Non - Confidential

Final Reassessment Report

Preserved Peaches from the People's Republic of China

June 2012

ISBN: 978-0-478-38264-8

Table of Contents

Abbreviations

Act (the)	Dumping and Countervailing Duties Act 1988
Anti-Dumping Agreement	WTO Agreement on Implementation of Article VI of the GATT 1994
Chief Executive	Chief Executive of the Ministry of Economic Development
CNY	Chinese Renminbi Yuan
FOB	Free on Board
g	Grams
HW	Heinz Wattie's Limited
kg	Kilograms
Minister (the)	Minister of Commerce
Ministry (the)	Ministry of Economic Development
NIFOB	Non-injurious Free-on-Board
NIP	Non-injurious Price
NV(VFDE)	Normal Value (Value for Duty Equivalent)
POR(D)	Period of Review (dumping), 1 June 2010 to 31 May 2011
USD	United States Dollar
VFD	Value for Duty
WTO	World Trade Organisation
	Commercially sensitive information

1. Executive Summary

1. The Ministry of Economic Development (the Ministry) completed a review of the anti-dumping duties that currently apply to imports of preserved peaches from the People's Republic of China (China) on 24 January 2012.

2. Immediately following the completion of the review the Ministry initiated a reassessment of the anti-dumping duties to consider the appropriate form and level of the duties that should apply.

3. The goods that are subject to reassessment are described as:

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

4. Anti-dumping duties have been in place on preserved peaches from China since 2006.

2006 Investigation

5. The original 2006 investigation found that a range of goods in various sizes were dumped and that some of the sizes being exported from some exporters were not dumped. Anti-dumping duties were imposed on those sizes that were dumped. The level of dumping found was between 12 and 384 percent with most of the goods being dumped at between 12 and 20 percent.

2011 Review

6. The review completed in 2012 found that the exporters were all dumping the goods into New Zealand at margins between 31 and 83 percent which would likely cause a recurrence of injury to the New Zealand industry if the duty was removed, and therefore there was a need for anti-dumping duties to remain in place.

2012 Reassessment

7. Since the 2006 investigation, there have been developments in the jurisprudence in New Zealand's World Trade Organisation obligations in relation to Anti-Dumping. In order to meet the developments with respect to the method of calculating dumping margins, it is now proposed that for each exporter, there will be one rate per kilogram of anti-dumping duty to cover all sizes of the goods.

8. An interim reassessment report was sent to interested parties for comment on 1 June 2012. No comments were received.

9. The effective date of the new duty rates will be the day after the Minister determines the new rates.

2. Background to the Reassessment

2.1 Introduction

10. Dumping is defined in section 3(1) of the Dumping and Countervailing Duties Act 1988 Act (the Act) and occurs when an exporter sells goods to New Zealand at a price lower than it sells the same or similar goods for in its own country. In essence dumping is price discrimination between an export and a domestic market. It is not illegal but injurious dumping can be remedied by the imposition of anti-dumping duties at the border to enable fair competition in the New Zealand market.

11. Dumping does not always cause material injury to the domestic industry. Material injury is when dumped goods cause a decline in factors such as output or profits, usually through undercutting, depressing or supressing New Zealand producers' prices. Injury may also be caused in a number of other ways. Dumped imports can also threaten to cause material injury.

12. Anti-dumping duties on preserved peaches from China were first imposed under the Act by the Minister of Commerce in 2006.

13. These duties were scheduled to expire on 21 August 2011, however, the New Zealand industry which is comprised solely of Heinz Wattie's Ltd (HW), made an application for the continuation of the duties beyond the expiry date (as it is able to do under the Act).

14. In its application for the continuation of duties HW claimed that the removal of the duty would allow imports of preserved peaches from China to recommence being sold to New Zealand at dumped prices, causing a recurrence of material injury to the New Zealand industry.

15. A review was initiated by the Ministry of Economic Development (Ministry) on 7 July 2011 (prior to the expiry of the duties) as it was satisfied that positive evidence, justifying the need for a review (as required by the Act) had been provided by HW.

