions Report (Step 1 EFC Report), provided in accordance with section 10C(2).

1.2 Proceedings

6. On 28 September 2022, MBIE accepted a properly documented application from Heinz Wattie's Limited (HWL), alleging that imports of preserved peaches from China are being dumped and causing material injury to the New Zealand industry.

7. The grounds for the application were that the alleged dumping of preserved peaches from China had caused and is continuing to cause the company material injury through loss of market share, price undercutting, price depression and price suppression resulting in a decline in sales, market share and profits, and adverse effects on inventories, employment and growth. HWL's application requested the imposition of provisional measures.

8. On 29 November 2022, MBIE initiated an investigation under section 10 of the Act, being satisfied that for the purpose of initiation the industry had provided sufficient evidence to support its application. This included sufficient evidence to justify investigating whether:

   - imports of preserved peaches from China are being dumped, and
   - the alleged dumping has caused or is causing material injury to the domestic industry.

9. On 12 May 2023, in accordance with section 10C(2) of the Act, MBIE provided notified parties with a Step 1 EFC Report as written advice of the essential facts and conclusions likely to form the basis for a determination to be made by the Minister under section 10D(1). Comments on the Step 1 EFC Report have been taken into account in the preparation of this Step 1 Final Report.

10. The investigation has been carried out according to the requirements of the Act. Section 1A of the Act describes its purpose as "to enable New Zealand to apply anti-dumping and countervailing duties in accordance with its obligations as a party to the WTO Agreement."[1] Accordingly, where the Act is silent, or does not provide clarity as to how a matter is to be addressed MBIE has, to the extent relevant, considered whether the World Trade Organization (WTO) Agreement on the Implementation of Article VI of GATT 1994 (AD Agreement), as well as WTO dispute settlement reports adopted by the Dispute Settlement Body (DSB) provide guidance.

1.3 Previous proceedings

1.3.1 China

11. As depicted in Figure 1 below, an anti-dumping duty on preserved peaches from China was first imposed after an investigation in 2006 (2006 China Investigation). The duty was reviewed in a sunset review in 2011 and continued for a further 5 years, then reviewed in a further sunset review in 2017 (2017 Review).

12. The 2017 Review found there was unlikely to be a continuation or recurrence of injury caused by dumping if the duty were removed. The duty was therefore terminated in February 2018, at the conclusion of the review.[2] HWL contested the findings of the 2017 Review and, following agreement between the parties, the High Court quashed the 2018 decision to terminate the duty and directed MBIE to undertake a reconsideration of the sunset review (2019 Reconsideration). The High Court ordered that the duty not be restored until a decision justifying it was made. This meant that no duty was in place during the 2019 Reconsideration.[3]

13. The 2019 Reconsideration upheld the findings of the 2017 Review and on 28 November 2019 notice was again given that the anti-dumping duty was terminated[4] on the basis that the imposition of an anti-dumping duty was not necessary to prevent a continuation and recurrence of material injury to the New Zealand industry. There has been no anti-dumping duty on preserved peaches from China since February 2018.

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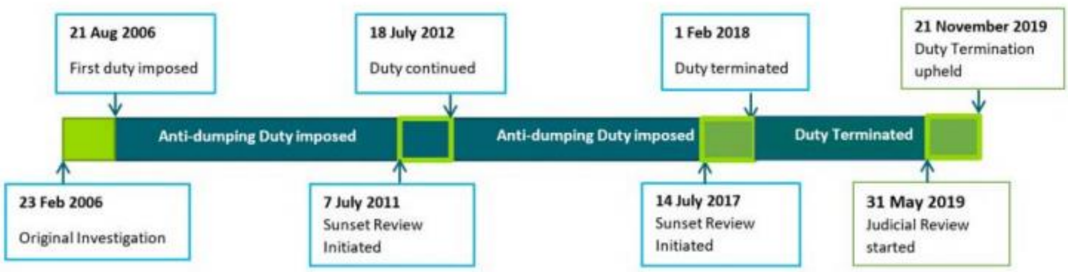
[1] The WTO Agreement is the Marrakesh Agreement Establishing the World Trade Organization, which includes the AD Agreement as an annexed Multilateral Agreement on Trade in Goods.

[2] Termination of Anti-Dumping Duties on Preserved Peaches From China - 2019-go5424 - New Zealand Gazette

[3] See paragraph 90(b) of the High Court's decision in Heinz Wattie's Limited v Ministry of Business, Innovation and Employment [2018] NZHC 4 September 2018: Heinz Wattie's Limited v Ministry of Business, Innovation and Employment [2018] NZHC 2309 (4 September 2018) (nzlii.org)

[4] Termination of Anti-Dumping Duties on Preserved Peaches From China - 2019-go5424 - New Zealand Gazette

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



1.3.2 Other countries

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

1.4 Findings

15. On the basis of its investigation, MBIE is satisfied that the findings to be reported to the Minister are that:

- MBIE has found dumping for some models of the subject goods exported from China to New Zealand over the POI(D) with dumping margins ranging from 4-24% and that other models were not dumped. MBIE has found an overall weighted average dumping margin for all exports of the subject goods during the POI(D) of 4.3%.
- MBIE has concluded that there has been an increase in imports of the subject goods along with some price effects – price undercutting, but not price depression or significant prevention of price increases (i.e., suppression).
- MBIE has found some consequential effects on the domestic industry which can be attributed to dumping. In particular, MBIE notes a loss of market share from 2020 and an impact on profits although a decline in profits between 2019 and 2020 was followed by an upward trend. MBIE has not found any actual declines in sales volumes or revenue, or any other economic factors.
- MBIE's conclusion is that, while dumping of the subject goods from China has had some impact on the domestic industry, the impact has not been demonstrated to be significant or substantial such that it can be concluded that dumping has caused material injury to the New Zealand industry producing like goods.
- MBIE considers the imposition of provisional measures is not necessary to prevent material injury being caused during the remaining period of investigation.

16. In terms of the determinations to be made by the Minister, MBIE recommends that the Minister determine under section 10D(1) of the Act, that imports of preserved peaches from China are being dumped but material injury to an industry has not been and is not being caused because of the dumping; and terminate the investigation under section 10D(3) and section 11.

17. MBIE also recommends that no provisional measures be applied under section 16 of the Act to imports of preserved peaches from China during the remaining period of the investigation.

1.5 Treatment of information

1.5.1 Information considered

18. Section 10C(3) of the Act requires that the chief executive should give interested parties a reasonable opportunity to present, in writing, all evidence relevant to the investigation and, on justification being shown, to present that evidence orally.

19. Article 6.1 of the AD Agreement provides that all interested parties in an investigation shall be given notice of the information which the authorities require and ample opportunity to present in writing all evidence which they consider relevant in respect of the investigation in question. Articles 6.1.1 to 6.1.3 set out matters relating to the use of questionnaires, while Article 6.2 provides that throughout the investigation all interested parties shall have full opportunity for the defence of their interests.

20. Article 6.14 provides that the procedures set out in Article 6 are not intended to prevent the authorities from proceeding expeditiously with regard to initiating an investigation, reaching preliminary or final determinations, whether affirmative or negative, or from applying provisional or final measures.

21. In an investigation, in accordance with the relevant provisions of the Act and where relevant the provisions of the AD Agreement, MBIE seeks and obtains information directly relevant to the proceeding, and satisfies itself as to the accuracy of the information provided. Such information includes questionnaire responses and other information from interested parties; the application and submissions from the New Zealand industry; import entry data from the New Zealand Customs Service (Customs), statistical data from Statistics New Zealand (Stats NZ) and other sources; and other relevant data such as exchange rates, interest rates and prices. MBIE can use verification visits, remote verification and desktop verification to review the information available and to assess its reliability.

1.5.2 Information available

22. Section 6 of the Act provides as follows:

> *(1) Where the chief executive is satisfied that sufficient information has not been furnished or is not available to enable the export price of goods to be ascertained under section 4, or the normal value of the 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 chief executive having regard to all available information.*
>
> *(2) For the purposes of subsection (1) the chief executive may disregard any information that the chief executive considers to be unreliable.*

23. Article 6.8 of the AD Agreement provides as follows:

> *In cases in which any 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.*

24. Annex II to the AD Agreement sets out procedures to be followed regarding the request for and provision of information from interested parties. Paragraph 7 of Annex II provides:

> *If the authorities have to base their findings, including those with respect to normal value, on information from a secondary source, including the information supplied in the application for the initiation of the investigation, they should do so with special circumspection. In such cases, the authorities should, where practicable, check the information from other independent sources at their disposal, such as published price lists, official import statistics and customs returns, and from the information obtained from other interested parties during the investigation. It is clear, however, that if an interested party does not cooperate and thus relevant information is being withheld from the authorities, this situation could lead to a result which is less favourable to the party than if the party did cooperate.*

25. Findings relating to those parties who have not provided information are based on the available information. Information available has been used where reasonable and appropriate as detailed below in this report.

1.5.3 Treatment of confidential information

26. Section 3F(1) of the Act provides that an interested party may ask the chief executive to provide copies of information relevant, among other things, to an investigation. However, section 3F(2) provides that section 3F(1) does not apply to confidential information (unless consent is given by the submitter), or information that would be likely to be withheld if it were requested under the Official Information Act 1982 (OIA).

27. MBIE has made available all non-confidential information through the public file for this investigation. Any interested party can request both a list of the documents on this file and copies of the documents on it.

28. Confidential information is defined in section 3F(5) of the Act:

> *In this section, confidential information means information about which the submitter of the information has shown a good reason for the chief executive to believe 1 or more of the following:*
>
> *(a) that making the information available would give a significant competitive advantage to a competitor of the submitter of confidential information:*
>
> *(b) that making the information available would have a significantly adverse effect on—*
>
> > *(i) the submitter of confidential information; or*
> >
> > *(ii) the person from whom the information was acquired by the submitter of the information; or*
> >
> > *(iii) any person to whom the information relates:*
>
> *(c) that the information should be treated as confidential for reasons other than the reasons described in paragraphs (a) and (b).*

29. In seeking information from interested parties for this investigation, MBIE has pointed 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 has pointed out to parties that section 3F of the Act allows the chief executive to disregard any confidential information for which a satisfactory non-confidential summary (or satisfactory statement of why such a summary cannot be given) is not provided.

30. This report summarises information relating to the calculation of dumping margins. Detailed information has not been included in this report about calculations where it is not required to be included in this report under the Act, and it is considered to be confidential for the purposes of 3F of the Act.

31. MBIE has reviewed requests for information to be treated as confidential, and is satisfied that documentation relating to transactions, such as invoices; information relating to costs and prices; information relating to commercial relationships; and non-public financial information; will generally come within the meaning of confidential information. Much of this information is not able to be summarised except in broad descriptive terms, but to the extent possible MBIE has required parties submitting confidential information to provide non-confidential summaries.

32. Some information relating to the domestic industry and the analysis of injury is considered confidential. This report therefore presents a summary of such information and associated analysis, with tables and charts used to assist in the summarisation of the material.

1.5.4 Verification of information

33. Article 6.6. of the AD Agreement provides:

> *Except in the 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.*

34. Article 6.7 of the AD Agreement provides for on-site visits as an option for the investigating authority to fulfil its obligation under Article 6.6 to "satisfy itself as to the accuracy of the information supplied by interested parties on which findings are based,"[5] but there are a number of ways of proceeding with verification.[6]

35. MBIE conducted in-person verification visits to the domestic industry and to one cooperative foreign manufacturer, Qingdao Countree Food Co. Ltd (Countree Food). Non-confidential versions of the associated verification reports are available on the public file.

1.6 Report details

36. In this report, unless otherwise stated, years are years ending 30 June and dollar values are New Zealand dollars (NZD). Other currencies used are US dollars (USD), Australian dollars (AUD) and Chinese Yuan (CNY). In tables, column totals may differ from the sum of individual figures because of rounding.

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[5] WT/DS189/R, Panel Report, *Argentina – Ceramic Tiles*, Footnote 65.

[6] WT/DS99/R, Panel Report, *US – DRAMS*, paragraph 6.78.

37. The **period of investigation for dumping** is the year from 1 July 2021 to 30 June 2022 (POI(D)), while the **period of investigation for injury** is from 1 July 2018 to 30 June 2022 (POI(I)).

38. HWL's application includes projections of performance indicators for 2023 and 2024, but HWL confirmed during the verification process that the application for this investigation is made on the basis that New Zealand's preserved peach industry is suffering current injury as a result of alleged dumping. This is not a threat of injury case. In assessing HWL's dumping application based on current injury MBIE determined whether there was evidence of current injury based on a POI(I) from July 2018 to June 2022.

39. HWL also made claims regarding the extent to which it would have achieved a greater level of performance in 2021 and 2022 but for the alleged dumping. HWL provided two counterfactual injury scenarios highlighting sales volume, revenue and profit amounts the company considers it would have achieved had it not needed to compete with the dumped goods.

40. As detailed in section 4 of this report, MBIE's evaluation of the effect of the alleged dumping on the relevant injury factors is based first on an assessment of whether there is an actual decline or other impact on those factors, and secondly, if necessary, whether the analysis should consider the position but for the dumping, i.e., a counterfactual approach, as it relates to the period 2019-2022.

41. All volumes are expressed on a metric ton (MT or tonne) basis unless otherwise stated. Exports to New Zealand were generally invoiced in USD or AUD. Exchange rates used are those relating to specific transactions, where available, or the Customs exchange rates or the rate that MBIE considers most appropriate in the circumstances, as indicated in the text.

1.7 Submissions on the Step 1 EFC Report

42. On 12 May 2023, in accordance with section 10C(2) of the Act, MBIE gave notified parties the Step 1 EFC Report and invited them to make written submissions to MBIE on it.

43. One substantive submission on the Step 1 EFC Report was received from HWL. HWL also met with MBIE to discuss the content of the submission.

44. The Annex to this Step 1 Final Report includes summaries of the comments made and MBIE's responses to them. Where appropriate, the matters raised have been taken into account in the preparation of this Step 1 Final Report.

2. Subject Goods, Like Goods and Interested Parties

2.1 Subject goods

45. The imported goods that are the subject of the investigation are described as:

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

46. 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 and plastic cups are covered by the subject goods description.

47. MBIE notes that there are some goods imported under the same tariff item as preserved peaches which are excluded from the investigation, namely goods such as preserved nectarines, including nectarine pulp or puree, preserved peaches suspended in jelly, mixes of fruit, dried peaches, and preserved peaches in containers exceeding 5.0 kg.

2.1.1 Tariff description

48. During the POI(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.					

2.1.2 Rate of duty

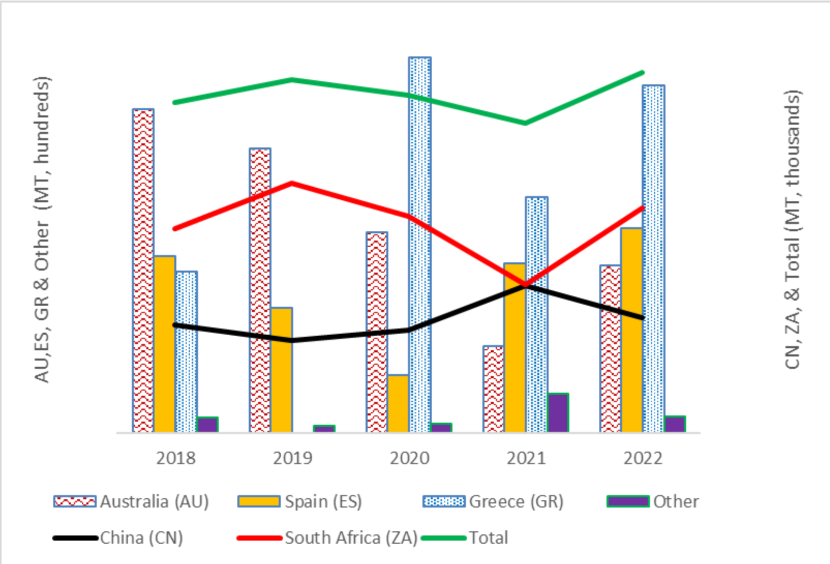
49. The subject goods from China have attracted a preferential rate of duty of 'Free' since 2012.

2.1.3 Imports of subject goods

50. Figure 2.2 shows imports of the subject goods from 2018 to 2022. South Africa and China are significant exporters of peaches to New Zealand (by quantity, measured in thousands of tonnes on the right hand side vertical axis of figure 2.2). South African imports are currently subject to anti-dumping duties. Australia, Spain and Greece were minor suppliers by quantity, measured in hundreds of tonnes on the left hand side vertical axis of Figure 2.2. Spain and Greece are also currently subject to anti-dumping duties.

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

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



51. Imports from China made up 32 per cent of total imports in the POI(D).

52. During the POI(D), imports of the subject goods from China included peaches diced, sliced or in halves; in juice, light syrup or heavy syrup; and in 113g-125g plastic cups, 635g plastic jars, and in 410g-425g, 820g, 3kg (A10), and 4.25kg cans.

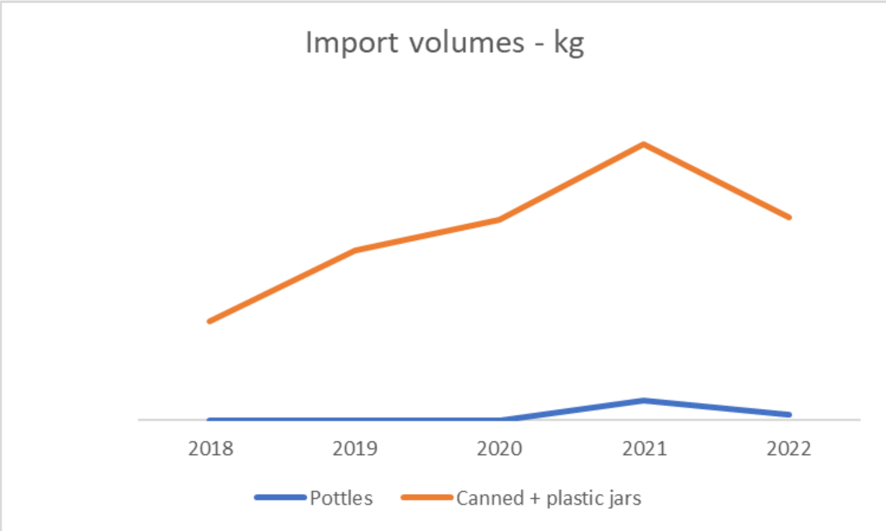
2.1.4 Imports in different container types

53. MBIE's analysis of Customs data for the initiation report for this investigation helped identify that the subject goods were imported in different types of packaging such as cans, glass jars and plastic pottles, and that a significant volume of these imports were canned.

