

Ministry of **Economic  
Development**



*M a n a t ū   Ō h a n g a*

**Non-Confidential Initiation  
Report:  
Dumping Application**

**Peaches in Preserving Liquid  
from  
The People's Republic of China**

**Dumping and Countervailing Duties Act 1988**

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## Abbreviations

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The following abbreviations are used in this Report:

Act	Dumping and Countervailing Duties Act 1988
Agreement	World Trade Organisation Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994
Chief Executive	Chief Executive of the Ministry of Economic Development
China	The People's Republic of China
CNY	Chinese Yuan/Renminbi
Customs	The New Zealand Customs Service
EBIT	Earnings Before Interest and Tax
FOB	Free on Board
HW	Heinz Wattie's Ltd
Kg	Kilogram
LDC	Less Developed Countries
LLDC	Least Developed Countries
MAT	Moving Annual Total
NZD	New Zealand Dollar
Ministry	Ministry of Economic Development of New Zealand
Minister	The New Zealand Minister of Commerce
OPS	Other Preferential Sources
Pac	Forum Island Members of the South Pacific Regional Trade and Economic Cooperation Agreement
POI	Period Of Investigation
Statistics	Statistics New Zealand
TH	Thailand
VAT	Value Added Tax
VFD	Value for Duty

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YTD 06	Year To Date 2006
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# 1. Executive Summary

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## Introduction

1. On 6 November 2005 the Ministry of Economic Development (the Ministry) accepted a properly documented application for a dumping investigation from Heinz Wattie's Limited (HW). Pursuant to section 10 of the Dumping and Countervailing Duties Act 1988 (the Act), the Ministry is required to examine the accuracy and adequacy of the evidence provided in the application to determine whether there is sufficient evidence to justify the initiation of an investigation.

## Goods Subject to the Investigation

2. The imported goods that are the subject of the dumping application (the subject goods) are:

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

## Grounds for the Application

3. HW claims that the subject goods originating from the People's Republic of China (China) are being imported at dumped prices and are causing material injury.

## Provisional Measures

4. HW believes the continued importation of the subject goods during the period of investigation will cause material injury and, therefore, has requested the imposition of provisional anti-dumping duty in accordance with section 16 of the Act.

## Dumping

5. The Ministry is satisfied that HW has provided sufficient evidence of dumping for the purposes of initiation of an investigation. The dumping margins expressed as a percentage of export price range from 26 to 111 percent.

## Injury

6. The Ministry is satisfied, on the basis of the information provided by HW, that there is sufficient evidence that the import volumes of the subject goods have increased significantly, and the New Zealand industry's prices have been undercut and suppressed by the imports resulting in a decline in profits.

## Injury Factors other than Dumped Goods

7. In its application HW addressed the volume of non-dumped imports, the patterns of consumption, restrictive trade practices, developments in technology, its exports, imports and productivity and stated that there are no other known causes of injury than from the imports of subject goods.

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8. HW has imported subject goods from China. The Ministry considers the volume to be significant. Whether these imports cause injury to HW will be considered in any investigation.

## **Causal Link**

9. HW has provided evidence in support of its claim that material injury has been caused by the subject goods.

## **Conclusion**

10. Sufficient evidence has been provided in the application to demonstrate that the subject goods imported into New Zealand are being dumped and by reason thereof are causing material injury to the New Zealand industry producing like goods.

## **Recommendation**

11. This report recommends that the Chief Executive of the Ministry of Economic Development initiate an investigation to determine both the existence and effect of any alleged dumping of the subject goods from China.

## 2. Proceedings

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### 2.1 Proceedings

12. On 6 November 2005, the Ministry of Economic Development (the Ministry) accepted a properly documented application from Heinz Wattie's Limited (HW), alleging that imports of peaches in preserving liquid (subject goods) from the People's Republic of China (China) are being dumped and by reason thereof causing and threatening to cause material injury to the New Zealand industry.

13. In accordance with section 10 of the Dumping and Countervailing Duties Act 1988 (the Act), the Chief Executive of the Ministry may, on receipt of an application from the industry, initiate an investigation to determine both the existence and effect of any alleged dumping of any goods on being satisfied that sufficient evidence has been provided that:

- the goods imported or intended to be imported into New Zealand are being dumped; and
- by reason thereof material injury to an industry has been or is being caused or is threatened or the establishment of an industry has been or is being materially retarded.

14. In *Kerry (NZ) Limited v Taylor* (1991) 2 PRNZ 393, the High Court found that in order to initiate an investigation, the Chief Executive must be satisfied that there is evidence going beyond mere assertion and of a nature and extent that indicate a likelihood of dumping and material injury, and requiring investigation. The Court said the Chief Executive should assess the evidence with due scepticism, bearing in mind the commercial context, but emphasised that he is to be satisfied of the sufficiency of the evidence, not of dumping.

### 2.2 Basis for the Application

15. In its application HW claims that as a result of the alleged dumping, material injury is resulting from:

- the increased volume of the allegedly dumped imports;
- price undercutting, price depression, and price suppression,

which is in turn, resulting in:

- a decline in sales volume and revenue;
- a decline in market share; and
- a decline in profits.

16. HW stated in its application that the volume of subject goods from China has increased over the last three years. HW has provided evidence that the price of the

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subject goods, [REDACTED], has led to the subject goods acquiring a significant increase in market share. HW claims this significant increase demonstrates that imports of subject goods are capable of gaining “a significant share of a key account exposes HW to declining volume market share and profitability”.

17. HW has requested the imposition of provisional anti-dumping duties to prevent material injury being caused during the period of investigation. Provisional anti-dumping duties may be imposed no earlier than 60 days after initiation of an investigation, if the Minister of Commerce of New Zealand (the Minister) has reasonable cause to believe that the subject goods are being dumped and are causing material injury to an industry, and is satisfied action is necessary to prevent material injury being caused during the period of investigation. Provisional measures would be considered as part of any investigation.

## 2.3 Interested Parties

### New Zealand Industry

18. The application was submitted by HW, the sole New Zealand producer of preserved peaches. The New Zealand Companies Office database shows HW is owned by HJ Heinz Credit Company and HJ Heinz Company (New Zealand) Ltd. HJ Heinz Company (New Zealand) Ltd is itself a subsidiary of HJ Heinz Credit Company of Pennsylvania, United States of America.

### Exporters

19. HW identified a number of companies that it considered were current Chinese exporters of the subject goods.

20. New Zealand Customs Service (Customs) data for the year ended 31 December 2005 shows that the following firms are exporters of preserved peaches to New Zealand under the tariff item and statistical key that Customs has advised cover the subject goods. The firms are listed in alphabetical order.