16. The review was completed by the Ministry on 24 January 2012, and found that there was dumping, and so concluded that if the duty was removed dumping would continue, and therefore anti-dumping duties were necessary to prevent a likely recurrence of material injury to the New Zealand industry.

17. The Act allows the Minister of Commerce to determine a new rate or amount of anti-dumping duty following the completion of a review including any changes in the formula used to establish an anti-dumping duty. However, section 14(6) of the Act first requires that a reassessment of the current form and level of anti-dumping duties is undertaken.

18. The reassessment of the anti-dumping duty was initiated on 24 January 2012 (the day the review was completed). The reassessment investigation has addressed whether it is appropriate for the form and the rate of the anti-dumping duties to remain unchanged or whether they should be changed to reflect the new dumping and injury margins as

well as any changes in the pricing and selling arrangements currently employed by importers, as found in the review.

2.2 Imported Goods

19. The imported (subject) goods covered by this reassessment are described as

"peaches in preserving liquid, in containers up to and including 4.0 kg"

20. Under the Working Tariff of New Zealand preserved peaches imported from China enter New Zealand under tariff item and statistical key 2008.70.09 00L. The preferential Customs duty rate for China for these goods of 1.4 percent reduced to "free" on 1 January 2012.

2.3 Interested Parties

New Zealand Industry

21. HW is the sole New Zealand manufacturer of preserved peaches and therefore under the Act constitutes the industry.

Exporters and Manufacturers

22. In the 2011 Review there were 23 exporters identified as supplying preserved peaches to New Zealand from China over the period in which dumping was considered (known as the period of review for dumping and was from 1 June 2010 to 31 May 2011).

23. The Ministry limited its examination to five exporters (75 percent of the export volume) as permitted by Article 6.10 of the World Trade Organisation Anti-dumping Agreement (the Agreement). Two of these exporters were involved in the original investigation in 2006, but none of the five exporters selected in the Review provided information, so dumping margins were calculated for each of the exporters using the best information available as permitted under the Agreement. Table 2.1 below lists those exporters.

Table 2.1: Exporters

Chic Foods Co. Ltd. / Chic International Trading (Shanghai Pudong New Area) Co. Ltd.
Linyi City Kangfa Foodstuff Drinkable Co. Ltd
Qingdao Huaci Metal & Porcelain (Industries) Co. Ltd.
Sino-Everygreen Foodstuff Co. Ltd.
Zhejiang Iceman Foods Co. Ltd.

24. The best information available on the exporters' costs is that from the 2011 review and this information has been used by the Ministry in reassessing the form and rate of the anti-dumping duty.

Importers

25. The 2011 review identified five importers importing from the five selected exporters. Each importer was given the opportunity to provide information related to their imports. HW (in its capacity as an importer) responded in full, and partial responses were received from the other importers. These importers are listed in Table 2.2 below. The importers' information was used to determine the level of each exporter's non-injurious export price, used when considering appropriate reference price duties.

Table 2.2: Importers

DMFC International (NZ) Ltd.
Foodstuffs (Auckland) Ltd.
Foodstuffs (South Island) Ltd.
Foodstuffs (Wellington) Co-operative Society Ltd.
Heinz Wattie's Ltd.

2.4 Export Price, Normal Value and Dumping Margin

26. As noted above, in the 2011 review, the Ministry established dumping margins for each of the five exporters based on the best available information, as they provided no current information of their own.

27. This was done by calculating the weighted average export prices and the 'normal' Chinese domestic sales values for each exporter at the point of the 'factory door' (ex-factory), and comparing the resulting export price and that of the normal value. To calculate ex-factory values, only the values representative of the cost to manufacture and sell the goods and the profit margin are considered for a comparison to find whether or not the goods are dumped.

28. For the export prices, each exporter's average price (provided by the importers' or from Customs data) was used as a base price and a number of deductions for costs were made back to the factory door in China. For the normal values, information available on Chinese domestic retail sales prices was used as base prices and information available on Chinese domestic market costs was subtracted. Other adjustments, where necessary, were also made to ensure a fair comparison between the Chinese domestic price and the price of the goods exported to New Zealand.