54. MBIE has obtained detailed information on imports from Customs data and from information received from importers, exporters and foreign manufacturers. As shown on Figure 2.3 below, this information indicates that imports of preserved peaches from China in cans and plastic jars increased steadily from 2018 to 2021 then declined between 2021 and 2022, while imports of preserved peaches in pottles were steady from 2018 to 2020 when there was a slight rise, followed by a decline between 2021 and 2022:

Figure 2.3: Import Volumes

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



55. HWL submits that plastic cups when sold as snacks can be substitutes for canned products and compete directly with the subject goods, but does not consider that the cups sold to the charity sector are substitutable for the like goods it produces as they serve a specific purpose.

56. MBIE accepts HWL's submission that preserved peaches in plastic cups are substitutable for its products. MBIE considers imports of preserved peaches in any container type (cans, tubs, jars and cups) that fall within the goods description above (i.e., up to and including 5kg) are subject goods. MBIE has considered all imports from China during the POI(D) of preserved peaches in plastic cups in undertaking the dumping analysis, including those destined for the charity sector.

57. As discussed below in section 2.2.1, MBIE accepts, however, HWL's submission that imports of peaches in plastic cups sold to the charity sector are non-injurious to the domestic industry. As peaches packaged in cans are not suitable to be distributed to children in schools, these imports of plastic cups are not substitutable for canned goods produced by HWL. Therefore, MBIE considers imports of peaches in plastic cups sold to the charity sector and provided for school lunches are not likely to cause injury to HWL.

2.2 Like goods and the New Zealand industry

58. Section 3A of the Act provides that for the purposes of the Act, the term **industry**, in relation to any goods, means:

   a. the New Zealand producers of like goods, or
   b. such New Zealand producers of like goods whose collective output constitutes a major proportion of the New Zealand production of like goods.

59. Section 3(1) of the Act defines **like goods**, in relation to any goods, as:

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

2.2.1 Like goods

60. 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 the subject goods in all respects, or have characteristics which closely resemble the subject goods.

61. The scope of the subject goods is defined in section 2.1 above.

62. In its application, HWL identified characteristics it considered provided a basis for concluding the goods it produces are like goods to the subject goods. HWL made the following submissions:

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

MBIE consideration

63. HWL's preserved peaches are mostly sold under brand names Wattie's, Oak or Weight Watchers, as halves or slices, in juice or syrup, in cans with net weights of 410g, 820g and A10 (2.95kg/3kg). HWL currently does not have the production capability to produce preserved peaches in cups.

64. Previously, MBIE determined the Weight Watchers branded preserved peaches were not like goods to the imported goods because the brand was specifically targeted towards consumers who are on the Weight Watchers' weight loss programme, marketed through the Weight Watchers franchise and sold at a different price level that is not affected by market price changes in the same way as other HWL products. HWL advised the Weight Watchers licence has come to an end and HWL has not produced anything with this branding in the last 18 months. Doing so is no longer on the production plan. HWL advised the current Weight Watchers stock will be the last of the products sold under this brand. MBIE has considered all the factors that determine like goods and has had no reason to change its position that Weight Watchers products are not like the subject goods.

65. HWL has not produced any new peach products that need to be addressed in relation to a like goods determination.

66. To determine whether the goods produced in New Zealand are like goods to the imported preserved peaches from China, MBIE has considered physical characteristics, function and usage, pricing structures, marketing and any other relevant considerations, with no one of these factors being necessarily determinative.

Physical characteristics

67. MBIE considers products produced locally by HWL have the same physical characteristics as the allegedly dumped goods from China.

Production methods

68. MBIE considers production methods for locally produced preserved peaches and the allegedly dumped goods from China are substantially similar.

Function and usage

69. MBIE considers both the locally produced and allegedly dumped goods have comparable or identical end uses.

Pricing

70. MBIE considers, in relation to pricing as a factor in considering the likeness of goods, the relevance of prices is not limited to the comparison point used in the assessment of dumping or injury. Rather, it will generally reflect the pricing point for the goods as sold to the ultimate customers. In this case there is nothing to suggest there is a significant difference in the level at which the goods are priced to final consumers, the costs that are built into the pricing structure, or the way in which prices are set.

Other considerations

71. 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 POI(D) for the current investigation, with the same producer supplying the same charity.

72. During the domestic verification visit for the current investigation, HWL explained that it does not consider charity sector cups to be substitutable for the like goods it produces as they serve a specific purpose, but said that cups when sold as snacks by the retail and food service sectors can be substitutes for canned products and compete directly with the like goods that it produces.

73. MBIE notes that HWL does not produce preserved peaches in plastic cups. However, preserved peaches in plastic cups are considered to be subject goods (for the reasons explained above in section 2.1) and have been addressed in the analysis of dumping, including preserved peaches in plastic cups imported by the charity sector.

Conclusion

74. Based on the submissions by HWL in its application, the information MBIE has gathered in relation to the subject goods from importers, foreign manufacturers and its own research, and evidence from past investigations and reviews, including in relation to preserved peaches from China, MBIE considers there is sufficient evidence to conclude that the preserved peaches produced by HWL are like goods to the subject goods.

2.2.2 New Zealand industry

75. Section 3A of the Act sets out the meaning of **industry**:

> *For the purposes of this Act, the term industry, in relation to any goods, means—*
>
> *(a) the New Zealand producers of like goods; or*
>
> *(b) such New Zealand producers of like goods whose collective output constitutes a major proportion of the New Zealand production of like goods.*

76. HWL submitted the application for this investigation. HWL remains the only New Zealand producer of preserved peaches and is therefore the domestic industry for the purpose of this investigation.

77. 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.

78. 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.

MBIE consideration and conclusion

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

2.3 Interested Parties

80. As referenced above in this report, section 10C(2) of the Act provides for this report to be given to “notified parties” and section 10D(3) provides for “interested parties” to present evidence relevant to an investigation.

2.3.1 Statutory provisions

81. Section 3 of the Act identifies **notified parties** as including:

(a) the Government of the country of export
(b) exporters and importers known by the chief executive to have an interest in the goods
(c) the applicant in relation to the goods.

82. Section 10B(2) of the Act provides:

> *The chief executive must give notice of a decision to start each step of an investigation as soon as practicable after the decision is made…*

83. Notice of initiation of the investigation was provided to the notified parties as required by section 3E of the Act.

2.3.2 Provisions in the AD Agreement

84. Article 6.11 of the AD Agreement provides:

> *For the purposes of this Agreement, "interested parties" shall include:*
>
> *(i) an exporter or foreign producer or the importer of a product subject to investigation, or a trade or business association a majority of the members of which are producers, exporters or importers of such product;*
>
> *(ii) the government of the exporting Member; and*
>
> *(iii) a producer of the like product in the importing Member or a trade and business association a majority of the members of which produce the like product in the territory of the importing Member.*
>
> *This list shall not preclude Members from allowing domestic or foreign parties other than those mentioned above to be included as interested parties.*

2.3.3 Chinese producers

85. 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 25 producers of preserved peaches from China which exported to New Zealand over the POI(D), supplying 25 importers. 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 supplied 98 per cent of the subject goods exported from China to New Zealand. MBIE considers use of a sample in the current investigation to be reasonable and appropriate.

86. MBIE sought information from these producers. Only two of them cooperated with MBIE's request for information: Countree Food and Shandong Tiantong Food Co. Ltd.

87. MBIE notes that only three of the selected producers exported preserved peaches in cans. All of the others, and also one of the three producers of cans, exported plastic cups (113-127g). One of the producers also exported peaches in larger sized plastic tubs (695g).

88. None of the Chinese producers made a submission on the Step 1 EFC Report.

Acroyali Holdings Qingdao Co Ltd (Acroyali)

89. Acroyali did not reply to an exporter's questionnaire sent by MBIE. The New Zealand importer it supplies provided some information about its shipments from Acroyali.

90. Acroyali is a major canned food manufacturer and exporter, located in Qingdao in Shandong Province. Production includes a wide range of preserved fruit and vegetables as well as jams and other processed products.

91. Information on Acroyali's website[7] states that it is one of the leading canned food manufacturers and exporters in China. Its plant covers more than 20,000 square meters of land space, and 16,300 square meters of production area, with two canned foods workshops and one peanut butter workshop. The website notes that Acroyali's factory technology includes automatic peach pitter lines and a USA imported Urschel dicing machine. The website notes that Acroyali's plant has been certified with ISO, HACCP and BRC global

[7] www.acroyali.com

standard approvals. The plant is located 35 kilometres away from Qingdao Port and 15 kilometres away from Qingdao International Airport.

92. Canned yellow peaches are available in syrup, juice, and water; and as halves, slices, and dices. Peach halves are supplied in tins of 425g, 570g, 820g, 2.5kg, 3kg, and 4.25kg; and in glass jars of 530ml, 720ml, and 1000ml. Peach slices and dices are supplied in tins of 227g, 425g, 570g, 820g, 2.5kg, 3kg, and 4.25kg; and in glass jars of 530ml, 720ml, 1000ml. Harvest time is in late June to early September, with production time from the end of June to early September.

93. Acroyali's exports to New Zealand during the POI(D) were of preserved peaches in light syrup (halves and slices) in cans of 3kg and 4.25kg.

94. MBIE considers Acroyali to be a non-cooperating producer.

Dalian Luxe Foods International Sales Co Ltd (Luxe Foods)

95. Luxe Foods did not reply to an exporters questionnaire sent by MBIE and the New Zealand importer it supplies did not provide any information about its shipments from Luxe Foods.

96. Information on Luxe Foods' website[8] 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.

97. 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 exposition which links the two companies as producers and sellers. MBIE has no information on which manufacturing facility produced the preserved peaches exported to New Zealand during the POI(D). In the 2006 China Investigation, Dalian Leasun was a cooperating producer which exported directly to a New Zealand importer. On the basis of the limited information available, and in the absence of any other evidence, MBIE has treated Luxe Foods as a foreign producer of preserved peaches.

98. The website of Luxe Foods shows that it produces fruit in cans, glass jars and pouches, including yellow peaches (halves, slices and dices) in light syrup and juice, in 250g, 350g, 440g, 530g and 840g jars. The packing season is July to August.

99. From Customs' data, during the POR(D) Luxe Foods exported preserved diced peaches to New Zealand. In the 2019 Reconsideration, Luxe Foods exports to New Zealand were of preserved peaches in 125g plastic cups. Luxe Foods' New Zealand importer's website shows they sell 125g pottles of peaches in juice.

100. On the basis of the information available to it, MBIE concludes that during the current POI(D), Luxe Foods exported 125g plastic pottles of peaches in juice to New Zealand.

101. MBIE considers Luxe Foods to be a non-cooperating producer.

Lianyungang Tianle Food Co Ltd (Tianle Food)

102. Tianle Food did not respond to MBIE's manufacturer's questionnaire. The New Zealand importer it supplies provided some information about its shipments from Tianle, including invoices and other supporting evidence.

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[8] http://www.luxefoods.com/

103. Tianle Food is a Chinese producer of canned and pottled fruits and vegetables, which it exports to more than 50 countries and regions. During the 2017 Review, Tianle Food advised in a partial questionnaire response that it did not sell preserved peaches on the Chinese domestic market.

104. 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.

105. For this investigation, MBIE confirms its view that imports to the charity sector are not likely to cause injury to HWL, noting that HWL does not produce preserved peaches in plastic cups (the product model preferred by the sector). HWL also agrees that imports of cups for the charity could not cause injury.

106. 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 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.

107. Tianle Food exports to New Zealand during the POI(D) were of diced peaches in juice in 127g plastic pottles for use by a charity.

108. MBIE considers Tianle Food to be a non-cooperating producer.

Linyi City Kangfa Foodstuffs Drinkable Co Ltd (Kangfa Foodstuffs)

109. Kangfa Foodstuffs did not respond to MBIE's manufacturer questionnaire. The importers it supplied provided questionnaire responses and invoices.

110. 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.

111. In the 2017 Review and in a reconsideration by MBIE in 2019 of the decision in the 2017 sunset review to terminate anti-dumping duty on preserved peaches from China (the 2019 Reconsideration), Kangfa Foodstuffs did not provide information about its exports or domestic sales.

112. During the POI(D), Kangfa Foodstuffs exported peach slices in syrup, in 820g cans, to New Zealand

113. MBIE considers Kangfa Foodstuffs to be a non-cooperating producer

Qingdao Countree Food Co Ltd (Countree Food)

114. Countree Food provided a detailed response to the exporter questionnaire and responded to follow-up emails and also provided a response to a request for information. Countree Food participated in an in-person verification visit. Related importers responded to questionnaires. Both importers provided information and invoices.

115. 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. For ease in this review, MBIE refers to Countree Food as the producer, but in doing so treats Countree Food and Sanqing Food as a combined entity. Its factory is in Heze, Shandong Province.

116. In the 2017 Review, Countree Food did not respond to MBIE's manufacturer questionnaire. In the 2019 Reconsideration, Countree Food was a cooperating producer.

117. During the POI(D), Countree Foods exported the following 'models' of preserved peaches to New Zealand peach slices and halves in light syrup or juice in can sizes of 410g, 415g and 425g, 820g and A10 (3kg) and peach dices in juice in 125g plastic cups and peach slices in juice in 695g plastic tubs.

118. Countree Food made sales of preserved peaches in 312g, 820g and A10 (3kg) cans on the Chinese domestic market.

119. MBIE considers Countree Food to be a cooperating producer for this investigation.

Shandong Tiantong Food Ltd (Tiantong Food)

120. Tiantong Food produces fruit, including preserved peaches, in cans, glass jars and plastic cups.

121. Tiantong Food provided a response to MBIE's manufacturer's questionnaire for this investigation and responded to follow-up emails and also provided a response to a request for information. Related importers responded to importers questionnaires.

122. During the POI(D) Tiantong Food exported to New Zealand preserved peaches, diced and in juice, in 113g plastic cups

123. Tiantong Food made sales to the Chinese domestic market of peach slices and halves in light syrup or juice in can sizes of 308g, 425g and 3kg, and in glass jars of 248g, 468g, 548g, 748g and 958g.

124. MBIE considers Tiantong Food to be a cooperating producer for this investigation.

2.3.4 Importers

125. New Zealand-based importers were identified from Customs data.

Figure 2.4: Importers of preserved peaches from China

Importing company
Bidfood Limited
Davis Trading Company Ltd
Foodstuffs Own Brands Limited
KidsCan Charitable Trust Inc
Walter & Wild Ltd
Woolworths New Zealand Limited

126. None of the importers made a submission on the Step 1 EFC Report.

Bidfood Ltd (Bidfood NZ)

127. Bidfood NZ is a national wholesale food distributor supplying the foodservice and hospitality industries.

128. Bidfood NZ provided a response to MBIE's importer questionnaire, including copies of invoices relating to their imports and other price and cost information for its imports over the POI(D).

Davis Trading Ltd (Davis Trading)

129. Davis Trading is a national wholesaler and distributor of imported and locally sourced ambient, chilled and frozen food ingredients, packaging and chemicals. Its main customers are food manufacturers, bakeries, food service customers, wholesalers, re-packers and franchises.

130. Davis Trading provided a response to MBIE's importer questionnaire.

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

131. 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.

132. Woolworths NZ provided a response to MBIE's importer questionnaire, including copies of invoices relating to their imports and other price and cost information for its imports over the POI(D).

Foodstuffs Own Brands Limited (Foodstuffs)

133. Foodstuffs is in the business of selling groceries (finished goods) to retail and wholesale customers through its stores. Foodstuffs is jointly owned by two regional co-operatives Foodstuffs North Island Ltd and Foodstuffs South Island Ltd – and operates on behalf of both to centrally represent activities including the procurement of and development of private label products and selected commercial activities. Foodstuffs' store brands include New World, Pak 'n' Save, Four Square, and Gilmours. Its private label brands are Pam's range brands, Value brand and Gilmours.

134. 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. Foodstuffs also provided copies of invoices and other price and cost information for its imports over the POI(D).

KidsCan Charitable Trust (KidsCan)

135. 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.

136. KidsCan responded to MBIE's importer questionnaire and provided copies of invoices for its imports over the POI(D).

137. 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. As explained elsewhere in this report, MBIE considers, and HWL agrees, that imports by the charity sector are not a cause of injury to HWL.

Walter & Wild Ltd (Walter & Wild)

138. Walter & Wild is a food manufacturing company and importer that sells products under a range of brands, including Hubbards, Hansells, Aunt Betty's, Vitafresh and Gregg's. Walter & Wild did not provide a response to MBIE's importer questionnaire.

2.4 Other interested parties

139. The Government of China is a notifiable party under the Act for the purposes of this investigation, and an interested party under the AD Agreement. On 4 October 2022, as required under Article 62.2 of the China-New Zealand Free Trade Agreement, MBIE advised the Government of China it had received a properly documented application from HWL, representing the New Zealand industry, in respect of alleged dumping of preserved peaches from China. On 29 November 2022, MBIE notified the Government of China that it had initiated this investigation. On 12 May 2023, MBIE sent a copy of the Step 1 EFC Report to the Government of China.

140. No other interested parties have come forward or been identified.

3. Dumping Investigation

3.1 Dumping

141. The objective of the dumping investigation is to establish if there is dumping, i.e. whether the export price of the goods is less than the normal value when a fair comparison is made.

142. Section 3 of the Act defines dumping as:

> ***dumping**, in relation to goods, means the situation where the export price of goods imported into New Zealand or intended to be imported into New Zealand is less than the normal value of the goods as determined in accordance with the provisions of this Act, and **dumped** has a corresponding meaning*

143. The dumping investigation determines export prices and normal values in accordance with the provisions of the Act and where relevant the AD Agreement, and makes a proper comparison between them in order to establish whether and to what extent any dumping is occurring.

144. Export prices are determined in accordance with section 4 of the Act and normal values in accordance with section 5. Where sufficient information is not available or is not provided, export prices and normal values can be determined having regard to all available information under section 6 of the Act.[9]

3.2 Export price

3.2.1 Legal basis

145. Export prices are normally determined in accordance with section 4(1) of the Act, which deals with transactions where the goods imported into New Zealand have been purchased by the importer from the exporter.

146. Relevantly, section 4(2)(b) of the Act provides that where there is no exporter's sale price or no price at which the importer, or a person not related to the importer, has purchased or agreed to purchase the goods, then the export price shall be determined for the purposes of the Act in such manner as the chief executive considers appropriate, having regard to all the circumstances of the exportation.

147. Section 6 of the Act provides that where the chief executive is satisfied that sufficient information has not been furnished or is not available to enable the export price of goods to be ascertained under section 4, then the export price shall be such amount as is determined by the chief executive having regard to all available information. The chief executive may disregard any information considered to be unreliable.

[9] Section 6(1) provides: Where the chief executive is satisfied that sufficient information has not been furnished or is not available to enable the export price of goods to be ascertained under section 4, 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 chief executive having regard to all available information.

3.2.2 Determination of export price

148. As provided for in section 4(1)(a) of the Act, the export price for an arm's length transaction is usually the price paid for the goods by the importer, less costs, charges and expenses incurred in preparing the goods for shipment that are additional to such costs incurred for sales for home consumption, and any other costs, charges and expenses resulting from the exportation of goods or arising after their shipment from the country of export.