Beijing Huiyuan Group Feicheng	Ningbo Free Trade Zone
Chic International Trading	Ningbo Free Trade Zone Manda Intl Trading
Dalian Leasun Food Co Ltd	Orient Foods Pte Ltd
Directus International Ltd	Paragon Foods Corp
Foshan Foodstuffs Imports & Export Co Ltd	Shandong Zhongdi Import and Export Co Ltd
Guangxi Fungrich Import & Export Co	Steed Trading International Co
Laiwu Prince Import and Export Co Ltd	Xiamen Green Mountain Import and Export Co Ltd
Linyi City Kangfa Foodstuff Drinkable Co Ltd	Zhejiang Cereals, Oils & Foodstuffs Import & Export Co Ltd
Med USA Corp	Zhejiang Iceman Foods Co Ltd



## Importers

21. HW identified a number of companies that it considered were current importers of the subject goods.

22. Customs data for the year ended 31 December 2005 shows that the following firms, listed in alphabetical order, are corresponding importers from the firms listed above.

Acton International Marketing Ltd	Foodstuffs (Wgtn) Co-op Society Ltd
Balars Wholesale Supplies Ltd.	Heinz Watties Ltd
Davis Trading Company Ltd	Wheeler (NZ) Ltd
Directus International Ltd	Hutchinsons (NZ) Ltd
DMC NZ LTD	Marsanta Foods Ltd
Foodstuffs (Auckland) Ltd	Tai Ping Trading Co Ltd
Foodstuffs (South Island) Ltd	

23. Any investigation will have to establish the extent to which the parties listed above are importing the subject goods.

24. For the year ended 31 December 2005, Customs data shows that the subject goods were exported either direct from China or via Hong Kong. The investigation will need to identify the manufacturer of the goods and establish whether the supplier/exporter recorded by Customs is the manufacturer and exporter or an exporter only.

## Selection of Exporters

25. Due to the number of exporters identified, any investigation would need to focus on those exporters (and their associated importers) representing the top 95 percent of imports (by volume) of the subject goods over the year ended 31 December 2005.

26. All other known exporters and their associated importers would be advised and they would be given the opportunity to provide submissions although submissions would not be actively sought.

27. Exporters falling into the category identified in paragraph 25 listed in alphabetical order, are:

Beijing Huiyuan Group Feicheng	Dalian Leasun Food Co Ltd
Directus International Ltd	Guangxi Fungrich Import & Export Co
Laiwu Prince Import & Export Co Ltd	Med USA Corp
Orient Foods Pte Ltd	Zhejiang Iceman Foods Co Ltd

28. The following firms are the corresponding importers from the firms listed above.

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Acton international Marketing Ltd	Davis Trading Company Ltd
Directus International Ltd	DMC NZ Ltd
Foodstuffs (Auckland) Ltd	Foodstuffs (South Island) Ltd
Foodstuffs (WN) Co-op Society Ltd	Heinz Wattie's Ltd
Hutchinsons (NZ) Ltd	Marsanta Foods Ltd
Wheeler (NZ) Ltd	

## 2.4 Imported Goods

29. The goods which are the subject of the application, also referred to as the “subject goods”, are:

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

30. HW initially described, in its application, the subject goods as:

*Preserved peaches (halves, slices or pieces) in various packs.*

31. The Ministry contacted HW and suggested that HW consider amending the description of the subject goods. The Ministry noted that the description, as it stood, was vague, and could be interpreted to include goods which HW does not make a like good to.

32. Specifically the Ministry noted that no dimensions were included in the description, that the subject goods were described as “preserved”, which might include frozen or dried, and that the goods were packaged in “various packs”, which is vague, while previous dumping and subsidy investigations into peach products (previous investigations) were limited to cans.

33. HW provided the following revised subject goods description.

*Peaches in preserving liquid up to and including 4.0 kg containers*

34. For the purpose of providing clarity the Ministry proposed that the description be reordered to provide:

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

HW accepted the clarification and it was agreed that the application would be considered for initiation on the basis of this description of the subject goods.

35. The Working Tariff of New Zealand classifies the subject goods under the following tariff classification:

**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:**

*[- Nuts, ground nuts and other seeds, whether or not mixed together]*

*[- Pineapples]*

*[- Citrus fruit]*

*[- Pears]*

*[- Apricots]*

*[- Cherries]*

**2008.70**

- **Peaches, including nectarines**

2008.70.01 00K kg - - *Cooked and preserved by freezing, not containing added sugar*

**2008.70.09 00L kg - - Other**

2008.80 *[- Strawberries]*

36. Applicable duty rates are:

Normal	7%
Australia	Free
Canada	Free
LDC	5.5%
LLDC	Free
Pac	Free
TH	Free
OPS	Free

## 2.5 Report Details

37. HW advised that its financial year is 1 May to 30 April. HW has provided financial data for the financial years 2003, 2004, 2005, year to date data to 30 September for imports, year to date data to 31 October 2005 for domestic activities and estimated financial data for 2006.

38. In its application HW used the Customs published exchange rate that applied at the time it established an ex-factory export price. In establishing an ex-factory export price for other months within the period of consideration the Ministry also applied the published customs exchange rates that applied at the time other ex-factory export prices have been established.

39. In this report, unless otherwise stated, years are 1 May to 30 April years and dollars values are NZD. In tables, column totals may differ from individual figures because of rounding.

40. Should an investigation be initiated, the period of investigation (POI) for considering claims of dumping will be the year ended 31 December 2005.

Consideration of injury will involve evaluation of actual and forecast data for the period 1 May 2002 to August 2006 to allow the Ministry to fully assess the presence of current material injury.

41. It should be noted that the inclusion of any information in this report does not indicate that the Ministry necessarily accepts that information or any conclusions arising from it. Any final determination of whether or not goods are dumped and causing injury can be made only after a full investigation carried out in accordance with the Act and the World Trade Organisation Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the Agreement).

### 3. New Zealand Industry

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42. Section 3A of the Act provides the definition 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.

“Like goods” is defined in section 3 of the Act:

“Like goods”, in relation to any goods, means—

- (a) Other goods that are like those goods in all respects; or
- (b) In the absence of goods referred to in paragraph (a) of this definition, goods which have characteristics closely resembling those goods:

#### 3.1 Like Goods

43. In order to establish the existence and extent of the New Zealand industry for the purposes of an investigation into injury, and having identified the subject goods, it is necessary to determine whether there are New Zealand producers of goods which are like those goods in all respects, and if not, whether there are New Zealand producers of goods which have characteristics closely resembling the subject goods.

#### The Imported Goods

44. HW has advised that the subject goods are peaches (halves, slices or pieces) in preserving liquid and might be packed in cans, glass jars, plastic pottles or other containers such as retort packs.

45. The subject goods have been identified in section 2.4 of this Report as:

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

#### New Zealand Production

46. HW advised that the preserved peaches it manufactures in New Zealand are packaged in cans. The cans are sold under the brand names Watties, Oak, Weight Watchers and various supermarket house brands. HW manufactures a number of products outside the description of the subject goods which can be seen on its website at: [www.watties.co.nz](http://www.watties.co.nz).

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47. HW considers its preserved peaches may not be like the subject goods in all respects but considers they have characteristics that closely resemble the subject goods and therefore are like goods within the definition of section 3 of the Act.

## Like Goods Considerations

48. In identifying which goods produced in New Zealand (the domestically produced goods) are like goods to the subject goods the Ministry considers physical characteristics, function and usage, pricing structures, marketing and any other relevant considerations (with no issue being necessarily determinative).