29. Because the weighted average export price was lower than the weighted average normal value in each case, the goods were considered to be dumped.

30. Table 2.3 below provides a summary of the Ministry's findings in the 2011 review on dumping. (Section 4 of the 2011 review report provides more information on how the adjustments were made.)

Non-Confidential

Table 2.3: 2011 Review: Dumping Summary

Exporters	Chic Foods Co., Ltd.	Linyi City Kangfa Foodstuffs Drinkable Co., Ltd.	Qingdao Huaci Metal & Porcelain (Industries) Co., Ltd.	Sino-Everygreen Foodstuff Co., Ltd.	Zhejiang Iceman Foods Co., Ltd.
Export Volume to NZ (Kg)					
Container and size (g)	Pottle 120	Jar 740/Can 3000	Can 425/Can 3000	Can 410/Can 820	Can 410/Can 820
Base Price/Kg	(CNY)	(CNY)	(CNY)	(USD)	(USD)
Adjustments: Inland freight (I.F.) Port charges and clearance fees (P.C. & C.F.) Bank charges (B.C.) Cost of credit (C.C.) Agents and exporters margin (incl. Customs clearance costs) (A.E.M & C.F)	I.F. P.C. & C.F. B.C.	I.F. P.C. & C.F. B.C. C.C.	I.F. P.C. & C.F. B.C. C.C.	C.C. A.E.M & C.F	C.C. A.E.M & C.F
Ex-Factory Export Price (CNY/Kg)					
Base Price (CNY/Kg)		11.43/6.83	15.26/6.83	15.26/11.43	15.26/11.43
Adjustments: Inland freight (I.F.) Packaging/ physical characteristics (P/P.C.) Physical characteristics (P.C.) Tax neutrality (2% VAT add-back) (VAT. 2%) Retailer and wholesaler margins (R.W.M)	I.F. P/P.C. VAT. 2%	I.F. P.C. VAT. 2% R.W.M	I.F. P.C. VAT. 2% R.W.M.	I.F. P.C. VAT. 2% R.W.M.	I.F. P.C. VAT. 2% R.W.M.
Normal Value (CNY/Kg)					
Dumping Margin as % of Export Price*	31%	37%	46%	68%	83%

*Some of the dumping margins differ from those in the 2011 review because the increase in Chinese producer prices used in the review was overstated. This did not affect the conclusion of the review that the goods were dumped. The correct dumping margins are shown above.

2.5 Disclosure of Information

31. The Ministry makes available all non-confidential information to any interested party through its public file system in accordance with the requirements of section 10 of the Act and Article 6 of the Agreement. Non-confidential versions of all submissions made by an interested party in this reassessment will be placed on the public file. Interested parties are entitled to request the non-confidential submissions, if they wish.

32. An interim reassessment report was sent to interested parties for comment on 1 June 2012. No comments were received.

3 Reassessment of Anti-dumping Duties

3.1 2006 Investigation

33. The 2006 investigation was the first investigation into dumped preserved peaches from China.

34. The 2006 investigation found:

    - 81 percent of the preserved peaches from China investigated were dumped and had caused material injury to the domestic industry.

    - Factors other than dumped goods had also caused injury to the domestic industry.

35. Anti-dumping duties were imposed based on whether or not a model (container size) was dumped, and were in the form of reference prices, with duty rates specific to the individual exporters investigated.

36. The Ministry investigated eight exporters' exports of peaches from China over a one year period. Over that period preserved peaches were exported to New Zealand in four size categories. None of the exporters in the selection exported product in all four sizes. The Ministry relied on section 4.1 of the Act which stated that anti-dumping duty can only be imposed in respect of those goods that are dumped. A 'transaction-to-transaction' methodology which focused on those transactions which were dumped was used, and non-dumped transactions were removed from the calculation. On the basis of averaging dumped transactions, two container sizes of the four were found to be dumped.