149. The starting point for MBIE is the documentation (usually invoices) for each shipment, which shows the price paid or payable for the goods by the purchaser. MBIE requested this information from foreign manufacturers, intermediary traders and importers in its questionnaires. It also requested documentation of other costs incurred in exportation of the goods. The base price, which is the starting point for the calculation of the export price, is the transaction price paid, whether by the importer or an intermediary.

150. Adjustments are then made to take the base price back to the ex-factory level and to ensure a fair comparison with the normal value. Adjustments to calculate an ex-factory price generally cover costs such as inland freight between the factory and the port, port charges and bank charges, overseas freight and insurance (depending on the terms of sale). Most fair comparison adjustments are made to the normal value, but those relating to differences in the cost of items such as credit and packaging are usually made to the full extent of the costs involved to both the export price and normal value.

151. In some cases where there is an intermediary company involved which acts as a facilitator of the sales and may ship the goods, adjustments are made for the intermediary's commission or margin, and any other costs associated with the trade, to ensure an ex-factory equivalent is achieved.

152. MBIE normally seeks to compare the export price with the normal value at the ex-factory level, after appropriate allowances to ensure a fair comparison. The information available in this investigation has been reviewed to establish the basis for and extent of any adjustments that may be required.

153. In establishing export prices MBIE has considered adjustments for the following:

- Costs to bring values back to the ex-factory level.
- Costs of preparation for export that are additional to those on sales for home consumption (section 4(1)(a)(i) of the Act).
- Other costs resulting from exportation or arising after shipment from the country of export (section 4(1)(a)(ii) of the Act).

154. Fair comparison adjustments are also dealt with in the discussion below on normal values (section 5(3) of the Act), but where it is sensible to do so adjustments have been made to export prices.

3.3 Normal value

155. Normal values are determined in accordance with section 5 of the Act. The normal value is usually the price at which producers sell like goods in their domestic markets. 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.

156. Section 5(1) of the Act provides that "subject to this section, for the purposes of this Act, the normal value of any goods imported or intended to be 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 in arm's length transactions by the exporter or, if like goods are not so sold by the exporter, by other sellers of like goods."

157. Section 5(2) of the Act provides that "where the chief executive is satisfied that the normal value of goods imported or intended to be imported into New Zealand cannot be determined under subsection (1)" (for certain specified reasons, described below), "the chief executive may determine that the normal value for the purposes of this Act, shall be either:

> *(d) the sum of—*
>
> > *(i) such amount as is determined by the chief executive to be the cost of production or manufacture of the goods in the country of export; and*
> >
> > *(ii) on the assumption that the goods, instead of being exported, had been sold for home consumption **in the ordinary course of trade** in the country of export,—*
> >
> > > *(A) such amounts as the chief executive determines would be reasonable amounts for administrative and selling costs, delivery charges, and other charges incurred in the sale; and*
> > >
> > > *(B) an amount calculated in accordance with such rate as the chief executive determines would be the rate of profit on that sale having regard to the rate of profit normally realised on sales of goods (where such sales exist) of the same general category in the domestic market of the country of export of the goods; or*
>
> *(e) the price that is representative of the price paid for similar quantities of like goods sold at arm's length **in the ordinary course of trade** in the country of export for export to a third country."*

158. The reasons for 'constructing' normal values under section 5(2) are "because:

> *(a) there is an absence of sales that would be relevant for the purposes of determining a price under that subsection; or*
>
> *(b) the situation in the relevant market is such that sales in that market that would otherwise be relevant for the purpose of determining a price under subsection (1) are not suitable for use in determining such a price; or*
>
> *(c) like goods are not 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 and it is not practicable to obtain within a reasonable time information in relation to sales by other sellers of like goods that would be relevant for the purpose of determining a price under subsection (1),"*
>
> (***emphasis added***)

159. MBIE applies section 5(2), where relevant, to construct normal values. MBIE also takes guidance, as appropriate, from the provisions of the AD Agreement. Article 2.2. of the AD Agreement provides for the construction of normal values. It provides that "when there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country or when, because of the particular market situation or the **low volume of the sales in the domestic market of the exporting country**), such sales do not permit a proper comparison, the margin of dumping shall be determined by comparison with a comparable price of the like product when exported to an appropriate third country, provided that this price is representative, or with the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits."

160. With regard to **the low volume of the sales in the domestic market of the exporting country**, 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."

161. Section 5(6) of the Act provides that "where the chief executive is satisfied, in relation to goods imported or intended to be imported to New Zealand, that –

(a) *the price paid for like goods –*

(i) *sold for home consumption in the country of export in sales that are arms' length transactions; or*

(ii) *sold in the country of export to a third country in sales that are arms' length transactions, -*

*Is, and has been for **an extended period of time** and in respect of **a substantial quantity** of like goods, less than the sum of –*

(iii) *such amount as the chief executive deems to be the cost of production or manufacture of the like goods in the country of export; and*

(iv) *such amounts as the chief executive determines to be reasonable amounts for administrative and selling costs, delivery charges, and other charges necessarily incurred in the sale of the like goods by the seller of the goods; and*

(b) *it is likely that the seller of those like goods will not be able to fully recover the amounts referred to in subparagraphs (iii) and (iv) of paragraph (a) within a reasonable period of time –*

*the price so paid for those like goods shall be deemed not to have been paid in **the ordinary course of trade**."*

*(**emphasis added**)*

162. Similarly, Article 2.2.1 of the AD Agreement provides "sales of the like product in the domestic market of the exporting country or sales to third countries at prices below per unit (fixed and variable) costs of production plus administrative, selling and general costs may be treated as not being 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 in substantial quantities 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."

163. Footnote 4 to Article 2.2.1 provides that "**the extended period of time** should normally be one year but shall in no case be less than six months." Footnote 5 to Article 2.2.1 provides that sales below per unit costs are made in **substantial quantities** when the authorities establish that the weighted average selling price of the transactions under consideration for the determination of the normal value is below the weighted average per unit costs, or that the volume of sales below per unit costs represents not less than 20 per cent of the volume sold in transactions under consideration for the determination of the normal value."

3.4 Fair comparison

164. As provided in section 5(3) of the Act and Article 2.4 of the AD Agreement, where the normal value of goods imported or intended to be imported into New Zealand is the price paid for like goods, in order to effect a fair comparison, the export prices and normal values are to be 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. Consistently with Article 2.4 of the AD Agreement, 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.

3.5 Basis for investigation of dumping

3.5.1 Scope of dumping analysis

165. During the POI(D), imports of the subject goods from China included peaches in 113g, 125g and 127g plastic cups, in 695g plastic tubs, and in 410g, 415g, 425g, 820g, 3kg, and 4.25kg sized cans. The imported peaches were in juice or light syrup.

3.5.2 Information available

166. The information available to MBIE in investigating the dumping of preserved peaches from China included:

- information contained in HWL's application
- information from importers
- information from foreign manufacturers and exporters
- information from Customs
- information arising from MBIE's independent research.

167. MBIE sent questionnaires to the identified foreign manufacturers.

168. A detailed response was received from Countree Food, permitting the establishment of export prices and normal values on the basis of information relating to sales by Countree Food. Countree Food also cooperated in a verification visit.

169. Tiantong Food also provided a questionnaire response and invoices for exports to New Zealand, but did not provide information on the costs of export sales. The available information partially permitted the establishment of export prices for Tiantong Food. The company also did not provide information on prices for domestic sales, on the basis that the product exported to New Zealand was not sold in the domestic Chinese market and it was not possible to identify a comparable domestic product to the export product. MBIE did not undertake a verification visit for Tiantong Foods due to the limited information provided.

170. Questionnaires were sent to the importers of preserved peaches from the identified foreign manufacturers. Responses, including questionnaire responses and copies of invoices, were received from most importers. This information was used to confirm information from Countree Food and Tiantong Food regarding their export sales, and as information available for establishing export prices for Acroyali, Luxe Foods, Tianle Food and Kangfa Foodstuffs.

171. MBIE has also considered all available information which can reasonably be relied upon, including information provided by the HWL and information sourced from retail stores during the verification visit in China.

172. MBIE is satisfied that the information provided by the Chinese producer Countree Food, which was verified by MBIE, is reliable, and provides the most reliable basis for determining export prices and normal values. While the limited amount of information provided by Tiantong Food precluded a verification visit, MBIE was able to successfully cross-check the data provided against information provided by Tiantong Food's New Zealand importer and Customs data.

173. The other manufacturers, Acroyali, Luxe Foods, Tianle Food and Kangfa Foodstuffs, did not cooperate, so export prices and normal values have been established on the basis of information available.

3.5.3 Price comparisons

174. The price comparisons have been undertaken on the basis of weighted average prices, , at the ex-factory level. Adjustments have also been made to take account of differences in terms and conditions of sale, such as discounts and rebates, delivery terms, and payment terms, where applicable. Prices are compared net of any taxation.

3.6 Countree Food

175. The detailed considerations relating to Countree Food for the establishment of export prices and normal values, and any due allowances made to ensure a fair comparison, are at Confidential Annex 2.

3.6.1 Export prices

176. Countree Food provided a response to the questionnaire and to a request for further information, including details of its export sales. The information used for establishing export prices was verified by MBIE at Countree Food's premises in China.

Base prices

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

178. Countree Foods' exports to New Zealand consisted of peach slices and halves in juice or light syrup in can sizes of 410g,415g, 425g, 820g, 3kg, sliced peaches in juice in 695g plastic tubs, and diced peaches in juice in 125g plastic cups. Countree Foods invoiced these sales in USD for one importer and AUD for the other. Countree Foods provided MBIE with invoices for its export sales to New Zealand during the POI(D). All export sales were on a per kg basis. Export sales to New Zealand were made exclusive of VAT. The base prices were expressed in USD and AUD. To calculate the export prices in CNY, MBIE made currency conversions using base exchange rates derived from www.ofx.com for the corresponding invoice dates.

Adjustments

179. Adjustments to the base price were made as necessary for cost of credit, freight to wharf, Customs and port handling charges arising from exportation, and additional selling costs for export which are not incurred on domestic sales, to ensure a fair comparison and to establish export prices on an ex-factory basis.

3.6.2 Normal values

Base prices

180. Countree Food provided a response to the questionnaire and to a request for further information, including details of its domestic sales. Countree Food made sales of preserved peach halves in syrup in 820g cans, and preserved peach slices in syrup in 312g and A10 (3kg) cans in the Chinese domestic market. Countree Food did not sell plastic cups or tubs on the domestic market in China. The information used for establishing normal values was verified by MBIE at Countree Food's premises in China.

Peaches in cans

181. MBIE has established base prices for canned peaches on the basis of Countree Food's net invoiced selling prices for A10 (3kg) canned peaches, exclusive of VAT. MBIE has established that the volume of sales used for the determination of normal value constitutes well in excess of 5 per cent of the volume of the export sales being investigated.

Peaches in cups and tubs

182. Because Countree Food did not sell preserved peaches in plastic cups or tubs on the domestic market in China, there were no sales in the ordinary course of trade. MBIE considered there was no comparable domestic model 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 production costs, provision for reasonable amounts for administrative and selling costs, other charges and a reasonable amount for profit, which MBIE calculated as the rate of profit achieved by Countree Food on domestic sales in the same general category of goods.

Ordinary course of trade

183. In determining whether Countree Food's domestic sales of peaches in cans were in the ordinary course of trade for the purposes of section 5(1) of the Act, MBIE checked whether sales were profitable. On the basis of information provided by Countree Food about its costs to produce the domestic products used in the price comparison, and information from Countree Food's financial records for the POI(D), MBIE established that domestic sales were made: within an extended period of time (one year); in substantial quantities; and at prices that provided for the recovery of all costs within a reasonable period of time.

Adjustments

184. In order to affect a fair comparison with export prices, adjustments to the base price were made for taxation, physical differences (can size, preserving medium and cut style), terms and conditions of sale, and the cost of credit. MBIE is satisfied that there were no other differences affecting price comparability for which adjustments needed to be made.

3.6.3 Dumping margin

185. MBIE has compared the export prices and normal values established for Countree Food for the can, cup and tub 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 during the POI(D) there was dumping of all product models exported by Countree Food, apart from 695g tubs of sliced peaches in juice.

3.7 Tiantong Food

186. The detailed considerations relating to Tiantong Food for the establishment of export prices and normal values, and any due allowances made to ensure a fair comparison are at Confidential Annex 3.

3.7.1 Export price

187. Tiantong Food responded to MBIE's questionnaire and to a request for further information, including details of its export sales. MBIE has used sales information provided by Tiantong Foods and its New Zealand importers, inland freight, port handling and brokerage rates provided by another cooperative Chinese manufacturer, and the People's Bank of China (PBC) one-year Loan Prime Rate to establish export prices for Tiantong Food.

Base prices

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

Adjustments

189. Adjustments to the base price were made as necessary for inland freight to wharf, and handling and brokerage costs in China to determine the export price on an ex-factory basis. Given the absence of cost information from Tiantong Food, values for these adjustments were based on rates provided by another cooperative Chinese producer, adjusted as necessary to reflect Tiantong Food's specific location and procedures. Cost of credit was calculated using the PBC one-year Loan Prime Rate for the relevant month of repayment.

3.7.2 Normal value

190. MBIE has used the normal values established for another cooperating Chinese manufacturer to compare with export prices calculated in the manner described above with appropriate adjustments derived from the cooperating manufacturer's data to ensure a fair comparison at the ex-factory level.

3.7.3 Dumping margin

191. MBIE has compared the export prices and normal values established for Tiantong Food for the goods exported on a weighted average to weighted average basis, making any necessary adjustments for differences affecting price comparability and using an appropriate exchange rate, to ensure a fair comparison. MBIE has established that exports of 113g diced peaches in juice, in plastic cups, are not dumped.

3.8 Kangfa Foodstuffs

3.8.1 Export price

192. 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

193. 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

194. Adjustments to the base price were made as necessary for inland freight, customs and port handling charges, and inland transport, based on information from a cooperating manufacturer, to determine the export price on an ex-factory basis.

3.8.2 Normal value

195. MBIE has used the normal values established for a cooperating Chinese producer to compare with export prices calculated in the manner described above with appropriate adjustments derived from the cooperating producer's data to ensure a fair comparison at the ex-factory level.

3.8.3 Dumping margin

196. 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, making any necessary adjustments for differences affecting price comparability and using an appropriate exchange rate, to ensure a fair comparison. MBIE has established that exports b Kangfa Foodstuffs of 3kg cans of sliced peaches in juice and light syrup are dumped.

3.9 Acroyali

3.9.1 Export price

197. Acroyali did not respond to MBIE's questionnaire. MBIE has used Customs data, information from an importer of Acroyali's products and information from a cooperating Chinese producer to establish export prices for Acroyali.

Base prices

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

Adjustments

199. Adjustments to the base price were made as necessary for inland transport, port charges and handling, and cost of credit to determine the export price on an ex-factory basis. Values for these adjustments were based on information from the application for inland transport, where it had been determined the distance travelled was roughly equivalent; from a cooperating Chinese producer for port charges and handling; and from a cooperating Chinese producer for cost of credit for sales of similar product models. Having determined that Acroyali is a canned food manufacturer and exporter and not an intermediary trader, MBIE treated its prices as ex-factory and did not make any adjustment for an intermediary's margin.

3.9.2 Normal value

200. MBIE has used the normal values established for a cooperating Chinese producer to compare with export prices calculated in the manner described above, with appropriate adjustments derived from the cooperating producer's data to ensure a fair comparison at the ex-factory level.

3.9.3 Dumping margin

201. MBIE has compared the export prices and normal values established for Acroyali for the goods exported on a weighted average to weighted average basis, making any necessary adjustments for differences affecting price comparability and using an appropriate exchange rate, to ensure a fair comparison. MBIE has established that exports by Acroyali of 3kg and 4.25kg cans of peaches in light syrup are not dumped.

3.10 Luxe Foods

3.10.1 Export price

202. Luxe Foods did not respond to MBIE's questionnaire. MBIE has used Customs data, information from a cooperating Chinese producer and information from other Chinese producers to establish export prices for Luxe Foods.

Base prices

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

Adjustments

204. Adjustments to the base price were made as necessary for inland transport, port charges and handling and cost of credit to determine the export price on an ex-factory basis. Values for the adjustment for inland transport were based on information from the application, which MBIE considers be the best information available noting that there was no information to confirm the distance between the wharf and Luxe Foods' factory, or about the number or size of containers per shipment. Values for the adjustment for port charges and handling and cost of credit were based on information from a cooperating Chinese producer.

3.10.2 Normal value

205. MBIE has used normal values established for a cooperating Chinese producer to compare with export prices calculated in the manner described above, with appropriate adjustments derived from the cooperating producer's data, to ensure a fair comparison at the ex-factory level.

3.10.3 Dumping margin

206. MBIE has compared the export prices and normal values established for Luxe Foods for the goods exported on a weighted average to weighted average basis, making any necessary adjustments for differences affecting price comparability and using an appropriate exchange rate, to ensure a fair comparison. MBIE has established that exports by Luxe Foods of 125g plastic pottles of diced peaches in juice are not dumped.

3.11 Tianle Food

3.11.1 Export price

207. Tianle Food did not respond to MBIE's questionnaire. MBIE has used Customs data, information from an importer of Tianle Food's products and information from a cooperating Chinese producer to establish export prices for Tianle Food.

Base prices

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

Adjustments

209. Adjustments to the base price were made as necessary for inland transport, port charges and handling and cost of credit to determine the export prices on an ex-factory basis. Values for these adjustments were based on information from the application for inland transport, where it had been determined the distance travelled was roughly equivalent; from a cooperating Chinese producer for port charges and handling; and from the importer for cost of credit.

Normal value

210. MBIE has used the normal values established for a cooperating Chinese producer to compare with export prices calculated in the manner described above with appropriate adjustments derived from the cooperating producer's data to ensure a fair comparison at the ex-factory level.

3.11.2 Dumping margin

211. MBIE has compared the export prices and normal values established for Tianle Food for the goods exported on a weighted average to weighted average basis, making any necessary adjustments for differences affecting price comparability and using an appropriate exchange rate, to ensure a fair comparison. MBIE has established that exports by Tianle Food of 127g plastic pottles of diced peaches in juice are dumped.

3.12 Retail prices

212. In past reviews of anti-dumping duties on preserved peaches from China, MBIE has determined normal values based on retail pricing information provided by HWL in the absence of any information provided by Chinese producers. In the 2019 Reconsideration, 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. It assessed retails prices in the context of a voluntary cross-check on normal values established in the investigation using information provided by Chinese producers.

213. In the current investigation, as detailed above, MBIE has used information provided by the Chinese producer Countree Foods to calculate normal values for the purpose of establishing dumping calculations. As described below, MBIE has carried out a cross-check on these normal values with retail prices provided by HWL in its application and is satisfied the cross-check confirms its normal value calculations made on the basis of Countree Food's sales to its domestic customers in China.