## Physical Characteristics

49. Assessing the physical characteristics involves looking at the appearance, size and dimensions, composition of the product and the production methods and technology utilised to create it.

50. HW stated that the subject goods are cut into halves, slices or pieces which are suspended in syrup or juice. HW has not advised of the production methods of the subject goods or whether there are any similarities or differences between the production methods used to manufacture the imported subject goods compared to those produced in New Zealand.

51. The domestically produced goods are also cut in halves, slices or pieces. HW advised that domestically produced goods are available in syrup (including light syrup with less sugar), clear juice or 'lite', a mix containing saccharin and water. The liquid that the peaches are contained in is also referred to as the 'carrier'.

52. HW advised that to its knowledge all preserved peaches imported into New Zealand are yellow peaches of clingstone varieties which are similar to those processed in New Zealand.

53. HW advised that the subject goods are packaged in containers which include cans, glass jars, pottles and retort packs. These containers are of various sizes although HW advised that the most commonly imported size was the 410g container, which by its estimates accounted for 90 percent of the subject goods.

54. HW stated that the domestically produced goods are packaged in a can. The cans range in size of 410g, 820g and 3 kg (or 'A10"). HW advised that the actual weight varies slightly depending on the carrier. HW claims its New Zealand produced cans are similar to the imported cans and are also similar to "other types of containers holding processed peaches".

55. The evidence indicates that HW produces preserved peaches in containers of similar sizes to the subject goods. The evidence also shows that some of the subject goods are available in containers other than cans of the type produced by HW and any investigation will need to consider the significance of this in the examination of like goods.

## Function and Usage

56. The Ministry considers function and usage to cover consumer perceptions/expectations, end uses, and will lead to any conclusions on the issue of substitutability where relevant.

57. HW stated that the domestically produced goods are for retail and food service sale in New Zealand. The domestically produced goods have the same function and application as the subject goods.

58. New Zealand retail market research data collected by A.C Nielsen and provided in HW's application shows that there are a number of brands of preserved peaches sold in supermarkets. These brands include some of those which HW stated are among the subject goods.

59. The Ministry has no information about whether the subject goods are sold to the food service industry.

## Pricing Structures

60. HW considers that the domestically produced goods compete at the same price point as the subject goods. HW provided AC Nielsen Moving Annual Total (MAT) data, showing the average retail selling price per kg of various brands i.e. the goods produced by HW, the subject goods and other brands for year ended 9 October 2005. From the A.C Neilson data provided by HW the Ministry notes that [REDACTED] brands of preserved peaches were sold in the MAT to 9 October 2005. Of these [REDACTED] had an average price between \$ [REDACTED] and \$ [REDACTED]. All of HW's brands, [REDACTED] were placed within this group.

## Marketing

61. Marketing considerations include the distribution channels used, customers (both actual and targeted), branding and advertising.

62. HW has stated that the distribution channels, customers and means of advertising are similar for the domestically produced preserved peaches and the subject goods.

63. In relation to branding and advertising, HW's website shows canned fruit as "Nature's finest quality fruit [is] packed into a can,..." and customers "...can enjoy quality Wattie's seasonal fruit all year round". HW also advertises on the same page Snack Packs of 4 plastic pottles of 120g each, which are "...great for lunches and ideal for those people `on the go`". This advertising demonstrates that the different containers do affect how products are conveyed to customers. Should a dumping investigation be initiated further examination will be required of the significance, in a like goods analysis, of the marketing of preserved peaches in a can and those in other forms of containers such as plastic pottles or a retort pack.

## Other

64. This category allows consideration of any other matter that is relevant in determining whether the goods produced in New Zealand are like goods to the subject goods. This can include tariff classification or any other matters which could be applicable in the circumstances.

65. HW provided the Ministry with the tariff item and statistical key that it considers its goods would enter under if they were imported into New Zealand, and noted that this was the same tariff item and statistical key as the subject goods were entering under.

66. There were no other matters that were presented to the Ministry in relation to the consideration of like goods.

## Conclusions Relating to Like Goods

67. HW has provided information regarding the subject goods and compared the characteristics of the subject goods with those domestically produced. HW has considered the physical characteristics, function and usage, pricing, marketing and tariff classification. HW considers that its preserved peaches, while not like in all respects, possess characteristics that closely resemble the subject goods and are therefore like goods within the terms of the Act.

68. The domestically produced preserved peaches are packaged in a can whereas HW stated that the subject goods may be packaged in a can, glass jar, plastic pottle or another form of packaging (such as a retort pack). The domestically produced preserved peaches are packaged in cans, which are between 410g and 3.0 kg. The subject goods description for the purposes of initiation includes sizes larger than HW produces.

69. Should a dumping investigation be initiated further analysis will be required as to whether HW makes like goods to all goods within the subject goods description, and if not how the goods description should be amended to exclude goods HW do not make like goods to.

70. During a previous review involving canned peaches the brand Weight Watchers, produced by HW, was excluded from injury analysis because it was not deemed to be a like good to the subject goods.<sup>1</sup> Should an investigation be initiated the Ministry will also consider if this is still the case.

71. The Ministry concludes that there is sufficient evidence for the purposes of initiation that preserved peaches produced by HW, while not like in all respects, have characteristics that closely resemble the subject goods, and therefore are like goods to the subject goods.

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<sup>1</sup> [http://www.med.govt.nz/buslit/trade\\_rem/peaches-rev-gr/final/index.html](http://www.med.govt.nz/buslit/trade_rem/peaches-rev-gr/final/index.html)



72. On the basis of the information available, the Ministry considers that HW is the New Zealand producer of like goods and therefore constitutes the industry within the terms of the Act.

### **3.2 New Zealand Industry**

73. An investigation may not be initiated unless the Chief Executive is satisfied that the requirements of section 10(3) of the Act are met. These requirements are that the collective output of those New Zealand producers who have, in writing, expressed support for the application constitutes:

- a. Twenty-five percent or more of the total New Zealand production of like goods produced for domestic consumption (assessed during the most recent representative period, being not less than six months); and
- b. More than 50 percent of the total production of like goods produced for domestic consumption (as so assessed) by those New Zealand producers who have, in writing, expressed support for or opposition to the application.

74. The application was submitted by HW, who advised that it is the only producer in New Zealand of preserved peaches. The Ministry's research has not established any other producers of preserved peaches therefore HW has standing in terms of the Act to make an application for a dumping investigation as the sole manufacturer in the New Zealand industry.



## 4. Evidence of Dumping

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75. Section 3(1) of the Act states:

“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:”

76. Information was provided in the application concerning the export price and the normal value of the subject goods. The following is an assessment of the information provided.

### 4.1 Export Prices

#### Introduction

77. Export prices have been determined in accordance with section 4 of the Act.

78. To calculate an ex-factory export price HW has used a deductive method that is based on the average purchase price by New Zealand importers. Because HW has taken this approach it has not provided export prices for specific sizes of the imported goods imported into New Zealand although it has converted the per kg amounts into 410g equivalent sizes. HW advised that there are imports of a variety of sizes but it estimates that 90 percent of the subject goods are packaged in 410g size containers.