37. As a result, anti-dumping duty was imposed on the 410g and 820g sizes but not on the 120g and 3kg sizes. For other exporters not examined (and for exporters who had not exported that size of container during the period), residual rates of duty were calculated for each of the dumped container sizes by combining the information from each exporter for that size and calculating a rate for that size. The level of dumping found was between 12 and 384 percent depending on the supplier, but the majority of imports had dumping margins of between 12 and 20 percent.

38. The anti-dumping duties imposed took the form of reference prices. (Reference prices set a cap on the amount of anti-dumping duty payable). Reference prices were imposed because they clearly signalled to exporters and importers a price level that is non-dumped or non-injurious and at which no duty is payable. They also have the advantage that duty is only collected when the goods are priced below the non-injurious or non-dumped level and therefore are only collected to the extent necessary to remove the injurious dumping.

39. The reference prices calculated were set in Chinese Yuan (CNY) and ranged between _____ per kg and ____ per kg. The residual rates for all other exporters were set at 8.02 per kg for 410g containers and 7.54 per kg for 820g containers.

3.2 2011 Review

40. The 2011 review found:

- The goods were being exported at dumped prices and this was likely to continue into the foreseeable future, however, with the duties in place there was no injury being caused to the domestic injury.

- The range of dumping margins for the individual exporters was found to be between 31 percent and 83 percent[1].

- That should anti-dumping duties be removed, there was likely to be a recurrence of material injury to the domestic industry.

- Anti-dumping duties needed to be continued to prevent dumped imports from causing a recurrence of material injury.

41. Since the original 2006 investigation there had been a number of decisions concerning anti-dumping procedures arising out of the WTO's dispute settlement body on the calculation of dumping margins. The development of the jurisprudence in this area meant that to be consistent with WTO obligations in respect of calculating dumping margins, they should be calculated for the "product as a whole" not for individual models[2].

42. Taking account of this development the Ministry considered five exporters' exports of peaches from China over a one year period, and calculated a dumping margin for each exporter (only two of the five exporters were the same as in the selection in the 2006 investigation, although all the importers from the five exporters were again involved).

43. For each exporter, instead of calculating a margin of dumping for each size of product as was done in the 2006 investigation, a dumping margin for the product as a whole was calculated for each exporter, that is, for all of the goods exported in the period falling within the description *"peaches in preserving liquid, in containers up to and including 4.0 kg".* As a result it was found that all the exporters assessed had been dumping.

3.3 Methods of Imposing Duty

44. Anti-dumping duties are intended to remove injury attributable to dumping, not to punish an exporter or provide a domestic industry with protection beyond the impact of the dumping.

45. Considerations taken into account in deciding an appropriate form of the anti-dumping duty include the ability to ensure a dumping margin is not exceeded, ease of

---

[1] As amended to correct overstated increase in Chinese producer prices used in the 2011 review calculations.

[2] WT/DS322 & related Appellate Body decisions "US Measures Relating to Zeroing"

administration at the border, the ability to maintain fairness between parties and the predictability of the amount of duty payable.

46. To choose the most suitable type of anti-dumping duty for the situation, the Ministry's practice is to consider each type of anti-dumping duty in turn.

47. There are three types of anti-dumping duty:

- the specific duty approach;
- the ad valorem rate approach; and
- the reference price approach.

48. A specific duty is a set amount of duty payable per unit imported. It is based on the monetary value of the margin of dumping.

49. An ad valorem duty is based on the margin of dumping or the margin of injury and is applied as a percentage of the value for duty.

50. The reference price approach relates to the difference between the transaction price and a benchmark price. The amount of the difference is the duty payable. A reference price can be based on either a domestic price (in the exporting country) or the domestic industry's non-injurious price.

51. Further information about these types of duty can be found in Box 3.1 below.

Box 3.1: The Pros and Cons of Each Method of Imposing Anti-dumping Measures

A Specific Duty Approach

A specific duty is convenient to apply, impossible to evade by incorrectly stating the value for duty, and the amount of duty payable is clear. However, problems may arise when dealing with a wide range of goods or where exchange rates fluctuate to the extent that margins of dumping will be exceeded without constant reassessments of the specific amount. Additionally, there is also the potential for an exporter to manipulate prices so that duty is either greater or lesser than the margin of dumping previously established. A specific duty expressed as a monetary amount will operate effectively when prices and exchange rates are consistent and stable enabling the dumping remedy to remain relevant to the margin of dumping.