214. Using retail price information provided by HWL in its application, MBIE calculated a range of ex-factory normal values based on information on retail and wholesale margins in China provided by Countree Foods. MBIE considers this information is a reasonable indicator of wholesaler and retail margins in China.

215. MBIE took the retail price data provided by HWL as its base data and MBIE deducted VAT amounts to reach VAT-exclusive base retail prices. MBIE then deducted retail margins of 35 per cent, 45 per cent and 50 per cent in three separate calculations from the VAT exclusive retail prices, and then deducted a 35 per cent wholesaler margin. [10] Where there was a model match between a product identified in HWL's application and a product sold by the Chinese producer on the domestic market, the resulting ex-factory price calculated for that model was consistent with the normal value calculated by MBIE using Countree Food's information.

[10] The information provided by the Chinese producer having indicated a retail margin range 35-50% and a wholesale margin of 35%.

216. MBIE emphasises that the calculation of normal values based on producer-specific price and cost information verified by MBIE is the best information for determining normal values in this investigation. 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." Also, section 5(3) of the Act requires, among other things, that to affect 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 established would need to be adjusted by a range of factors, including margins and distribution costs, for which reliable information is often not available.

217. In the present investigation, the conditions in section 5(1) of the Act are met, as sales by Countree Food are verified to be in the ordinary course of trade and are arm's length transactions made at a profit. These sales also provide a reasonable basis for determining normal values for other producers, on the basis that they are prices of another seller of like goods.

3.13 Conclusions relating to dumping

218. MBIE has established dumping margins for the POI by comparing the export prices and the normal values established in the manner described above in this report. The dumping margins so established are shown in Figure 3.1.

Figure 3.1: Dumping Margins

Weighted Average Dumping Margins	Qingdao Countree Food Co Ltd (Countree Food)	Shandong Tiantong Food Ltd (Tiantong Food)	Linyi City Kangfa Foodstuffs Drinkable Co Ltd (Kangfa Foodstuffs)	Acroyali Holdings Qingdao Co Ltd (Acroyali)	Dalian Luxe Foods International Sales Co Ltd (Luxe Foods)	Lianyungang Tianle Food Co Ltd (Tianle Food)
Plastic cups	7.5%	No dumping			No dumping	17%
Plastic tubs	No dumping					
Cans < 500g	9.3%					
Cans ≥500g<3kg	8.6%		24%			
Cans≥3kg	4%			No dumping		
Overall weighted average per manufacturer	3.7%	No dumping	24%	No dumping	No dumping	17%

219. MBIE has established an overall weighted average dumping margin for all exports of preserved peaches from China for the POI of 4.3%.

4. Injury Investigation

4.1 Legal requirements

4.1.1 Basis for determinations

220. Section 8(1) of the Act provides that in determining whether or not material injury to an industry has been or is being caused or threatened by means of the dumping of goods imported or intended to be imported into New Zealand from another country, the chief executive shall examine:

(a) the volume of imports of the dumped goods, and
(b) the effect of the dumped goods on prices in New Zealand for like goods, and
(c) the consequent impact of the dumped goods on the relevant New Zealand industry.

4.1.2 Matters the chief executive shall have regard to

221. Section 8(2) of the Act provides that, without limiting the generality of section 8(1), and without limiting the matters the chief executive may consider, the chief executive shall have regard to the matters set out in section 8(2). These matters are discussed in the relevant sections of the analysis below in this report and include:

- The extent to which there has been or is likely to be a significant increase in the volume of dumped goods, either in absolute terms or relative to production or consumption.
- The extent to which the prices of dumped goods represent significant price undercutting in relation to prices in New Zealand (at the relevant level of trade) for like goods of New Zealand producers.
- The extent to which the effect of the dumped goods is or is likely significantly to depress prices for like goods of New Zealand producers (i.e., price depression) or significantly to prevent price increases for those goods that otherwise would have occurred (i.e., price suppression).
- The economic impact of the dumped goods on the industry, including actual and potential decline in output, sales, market share, profits, productivity, return on investments, or utilisation of production capacity; factors affecting domestic prices; the magnitude of the margin of dumping; and actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investments.
- Factors other than the dumped or subsidised goods that have injured, or are injuring, the industry, including: the volume and prices of goods that are not sold at dumped prices or that are not subsidised; contraction in demand or changes in the patterns of consumption; restrictive trade practices of, and competition between, overseas and New Zealand producers; developments in technology; and the export performance and productivity of the New Zealand producers.
- The nature and extent of importations of dumped or subsidised goods by New Zealand producers of like goods, including the value, quantity, frequency, and purpose of any such importations.

222. In addition, Article 3.5 of the AD Agreement requires that it must be demonstrated that the dumped imports are, through the effects of dumping, causing material injury.

223. Per the AD Agreement, the demonstration of a causal relationship between the dumped imports and the injury to the domestic industry must be based on an examination of all relevant evidence before the authorities, who shall examine any known factors other than the dumped imports which at the same time are injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the dumped imports.

224. Factors which may be relevant in this respect include, *inter alia*, the volumes and prices of non-dumped imports of the product in question, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry.

4.2 Basis for investigation of material injury

4.2.1 Information available

225. MBIE has based its assessment of injury on the information provided by HWL in its application, HWL's response to MBIE's request for further information, information provided by HWL during and after an in-person verification process, and information provided by other interested parties.[11]

4.2.2 Period of investigation of injury

226. The period of investigation of injury (POI(I)) covers the period 1 July 2018 to 30 June 2022. The information in the tables below is provided in June years (unless otherwise stated).

4.2.3 MBIE's approach to the injury analysis

Background

227. The material injury analysis is normally undertaken by comparing data for an injury factor against data in a period unaffected by dumping (a coincidence analysis). It considers the trend experienced over the period for the factors concerned and is not simply a binary comparison of the beginning and end points of the period investigated.

228. In considering the extent of the effect of dumped imports, the analysis may also be undertaken on the basis of the position that the industry would have been in but for the dumping, requiring inferences to be drawn as to the counterfactual situation.

229. In undertaking a counterfactual analysis of injury, an investigating authority would assess the claims relating to the level of prices or profits or other factor that would otherwise have been achieved, and seek to identify and quantify the extent to which the effects attributable to the dumped goods have had an economic impact on the industry in the ways identified in the Act.

230. In undertaking this assessment MBIE needs to consider the influence of factors other than the dumped goods in preventing expectations from being achieved, as well as the level of dumping established. Any counterfactual analysis needs to be based on reasonable assumptions, which must be identified and explained.

[11] Non-confidential versions of HWL's response to MBIE's request for further information and a domestic industry verification report are available on the public file for this investigation.

231. The evidence provided by HWL is assessed below against each of factors set out above in order to reach an overall conclusion as to whether there is evidence that there is material injury being caused to the New Zealand industry by the dumping. MBIE's evaluation of the effect of the alleged dumping on the relevant injury factors is based first on an assessment of whether there is an actual decline or other impact on those factors, and secondly, if necessary, whether the analysis should consider the position but for the dumping, i.e. a counterfactual approach, as it relates to the period 2019-2022. With any counterfactual analysis MBIE will take into account the uncertainty of assessing what might have or could have occurred if certain events had played out.

Application

232. MBIE notes that HWL's application has been structured similarly to previous applications that have sought the initiation of sunset reviews on goods subject to anti-dumping duties. The present application is for an investigation where no duties are currently in place on the subject goods. As HWL confirmed during the verification process, the application for this investigation is made on the basis that New Zealand's preserved peach industry is suffering current injury as a result of alleged dumping.

233. While the application includes projections of performance indicators for 2023 and 2024, in assessing a dumping application based on current injury, MBIE is required to determine whether there is sufficient evidence of current injury, which in this case is based on a POI(I) of 2019 to 2022. HWL has confirmed that it is <u>not</u> making an application on the basis of threat of injury.

Counterfactual argument by HWL

234. HWL also made claims regarding the extent to which it would have achieved a greater level of financial performance had it not been for the dumping in 2021 and 2022. In particular, HWL stated that there have been cost increases to the business that it had to balance with any price increases it could consider, given its competitors' price points. HWL also said it was unable to make any further price increases in response to the costs it incurred and still maintain its market share. It said it could not recover all costs incurred due to the need to maintain pricing competitiveness and market share. HWL explained that it needs a certain market share and production volume from the manufacturing point of view to keep the business viable.

235. HWL provided <u>two</u> counterfactual injury scenarios highlighting sales volume, revenue and profit amounts the company considers it would have achieved had it not had to compete with the dumped goods. MBIE has addressed these counterfactual scenarios, where appropriate, in its material injury analysis below. MBIE is, however, mindful that counterfactual scenarios are based on what might have or could have occurred if certain events had played out and, therefore, by their very nature add a speculative or hypothetical element to any claims by an interested party. For this reason, MBIE has placed less weight on injury established by way of a counterfactual argument. MBIE has placed comparatively greater weight on the evidence of injury able to be shown by way of a trend analysis (i.e., whether the injury indicators assessed have in fact declined over time).

Counterfactual analysis based on level of price undercutting

236. HWL considers this particular counterfactual injury scenario is represented by the difference between the price undercutting amount it experienced prior to June 2020 (when it considers there was no dumping because of the duties in place) and the level of price undercutting it considers it has experienced post-June 2020 when there were no duties in place. HWL calculated the difference in these two price undercutting amounts to be a reflection of the level of performance that it would have achieved, with reference to prices, sales and profits, had the alleged dumping not taken place.

237. MBIE notes that anti-dumping duty on preserved peaches from China were terminated from February 2018 after the 2017 Review. The duties were not restored during the 2019 Reconsideration, which resulted in the termination of the duty being confirmed in November 2019. MBIE understands HWL's submission to be that until November 2019 the removal of the duty was not definitive, such that any impact would not expect to be seen until after November 2019. MBIE accepts this submission for the purpose of the injury analysis that follows.

238. MBIE notes that its price undercutting analysis has found that there is undercutting. MBIE has considered HWL's first counterfactual submission in light of these findings.

Counterfactual analysis based on level of market share

239. HWL considers this counterfactual injury scenario is represented by the difference between the market share it experienced prior to June 2020 (when it considers there was no dumping because of the duties had not been definitively removed) and the market share it considers it has experienced post June 2020 when there were no duties in place. HWL calculated the difference in these two market share percentages to be a reflection of the level of performance that it would have achieved, with reference to prices, sales and profits, had the alleged dumping not taken place.

240. MBIE notes that its market share analysis, detailed below, indicates HWL has experienced some decline in its market share over the POI(I). MBIE considers this decline is partially attributable to increases in imports of subject goods from China, with the information indicating some of the lost market share was attributable to imports from other sources. MBIE also notes that HWL's approach is to process the full available peach harvest each year, which may impact its ability to assume additional market share other than by utilising its import strategy to supplement its domestic production. MBIE has considered HWL's second counterfactual submission in light of these findings.

4.3 Import volume effects

241. In determining whether or not any material injury to an industry has been or is being caused, under section 8(2)(a) the chief executive shall have regard to the extent to which there has been or is likely to be a significant increase in the volume of imports of dumped goods either in absolute terms or in relation to production or consumption in New Zealand.

242. In its application, HWL stated that China is a significant exporter of canned peaches and noted that exports to New Zealand from China have been increasing since the removal of duties following the 2019 Reconsideration. HWL provided a figure for China's average share of total imports prior to June 2020, which was lower than the figure it provided for China's average share of total imports since June 2020. This, HWL says, reinforces the point that importers are now taking advantage of dumped preserved peaches from China in increasing volumes.

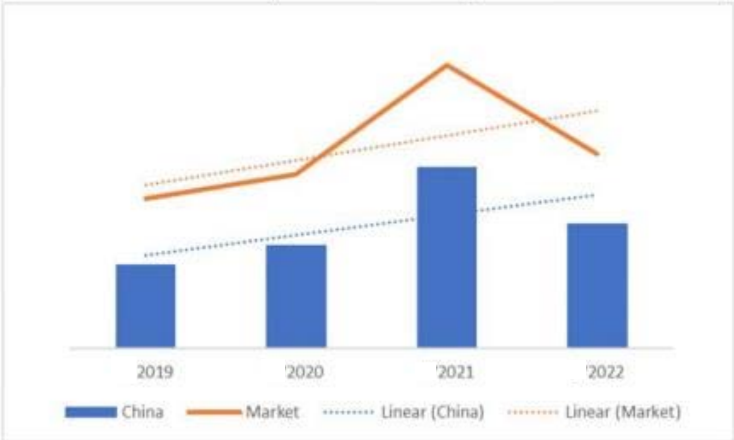
243. MBIE notes that HWL drew on import data sourced from Statistics New Zealand (InfoShare database) and from Trade Data International Pty (Ltd) (TDI) to support its position. MBIE also notes that this data, collected under Tariff Item 2008.70.09.00, includes goods that are not covered by the subject goods description (for example, nectarines, and preserved peaches in containers outside the subject goods description).

244. For the reasons detailed in the initiation report for this investigation, MBIE prefers using confidential import figures sourced from Customs, which are available at the import entry line level, cover a wide range of data fields and identify individual transactions including the parties to them, which is essential information for undertaking an effective investigation. Using Customs import data, MBIE has been able to establish a more accurate picture of import volumes and values for the subject goods from China during the POI(I) and the dumping investigation period (1 July 2021 to 30 June 2022).

245. In order to assess whether imports from China have increased relative to production or consumption in New Zealand, MBIE has used Customs data for imports of subject goods from China and other countries. The results are reflected in the figure below.

Figure 4.1: Imports from China, in absolute and relative terms, subject goods, Customs data

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



246. The graph above shows that import volumes from China increased steadily from 2019 to 2021 and then decreased in 2022, although Chinese import volumes in 2022 were still higher than in 2019 and 2020. The trend in import volumes from China over the POI(I) is best illustrated through the addition of a trend line in the above graph which shows clearly that imports of subject goods from China increased over the POI(I) both in absolute terms (i.e. in volume), and relative to consumption in New Zealand (i.e., as a percentage of the total New Zealand market for preserved peaches).

4.4 Price effects

247. In examining price effects, as required by section 8(1)(b) of the Act, MBIE has considered:

- Section 8(2)(b) of the Act, which requires that the chief executive should have regard to the extent to which prices of the dumped goods represent significant price undercutting in relation to prices in New Zealand (at the relevant level of trade) for like goods of New Zealand producers (**price undercutting**).

- Section 8(2)(c), which requires that the chief executive should have regard to the extent to which the effect of the dumped goods is or is likely:
  - significantly to depress prices for like goods of New Zealand producers (**price depression**) or
  - significantly to prevent price increases for those goods that otherwise would have been likely to have occurred (**price suppression**).

4.4.1 Price undercutting

248. Price undercutting refers to the extent to which the prices of the subject goods are lower than the prices of like goods produced by New Zealand producers. Prices are compared at the point that the imported goods first compete with the goods made in New Zealand. Price undercutting is not in itself a determinant of the existence or extent of injury. The margin of price undercutting is considered in relation to the extent of the economic impact on the industry measured in terms of the factors set out in section 8(2)(d) of the Act.

249. MBIE sourced import prices over the one-year POI(D) in respect of each of the New Zealand importers who sourced from the Chinese producers selected for the dumping exercise. With the information provided by both the importers and the Chinese producers, MBIE was able to calculate ex-wharf import prices for the different models of preserved peaches imported into New Zealand. MBIE was also able to remove from the undercutting exercise non-subject goods imports from the designated tariff item. For the purpose of the price undercutting exercise, MBIE has categorised the imports into the following three categories in order to calculate weighted average Chinese ex-wharf import prices: (i) peaches in cans; (ii) peaches in plastic cups and (iii) peaches in plastic tubs.

250. MBIE compared the weighted average ex-wharf import values derived for the three categories above with the weighted average HWL price for Oak brand over the dumping investigation period, less an amount for internal distribution cost to derive a weighted average ex-factory selling price for Oak. MBIE found a small amount of undercutting for peaches in plastic cups (when non-dumped imports and imports for KidsCan were excluded from the calculations), and that there was significant price undercutting for the imported peaches sold in cans and a lesser amount for the imported peaches sold in plastic tubs (however, tubs were not found to be dumped).

4.4.2 Price depression

251. Price depression occurs where prices achieved by the New Zealand manufacturers are lower than those achieved in a period unaffected by dumped goods. Price depression does not consider the situation where price increases are prevented due to dumping – this is price suppression (discussed separately below). Price depression is not in itself a determinant of the existence or extent of injury. Price depression is considered in relation to a consequent impact on the industry, measured primarily in terms of the factors set out in section 8(2)(d) of the Act.

252. Where the evidence indicates that the price at the end of the period is lower than prices at previous points, even if there has been an increase in the interim, this may still allow a finding that there has been price depression compared with the period prior to the commencement of the dumping.

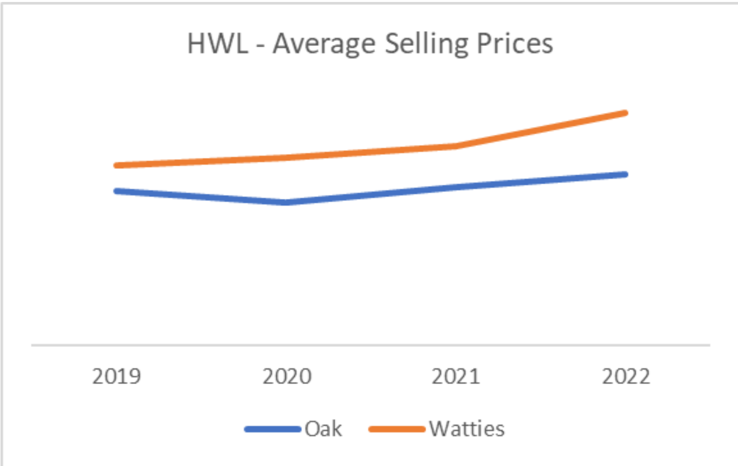
253. In its application, HWL stated that it has experienced price depression due to the level of price undercutting in the New Zealand market. It noted that it has increased the price of like goods across both its brands to offset increases in input costs, but has not been able to increase prices as much as it would have otherwise been able to in order to offset these cost increases. MBIE notes that this submission is relevant to price suppression rather than price depression and MBIE has addressed it in section 4.4.3 below.

254. HWL also raised the importance of ensuring that its premium brand, Wattie's, is priced at a level that does not create such a price differential between the two brands that consumers resist paying the Wattie's price. HWL asserts that prices for the Wattie's brand have been forced downwards due to the entry of dumped imports into the New Zealand market causing a loss of volume and market share.

255. The figure below charts HWL's historical selling prices over the POI(I) for both Oak and Wattie's brands of preserved peaches.