79. HW imports the subject goods from China, [REDACTED]. HW did not provide information relating to these purchases. HW advised that its import prices are “[REDACTED]”.

#### Base Prices

80. Base prices have been established using the average purchase price by New Zealand importers. HW has provided trade data supplied to it by Statistics New Zealand (Statistics)<sup>2</sup> as evidence of the purchase prices by New Zealand importers. The trade data relates to imports under the tariff item and statistical code 2008.70.09.00L and is presented on a monthly basis, by selected country of origin, from January 2005 to July 2005. For January to March 2005 the data is further separated by the port of entry into New Zealand. Monthly import data relating to the port of [REDACTED] was also provided. This data contained details of imports from [REDACTED] February 2005.

81. The trade data supplied by HW contained all imports within that tariff item and statistical code. Non-subject goods may include nectarines and imports of peaches preserved in methods other than liquid or in containers larger than the subject goods.

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<sup>2</sup> <http://www.stats.govt.nz/default.htm>

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HW has not separated any imports it considers to be non-subject goods from the trade data although stated that its [REDACTED]. Any investigation would need to exclude any non-subject goods from investigation by removing them from dumping and injury calculations.

82. The trade data shows the monthly quantity in kilograms (kg) and Value for Duty (VFD) amount as well as the month of import and the country of origin. HW divided the total volume of imports from China in February 2005 by the total VFD to arrive at the average VFD per kg amount. HW chose this month because February is the month in which a normal value has been established.

83. For the purpose of assessing whether there is sufficient evidence to justify initiation of a dumping investigation the Ministry considers it is necessary to evaluate whether there is evidence of dumping in other periods other than February 2005.

84. In the same manner as HW has done for February 2005, the Ministry has established a weighted average export price based on the monthly volume of imports and the average VFD in that month for the seven months to July 2005. This allows the Ministry to better consider whether dumping is occurring over a wider period of time than the month advised by HW. The monthly average VFD per kg over this period is shown in Table 4.1 below.

85. HW noted that using a monthly average "reduced the incidence of dumping". HW noted that imports of subject goods were as low as NZD [REDACTED] per 410g can (export price of CNY [REDACTED]), which resulted in a dumping margin of [REDACTED] percent. During any investigation the Ministry normally endeavours to establish margins of dumping by comparing specific export and domestic transactions. This analysis would reflect the dumping margins of each transaction.

86. The Ministry obtained Customs data relating to the tariff item referred to in paragraph 80, for the calendar years 2001 to 2005 and for all sources, and compared the import volumes and VFD amounts to those provided in the application. Other than for the month of January 2005, which is a minor difference, the Customs data supports the data provided by HW.

### **Exchange Rates**

87. To calculate an ex-factory export price in Chinese Renminbi or Yuan (CNY), HW has used an average exchange rate published by Customs for February 2005. In establishing an ex-factory export price for the other months under consideration the Ministry has also used the monthly average rates published by Customs.

### **Units of Measure**

88. In accordance with the Working Tariff of New Zealand the unit of measure is kilograms. For the purposes of establishing an ex-factory export price HW has calculated a price per kg as well as an equivalent 410g container price. Based on previous investigations the Ministry is aware that a 410g size can is the most

common size of can sold in the New Zealand market. HW has estimated that 90 percent of the subject goods were packaged in a 410g size container.

## Adjustments

89. HW has provided what it considers to be the costs, charges and expenses incurred in preparing the goods for shipment to New Zealand which are additional to those costs, charges and expenses generally incurred on sales for domestic consumption in China.

### Inland Freight

90. HW estimates that it would cost one percent of the value of the goods for inland freight from the factory/cannery to the port of export but it has not provided any evidence in support of this amount. When asked about why HW had not provided information pertaining to its supplier in China to support this adjustment HW advised that [REDACTED] it was not possible to obtain detailed information relating to the activities of its supplier.

91. For the purposes of initiation the Ministry considers an adjustment of this small magnitude is acceptable given the difficulty posed in obtaining actual information.

### Buyer's and Export House Commission

92. HW has identified that a buyer's commission may be a component of export sales. HW stated that a buyer's commission has not been allowed for on the basis that this charge may not be part of the VFD amount.

93. HW also stated that an export house commission could be a possible adjustment but no figure has been given. Market research undertaken on HW's behalf into the preserved peaches industry in China notes that preserved peaches are sold through an export trading company that is affiliated to the Chinese Government. No indication of the likely cost of this service has been given.

94. The Ministry considers it is reasonable that there may be commission taken by an export trading company, acting as a middleman between the domestic supplier or trader and foreign interests. In the absence of specific information regarding buyer's and export house commission the Ministry accepts that no adjustment can be made at this stage.

95. Any cost incurred in this manner would normally be deducted from an FOB export price. An adjustment for export house commission or buyer's commission would reduce the export price and increase any dumping margin. Any investigation will have to consider the distribution channels through which the exported goods pass and what level of commission entities within that channel are extracting.

### Other Adjustments

96. Customs clearance costs and port charges would also normally be deducted from an FOB export price. No estimation of these costs has been provided by HW. In the absence of information regarding these costs no adjustment can be made.

Any cost of this nature would reduce the export price and increase any dumping margin.

## Export Price Calculation

97. The ex-factory export price has been calculated by deducting the adjustments above from the base prices. The Ministry has calculated a monthly ex-factory export price as well as a weighted average ex-factory export price for the whole period. The results are shown in the following table.

**Table 4.1 Average monthly export price (CNY) for January to July 2005**

	Jan-05	Feb-05	Mar-05	Apr-05	May-05	Jun-05	Jul-05	Weighted Average Price
Total Volume (kg)	248,862	54,582	37,416	32	18,000	816	32	359,676
Total VFD	256,166	43,930	26,715	150	19,736	992	167	347,539
VFD (FOB) NZD	1.03	0.80	0.71	4.69	1.10	1.22	5.22	0.97
Exchange rate	5.83	5.88	6.04	6.00	6.00	5.94	5.80	5.94
FOB price (CNY)	6.00	4.73	4.31	28.13	6.58	7.23	30.29	5.74
Less adjustments								
Inland freight	0.06	0.05	0.04	0.28	0.07	0.07	0.30	0.06
Ex-factory export price	5.94	4.68	4.27	27.84	6.51	7.15	29.98	5.68
410g container (CNY)	2.43	1.92	1.75	11.42	2.67	2.93	12.29	2.33

98. From its analysis of export prices the Ministry notes the export prices are lowest in March, while the greatest volume was imported in January 2005 and overall the average prices are subject to considerable variation. For the months of April and July the volume of imported subject goods is substantially smaller than the other months. In these months the average VFD prices are also significantly higher than the average prices in the other months.

99. After considering the average retail prices in the New Zealand retail market, under pricing structures at paragraph 60, the Ministry considers that imports during April and July, which have a VFD more than [redacted] times greater than any of the HW brands *retail* prices, be excluded from the calculation of dumping margins, for the purposes of initiation, because these goods, on the basis of price, do not appear to be goods subject to the application. The weighted average export price above and for the purpose of establishing dumping margins therefore excludes data from these two months.