Ad Valorem Rate Duty

Ad valorem duty rates can be provided to all parties, and therefore are transparent. They are also convenient to apply and are unlikely to be substantially affected by exchange rate movements. They are appropriate where a large range of goods exist or where new models appear.

As with other approaches, the possibility exists for collusion between exporter and importer to manipulate invoice values of goods subject to duty, particularly if imported in conjunction with similar goods. Under this approach, a particularly low, and potentially more injurious, export price would result in a lower duty, which may be insufficient to remove injurious dumping. Conversely, a particularly high, and less injurious export price, would attract a higher duty, perhaps higher than is necessary to remove injurious dumping.

Reference Price Duty

Reference prices are most suitable when dealing with movements in export price and exchange rates (if expressed in the currency of the normal value). They are particularly useful for dealing with situations where a lesser duty is applicable, that is, a duty set at less than the margin of dumping but at a level that would still not be injurious to the industry.

Reference price duties have the advantage of clearly signalling to exporters and importers what un-dumped or non-injurious prices are. Additionally they are collected only when goods are priced below the reference price which is a non-injurious price. Therefore, duty is only collected to the extent necessary to remove injurious dumping.

Reference price duties are claimed to be more easily evaded than other forms of duty by overstating the VFD of the goods. Another drawback is that they are set at a fixed level based on a snapshot of price and cost, which obviously change over time and so may become less accurate. Significant changes which may occur over time in prices and exchange rates can be addressed by a reassessment of reference prices.

3.4 Proposed Methods of Imposing Anti-dumping Duty in the Present Case

52. The Ministry's practice is to consider the suitability of all methods of imposing anti-dumping duties in the circumstances of each investigation and in respect of each importer who is or will be subject to the duties.

53. All the goods of the exporters of Chinese preserved peaches were found to be dumped. The potential to dump preserved peaches into the market remains, and if there had been no anti-dumping duties in place, the significant dumping margins found during the 2011 review indicate that there would have been injury caused to the domestic industry.

54. No current injury to the domestic industry was found, so the reference price approach in place has been effective. It is proposed that the imports should continue to be subject to anti-dumping duty in this form. Reference prices are normally exporter specific and set at a fixed value on a per unit basis. These values are known to the

parties and clearly signal an un-dumped or non-injurious price to the exporter. They are fair because they cap the amount of anti-dumping duty payable and so only collect as much duty as required to prevent injury caused by the dumping.

55. The Ministry notes that as dumping margins are now calculated for the product as a whole, the anti-dumping duty should, for each exporter, cover all sizes of preserved peaches exported.

56. The Ministry has explained below how the references prices have been set for each exporter.

57. A reference price can be set at either the full margin of dumping or at a level below the full margin of dumping if this is sufficient to remove the injury caused by dumping (known as a "lesser duty"). A reference price at the full margin of dumping is referred to as a normal value (value for duty equivalent or NV(VFDE)) and is compared to a reference price set at a level which would remove the injury caused by dumping (referred to as a non-injurious free-on-board price or NIFOB). If the NIFOB is less than the NV(VFDE) amount, this indicates a lesser duty should apply.

Calculation of a Non-dumped [or NV(VFDE)] Reference Price Anti-dumping Rate

58. A *Normal value (Value for Duty Equivalent)* or NV(VFDE amount represents the non-dumped price of the imports at the free-on-board level, that is, the level at which the goods are loaded on the vessel ready to be exported from the exporting country. An NV(VFDE) starts with the price charged at the ex-factory level in the exporting country's domestic market. The Ministry then adds any costs required to export the goods, to the point of the goods being on the vessel in the exporting country (the free-on-board FOB level). Such costs may include inland freight and Customs clearance costs. The resulting value is the NV(VFDE) amount.