Figure 4.2: Selling prices for preserved peaches

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



256. MBIE's analysis of the Oak and Wattie's brand prices confirms that there have been price increases for both Wattie's and Oak brands over the POI(I). This confirms that there has been no price depression for either brand. Since there is no current price depression, as the trend over the POI(I) has been an increase in prices, the use of HWL counterfactual data showing the price that might have been achieved in the absence of dumping (i.e., even higher increased prices) would simply accentuate the lack of any price depression.

4.4.3 Price suppression

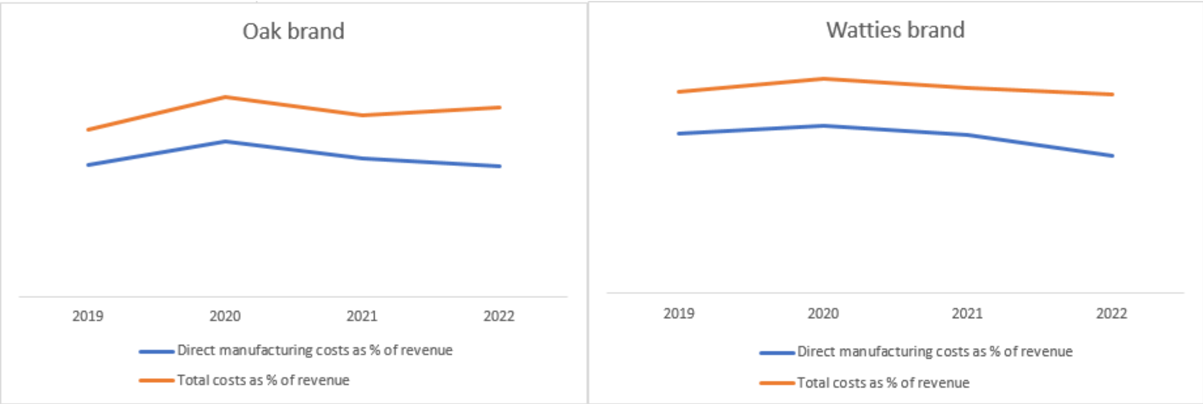
257. Price suppression occurs when New Zealand producers are unable to increase prices, for example, to recover cost increases. Price increases may be in response to increases in costs, or changes in supply or demand of a product. Cost increases that are not able to be recovered by price increases will be reflected in an increased ratio of costs to sales revenue. Price suppression is considered in relation to consequent impact on the industry, measured in terms of the factors set out in section 8(2)(d) of the Act.

258. In its application, HWL stated that it has experienced price suppression as it has been unable to offset the difference in price undercutting by means of cost savings and price increases elsewhere. HWL provided data on its financial performance between 2019 and 2022, in situations with and without the alleged dumping, for the Oak and Wattie's brands.

259. The figures below chart HWL's historical (i) production/direct manufacturing costs and (ii) its total costs as a percentage of selling price over the POI(I) for both Oak and Wattie's brands of preserved peaches. Total costs include direct manufacturing costs as well as other costs such as fixed manufacturing, selling, general and administrative expenses.

Figures 4.3 and 4.4:
Direct manufacturing costs and total costs as a percentage of selling prices (by brand)

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



260. The information shows that for Oak, *direct manufacturing costs* increased as a percentage of sales revenue from 2019 to 2020 but decreased from 2020 to 2022. Oak brand *total costs* (i.e., direct manufacturing costs plus fixed manufacturing, selling, general and administration expenses), as a percentage of sales revenue, followed the same pattern but increased from 2021 to 2022 though they were still below the 2020 percentage figure but above the 2019 percentage figure. This indicates price suppression has occurred over the entire POI(I) when price suppression is measured by the extent to which cost increases have or have not been reflected in price increases.

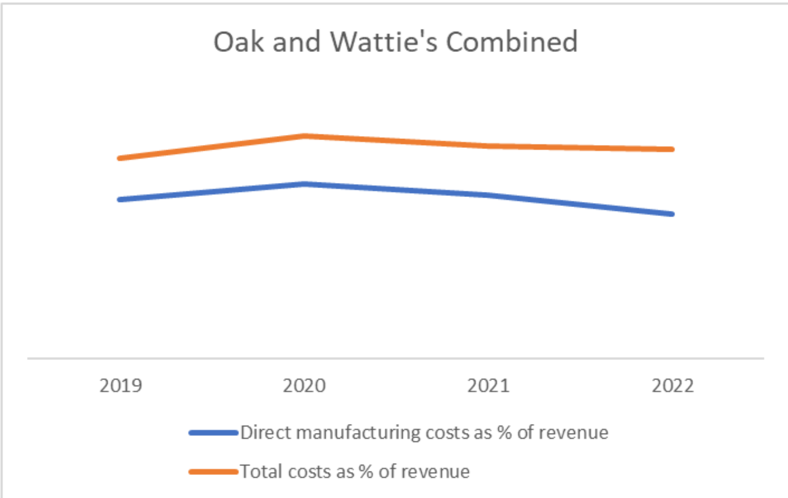
261. For the Wattie's brand, *direct manufacturing costs*, as a percentage of sales value, remained static from 2019 to 2021 and then decreased from 2021 to 2022. Wattie's brand *total costs* (direct manufacturing costs plus fixed manufacturing, selling, general and administration expenses), as a percentage of sales revenue, remained reasonably static over the POI(I) indicating no price suppression has occurred when price suppression is measured by the extent to which cost increases have or have not been reflected in price increases.

262. The 2022 figures in the figure above reflect HWL's statement that it increased its pricing in October 2021 to adjust for manufacturing cost increases including raw peach costs which increased in 2020 and 2021. For both Oak and Wattie's brand, *direct manufacturing costs* as a percentage of sales revenue either remained static or decreased, indicating that HWL was able to pass on its 2020 and 2021 manufacturing cost increases through increased prices. This in turn indicates that the company did not suffer from price suppression when price suppression is measured by the extent to which *direct manufacturing cost* increases have or have not been reflected in price increases.

263. In its submission on the EFC Report, HWL noted that MBIE did not analyse price suppression using *manufacturing* costs plus *fixed* costs (i.e. total costs) which was an error as it is not consistent with how MBIE analyses profit, for instance. MBIE has reflected HWL's position with the addition of total costs in figure 4.3 and 4.4 above and in figure 4.5 below. When price suppression is analysed through *total* costs (i.e. direct manufacturing costs plus fixed manufacturing, selling, general and administration expenses) the figures in the tables above show that HWL's Wattie's brand has been able to recover cost increases over the POI(I) through price increases, but not for Oak. The information shows that for Oak, *total* costs increased as a percentage of sales revenue over the POI(I) indicating that costs increases have not been totally recovered through increased prices. This indicates that price suppression has occurred for the Oak brand, when prices suppression is analysed through *total* costs.

264. The figure below charts HWL's *direct manufacturing* costs and its *total* costs (i.e. direct manufacturing costs plus fixed manufacturing, selling, general and administration expenses), as a percentage of selling price, over the POI(I), when the pricing and costing information for both Oak and Wattie's brands of preserved peaches, is combined:

Figure 4.5:
Direct manufacturing costs and total costs
as a percentage of selling prices (Oak and Wattie's combined)
In order to protect information provided on a Commercial-in-Confidence basis, axis values and gridlines have been deleted, the X axis may not cross the Y axis at 0

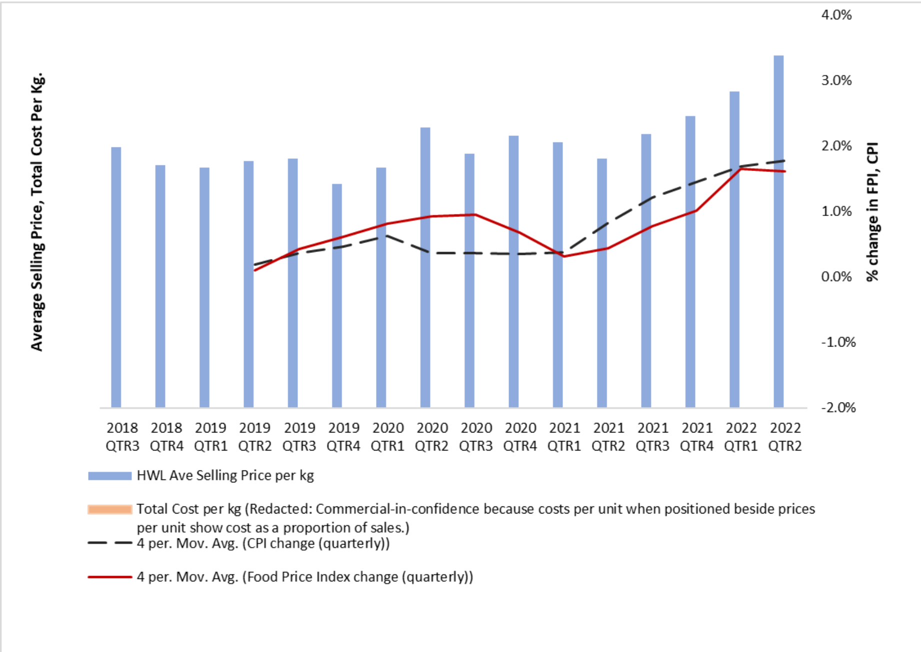


260. When price suppression for both the Oak and Wattie's brand combined is analysed through *direct manufacturing* costs, the information in the figure above shows that HWL's has been able to recover cost increases over the POI(I) through price increases. However, when price suppression is analysed through *total* costs (i.e., direct manufacturing costs plus fixed manufacturing, selling, general and administration expenses), the information in the figure shows that HWL has not been able to totally recover cost increases over the POI(I) through price increases. The information shows that between 2019 and 2022 (the POI(I)), *total* costs increased as a percentage of sales revenue. This indicates that total cost increases have not been totally recovered through increased prices and that, on that measure, price suppression has occurred when the Oak and Wattie's brands are combined. MBIE notes that to the extent that price suppression can be observed using this measure, it is not considered significant.

265. HWL's counterfactual submission is that but for the dumping and price undercutting the dumping has caused, the company would have been able to its increase its prices more. The wording of the Act in relation to price suppression asks MBIE to have regard to the extent to which "the effect of the dumped or subsidised goods is or is likely significantly to … prevent price increases for those goods that otherwise would have been likely to have occurred." In its submission on the EFC Report, HWL noted that it has been unable to offset the significant cost increases it began to experience in 2020 with prices increases which demonstrates that its prices have not been able to rise in line with inflation.

266. The following figure shows HWL's average selling price and total costs per unit as well as changes in the Consumer Price Index (CPI) and Food Price Index (FPI) over the POI(I) in order to gauge the extent to which the company's prices have kept up with inflation.

Figure 4.6:
HWL selling prices and total costs in relation to CPI and FPI changes
In order to protect information provided on a Commercial-in-Confidence basis, axis values and gridlines have been deleted, the X axis may not cross the Y axis at 0. The cost per unit figures have been redacted in order to protect information provide on a commercial in confidence basis.



267. The analysis in Figure 4.6 above indicates that HWL's total costs over the POI(I) have not totally been recovered through increased prices and that when the Oak and Wattie's brands are combined, price suppression has occurred. MBIE notes that while price suppression can be observed using this measure, the extent of the price suppression is not considered significant. Whether or not HWL could have increased its prices even more, and as HWL claims, in line with inflation, is uncertain. MBIE acknowledges that there is potential, but for the dumping, that there could be some further price suppression under the counterfactual scenario. HWL provided projections for 2021 and 2022 showing anticipated price increases in the absence of dumping as part of its counterfactual *scenario 1*. However, against a backdrop of increasing prices, no evidence of price depression, and a weighted average dumping margin of only 4.3 percent, MBIE does not consider the evidence supports a finding that price increases have been "significantly" prevented by the effect of the dumped goods. This finding is supported by the figures in the figure 4.6 above. The figures suggest that HWL's prices have to a large extent mirrored recent CPI and FPI changes.

268. On the basis of the total information provided by HWL, MBIE considers that the company has not been "significantly" prevented from making price increases that otherwise would have been likely to have occurred by the dumped goods or otherwise.

4.4.4 Conclusions on price effects

269. In considering the effect of the dumped goods on prices in New Zealand for like goods, MBIE has established that:

- There is price undercutting attributable to the alleged dumping of the subject goods.
- There is no evidence of price depression attributable to the dumping of the subject goods.
- There is some evidence of price increases being prevented, but the evidence does not support a finding of significant prevention of price increases (i.e., suppression), attributable to the dumping of subject goods.

270. Further, the analysis on dumping shows that the extent of any price effects can only partially be attributable to the dumping. As discussed below, in section 4.5.11, the magnitude of margin of dumping is lower than the price undercutting, indicating that dumping has only partially contributed to the price effects.

271. The price effects examined above are considered in relation a consequent impact on the industry, in particular when measured, among other things, in terms of the factors and indices set out in section 8(2)(d) of the Act. Injury caused to the New Zealand industry is assessed in terms of the economic impact in the following section of this report.

4.5 Economic impact of dumping

272. Section 8(2)(d) of the Act sets out a number of factors the chief executive shall have regard to in relation to considering the economic impact of the dumped goods on the relevant New Zealand industry, including whether there are actual or potential declines experienced in relation to the identified factors. MBIE notes that the test in section 8(2)(d)(i) requires it to have regard to "actual and potential decline[s]" in the relevant economic indicators as opposed to increases prevented by dumping.

4.5.1 Output

273. Changes in output by domestic producers reflect production decisions in response to changes in the market situation, which could arise from a combination of changes in demand, competition, or from movements in prices and costs. Often a decline in output is reflected in declines in sales revenue, especially when a company produces to order so that few inventories are held.

274. In the context of the domestic peach industry, HWL's output is also dependent on the size and quality of the peach crop available each year. In recent years, HWL has made a move to ensure raw peach supply by investing in the efficient use of its own orchards, engaging in a tree renewal program with its growers, the introduction of a peach variety that is harvested over a longer period and signing multi-year contracts to ensure it procures all the product produced by its growers. Supply agreements with growers are rolling multi-year agreements, with the growers appreciating the longer term commitment by HWL to continue receiving their fruit. In return, HWL gets a better picture of growers' intentions to continue supplying HWL, or to exit the industry, which enables HWL to better manage planting programmes to maintain consistent supply. Because HWL aims to sell what it produces in any given year, sales volumes closely follow production volumes such that sales volumes are a better indication of injury than production volumes, in that, if HWL does not sell all that it has produced, that may be because of the impact of dumping (see sales volume discussion below).

4.5.2 Sales volume and revenue

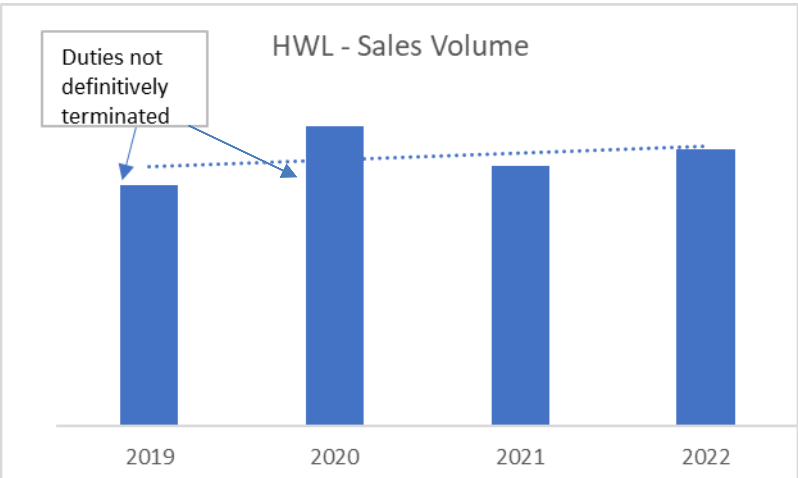
275. The Act requires that impacts on sales be considered as an injury factor. Movements in sales revenue reflect changes in volumes and prices of goods sold. Dumped imports can affect both of these factors through increased supply of goods to the market and through price competition.

4.5.3 Sales volume

276. Figure 4.7 illustrates the sales volume achieved by HWL for Oak and Wattie's brands of preserved peaches during the POI(I), based on information provided by HWL. The figures exclude own imports by HWL in order to reflect sales of only domestic production.

Figure 4.7: Sales volumes

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



277. HWL's data shows a slight increase in sales volume for the Oak and Wattie's brands between 2019 and 2020 followed by a decline of similar magnitude in 2021 followed by an increase in total sales volume across both brands between 2021 and 2022. Overall, between 2019 and 2022 there is an increase in sales volumes which is illustrated by the trend line which has been added to the graph.

278. MBIE notes that the decline in sales volume in 2021 coincided with an increase in imports of the subject goods from China in that year, which is the first full year after the duties were definitively terminated (November 2019).[12] However, there was a recovery in sales volume in 2022 to levels greater than in 2019 when the duties were in place on imports of the subject goods from China.

279. Under HWL's counterfactual scenario 1,[13] HWL's sales volumes in 2021 and 2022 would remain the same therefore MBIE's analysis above would also remain unchanged. Under HWL's counterfactual scenario 2,[14] its sales volumes in 2021 and 2022 would have increased in the absence of dumping. HWL claims that the loss of sales volumes that it would have achieved in the absence of dumping is the injury that should be assigned to the dumping. While MBIE acknowledges that, but for the dumping, the company *may* have achieved higher sales, MBIE cannot conclude that this was guaranteed. A key consideration here in contemplating this counterfactual scenario is that the company's ability to assume market share is restricted by the available domestic peach crop (a matter that has been noted above).

280. Further, the information in Figure 4.7 above does not show that the company has incurred injury through decreased sales volumes. Indeed, the trend shown across the full POI(I) is an increase in sales volumes. The use of data showing the level of sales volumes that HWL might have achieved in the absence of dumping (i.e., even greater increase sales volumes) would accentuate the lack of any evidence of injury through decreased sales volumes.

281. On the basis of the total information provided by HWL, MBIE considers the company has not experienced actual declines in sales volume attributable to dumping. The evidence is of increased, not decreased, sales volumes over the POI(I). While MBIE acknowledges the submission that the company *may* have achieved higher sales, but for the dumping, MBIE cannot conclude this was guaranteed. The uncertainty of the counterfactual argument in this case means MBIE places less weight on it than on evidence from a trend analysis (i.e., assessing whether the injury indicators have actually declined over time).

4.5.4 Sales revenue

282. The following figure shows the sales revenue achieved by HWL for Oak and Wattie's brands during the POI(I), based on information provided by HWL. The figure excludes own imports by HWL in order to reflect sales revenue achieved from domestic production only.