100. HW has provided information based on average VFD prices over a month and the Ministry has used the same method to calculate base prices for other months

and a weighted average base price for the period January to June 2005 (excluding April 2005). It is however the Ministry's normal practice during any investigation to use actual export prices for each individual transaction, based on actual invoices and customs entries where possible.

101. The Ministry considers that HW has provided information that is reasonably available to it and this information has been used to calculate the ex-factory export prices shown in Table 4.1 above. The evidence provided is sufficient for calculating an export price for the purpose of initiation of any investigation.

## 4.2 Normal Values

102. Normal values are determined in accordance with section 5 of the Act.

103. The normal value of any goods imported or intended to be imported into New Zealand is the price paid for like goods sold in the ordinary course of trade for domestic consumption in the country of export, in sales that are arm's length transactions by the exporter or, if like goods are not sold by the exporter, by other sellers of like goods.

### Introduction

104. As mentioned at paragraph 93, market research was conducted on HW's behalf in China. This research took place during 2003 and 2004 and was completed in 2004. The report and attached notes and references which make up appendix three in HW's application document comment on and make conclusions on a number of facets of the Chinese preserved peach industry including: the geographical coverage for demand and supply; information on market participants; distribution channels and export operations. The research was primarily focused on establishing the size of the Chinese domestic market for yellow peaches and prices in that market.

105. The following points summarise information relevant to establishing normal values:

- The domestic market consists of three levels in the chain of distribution i.e. producers (canneries), intermediaries (traders, distributors, agents) and retailers (local and international supermarket chains). Some large canneries have their own distribution network and have a direct relationship with retailer(s). There are a large number of canneries.
- Two thirds of domestic yellow peach production is destined for export. A major proportion of the domestic demand for preserved peaches is the food service sector. Retail sales of preserved peaches, mainly through international supermarket chains, make up the other domestic market segment and consist of about ten percent of domestic production.
- Preserved yellow peaches that are sold in the retail market are mainly packaged in glass jars as Chinese consumers prefer to see the quality of the packaged fruit. Only a small volume is sold in cans.

- Preserved Peaches are sold in a variety of container weights. Cans were observed of 400g and 822g and glass jars ranging from 425g to 1.3 kg.
- A number of store 'price checks' were undertaken to establish retail prices for domestically produced preserved peaches. Domestic retail prices vary depending on brand and weight of container and by supermarket chain. Based on the first three quarters of 2003 the estimated average retail price of preserved peaches was CNY [REDACTED] per kg or CNY [REDACTED] for a 410g container. The report also noted erratic domestic pricing strategies which included "dumping" of product intended for export.

106. To update prices and comment on whether there have been any significant changes to the market, HW arranged for further store checks to be conducted in February 2005.

## Base Prices

107. HW chose to use the three prices observed during the store checks in February 2005 to establish base prices.

108. These prices relate to three different weights of jars, observed or purchased at two different retail outlets. The outlets were the [REDACTED] supermarket, a local retailer and a [REDACTED] store, part of [REDACTED] chain of the same name. The retailers visited were both in Shanghai. As evidence of the retail prices HW provided a copy of a receipt for the purchase of one jar dated 3 February 2005. The receipt is for CNY [REDACTED], for a 950g jar of preserved yellow peaches. Prices for the other two jars of preserved peaches were observed, but not purchased, at CNY [REDACTED] (757g) and CNY [REDACTED] (600g).

109. To calculate a normal value base price for a 410g jar all three retail prices have been converted to a price per gram and multiplied by 410 to give an estimated 410g container price. The normal value base price of CNY [REDACTED] is a simple average of all three 410g equivalent prices.

## Adjustments

### Physical Characteristics

#### *Packaging: Glass Jars Versus Tin Cans*

110. Due to the lack of availability of canned preserved peaches in the retail market the base price is for the sale of preserved peaches in a glass jar. HW considered whether an adjustment would be appropriate for the difference between the two packaging methods. HW stated that based on its knowledge of costs for processed peaches in cans and glass jars it considered no adjustment to normal values was necessary.

111. The Ministry has not been able to obtain research on the cost differences between these two packaging methods. However the Ministry considers any cost



difference between the two methods will be relatively small so will not affect significantly any dumping margin calculated for the purposes of initiation.

112. The Ministry notes that the market research identified packaging costs of ███% of total costs and no distinction was made between export costs and costs of domestic packaging. Any investigation will need to consider any cost difference in packaging between different types of containers should domestic prices of preserved peaches not be available for the same container types as those exported to New Zealand.

#### *Container Size*

113. Normal values are based on three specific sizes of container. Export prices, on the other hand, are based on an aggregate of all export sales over the six month period January to July 2005 of an unknown mix of container sizes.

114. The Ministry notes from the information supplied in the application that larger container sizes tend to be cheaper than small container sizes on a per gram basis although there is much variation, probably due to other factors such as brand and place of origin. While normal values have been based on containers ranging between 600 and 950g, HW estimates that 90 percent of the volume of subject goods is in the 410g size. Based on this assessment of the imported goods size mix it is possible that the average cost per gram of the exported goods is higher than the cost per gram of the normal value. However the Ministry does not have information capable of making an adjustment for differences in container size at this stage.

115. In any investigation the Ministry's normal practice is to compare export prices and normal values on a transaction-to-transaction basis. This would mean comparing actual export sales, of specific sizes, with specific domestic sales of like goods, that is, goods that are identical or with characteristics that closely resemble the exported goods. Where differences exist that affect price comparability due allowance will be made.

#### **Taxation**

116. China has a Value Added Tax (VAT) of 17 percent which the sale of preserved peaches is subject to. The net amount of tax payable depends upon the value added to a product at various price points within the production of a product.

117. Because the base price used for the purposes of initiation is a retailer's price the full component of VAT is deducted from the base price. To arrive at an ex-factory normal value the VAT has been deducted from the retail price.

#### **Retail Margin**

118. HW stated an adjustment of ███ percent should be made for a retailer's margin. HW stated that the percentage is based on its knowledge of the distribution of preserved peaches.

119. The market research does not contain specific information on the size of margins within the Chinese market. By only making an adjustment for a retailer's

margin pre-supposes a simple distribution chain. The market research in the application referred to a number of distribution methods including a simple distribution model where a large cannery (that produced a variety of canned goods) sold directly to the retailer. The market research noted that goods found at [REDACTED] stores are sold by the wholly owned distributor of one such cannery. Two of the three prices that were used to establish normal value base prices were obtained from a [REDACTED] store. In such a distribution chain a distributor's margin should be allowed for, and the normal value in HW's application is therefore likely to be overstated. However, given the size of the dumping margins shown below, the Ministry does not consider the absence of an adjustment for a distribution margin materially affects its assessment of whether there is sufficient evidence of dumping for the purposes of initiation.

120. Because the normal value is based on retail purchases the Ministry considers it is reasonable that due allowance should be given for a retailer's margin and in the absence of actual information on margins, the Ministry considers the margin proposed by HW is reasonable.