59. The Ministry calculated the NV(VFDE) price per kg for each of the five exporters. This was done by starting with the domestic ex-factory sales price (normal value) for each exporter. Added to that amount was any cost normally incurred, such as inland freight and Customs clearance fees and where relevant the exporter's and agent's margins involved, up to the FOB level. The resulting value is the NV(VFDE). In order to effect a fair comparison with the time period on which the NIFOBs are based, the NV(VFDE)s have been further updated by 5 percent being the percentage increase in the Chinese producer prices for the year to 31 October 2011. Any exports priced at or above this amount will be non-dumped. Any imports priced below this amount would be subject to the anti-dumping duty.

60. To enable the NV(VFDE) amounts to be compared to the NIFOB amounts they have been converted from CNY to NZD using the average exchange rate for the period 1 November 2010 to 31 October 2011.

61. Table 3.1 below shows the calculation of the NV(VFDE) from the normal value.

Table 3.1: Calculation of Exporters NV(VFDE) Amount (CNY per Kg)

	Chic Foods Co., Ltd.	Linyi City Kangfa Foodstuffs Drinkable Co., Ltd.	Qingdao Huaci Metal & Porcelain (Industries) Co., Ltd.	Sino-Everygreen Foodstuffs Co., Ltd.	Zhejiang Iceman Foods Co., Ltd.
Normal Value (ex-factory)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Total costs from Factory to FOB	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Agent's Margin	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Exporter's Margin	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Cost of Credit	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
NV(VFDE) in CNY	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
NV(VFDE) updated by % change in PPI of 5%	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Ave. x-rate CNY to NZD	0.194464	0.194464	0.194464	0.194464	0.194464
NV(VFDE) in NZD	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

Calculation of a NIFOB Amount

Calculation of a Non-injurious Price (NIP)

62. In order to calculate a NIFOB amount it is necessary to establish a non-injurious price (NIP) for the domestic industry, that is, the price at which a domestic producer can sell its goods in the domestic market in the absence of dumped goods. There are a number of methods which can be used to calculate a NIP including:

- The use of current prices adjusted by any price depression incurred during the period of injury;
- The current cost of production, plus industry profit taken at a time when the industry was unaffected by dumped imports;
- The use of pre-injury prices scaled up by a relevant index;

- Determining the lowest priced non-dumped product in the market.

63. When an anti-dumping duty is already in place, the Ministry normally considers the domestic industry's current ex-factory selling price (exclusive of all discounts and rebates) to be its non–injurious price. The Ministry normally considers that the anti-dumping duties have acted to prevent any injurious dumping occurring and that the industry's prices have returned to levels achieved in the absence of dumping.

64. HW has voiced concerns about calculating a NIP based on the latest data from 1 April 2011 to 31 March 2012 because it considers that:

   - It was still being affected by dumped Spanish peaches in the market for some time after an anti-dumping duty was put in place. ____________________________ ____(18 month) period of time.

   - There has been significant activity in the market since the Ministry's verification visit (August 2011) and HW's actual results for the year to date (March 2012) are slightly different to that forecast.

   - There was a delay in increasing its prices because of the price competition from Spanish peaches in the market.

   - That its financial year ended 30 April 2010 should be used as a base and be increased by the Consumer Price Index which it argues is close to the forecast figures for 2012.

65. The Ministry first calculated a NIP on the basis of the 12 months ended 30 March 2012, This NIP ($___/kg), equalled the NIP calculated for the 6 months to October 2010 (used in Spanish peaches case) which was considered to be from a period free from dumped goods. This appears to indicate that the prices in the 12 month period have recovered to a level achieved prior to dumping.

66. In light of HW's comments relating to the prolonged presence of dumped Spanish peaches, however, and the fact that anti-dumping duties were imposed in August 2011, the Ministry has calculated a NIP for the most recent 6 month period (1 October 2011 to 31 March 2012), when anti-dumping duties were in place. The NIP for the later 6 months ($___/kg) was higher than the NIP for the full 12 months.

67. From this comparison it appears that although prices had recovered to pre-dumped levels in the year to March 2012, they continued to increase slightly in the last 6 months of that period. It appears, as HW has indicated, that there may still have been some influence on prices in the market from the dumped Spanish peaches in the earlier part of that year.