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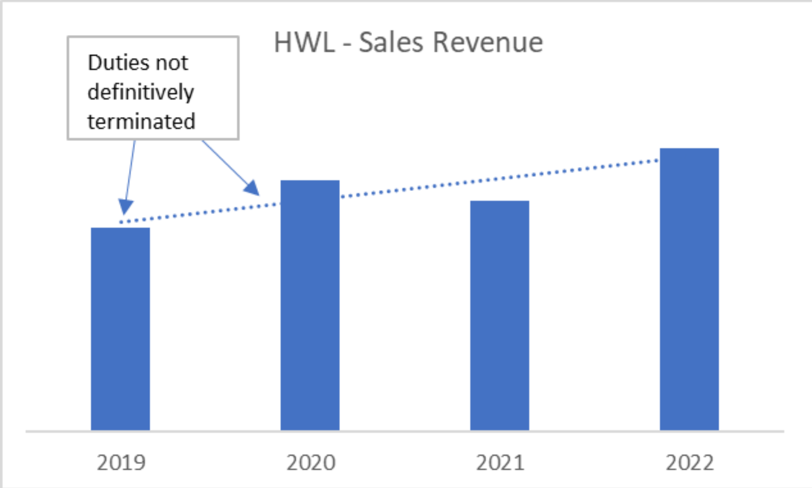
[12] MBIE notes that the duties were removed in February 2018 and were not restored during the subsequent 2019 Reconsideration. HWL submits that New Zealand importers did not respond to the termination of the duties until this was confirmed, in November 2019.

[13] HWL submits, in this scenario, that its sales volumes would have increased after June 2020 by the level of price undercutting but for the alleged dumping.

[14] HWL submits, in this scenario, that its market share would have been greater after June 2020 but for the dumping.

Figure 4.8: Sales revenue

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



283. HWL's data shows a similar trend to sales volume (above) although the increased 2022 revenue is more pronounced than the 2022 sales volume increase. Between 2019 and 2020 (when duties were terminated but with the possibility they might be restored),[15] there was an increase in sales revenue for the Oak and Wattie's brands followed by a decline in 2021 (at which stage the duties had been definitively terminated). In 2022, there was an even greater increase in sales revenue across both brands combined. The 2022 revenue achieved by HWL was greater than in 2019 and 2020 (when duties were terminated but potentially going to be restored). Overall, between 2019 and 2022 there was an increase in sales revenue which is clearly illustrated by the trend line which has been added to Figure 4.8.

284. As with sales volume above, MBIE notes that the 2021 decline in sales revenue coincided with an increase in imports of the subject goods from China in that year which is the first full year after the duties were definitively terminated (November 2019). However, there was a recovery in sales volume in 2022 to levels greater than in 2019 and 2020, when the duties on imports of the subject goods from China had been terminated but were potentially going to be restored.

285. Under HWL's counterfactual scenario 1, its sales revenue in 2021 and 2022 would have increased in the absence of dumping (in both years) and under HWL's counterfactual scenario 2, its sales revenue in 2021 and 2022 would have increased in the absence of dumping on the back of what the company claims would have been an increase in market share. HWL claims that this loss of potential sales revenue, which it says it would have achieved in the absence of dumping, is the injury that should be assigned to the dumping. HWL reinforced its counterfactual scenario in its submission on the EFC Report, by providing a chart of sales revenue showing its projected sales revenue with a 4.3% (i.e., the weighted average margin of dumping) price increase applied.

[15] As noted above, duties were terminated in February 2018 and not restored during the subsequent 2019 Reconsideration. HWL submits that New Zealand importers did not respond to the termination of the duties until this was confirmed, in November 2019.

286. The information in the table above, and in the graph provided in HWL submission on the EFC Report, shows little evidence that the company has incurred injury through decreased sales revenue across the POI(I). The use of data showing the level of sales revenue that it might have achieved in the absence of dumping (i.e., even greater increases in sales revenue) would accentuate the lack of any evidence of injury through decreased sales revenue.

287. On the basis of the total information provided by HWL, MBIE considers the company has not experienced injury through actual declines in sales revenue attributable to dumping. The evidence is of increased, not decreased, sales revenue over the POI(I). While MBIE acknowledges the submission that the company *may* have achieved higher sales revenue, but for the dumping, MBIE cannot conclude this was guaranteed, noting the findings on price suppression. The uncertainty of the counterfactual argument in this case means MBIE places less weight on it than on evidence from a trend analysis (i.e., assessing whether the injury indicators have declined over time).

4.5.5 Market share

288. Analysis of market share must consider changes in the size of the total market. A decline in the domestic industry’s market share when the total market is expanding will not necessarily indicate that material injury is being caused, particularly if the domestic industry's sales are also growing, because the New Zealand industry is not entitled to a particular market share.

289. In order to illustrate the impact of imports on the New Zealand market, HWL referenced the 2006 China Investigation where the Delish brand grew to a significant share in Pak ‘n’ Save South Island supermarkets over a 4-week period and, likewise, for the 2011 Spain Investigation where the Cinderella brand grew its share in Pak ‘n’ Save Wellington supermarkets over 4 weeks. HWL reiterated that in these cases the import volumes increased by a volume that is relatively small for a country the size of China.

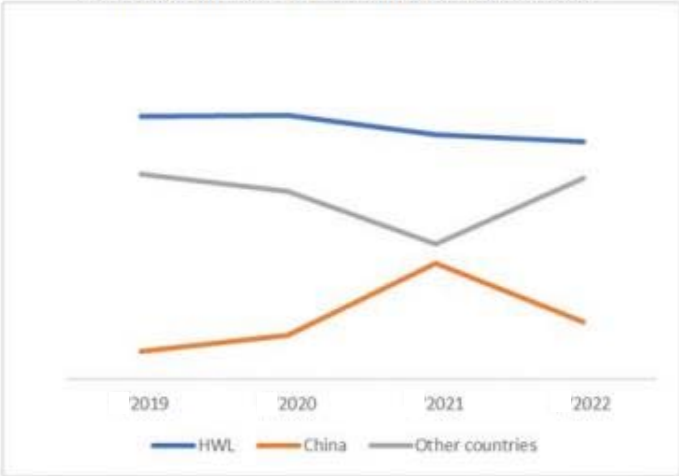
290. In its application, HWL provided data showing HWL’s average market share for the three years prior to mid-2020 (when duties on Chinese imports had been terminated but were potentially going to be restored). In the two years since, HWL stated the average has decreased and it has experienced a loss of market share points. HWL claims that in the two years to mid-2020, Chinese peaches had a net gain of market share points at a level that was slightly higher than HWL’s lost market share points, the majority being at the expense of HWL’s market share.[16]

291. MBIE has reviewed the information available on market share, using Customs data for imports of subject goods from China and from other countries. Figure 4.9 below details this information.

[16] Based on Information Resources Inc. (IRI) retail data.

Figure 4.9: Market Share

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



292. As shown above, HWL's market share declined over the POI(I), with the decline in 2021 coinciding with an increase in market share for imports from China and a decrease in market share for imports from other countries. However, the continuing decline in HWL's market share in 2022 appears to reflect the significant increase in the share of other countries rather than that of China.

293. The information shows that HWL has experienced some decline in its market share over the POI(I). This decline is partially attributable to increases in imports of subject goods from China and in part attributable to imports from other countries.

4.5.6 Profits

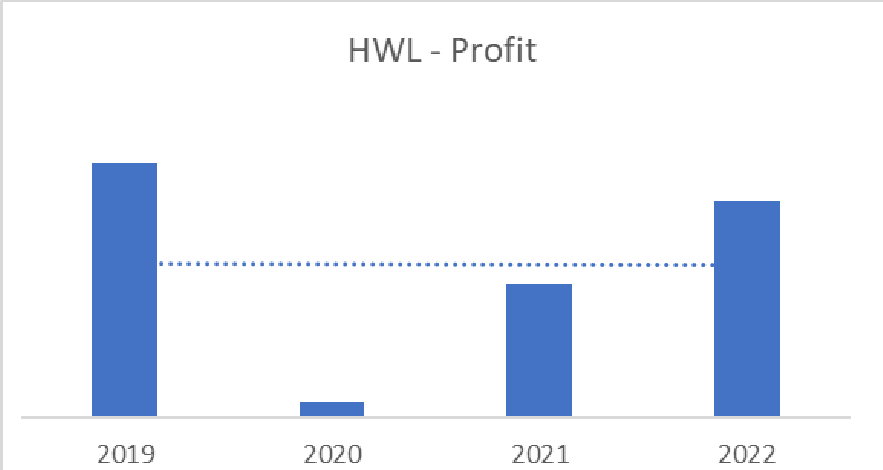
294. The Act requires that impacts on profits be considered as an injury factor. Dumped imports can affect gross profit and net profit via the impact on sales prices and volumes. Changes in net profit reflect changes in prices, sales volumes or costs. Dumped imports can impact on any or all of these.

295. In its application, HWL noted that its loss in sales revenue directly impacts profits. The company provided figures showing a summary of this loss in profit and said that such a loss in profit is significant material injury and reflects the fact that a remedy in the form of an anti-dumping duty is urgently required to prevent further material injury to the New Zealand industry.

296. Figure 4.10 below shows the profit achieved by HWL for Oak and Wattie's brands combined during the POI(I), based on information provided by HWL. The figure excludes own imports by HWL in order to reflect profit achieved from domestic production only.

Figure 4.10: Profit

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



297. The information shows a significant decline in profits across both HWL brands combined between 2019 and 2020 (where duties on imports from China were terminated but with the possibility they might be restored). MBIE notes from its price suppression analysis that costs in relation to prices increased between 2019 and 2020, which likely explains the profit result for 2020. This was followed by an increase in profits in 2021 and again in 2022 (by which stage the duties had been definitively terminated), but to a point where profits for both years were still below the profits achieved in 2019 (when anti-dumping duties had been terminated but were potentially going to be restored) although well above those achieved in 2020.

298. MBIE is satisfied that the information shows that although there was a clear decline in profits between 2019 (when the duties had been terminated but were potentially going to be restored) and 2020, and the trend across the POI(I) is slightly downward, since 2020 HWL's profit results have been trending upward. While noting the conclusions reached regarding price undercutting and price suppression, MBIE considers the evidence is not conclusive as regards the impact of dumping of the subject goods on HWL's actual profits**.**

299. Under HWL's counterfactual scenarios 1 and 2, HWL's profit in 2021 and 2022 would have increased significantly in the absence of dumping (in both years) on the back of what the company claims would have been an increase in selling prices (scenario 1) and an increase in market share (scenario 2). HWL claims this loss of potential profit, which it says it would have achieved in the absence of dumping, is the injury that should be assigned to the dumping.

300. In its submission on the EFC Report, HWL reiterated this point by providing two graphs. Both graphs showed the profits HWL would have achieved in the absence of dumping by applying a 4.3% price increase (i.e., the weighted average margin of dumping) to their actual profits.

301. The first graph shows earnings before interest and tax (EBIT) as a % of net sales value (i.e., the profit margin) the company would have achieved across the POI(I) in the absence of dumping. HWL applied a 4.3% price increase to 2021 and 2022 and noted that this improved the profit margin to 2019 levels.

302. The second graph shows EBIT (in dollars) with the 4.3% price increase applied from 2020 onwards. This graph showed an increase in EBIT (in dollars) from 2020. With the application of the 4.3% price increase, the EBIT amount at the end of the POI(I) was greater than in 2019.

303. MBIE accepts the argument that in the absence of dumping it is possible HWL could have achieved higher profit levels than it actually did, although it is uncertain whether those levels would have been at the weighted average margin of dumping.

304. MBIE concludes that the evidence is not conclusive as regards the impact of dumping of the subject goods on HWL's actual profits. While it is possible, applying HWL's counterfactual, the company could have achieved higher profit levels than it actually did, this is uncertain. HWL's counterfactual scenario 1 highlights increased profits due to increased selling prices over and above cost increases. Under the price suppression section above, MBIE has concluded that HWL has not been significantly prevented from increasing its prices, which casts doubt on its claim that it would have been able increase prices further in the absence of the dumping. The uncertainty of the counterfactual argument in this case means MBIE places less weight on it than on a trend analysis (i.e., assessing whether the injury indicators have declined over time).

4.5.7 Productivity

305. The Act requires that impacts on productivity be considered as an injury factor. Productivity is the relationship between goods produced and the inputs required to manufacture those goods. Productivity is affected by output/sales and capacity utilisation levels.

306. The peach production period in New Zealand runs from February to March – this is the period that additional employees working on preserved peaches are hired. HWL noted that, with regard to productivity, imports of preserved peaches from China are not having an injurious effect on HWL's productivity as HWL sources all available peach raw material for processing into preserved peaches. Presently, HWL has commitments to contracted growers to take their crop for future years.

307. In previous peaches investigations and reviews, MBIE has concluded that HWL's productivity is not directly affected by whether anti-dumping duties are in place or not, at least in the short term. Any measure of productivity is mainly affected by the level of seasonal labour employed when the crop needs processing, so total labour costs are variable, depending on the total size of the crop, the size of the fruit, yield and factory efficiency in processing. Because labour size and costs are contingent on the size of the crop, yield and finished tonnage and based on HWL's purchasing requirements from growers, MBIE does not consider that productivity is a particularly useful factor in this case when assessing injury caused by dumped imports. While MBIE has had regard to this factor as required by the Act, it has given it little weight.

4.5.8 Return on investments

308. The Act requires that impacts on the return on investment be considered as an injury factor. An analysis of return on investment (ROI) measures profit against the value of the investment in a business. Changes in return on investment may impact the ability to retain current investment or attract new investment. Declines in return on investment can result from a decline in profit or an increase in the level of investment within the business. ROI is normally expressed as EBIT as a percentage of assets or shareholders' funds employed in the production of like goods.

309. In its application, HWL stated that it views the industry positively and continues to invest in its canned peach processing operation. The company has undertaken recent investment in its processing facility by installing a new colour sorter and peach pitters, which are used solely for processing peaches. While the colour sorter has been installed and is now operational, the installation process for the new pitters has been delayed by the process of procuring the required skilled personnel from overseas as well as global supply chain and shipping issues.

310. In the past, HWL's return on investment has not been looked at in detail as an injury factor due to the canned peach business sharing assets, at various stages of production, with other products and categories. There is nothing in the present investigation to suggest a change of approach would be warranted. HWL produces a range of seasonal and non-seasonal fruit and vegetable products that use the production plant which means that considering canned peach assets alone, for the purpose of assigning injury due to the dumping, is not possible or at the very least meaningless considering the small percentage that canned peach production represents of total throughput using the shared production machinery. While MBIE has had regard to this factor as required by the Act, it has given it little weight.

4.5.9 Utilisation of production capacity

311. The Act requires that impacts on utilisation of production capacity be considered as an injury factor. The utilisation of production capacity reflects changes in production volumes or changes in capacity. A decline in production volumes will normally lead to a higher cost per unit due to increased fixed overheads per unit. This will lead to a decrease in profit level unless offsetting savings are found elsewhere.

312. HWL's production capacity for canned peaches is constrained by the size of the crop that its contracted orchardists can deliver. All fruit is supplied and processed in the first quarter of each year. HWL notes that there are current constraints on seasonal labour availability, which led to some peaches not being harvested in early 2021. HWL provided its theoretical capacity in the absence of such constraints but this in itself depends on what volume of fruit HWL wants to hold in storage and continue processing after the harvest has finished.

313. In past investigations and reviews involved canned and preserved peaches, MBIE has held the view, which it continues to hold, that capacity utilisation was not a good indicator of injury given the number of variables involved, including that capacity is limited by the quantity of raw peaches available for production of canned peaches each year, competition for the parts of the canning line which are common to other seasonal fruit and vegetables, and also by the storage life of the raw fruit. While MBIE has had regard to this factor as required by the Act, it has given it little weight.

4.5.10 Factors affecting domestic prices

314. Section 8(2)(d)(ii) of the Act lists "factors affecting domestic prices" as one of the matters to which the chief executive must have regard when assessing the economic impact of dumped goods on the industry.

315. In its response to MBIE's request for further information, HWL listed the following possible factors affecting domestic prices: minimum wage increases; availability of seasonal labour; and competing (higher value) export crops such as kiwi fruit and apples. HWL also said that it has only reviewed its pricing twice recently, in October 2021 and in August 2022, to adjust for accumulated manufacturing cost increases as well as raw material peach costs which have increased in 2020 and 2021.

316. MBIE has endeavoured to take the above factors into account when undertaking its injury analysis (see above), including where relevant (below) under “Other Causes of Injury.”

4.5.11 Magnitude of margin of dumping

317. Section 8(2)(d)(iii) of the Act refers to the magnitude of the margin of dumping as a factor the chief executive shall have regard to when assessing the economic impact of dumped goods on the industry. The main effect of large margins of dumping is that they can potentially enable significant price undercutting, which has flow-on effects on prices achieved and volumes sold by the New Zealand industry.

318. HWL has said in previous investigations and reviews that when preserved peaches or other preserved fruit are sold at very low prices that reflect large margins of dumping, it affects the total pool of sales in the preserved fruit category. This is because if the price differential is too great between peaches and other preserved fruit products, the customer will buy the cheaper product.

319. MBIE has found an overall weighted average dumping margin for all exports of the subject goods from China during the POI(D) of 4.3%. The effect of the magnitude of the margin of dumping is that it permits price undercutting of like goods produced by the domestic industry. The level of the margin of dumping in this case is lower than the price undercutting. MBIE concludes on this basis that the magnitude of the margin of dumping has partially contributed to the price effects identified by HWL.

4.5.12 Other actual and potential negative effects

320. Section 8(2)(d)(iv) of the Act sets out a number of factors the chief executive shall have regard to in relation to considering the economic impact of dumped goods on the industry.

Cash-flow

321. Cash flow is the total amount of money being transferred into and out of a business, especially as it affects liquidity, and provides an indication of the ability of producers to self-finance their activities.

322. In its application, HWL noted that cashflow is not a good indicator of injury due to the shared resources common to both canned preserved peaches and other products HWL manufactures. A major feature is the seasonal nature of the cash flow for peaches which means that expenditure and revenue are very uneven in relation to production and sales. HWL has not claimed any adverse effect on cash flow in this investigation and noted that, because of the above reasons, in the past cash flow has not been considered a good indicator of injury.

323. MBIE acknowledges the difficulty in separately measuring any possible negative effects on cash flow resulting from the sale of canned peaches as opposed to other products that share common production facilities. MBIE considers it is not possible to clearly establish the extent to which any possible negative effects on cash flow may be attributable to the dumped imports.

Inventories

324. Increasing inventories at the end of a financial period can be a sign of injury, bearing in mind the context of the normal conditions and practices of the industry concerned.

325. In its application, HWL provided a graph showing the inventories of peaches on-hand since May 2019 (on a monthly basis). The graph indicates the seasonal nature of production and inventory levels. HWL noted that year-on-year, it is unknown what will precisely happen in terms of seasonal variability and adverse events, for example unforeseen late frosts. Although peach crops are becoming more stable, recent severe weather events illustrated the impact that adverse events can have on peach crops and inventory levels.

326. HWL claims that, with the loss of market share to Chinese imports, inventory levels have been higher than they would have been if its market share had been maintained, indicating that it could have supplied the volume it lost through loss of market share to the Chinese imports.