#### **Value Added Tax Price Effect**

121. Chinese companies pay a VAT component for products they purchase. Where the product is subsequently exported the exporter can claim back a proportion of that VAT cost, based on the domestic content of the exported good.

122. HW provided a copy of an Ernst & Young "China Update" dated October 2003 explaining and notifying upcoming changes to the VAT export refund policy. The changes came into effect on 1 January 2004. HW stated that the VAT refund rate is 13 percent for preserved peaches. This rate is supported by United States Department of Agriculture "GAIN" report on Canned Deciduous Fruit from China for 2005.<sup>3</sup>

123. Under the VAT export refund policy where export sales are made a percentage of the local content cost will be refunded to the seller who incurred the cost of the VAT when purchasing the inputs into the exported good.

124. Where the VAT export refund rate is 13 percent the net effect of comparing an export sale with a domestic sale is that the domestically sold good is four percent cheaper after removing the VAT component (17 percent) from the retail price. Consequently an upward adjustment of four percent of the normal value has been proposed by HW.

125. Given the lack of specific information available to HW the Ministry considers that it is reasonable to assume the full 13 percent is refunded resulting in an upward adjustment to the normal value of four percent. Any investigation will need to consider further the supply and distribution chain and any effect these have on VAT payments and refunds.

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<sup>3</sup> <http://www.fas.usda.gov/gainfiles/200503/146119125.pdf>

## Other Adjustments

126. It is a requirement of the Act to consider if there is any difference between the volume exported and the volume of domestic sales on which normal value is established which affects price comparability. For the purposes of initiation HW has used aggregate information to establish export prices, which consist of mostly large consignments. Often large volume purchases receive discounts based on the quantity purchased, although it is difficult to establish at this stage whether discounts for quantity are given or the scope. On the other hand normal values are based on retail prices, which may reflect quantity discounts in the purchase price paid by the supermarket. Due to lack of detailed information no adjustment for differences in quantity has been made.

## Normal Value

127. The normal value has been calculated by deducting from the base price adjustments listed above except for the difference in VAT percentage which is an upward adjustment. The following table shows calculation of an ex-factory normal value:

**Table 4.2 Ex-factory Normal value (CNY)**

Base Price (410g)	██████████
<i>Less adjustments</i>	
VAT @ 17%	██████████
Retail margin @ ██████%	██████████
Ex-factory price	3.55
<i>Plus adjustment</i>	
VAT net price effect	0.14
Ex-factory Normal Value	3.69

128. The Ministry considers that HW has provided information that is reasonably available to it and this information has been used to calculate the ex-factory normal value shown in Table 4.2 above. The evidence provided is sufficient for calculating a normal value for the purpose of initiation of any investigation.

## 4.3 Comparison of Export Price and Normal Value

129. The Ministry is obliged to effect a fair comparison of export prices and normal values, which includes the obligation to compare, among other things, sales made at as nearly as possible the same time (section 5(3)(b) of the Act).

130. For the purposes of initiation the Ministry notes the presence in the application of a limited range of normal values and considers that, because it is difficult to

establish a wider range of normal values over a period of time, the data provided by HW is acceptable. Based on the price checks carried out during the market research and recent price checks, HW considers that domestic prices have not changed significantly between 2003 and February 2005. The Ministry also concludes that Chinese retail prices are likely to be reasonably static, although notes that the market research did comment on 'dumping' into the domestic market by Chinese exporters with excess product. This indicates that there may be incidences of domestic price variation. Any investigation will also need to consider any domestic price fluctuations and whether any domestic sales are made at a loss.

131. The table below shows the export price, normal value and dumping margin calculations.

**Table 4.3 Dumping Margins (CNY)**

	<b>Jan-05</b>	<b>Feb-05</b>	<b>Mar-05</b>	<b>May-05</b>	<b>Jun-05</b>	<b>Weighted Average Export Price</b>
Normal Value (410g)	3.69	3.69	3.69	3.69	3.69	3.69
Export Price (410g)	2.43	1.92	1.75	2.67	2.93	2.33
Dumping margin	1.26	1.77	1.94	1.02	0.76	1.36
Dumping margin as a % of Export Price	52%	92%	111%	38%	26%	58%

132. The table above shows for the five months under consideration, there is evidence of dumping for each month with the highest dumping margins in February and March 2005. As noted in paragraph 98, the months of April and July have been excluded from the analysis of dumping, due to the likelihood that these goods are not subject goods.

133. The dumping margins range from 26 percent to 111 percent. The Ministry has established that there is evidence of dumping, both on a month by month basis and on a weighted average basis over the months from January to June 2005. The Ministry considers HW has provided sufficient evidence to show that the dumping margins are not *de minimis* in terms of Article 5.8 of the Agreement as the dumping margins are greater than two percent, as expressed as a percentage of the export price.

#### **4.4 Volume of Dumped Goods**

134. Section 11(2) of the Act provides that evidence of dumping shall be regarded as insufficient if the volume of imports of dumped goods, expressed as a percentage of total imports of like goods into New Zealand, is negligible, having regard to New Zealand's obligations as a party to the Agreement. The Agreement deals with the negligibility of dumped imports under Article 5.8 of the Agreement as follows:



## 4.5 Conclusions Relating to Dumping

139. HW has calculated an export price using a deductive method based on the VFD amounts as provided by Statistics. The normal value has also been calculated using a deductive method based on information gained through market research undertaken on HW's behalf on actual and observed retail prices.

140. The Ministry found dumping margins ranging from 26 to 111 percent. The margins are not *de minimis* in terms of Article 5.8 of the Agreement. The volume of imports from China is greater than 3 percent of the total imports of like goods and therefore is not negligible in terms of Article 5.8.

141. While the dumping margins are significant, information is not available at this point to establish whether some adjustments should be made, for differences which may potentially affect price comparability between export prices and normal values, and if so, at what amount. As outlined above, adjustments, which are likely to be required to establish ex-factory export prices, have not been made for customs costs and port charges. There is insufficient information on whether other potential adjustments such as for export house or buyer's commission, should be made. Similarly adjustments to normal value have not been made for distributor's margin. Potential adjustments to normal value (which might be upward or downward) include allowances for differences in quantity, physical characteristics and packaging.

142. However, the smallest dumping margin in Table 4.3 is 26 percent and the weighted average dumping margin is 58 percent. Given the size of the dumping margins relative to the likely size of any further adjustment that could be made (three of which would increase the dumping margin, and the other would reduce the dumping margin), the Ministry is satisfied on the basis of the information and evidence provided by HW that the comparison of the export price and normal value has provided sufficient evidence of dumping for the purposes of initiation.

143. Any investigation will need to consider export price and normal value in terms of sections four and five of the Act respectively, and in particular the application of the appropriate adjustments under 4(1)(a)(i) and (ii) and 5(3).