68. As a reassessment is forward looking the Ministry considers it should consider using the NIP based on the most recent 6 months period (October 2011 to March 2012) as it is slightly higher than that of the full 12 months to March 2012 when some influence of

dumped goods may still have been in the market. It is reasonable to assume that any influence of Spanish peaches, if it exists, is probably minimal over the last 6 month period. Data from the 2011 review showed that the import volume of Spanish peaches had declined significantly from mid-2011, most probably because of a potential threat at that time of provisional measures being imposed. Final anti-dumping duties were imposed in August 2011.

69. The NIP has been calculated based on HW's net sales value (NSV) for the product as a whole (i.e. all sizes of product excluding the Weight Watchers product). HW's total NSV for a period was divided by the total metric tonnes sold and the resulting average price per tonne converted to a price per kilogram. No price depression adjustment was required. The NIP as calculated above in paragraph 66 for the 6 months to 31 March 2012 is at the ex-factory level and was calculated by deducting. ______________ ____ ____

NIFOB Calculation

70. A NIFOB is calculated by deducting from the New Zealand industry's NIP an importer's costs that arise between the free-on-board level of trade and the level of trade that first competes with the domestic industry's product.

71. In the 2011 review, the first point of competition in the New Zealand market was at the ex-factory price for the domestic industry, and either the importer's ex-wharf or into-store level of trade depending on the importer's operation.

72. In the 2006 review it was found that all exporters considered were competing at the ex-wharf level.

73. In the 2011 review, however, the Foodstuffs group of companies were considered to be importing at the ex-wharf level because the Group ___________________________ on an FOB basis and pays an agent's margin as well as the costs associated with shipment to New Zealand. The importer DMFC's level of trade was considered to be at the into-store level as it acts as an agent buying the goods at FOB, adds its margin and sells free-into-store (FIS) to the customers' warehouse.

74. Using the partial information provided by the importers, and the best available information to fill in the gaps, the importer's costs (in relation to each exporter) were then deducted from the industry's NIP.

75. Table 3.3 below shows the NIFOB amounts established on the basis of the costs associated with importing from each exporter.

Table 3.2: Calculation of NIFOB Amount

	Chic Foods Co., Ltd. (CNY)	Linyi City Kangfa Foodstuffs Drinkable Co., Ltd. (CNY)	Qingdao Huaci Metal & Porcelain (Industries) Co., Ltd. (CNY)	Sino-Everygreen Foodstuffs Co., Ltd. (CNY)	Zhejiang Iceman Foods Co., Ltd. (CNY)
Non-injurious Price NIP					
Less costs after FOB to store:					
Insurance					
Freight					
Port Clearance					
Cartage to store	n.a.			n.a.	n.a.
Devanning Fee	n.a.			n.a.	n.a.
Sales & Admin. & Profit	n.a.			n.a.	n.a.
Total Costs					
NIFOB					

Consideration of a lesser duty for Each Exporter

76. Sub-section 14(5) of the Act requires that the Minister has regard to the desirability of ensuring the amount of duty is not greater than is necessary to prevent material injury to the New Zealand industry caused by dumping.

77. As noted above, whether a lesser duty rule should apply is determined by comparing the NV(VFDE) amount with the NIFOB amount. A lesser duty applies if the NIFOB is lower than the NV(VFDE), as the NIFOB will be less than the full dumping margin while still being sufficient to remedy the injury. The lowest resulting price will be the reference price anti-dumping duty.

78. A comparison of the NIFOB and the NV(VFDE) amounts calculated are shown in the Table below.

Table 3.3: Comparison of NIFOB and NV(VFDE) Amounts

	NIFOB (NZD)	NV(VFDE) (NZD)	Lower Price
Chic Foods Co., Ltd			NIFOB
Linyi City Kangfa Foodstuffs Drinkable Co., Ltd			NV(VFDE)
Qingdao Huaci Metal & Porcelain (Industries) Co., Ltd			NV(VFDE)
Sino-every Green Foodstuffs Co., Ltd			NV(VFDE)
Zhejiang Iceman Foods Co., Ltd			NV(VFDE)

79. The comparison shows that in the majority of cases the NIFOB is greater than the NV(VFDE) so a lesser duty is not appropriate and the full margin of dumping (the NV(VFDE) value) should be applied. For one exporter, however, the lower price is a NIFOB so a lesser duty is applicable (the NIFOB amount).