327. In previous cases, and observed by MBIE in this investigation, the canning of peaches over a relatively short period once a year means that inventory is at its peak soon after production and then declines as inventory is sold down over the next 12 months. MBIE considers that, because of the way HWL manages its inventory level, the amount of inventory on hand is not a good indication of current injury, given HWL aims to sell its full inventory over the season. MBIE does however note that HWL is particularly exposed to injury from dumped imports shortly after yearly production when inventory levels are high and where any lowering of its prices would have a particularly significant adverse effect if inventories are to be maintained for longer periods.

Employment and wages

328. In its application, HWL stated that dumped preserved peaches from China are not currently having adverse effects on employment and wages due to that fact that HWL sources the entire peach crop and converts all of this to canned preserved peaches. In any given season HWL employs seasonal staff on an 'as required' basis from the recruitment agencies with whom it has a contract to supply labour. The number of staff varies each year and is dependent on the volume of peaches to be processed. Employee and wage rate data show that average annual wage rates have steadily increased over time. Employee numbers have also increased over the last few years but declined in 2021 and 2022 reflecting the availability of seasonal workers, especially during the COVID-19 pandemic. HWL relies on other means for production to run efficiently including getting staff in all at once, running production continuously, rather than stop-starting as in the past, and reducing the down time required when changing over from the production of different crops. While MBIE has had regard to this factor as required by the Act, it has given it little weight.

Ability to raise capital and investments

329. In its application, HWL stated that it has invested significant capital in 2022 due to its favourable view of the industry moving forward. Underpinning this view is the use of trade remedies to create a level playing field by defending the local industry when it comes under attack from dumped imports and, while this defence removes the injurious effects of dumped imports, HWL will continue to invest in the industry.

330. HWL has not made any claims of adverse effects in ability to raise capital and investments in this investigation. To the contrary there is ongoing investment, for example the peach colour sorter and pitters. This shows a commitment to the industry by HWL should the industry continue not to be injuriously impacted by dumped imports.

4.6 Conclusions on economic impact

331. MBIE is satisfied that, bearing in mind the conclusions reached regarding the volume and price effects of dumped imports, there is a reasonable basis to reach conclusions that:

- HWL has not experienced any actual declines in sales volume attributable to dumping. The evidence is of increased, not decreased, sales volumes over the POI(I). While MBIE acknowledges the submission that the company *may* have achieved higher sales, but for the dumping, MBIE cannot conclude this was guaranteed, noting the company's ability to assume market share is restricted by the available domestic peach crop.
- HWL has not experienced injury through actual declines in sales revenue attributable to dumping. The evidence is of increased, not decreased, sales revenue over the POI(I). While MBIE acknowledges the submission that the company *may* have achieved higher sales revenue, but for the dumping, MBIE cannot conclude this was guaranteed, noting the findings on price suppression.
- HWL has experienced some decline in its market share over the POI(I), which can in part be attributed to the alleged dumping of the imports from China and is in part attributable to imports from other countries.
- Although there was a clear decline in profits between 2019 (when the duties were not definitively terminated) and 2020 and the trend across the POI(I) is slightly downward, since 2020 HWL's profit results have trended upward. MBIE concludes that the evidence is not conclusive as regards the impact of dumping of the subject goods on HWL's actual profits. While it is possible, applying HWL's counterfactual, the company could have achieved higher profit levels than it actually did, this is uncertain, noting the conclusion that in the price suppression analysis that HWL has not been significantly prevented from increasing its prices.
- Output and utilisation of production capacity are not useful indicators of injury attributable to dumped goods, particularly as both are dependent on the quantity of raw peaches available to be harvested each season and the company's purchasing requirements with growers. While MBIE has had regard to these factors as required by the Act, it has given them little weight.
- Productivity, inventories, employment and wages are not particularly useful factors when assessing injury as these factors are affected by the level of the crop available from growers and the seasonal labour available to process the crop which in turn affects the wage levels. While MBIE has had regard to these factors as required by the Act, it has given them little weight.
- The level of the margin of dumping in this case is lower than the price undercutting. MBIE concludes on this basis that the magnitude of the margin of dumping has partially contributed to the injurious effects of the dumped goods.
- It is difficult to reach any meaningful conclusions on return on investment and cashflow that is specific to canned peaches in light of the difficulty in separately measuring any negative effects resulting from the sale of canned peaches as opposed to other products that share common production facilities.

4.7 Other causes of injury

332. In the examination of whether material injury is being caused by means of the dumping of goods imported into New Zealand, section 8(2)(e) and (f) of the Act sets out factors other than the dumped goods that may have injured the industry, and which the chief executive shall have regard to, including—

- The volume and prices of goods that are not sold at dumped prices; and
- Contraction in demand or changes in the patterns of consumption; and
- Restrictive trade practices of, and competition between, overseas and New Zealand producers; and
- Developments in technology; and
- Export performance and productivity of the New Zealand producers;
- The nature and extent of importations of dumped goods by New Zealand producers of like goods, including the value, quantity, frequency and purpose of any such importations.

333. This reflects Article 3.5 of the AD Agreement, which is discussed above in section 4.12 of this report.

334. MBIE has assessed the causal link between the dumped imports and any material injury on the basis of the requirements of the Act and the AD Agreement.

4.7.1 Non-dumped imports

335. Section 8(2)(e)(i) of the Act refers to the volume and prices of goods that are not dumped as factors other than the dumped goods that may have injured or are injuring the industry. This factor requires an assessment of the extent to which prices of imports from other sources might be affecting HWL.

336. MBIE has analysed Customs data on and calculated weighted average landed prices for imports from the main supplying countries, with anti-dumping duties included where relevant. This analysis suggests that, compared with the undercutting levels established for imports of subject goods from China there is less undercutting by imports from the main supplier of preserved peaches to New Zealand, South Africa (which include anti-dumping duties where applicable). There is also price undercutting by imports of preserved peaches from Greece (which also include anti-dumping duties), but the smaller import volumes from Greece are unlikely to be a cause of injury to HWL.

337. MBIE established above that there is dumping of imports of preserved peaches from China and that these imports are undercutting the prices of HWL product. An analysis of import prices of preserved peaches from other sources, including the main source of preserved peaches, South Africa, and Greece, both of which are subject to anti-dumping duties, indicates that such imports are unlikely to be a source of injury to HWL.

4.7.2 Changes in demand or patterns of consumption

338. Section 8(2)(e)(ii) of the Act refers to contraction in demand or changes in the patterns of consumption as factors other than the dumped goods that may have injured or are injuring the industry.

339. While price may be a factor affecting demand for preserved peaches, other factors affecting demand include seasonality, convenience, and more recently prolonged life in periods of panic buying due to the COVID-19 pandemic. For instance, there was an increase in demand for preserved peaches in 2020 due to panic buying prior to the COVID-19 nationwide lockdown in New Zealand in late March/early April. However, this was only a short-term effect and subsequently the market has fluctuated, driven by further regional lockdowns and resulting shopping behaviour and international shipping issues (which can lead to out of stock situations for imported goods, driving the demand for locally produced fruit).

340. MBIE confirms that during the POI(I) there were lockdowns or restrictions in New Zealand, or parts of New Zealand, due to COVID-19. Lockdowns at Alert Level 4 occurred from 25 March to 27 April 2020, 17 August to 31 August 2021 (Northland until 2 September and Auckland until 21 September 2021), and there were also some restrictions at other times.

341. HWL provided sales data for the New Zealand market that showed increased sales in March 2020 and August/September 2021 due to Alert Level 4 lockdowns in New Zealand, but not at Alert Level 3 restrictions. Increased sales also occur at the same point each year due to seasonality. MBIE notes that essential services such as supermarkets remained open during the lockdowns and that restaurant closures may have affected sales of some 3kg cans, but that over time sales of other retail size cans would not be affected.

342. HWL notes that there has been a recent decrease in demand for canned fruit in general, led by a decline in ambient fruit demand, which HWL attributes to changes in consumption patterns reflecting an organic decline of preserved food generally. HWL considers, however, that the main driver of sales remains price.

343. MBIE concludes that, while consumer preferences may be changing gradually, there have been no significant changes in the pattern of consumption or demand in New Zealand for preserved peaches. MBIE is satisfied that any injury arising from this factor has not been attributed to dumping.

4.7.3 Restrictive trade practices and competition

344. Section 8(2)(e)(iii) of the Act refers to restrictive trade practices of, and competition between, overseas and New Zealand producers as factors other than the dumped goods that may have injured or are injuring the industry.

345. MBIE notes that in New Zealand competition is regulated by the Commerce Commission. MBIE is nevertheless required under section 8(2)(e)(iii) of the Act to assess restrictive trade practices of, and competition between, overseas and New Zealand producers as factors other than the dumped goods that may have injured or are injuring the industry.

346. In its application, HWL stated that it is not aware of any restrictive trade practices that are currently affecting the New Zealand industry.

347. MBIE notes that there are significant volumes of imports of preserved peaches available from countries such as Australia, China and South Africa, which ensures that the New Zealand market is not monopolised by the New Zealand industry. No information has been provided from any of the interested parties in the investigation to indicate that conditions of competition in the New Zealand market between overseas producers and the New Zealand producer have changed in recent years.

4.7.4 Developments in technology

348. Section 8(2)(e)(iv) of the Act refers to developments in technology as factors other than the dumped goods that may have injured or are injuring the industry.

349. HWL noted in its application that it did not believe there is any evidence of a technology development relevant to the consideration of material injury and that it understands its method of processing peaches is similar to that of other processors. While the basic canning process is unchanged, there have been some technological advances in processing to improve efficiency and reduce risks, such as colour sorters and more advanced pitters. HWL has recently invested in newer equipment that is based on better technology that will help improve product quality.

350. MBIE is aware that there are products entering the market in plastic cups and pottles, rather than in cans, but this has been going on for some time, and does not reflect any recent significant development in technology. HWL continues to produce peaches in cans and has no plans to change this approach.

351. MBIE has no information that would indicate there has been a significant change in technology that could contribute to or cause material injury to the domestic industry. MBIE is satisfied that any injury arising from developments in technology have not been attributed to dumping.

4.7.5 Exports of New Zealand producers

352. Section 8(2)(e)(v) of the Act refers to the export performance and productivity of the New Zealand producers as factors other than the dumped goods that may have injured or are injuring the industry.

353. HWL has historically exported a small volume of preserved peaches to the Pacific Islands (mainly to the food service industry) and more recently to Australia under HWL's Golden Circle label. The Australian exports were partly attributed to the challenges the Australian market was facing as importations of canned peaches from other sources were affected by COVID-related shipping delays and significant increases in costs, especially shipping costs. HWL had excess stock and the advantage of reliability and price stability in supplying the Australian market.

354. MBIE considers that such a relatively small export volume, at the prices achieved, has not had a negative effect on HWL's profitability. Productivity would not be adversely affected either, as these peaches are produced at the same time as the rest of HWL's canned peach production. MBIE therefore concludes that the export performance and productivity of the New Zealand producer are not a cause of injury to the New Zealand domestic industry.

4.7.6 Imports by the New Zealand Industry

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

356. In the past HWL has imported preserved peaches from China in order to supplement and complement its domestic supply, however, the company did not import any preserved peaches from China during the dumping investigation period (1 July 2021 to 30 June 2022). Generally, the company stated that it has moved away from importing from China (due to consumer perceptions) to supplement its Oak brand, and when there is increased demand that it cannot fulfil from New Zealand raw peach supply, it looks at the co-packing options in South Africa. HWL preserved peach imports, apart from country of origin declarations, are labelled the same as the New Zealand products and are sold at the same regular price. The sale of these products in the New Zealand market protects the market share, shelf space and consumer goodwill for New Zealand preserved peaches in a time of shortage which, the company claims, does not cause injury to HWL.

357. Customs data shows that in recent years HWL has been a major importer of canned peaches from South Africa confirming the company's claim that it imports in order to supplement its domestic production so that it is not totally reliant on a successful peach crop harvest in any single year, given crop supply variation caused by natural events such as adverse weather conditions impacting on crop volume. This has been recently highlighted by the impact on Hawkes Bay peach orchards from Cyclone Gabrielle which has affected the volume of raw peach intake by HWL. HWL's imports are subject to the payment of anti-dumping duties in the same manner as other importers' imports of these goods.

358. MBIE is satisfied that any injury from imports by the New Zealand industry has not been attributed to dumping.

4.8 Other factors

359. There may be other factors, other than imports of the subject goods, which could be affecting the performance of the domestic industry in relation to the subject goods, including the impact of the COVID-19 pandemic.

4.8.1 COVID-19

360. MBIE has referred in this report to the impact of COVID-19 on sales due to lockdowns and panic buying, which HWL considers to be a short-term effect. MBIE has also noted that a shortage of seasonal labour from overseas resulted in a failure to harvest some of the peach crop in 2021. This led to lower levels of productivity and output. However, as noted above, HWL can replace any shortage in domestic volume with imports if required.

361. HWL has indicated that some input costs were increasing during the COVID period, but that it was likely foreign producers would be exposed to the same input costs. Shipping delays and increased maritime freight costs as a result of COVID-19 were likely to have impacted on the costs of imported goods. HWL stated that some exporters and importers did not appear to be as affected by these challenges due to the higher margins that are available on product from China leading to the growth of private label products.

4.8.2 Severe weather events

362. This report has noted elsewhere the impact on Hawkes Bay peach orchards from Cyclone Gabrielle which has affected the volume of raw peach intake by HWL. Due to the impact of Cyclone Gabrielle, HWL is unable to produce a sufficient supply of canned peaches from the local harvest to meet total domestic demand during 2023. MBIE notes that Cyclone Gabrielle occurred outside the POI.

4.9 Conclusions on material injury

363. Material injury is not defined in either the Act or the AD Agreement, but is assessed by reference to the factors set out in section 8 of the Act, in the context of the circumstances of the industry concerned. No single factor or combination of factors will necessarily result in a finding one way or another. In each case MBIE evaluates which factors are relevant and which are important, in light of the circumstances of the particular case at hand.

364. The Oxford English Dictionary definition of "material" is "significant; important". In the past, for the purposes of assessing whether the extent of injury is material, MBIE has assessed whether the level of harm is significant or substantial and this is the test applied in this report.[17]

4.9.1 Dumped imports

365. As described in the preceding sections of this report, as required under sections 8(1) and 8(2) of the Act, MBIE has examined the information available concerning the volume and price effects of allegedly dumped imports and the consequent impact on the domestic industry, including the extent and nature of any such effects and the causal relationship with the dumped imports of preserved peaches from China.

366. Having considered all relevant factors and indicators as required under the Act, MBIE's analysis has led it to conclude that there has been an increase in imports of the subject goods along with price effects, being price undercutting but not price depression or significantly to have prevented price increases for those goods (i.e., suppression). MBIE notes that the price effects identified by HWL in its application and which MBIE observed in this investigation can partially be attributed to the dumping given the finding that the magnitude of the margin of dumping is lower than the price undercutting established. There have been some economic impacts on the domestic industry which can be attributed to dumping, in particular a loss of market share from 2020 and an impact on profits although the marked decline in profits between 2019 and 2020 has been followed by an upward trend, albeit still not to 2019 levels. MBIE has not found any declines in sales volumes or revenue.

4.9.2 Other causes of Injury

367. MBIE is satisfied that in relation to the matters the chief executive is required to have regard to under section 8, it has not attributed to dumped imports any injury caused by other factors. MBIE is also satisfied that there are no other relevant matters that need to be considered under section 8.

4.9.3 Conclusion

368. MBIE has examined the information available and has considered all the factors set out in section 8 of the Act, noting in this case in particular its conclusions regarding price undercutting, price suppression, market share and profits. MBIE's conclusion is that, while the dumping of the subject goods from China has had some injurious impact on the domestic industry, the impact has not been demonstrated to be significant or substantial such that it can be concluded that dumping has caused material injury to the New Zealand industry producing like goods.

369. MBIE is satisfied that the effects of other factors which may be having an economic impact on the New Zealand industry have not been attributed to the dumping of the goods from China.

[17] Dumping Investigation into Diaries from Korea, Ministry of Business, Innovation and Employment, December 2013

5. Conclusions

370. On the basis of its investigation of the dumping of preserved peaches from China, and in accordance with the requirements of the Act for the determination of export prices and normal values for the subject goods, and the determination of whether or not material injury to an industry has been or is being caused by means of the dumping, MBIE has concluded that:

- Imports into New Zealand of peaches from China are dumped with an overall weighted average dumping margin for all exports of preserved peaches from China for the POI of 4.3%.
- The dumping of preserved peaches from China has not caused material injury to the New Zealand industry.
- Any injury attributable to causes other than dumping of preserved peaches from China has not been attributed to the dumped goods.

371. In terms of the determinations to be made by the Minister, MBIE considers that:

- A negative determination under section 10D(1) of the Act should be made in respect of imports of preserved peaches from China, and consequently, the investigation in regard to these goods should be terminated.

372. MBIE also considers that provisional measures should not be applied under section 16 of the Act to imports of preserved peaches from China during the remaining period of the investigation.

373. These conclusions will provide the basis for MBIE's recommendations to the Minister on the findings of the investigation.

Trade and International
Ministry of Business, Innovation and Employment
12 June 2023

ANNEX 1: SUBMISSIONS RECEIVED ON THE STEP 1 EFC REPORT

Heinz Wattie's Limited (HWL) was the only interested party that provided a submission on the EFC Report. The company's comments are detailed below:

HWL's Submissions	MBIE Comments
A. Summary	
A1. HWL noted that it has serious concerns regarding the analysis and conclusions regarding material injury and how they have been reached, including: • The higher test in this investigation that MBIE has applied regarding injury factors being 'fully' attributable to or 'fully' contributed by. • Misinterpretation of the Act. • Incorrect analysis and interpretation of HWL data leading to incorrect conclusions regarding material injury.	MBIE has not applied a higher test in this investigation than it has applied in other investigations regarding the attribution of injury to dumping, nor has MBIE misinterpreted the Act. Under section 8(1) of the Act, MBIE must consider "whether or not material injury has been or is being caused… by means of the dumping…". This means, in considering causation, MBIE must examine the extent to which injury has been caused by the dumping, as opposed to other factors. MBIE acknowledges that in past reports it has used different language to describe this (for example in the Step 1 Final Report for the Investigation into Dumping of Aluminium-Zinc Coated Steel from China and Korea the language used was "partially"). MBIE has revised the language in this report accordingly. MBIE notes that a finding that an injury factor is partially attributable to dumping does not mean MBIE disregards that factor in its analysis. As it has always done, MBIE considers all relevant factors in reaching an overall conclusion on whether there is material injury caused by dumping. With regard to the submission that MBIE incorrectly analysed and interpreted HWL data, MBIE notes that its price suppression analysis for the EFC Report used HWL's direct manufacturing costs but not fixed costs. Fixed costs in this case include costs such as fixed manufacturing, selling, general and administrative expenses. MBIE's reasons for using only direct manufacturing costs are discussed below. MBIE has undertaken a further price suppression

	analysis using total costs i.e., direct manufacturing costs as well as fixed costs such as fixed manufacturing, selling, general and administrative expenses (see: Section 4.4.3 of this Step 1 Final Report).
B. A higher test for "material injury"	
B1. HWL noted the use of the word "fully" eight times in the EFC Report yet says the Act does not define that any injury factor must be fully contributed by or be fully attributable to and it would be naïve to think it should, at any point in time, given other influences that could be impacting any injury factor for a business. The Act would not be enforceable if MBIE had to meet the test of fully contributed by or be fully attributable to for any injury factor.	As noted above, MBIE must analyse causation in any investigation and in doing so examines the extent to which injury has been caused by the dumping, as opposed to other factors. MBIE acknowledges that in past reports it has used different language to describe this and has revised the language in this report to align with that used in other investigations. MBIE notes that any finding that an injury factor is partially attributable to dumping does not mean MBIE disregards the factor in its injury analysis. As it has always done, MBIE considers all relevant factors in reaching an overall conclusion on whether there is material injury caused by dumping.
B2. MBIE's interpretation of how the Act is applied is an unreasonable deviation from how it has been applied in the past. HWL has reviewed the last new investigation final report, being Preserved Peaches from Spain 2011 and the last Sunset Review Final Report, being Preserved Peaches from Spain 2021 and has not found in either case that MBIE has had to find that an injury factor has had to be 'fully' contributed by or be 'fully' attributable to, nor does the Act prescribe it. Rather the test has been lower being 'contribute to' or 'attributable by'. It would appear given how consistently this has been applied that a new clear foundation has been set in the way MBIE is interpreting and implementing the Act, with such significantly higher test, as opposed to recent and historical antidumping investigations.	See responses above.