## 5. Evidence of Injury

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144. The basis for considering material injury is set out in section 8(1) of the Act:

8. Material injury to industry—(1) In determining for the purposes of this Act whether or not any material injury to an industry has been or is being caused or is threatened or whether or not the establishment of an industry has been or is being materially retarded by means of the dumping or subsidisation of goods imported or intended to be imported into New Zealand from another country, the [Chief Executive] shall examine—

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

145. Material injury became evident in HW's financial year ended April 2004. The period starting with the financial year 2004 and ending with the estimated data for 2006 is described as the injury period in this section.

146. The import and financial data in this section of the report is presented in years ended 30 April. The data relating to the whole financial year to April 2006 is an estimate. HW provided data for the first five months of the 2006 financial year (1 May to 30 September 2005), relating to import volumes (both HW and other importers) and HW sales in the corresponding period. This data is used in analysis of import volumes, sales volume and market share. HW provided data for the first six months of the 2006 financial year (1 May to 31 October 2005), for all other injury analysis. Year to date data is described in this report as Year To Date 2006 (YTD 06) with reference to the latest month the data relates to, e.g. YTD 06 (Oct).

### 5.1 Import Volumes

147. *Section 8(2)(a) of the Act provides that 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 or subsidised goods either in absolute terms or in relation to production or consumption in New Zealand.*

148. In the application HW supplied the yearly import volumes for 2003 to 2005 and YTD 06 (Sept). The import volume figures have been provided for years ended April to coincide with the HW financial year. This information was obtained from Statistics and consists of import statistics separated by country or customs unions for the tariff item and statistical key: 2008.70.09.00L. HW also provided information pertaining to its domestic production and its imports in each period in order to estimate total New Zealand consumption. As imports by HW were included in the Statistics data, HW estimated sales of preserved peaches produced in New Zealand by deducting its imports from its total sales during the period.

149. The Ministry has compared the import data with information supplied by Customs and notes that it is essentially the same. The Ministry's research has

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shown the tariff item and statistical key that covers the subject goods is not a suppressed tariff item so full information is available.

150. HW advised that preserved nectarines are also included under the same statistical key as the subject goods. HW advised that it did not consider that imported nectarines were present in the New Zealand market and that by implication the entire import volume consisted of preserved peaches. Previous investigations into canned peaches have found that imports of nectarines under the same statistical key were negligible.

151. HW provided a list of concessions that apply to the tariff item and statistical key and these included preserved peaches in packaging exceeding 4.1 kilograms and preserved peaches packed with no additives. This indicates that the import data provided by HW may include other goods which do not come within the description of the subject goods. Any investigation will need to ascertain the volume of goods that fall outside of the description of subject goods and remove those goods from the volume of dumped imports. Any undumped goods will also be removed from the volume of imports in consideration of imports under section 8(2)(a) of the Act.

**Table 5.1: Import Volumes for Year ended April (Kilograms)**

	2003	2004	2005	YTD 06 (Sept)
Subject Imports**				
Other Imports*				
Total Imports	6,598,705	7,119,098	6,920,303	2,754,482
Sales of Domestic Production**				
NZ Market				
<u>Change on previous year:</u>				
Subject Imports**				
Other Imports*				
Total Imports		520,393	-198,795	
Sales of Domestic Production**				
NZ Market				
<u>Percentage Change:</u>				
Subject Imports**				
Other Imports*				
Total Imports		8%	-3%	
Sales of Domestic Production**				
NZ Market				
<u>Subject Imports as a Percentage of:</u>				
Domestically Produced Sales**				



NZ Market



\*Includes all HW's imports

\*\*Excludes all HW's imports

152. In absolute terms, the volume of imports of subject goods increased significantly in 2004 and 2005. Imports of subject goods in the YTD 2006 (Sept) are less than in 2005, on a per month basis, but this period does not include the months which HW considers to be the main import period. In relation to New Zealand domestic production and total market consumption in New Zealand imports of the subject goods have also increased in 2004 and 2005, while there has been a significant decrease in the YTD 2006 (Sept). Again it should be noted that this period does not include those months which HW considers to be the main import period.

153. The Ministry has considered the seasonal variation in previous years and notes a similar low level of imports in the YTD (Sept) periods in 2003, 2004 and 2005. The Ministry also considered updated information relating to imports from China over the period 1 October to 31 December 2005. The Ministry notes a decline in imports of subject goods for the financial year to 31 December 2005 when compared to imports over the same period in the previous year. While this indicates a likely decline in the import volume of subject goods for the 2006 financial year, the Ministry considers that the volume of subject goods is still significant and notes it is already well above 2003 import levels and looks likely to surpass 2004 imports also.

## Conclusion on Import Volumes

154. There is sufficient evidence that the volume of imports of the subject goods has increased significantly in absolute terms and relative to New Zealand production and consumption over the injury period.

## 5.2 Price Effects

155. The Ministry notes that the financial data used by HW in determining price effects from the subject goods includes revenue and expenditure relating to its imported preserved peaches. The average price(s) per kg is the net sales value according to the volume of all sales in each given year, i.e. including sales of imported goods. The "cost of production" data in the price suppression tables therefore also partly represents the "cost of goods sold" relating to sales of imported products. HW has also provided an additional break down of sales per brand but it is not known what proportion imports represent of the sales of each brand. It is also noted that the average price includes sales of the Weight Watchers brand which in previous dumping and subsidy investigations were excluded from the injury analysis as this product was not considered a like good.

156. HW has advised that it sells imported canned peaches at the same prices as the domestically produced equivalent. Should a dumping investigation be initiated the Ministry will need to consider whether HW's financial data over the injury period should be separated into domestic production and imported products as well as considering whether the Weight Watchers brand is or is not a like good to the subject goods.













## Price Undercutting

157. Section 8(2)(b) of the Act provides that the Chief Executive shall have regard to the extent to which the prices of the dumped or subsidised 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.

158. In considering price undercutting, the Ministry will normally seek to compare prices at the ex-factory and ex-importer's store levels, to ensure that differences in distribution costs do not confuse the impact of dumping.

159. HW submitted AC Nielsen MAT data, to 7 October 2005, on retail selling prices for "total supermarkets" of two HW brands and two competing brands which HW has stated are sourced from China.

**Table 5.2 Price Undercutting at the Retail Level (per kg)**

	Wattie's	Oak		
Average Price/kg				
Price Undercutting Wattie's				
Percentage of Price Undercutting				
Price Undercutting Oak				
Percentage of Price Undercutting				

160. Based on the information above there is evidence of significant price undercutting of the two Wattie's brands by both of the imported products at the retail level. Any investigation will need to consider the point at which domestically produced goods and imported goods will be compared and consider whether the price undercutting analysis should be made on a container-by-container basis.

## Price Depression

161. Section 8(2)(c) of the Act provides that the Chief Executive shall have regard to 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.

162. Price depression occurs when prices are lower than those in a market unaffected by dumping, usually in a previous period.

163. HW claims that prices have been depressed. To determine the level of price depression HW provided its average net sales price per kg (average price) for each of the years to 2005, the YTD 06 (Oct) and the estimated value for 2006.