80. On the basis of the information outlined above, the Ministry proposes the named exporters be subject to the reference price anti-dumping duty equating to the lowest price levels from the comparisons.

81. The Ministry also considers that the NV(VFDE)s should be set in CNY and the NIFOB should be set in NZD. These are the currencies in which the goods are sold in their own markets. The NIFOB is capped by the NV(VFDE) (the full margin of dumping) to ensure that exchange rate movements do not result in the imposition of a duty that exceeds the margin of dumping.

Residual Rate of Duty for `Other Exporters'

82. The Ministry recommends a residual rate of duty for `all other exporters´ at the rate of CNY 12.34 per kg (in Table 3.4 below). This rate of duty would be paid by importers of preserved peaches sourced from other exporters in China.

83. As no other information was available, this amount has been established based on all dumping margins found in the 2011 review (i.e. a weighted average NV(VFDE) per kg of the exporter's ex-factory normal values weighted by their related export volume). This approach will ensure that the residual rate will not exceed the weighted average margin of dumping of the selected exporters.

Conclusion

84. The Ministry concludes that:

- Reference prices should be imposed at the lower of the NIFOB or the NV(VFDE) as in Table 3.3 above.

- The reference prices should be set for the NIFOB in NZ dollars and the NV(VFDE) amounts in Chinese Renminbi Yuan (CNY) as in Table 3.4 below:

Table 3.4 Proposed Levels of Reference Prices

Name of Supplier	Reference Price per Kg	Alternative per Kg (Cap)
Chic Foods Co., Ltd	NZD____	CNY____
Linyi City Kangfa Foodstuffs Drinkable Co., Ltd	CNY____	n.a.
Qingdao Huaci Metal & Porcelain (Industries) Co., Ltd	CNY____	n.a.
Sino-every Green Foodstuffs Co., Ltd	CNY____	n.a.
Zhejiang Iceman Foods Co., Ltd	CNY____	n.a.
Residual duty (all other exporters)	CNY 12.34	n.a.

3.5 Refunds of Anti-dumping Duty

85. Section 14(10) of the Act provides that if a reassessment results in a lower duty being imposed the Minister may require the New Zealand Customs Service to refund, with effect from the date of initiation of the review, the difference between the duty paid and the lower duty. However, if the reverse situation applies the shortfall is not required to be paid.

86. The Ministry recommends that the Minister approve the refund of any excess anti-dumping duty paid from the date of the initiation of the review on 7 July 2011 until the day before the new rates take effect.

3.6 Impact of Anti-dumping Duty

87. It is difficult to predict the impact that the proposed reference pricing will have on the likely imports or prices in New Zealand. If the existence of anti-dumping duty has a major influence on importer's decisions they may choose to reduce the level of importing from China and import preserved peaches from some other sources, or absorb or pass on the price increase to their customers. It is likely, however, that any price increase will have a chilling effect on imports from China.

3.7 Recommendations

88. It is recommended that the Minister:

    a. Determine new rates of anti-dumping duty as set out in Table 3.4 above.

    b. Agree that the new rates of anti-dumping duty should apply from the day after the date the Minister determines the new rates, in accordance with section 17(c) of the Act.

    c. Sign the attached Gazette notice publically notifying the above decisions.

APPENDIX 1

89. A full copy of the Anti-dumping Agreement on the Implementation of Article VI of the GATT 1994 (Anti-Dumping Agreement) can be found at:

    www.wto.org/english/res_e/booksp_e/analytic_index_e/anti_dumping_05_e.htm

90. A full copy of the Dumping and Countervailing Duties Act can be found at:

www.legislation.govt.nz/act/public/1988/0158/latest/DLM137948.html?search=ts_act_
dumping+and+countervailing_resel&p=1&sr=1