C. Material Injury Analysis	
C1. Overview	
HWL acknowledged that MBIE has correctly identified that it was the cost increases incurred in 2020 which explains HWL's increased profit result in 2021 and 2022. However, HWL considers that the injury needs to be considered based on its 2019 performance as this is the performance that HWL is looking to achieve in the absence of dumped Chinese preserved peaches.	While HWL considers that injury needs to be considered based on its 2019 performance, as this is the performance that HWL is looking to achieve in the absence of dumped Chinese preserved peaches, MBIE is also mindful that the duties were terminated in November 2019 and that any impact would not expect to be seen until after November 2019 (well into the 2020 June year) and the full effects would only be felt in the 2021 and 2022 June years. There is an argument, therefore, that HWL's performance in <u>both</u> 2019 and 2020 should be considered indicative of what HWL would expect to achieve in the absence of dumped goods from China on the basis that the duties had not been definitively terminated until well into the 2020 June year. On this basis, MBIE has made its injury findings in the EFC Report and in this Step 1: Final Report, by considering HWL's performance over the entire four-year POI(I) (the 2019-2022 June years) and has been careful to ensure that when examining if any injury has occurred to the industry and to what extent, it has examined all relevant factors including when imports from China and other sources peaked and how this impacted HWL's performance.
HWL claims that it takes some months to analyse the consequential reaction from consumers to cost increases and the subsequent actions HWL may take. HWL has evaluated that presently the market cannot sustain further price increases in the presence of dumped Chinese peaches without further market share decline and the corresponding volume effects.	MBIE has analysed HWL's price and cost increases under the "Price Suppression" section of this report, including examining the extent to which HWL has been able to increase its prices in line with cost increases and also in line with inflation, measured by the Consumer Price Index (CPI) and the Food Price Index (FPI) increases. This exercise found that generally the company has been able to increase its prices in line with its cost increases and with inflation. This issue has been addressed in Section 4.4.3 of this report.

C2. Misinterpretation of the Act / EBIT v NSV graph HWL claims that MBIE has misinterpreted the Act by stating in the EFC Report that "Price depression does not consider the situation where price increases are prevented due to dumping". HWL quotes Section 8 2(c) of the Act which states: "the extent to which the effect of the dumped or subsidised goods is or is likely significantly to depress prices for like goods of New Zealand producers or significantly to <u>prevent price increases</u> for those goods that otherwise would have been likely to have occurred." According to HWL, MBIE's incorrect interpretation of the Act has led to an incorrect analysis from simply looking at average selling prices, rather than look at the price increases <u>prevented</u> by the dumped goods from China.	Section 8(2)(c) of the Act covers both price depression and price suppression, as follows: "*the chief executive shall have regard to… the extent to which the effect of the dumped… goods is or is likely significantly to depress prices for like goods of New Zealand producers… " (this refers to price depression*); "*… or significantly to prevent price increases for those goods that otherwise would have been likely to have occurred*" (this refers to price suppression). Accordingly, the statement that "price depression does not consider the situation where price increases are prevented due to dumping" is accurate as those words refer to price suppression. MBIE notes that HWL's submissions regarding the prices the company would have been able to achieve if it were not for the dumping have been taken into account as claims of price suppression. This is not a new approach and HWL's submissions in this regard have been taken into account.
HWL provided a graph, showing EBIT as a percentage of net sales value, to support its argument that it has been unable to offset cost increases with increased prices, which, it says, has led to price depression. The graph showed that EBIT as a percentage of sales revenue decreased between 2019 and 2020, then increased from 2020 to 2022, but did not reach 2019 levels.	MBIE notes that this graph was used to illustrate a price suppression argument by HWL. HWL price suppression argument is addressed above and in Section 4.4.3 of this Step 1 Final Report. Furthermore, MBIE has considered EBIT as a percentage of sales revenue in Section 4.5.6 (Profits) in the body of this report.
C3. Magnitude of the Margin of Dumping Using information from the EFC Report, HWL undertook an analysis to ascertain how much it could have raised its prices by. HWL referred to para 251 of the EFC Report where MBIE states "the magnitude of margin of dumping is lower than the price undercutting". Given this, HWL claims that	MBIE agrees that anti-dumping duties are intended to "level the playing field" so that a domestic industry which has been materially injured through dumping is provided with a remedy. More specifically, anti-dumping duties are a particular duty imposed at the border which importers of the dumped goods incur. It is

if MBIE were to impose an anti-dumping duty, it would be the 4.3%. margin of dumping determined in the investigation. HWL claims it would be able to offset the injury it has experienced through price increases by this amount and this is arguably the price increase that is being prevented. HWL provided a graph showing the increased prices HWL says it would have been able to achieve in the absence of dumping, applying the 4.3% price increase to 2021 and 2022 EBIT as a percentage of net sales value.	expected that these importers pass on the cost of the anti-dumping duty to their customers through higher prices. By doing so, domestic producers are then able to increase their prices in order to recover cost increases incurred which they might not have been able to recover due to competition from the dumped imports. However, before anti-dumping duties can be imposed in the form and for the reasons noted above, certain tests and requirements need to be met. These tests and requirements are stipulated in the Act and the WTO Anti-dumping Agreement, most importantly the imported goods must be dumped and be causing material injury to the domestic industry. MBIE has analysed HWL's price and cost increases under the "Price Suppression" section of this report, including examining the extent to which HWL has been able to increase its prices in line with cost increases and also in line with inflation (given HWL's submission below in relation to Profits), measured by the Consumer Price Index (CPI) and the Food Price Index (FPI) increases. This exercise found that generally the company has been able to increase its prices in line with its cost increases and with inflation and that while the company experienced some price suppression when the analysis was based on total costs, rather than on direct manufacturing costs, the price suppression was not "significant" (see also C5 below under "Price Suppression") Also, MBIE has examined HWL's financial performance over the injury investigation period, including the impact of cost increases on its selling prices and how this has impacted on its sales revenue and profits, and determined that while the company has experienced price effects from the dumped goods, and that there has been an impact on the company's profit level resulting in injury, the injury has not reached the level where it can be considered "material".

C4. Price depression HWL provided a graph showing the price increases it was able to make to its Wattie's and Oak brands during the POI(I) and the price increases it says it would have been able to achieve in the absence of dumping. It submits that this graph shows price depression over the POI(I).	Price depression is discussed in Section 4.4.2 of this Step 1 Final Report. The graph HWL provided indicates prices for both brands have increased across the whole of the investigation period, meaning there is no evidence of actual price depression during the POI(I). The use of HWL counterfactual data showing the price that might have been achieved in the absence of dumping (i.e., even higher increased prices) would simply accentuate the lack of any price depression.
C5. Price suppression HWL provided a graph that it says shows that its costs as a percentage of net sales value have not been able to be recovered in 2021 and 2022 to the level of 2019. It claims that this refutes MBIE's statement at para 248 of the EFC Report that costs as a percentage of sales revenue have decreased for the Wattie's brand and remained stable for the Oak brand. HWL's graph. HWL says that costs (costs of production plus fixed costs) as a percentage of sales have not remained stable for the Oak brand. HWL provided a graph of its price suppression calculations (costs as a percentage of NSV) for its Wattie's and Oak brands, stating this this shows price depression and suppression on contrast with MBIE's findings in paragraph 250 of the EFC Report. HWL claims that MBIE has made an error in not looking at total production cost as 'cost of production + fixed cost' and states this is not consistent with how MBIE analyses profit for instance. HWL also argued that since para 309 of the EFC Report shows that imports from China had a higher level of price undercutting than imports from the main supplier of preserved peaches, South Africa, it would appear logical that, with the higher price undercutting of dumped imports from China, it	In the EFC Report, MBIE analysed price suppression by comparing HWL's *direct manufacturing* costs as a percentage of sales revenue over the POI(I). MBIE did not include fixed costs (such as fixed manufacturing, selling, general and administrative expenses). Generally, total fixed costs cover a wider range of products and aren't specific to a product (unlike direct variable costs such as material inputs). The results of the exercise where price suppression was analysed using only *direct manufacturing* costs showed that HWL had not incurred price suppression on that measure. In an inflationary environment, however, there is more likely to be changes in total fixed costs, such that including them in the price suppression analysis is justified. At section 4.4.3 of this Step 1: Final Report, MBIE has revisited its price suppression calculations and analysis using both *direct manufacturing costs* and *total costs*. The results of this analysis are detailed in Section 4.4.3 and indicate that when cost and price information is combined for both the Oak and Wattie's brands, total costs increases have not been totally recovered through prices increases and that price suppression has resulted on that measure. However, MBIE has also concluded that this price suppression is not significant when the

is these imports that is preventing HWL raising its prices further to offset cost increases resulting in significant material injury caused by the dumped Chinese preserved peaches. It considers this logical as trade remedies exist on imports from South Africa. HWL disagreed with MBIE'S statement at para 248 of the EFC Report where MBIE reached the finding that the evidence does not support a finding that price increases have been "significantly" prevented by the effect of the dumped goods. HWL states that MBIE found it did suffer injury in the form of market share loss and that there *'could be some price suppression'.* HWL claims that any further price increases would have resulted in further market share loss and increased inventories of unsold stock and therefore further price increases have been prevented due to the dumped preserved peaches from China. HWL's view is that the conclusion reached at 242 of the EFC Report is incorrect. It claims that it has not been able to apply price increases for those goods that otherwise would have been likely to have occurred, rather they have been prevented, as the wording in the Act prescribes. It further claimed that price increases would have resulted in more significant market share loss which would increase the injury in loss of market share and increased inventories due to unsold stock as a result of loss of market share. In HWL's view its analysis refutes the conclusions at para 250 of the EFC Report in regards to price depression and suppression.	figures are compared across the entire POI(I). In terms of HWL claim that it has been unable to apply further price increases as this would have resulted in further market share loss and increased inventories of unsold stock, MBIE has analysed the extent to which HWL has been able to increase its prices in line with its recent cost increases and also in line with inflation, measured by the Consumer Price Index (CPI) and the Food Price Index (FPI) increases. This exercise found that generally the company has been able to increase its prices in line with its cost increases and with inflation. MBIE also determined that while the company has experienced price effects from the dumped goods, and that there has been an impact on the company's profit level resulting in injury, the injury has not reached the level where it can be considered "material".

C6. Sales Revenue HWL claims that based on the evidence it presented on price depression and suppression, it would have been able to achieve higher sales revenue if it had been able to offset the significant increase in costs of production through further price increases. It provided a graph of its sales revenue with and without the price increases it says it could have made in support of this argument.	MBIE has addressed sales review in Section 4.5.4 of this Step 1 Final Report. On the basis of the total information provided by HWL, MBIE considers the company has not experienced injury through actual declines in sales revenue attributable to dumping. The evidence is of increased, not decreased, sales revenue over the POI(I). As noted in section 4.2.3 of this report, the uncertainty of the counterfactual argument in this case means that MBIE places less weight on it than on evidence from a trend analysis (i.e., assessing whether the injury indicators have declined over time) when undertaking its material injury analysis.
C7. Profits HWL agrees there has been a reduction in EBIT as articulated by MBIE in paras 274 to 277 of the EFC Report but disagrees with the conclusion reached by MBIE. HWL claims that there has been inflation in costs experienced since 2020 and it has been unable to fully recover due to the dumped preserved peaches from China. HWL attributes this injury to imports from China and claims that the balance of the market mainly comprised of imports from South Africa, which are subject to a trade remedy to remove the injurious effect of those imports, so that, HWL claims, the injury can only be caused by the dumped peaches from China. HWL further noted that while MBIE has looked at EBIT in totality, EBIT was down in 2021 and 2022 on 2019 indicating that HWL has been unable to recover profits due to the price effects. HWL says this decline is significant and material. It provided a graph of its profits (actual and with the price increase it says it could have made, but for the Chinese dumping) in support of this argument.	Throughout the EFC Report and throughout this Step 1: Final Report, MBIE has addressed HWL's claim that it has not been able to fully recover cost increases due to the dumped preserved peaches from China including the extent to which any injury claimed by HWL can be attributable to imports from China as opposed to imports from other sources such as South Africa which are subject to anti-dumping duties. In the Injury Section (section 4) of this Stage 1: Final Report, MBIE has addressed HWL's claims regarding profits. In terms of HWL claim that it has been unable to apply further price increases as this would have resulted in further market share loss, MBIE has analysed the extent to which HWL has been able to increase its prices in line with its recent cost increases and also in line with inflation, measured by the Consumer Price Index (CPI) and the Food Price Index (FPI) increases. This analysis has been discussed above in this Annex (C5. Price suppression) and is set out in Section 4.4.3 of this Step 1: Final Report.

C8. Market share	
HWL disagreed with MBIE'S statement at para 260 of the EFC Report stating MBIE's reservations about its counterfactual claim on market share given the company's ability to assume market share is restricted by the available domestic peach crop. HWL claims that it manages its market share through a dual manufacture and import strategy and therefore when the domestic peach crop is restricted HWL will import to defend market share.	MBIE agrees with HWL that it manages its market share through a dual manufacture and import strategy and that when the domestic crop is restricted, HWL will import product to defend its market share. However, MBIE considers HWL's ability to manage market share, especially with domestic supply, is restricted by the available domestic peach crop it can source from the domestic peach growers. This has been highlighted by the recent impact that Cyclone Gabrielle had on the Hawkes Bay horticultural industry.
HWL notes MBIE's conclusion at para 272 of the EFC Report on market share including that MBIE acknowledged HWL has suffered loss of market share as a result of an increase in imports from China. HWL notes again that that the Act does not define that the decline be *'fully attributable'* and submits that to do so would make the Act unworkable.	As noted above, MBIE is required to consider the extent to which injury is caused by dumping as part of its analysis. MBIE has adjusted the language used to describe this aspect of its analysis in the Step 1: Final Report to reflect past practice. A finding that an injury factor is partially attributable to dumping does not mean MBIE disregards that factor in its analysis.

C9. HWL Conclusions on Economic Impact Based on the above claims HWL reached the following conclusions on Economic Impact: • HWL has experienced injury through price undercutting, price depression and price suppression. This injury is significant to the industry. • HWL has experienced a significant loss of sales revenue over the injury period due to the impacts of price undercutting, price depression and price suppression meaning some further price increases were not able to be passed on. • HWL has experienced a significant loss of profits over the injury period due to the impacts of price undercutting, price depression and price suppression meaning some further price increases were not able to be passed on to offset cost increases.	MBIE has set out its updated conclusions on economic impact in Section 4.6 of this Step 1: Final Report. These reflect MBIE's consideration of HWL's submissions on the EFC Report.
D. Other matters	
D1. HWL submitted that while it respects that the trade remedies team need to show impartiality, setting a new test so high to meet the requirements of the Act and how the Act is being interpreted would appear to put the trade remedies team at odds with the purpose of MBIE.	As noted above, MBIE has not applied a new test in this investigation.
D2. HWL submitted that in its opinion MBIE has gone far beyond their statutory obligations in enforcing the Act and as such have compromised their impartiality resulting in a breach of natural justice for HWL and the orchardists HWL represents.	MBIE notes that it published the EFC Report as required under the Act and invited interested parties to make written submissions on that. HWL did so and MBIE also met with the company to discuss its comments and concerns.

D3. HWL requested to understand MBIE's position regarding the export rebate that some cooperating exporters said they receive. It queried whether this should lower the export price to ensure a fair comparison with the normal value.	MBIE met with HWL on 30 June 2023 and at the meeting HWL clarified its submission on this point. HWL asked whether an adjustment for VAT featured in MBIE's calculation of export prices. MBIE used the same approach as in past investigations for establishing export prices, including how VAT was considered. MBIE looked at the VAT rates for inputs to export products and the VAT export rebate applying to those products. In the past, there was a differential between these rates meaning an adjustment was necessary as part of the dumping calculations. In this investigation, the rates were the same, so no adjustment was needed to be made as part of the dumping calculations.
D4. Regarding para 293 of the EFC report, HWL queried whether MBIE should have used the best information for its price effect analysis, which it has repeatedly stated is Customs data HWL is not privy to. It further submits that the price effect analysis and comments be based on this as per the analysis HWL has now done, conducted based on the published EFC Report.	At the meeting between HWL and MBIE on 30 June 2023, HWL clarified, by reference to paragraph 337 of the EFC Report, that it wanted to confirm whether a remedy can be imposed even if the margin of dumping is less than the level of undercutting. MBIE confirmed that this would be permissible, depending on the circumstances of a particular case, but that the tests required to establish material injury and causality first need to be met.

CONFIDENTIAL ANNEX 2: DUMPING ANALYSIS: QINGDAO COUNTREE FOOD CO LTD (COUNTREE FOOD)

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 3 of this Step 1 Final Report provides a summary of the confidential information to the extent that information is capable of summary.

Confidential Annex 3: Dumping Analysis: Dumping Analysis: Shandong Tiantong Food Co Ltd (Tiantong Food)

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 3 of this Step 1 Final Report provides a summary of the confidential information to the extent that information is capable of summary.

CONFIDENTIAL ANNEX 4: PROVISIONAL MEASURES

NOTE: This Annex is confidential because making the information available would have a significant adverse effect on the submitter of the information. Step 1 Final Report provides a summary of the confidential information to the extent that information is capable of summary.