**Table 5.3: Price Depression**

	2003	2004	2005	YTD 06 (Oct)	2006 (Estimate)
Average Price per kg	██████████	██████████	██████████	██████████	██████████
Difference from Previous Year		██████████	██████████	██████████	██████████

164. HW's average price increased in 2004 but decreased in 2005 to a level slightly above 2003. The data for YTD 06 (Oct) show a slight increase in average price compared to the 2005 year, however HW submitted that no price depression is evident in this period because imports from China had not made an impact in this period. Any investigation will need to consider the 2006 result, which HW estimates to show further erosion of HW's average price.

165. HW also provided financial data for each of the brands it produces. Information relating to price depression by brand is shown in the table below.

**Table 5.4: Price Depression by Brand**

	2003	2004	2005	YTD 06 (Oct)	2006 (Estimate)
Oak selling price per kg	██████████	██████████	██████████	██████████	██████████
Difference from Previous Year		██████████	██████████	██████████	██████████
Watties selling price per kg	██████████	██████████	██████████	██████████	██████████
Difference from Previous Year		██████████	██████████	██████████	██████████
██████████ selling price per kg	██████████	██████████	██████████	██████████	██████████
Difference from Previous Year		██████████	██████████	██████████	██████████

166. As can be seen in Table 5.4 above, the average price for ██████████ decreased in both 2004 and 2005, and is estimated to ██████████ in 2006. HW advised that its ██████████ was ██████████. The table also shows that average price for the ██████████ brand has increased since 2003, although is estimated to decrease in 2006 but will still be above the prices in 2003 and 2004. The average price of the ██████████ brand was depressed in 2005, compared to 2004 and for the YTD 06 (Oct), but for these two periods is still above the price in 2003.

### Conclusion on Price Depression

167. When HW's average prices are considered, while prices from 2004 to YTD 06 (Oct) have fluctuated, prices in each of these periods are above the 2003 price. In relation to the pre-injury period of 2003 there is therefore no evidence of price depression.

## Price Suppression

168. Section 8(2)(c) of the Act also provides that the Chief Executive shall 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.

169. The Ministry has generally based its assessment of price suppression on positive evidence, in particular the extent to which cost increases have not been recovered in prices. Cost increases not recovered in prices will be reflected in declines in gross profits and earnings before interest and taxation (EBIT) expressed as a percentage of sales. Where cost savings have been made, the lack of any price increase will not normally be regarded as price suppression. While the inability to recover cost increases in prices is the main indicator of price suppression, the Ministry will consider any other factors raised as positive evidence of price suppression.

170. HW stated that in 2004 “[the increase in] unit costs [redacted] the increase in the average price. In the following year the average selling price [redacted] more than the total costs”. HW has also advised that the cost of tin has increased dramatically in recent months. In any investigation the Ministry will need to consider what effect this has on EBIT as a percentage of sales and will need to consider the allocation of shared expenses to the processed peach business.

**Table 5.5: Price Suppression for Years ended April (per Kg)**

	2003	2004	2005	YTD 06 (Oct)	2006 (Estimate)
Average price (net sales value)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Cost of production	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Gross Profit	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Other costs	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Total costs	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
EBIT	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
<u>As a percentage of Revenue</u>					
Cost of production	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Gross Profit	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Other costs	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Total costs	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
EBIT	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

171. Table 5.5 shows gradual reductions since 2003 in gross profit and EBIT per kg. This is driven primarily by increases in the cost of production and to an extent by a

decrease in average price in 2005. Other costs, as a percentage of revenue, have remained static.

**Table 5.6: Price Suppression by Brand for Years ended April (per Kg)**

	2003	2004	2005	YTD 06 (Oct)	2006 (Estimate)
Oak average price (net sales value)	████████	████████	████████	████████	████████
Cost of Production	████████	████████	████████	████████	████████
Gross Profit	████████	████████	████████	████████	████████
Total costs	████████	████████	████████	████████	████████
EBIT	████████	████████	████████	████████	████████
<u>As a percentage of Revenue</u>					
Oak gross profit	██████	██████	██████	██████	██████
Oak EBIT	██████	██████	██████	██████	██████
Watties average price (net sales value)	████████	████████	████████	████████	████████
Cost of Production	████████	████████	████████	████████	████████
Gross Profit	████████	████████	████████	████████	████████
Total costs	████████	████████	████████	████████	████████
EBIT	████████	████████	████████	████████	████████
<u>As a percentage of Revenue</u>					
Wattie's gross profit	██████	██████	██████	██████	██████
Wattie's EBIT	██████	██████	██████	██████	██████
████████ average price (net sales value)	████████	████████	████████	████████	████████
Cost of Production	████████	████████	████████	████████	████████
Gross Profit	████████	████████	████████	████████	████████
Total costs	████████	████████	████████	████████	████████
EBIT	████████	████████	████████	████████	████████
<u>As a percentage of Revenue</u>					
████████ gross profit	██████	██████	██████	██████	██████
████████ EBIT	██████	██████	██████	██████	██████

172. Table 5.6 shows, in relation to the ██████ brand, that in 2004 and 2005 EBIT per kg, as a percentage of revenue, has decreased. In relation to the ██████████ brand EBIT per kg, as a percentage of revenue, decreased in 2004 but increased in 2005

to a level slightly below 2003. EBIT per kg, as a percentage of revenue for the [REDACTED] brand is [REDACTED] in the years 2003 to 2005 and is relatively static. Estimates for the 2006 year, for all three brands predict reductions in EBIT per kg as a percentage of revenue. This is borne out in the YTD 06 (Oct) data.

173. Any investigation will need to consider the extent to which changes in the cost of imported preserved peaches and hence the margin achieved on imported products, has impacted on the average data relating to price suppression.

### **Conclusion on Price Suppression**

174. There is sufficient evidence that the average selling price of preserved peaches has been suppressed in 2004 and 2005.

### **Conclusion on Price Effects**

175. There is sufficient evidence of price undercutting and price suppression for the purposes of initiation.

176. The Ministry notes that while price effects analysis on a per brand basis can be useful in understanding the reasons for change in the total business, any conclusions on price effects must be based on the results from the production and sale of all like goods by the New Zealand industry.

## **5.3 Economic Impact**

177. *Section 8(2)(d) of the Act provides that the Chief Executive shall have regard to the economic impact of the dumped or subsidised goods on the industry, including—*

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

### **Output and Sales**

178. 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.

### **Sales Volume**

179. HW has advised that its production volume "...closely follows sales and therefore there is no need to do a separate analysis of output". HW's output of domestic preserved peaches occurs during the cropping season. This output is

supplemented by imports in the latter months of the year, leading up to the next cropping season to make up for shortfalls of the locally produced product.

180. The following table shows HW's sales volume, that is sales of HW's domestic production and imported preserved peaches. HW's imports are included in this analysis so any affect of the dumped goods on HW's business is evident, without being effected by crop failure and shortfalls. HW has advised that imported product is sold at the same price as domestically produced preserved peaches, so the mix of domestic and imported peaches, in any given year, should not affect sales volume. The same approach is taken in Table 5.8 below.

**Table 5.7: Sales Volume for Years Ended April (Kg)**

	2003	2004	2005	YTD 06 (Oct)	2006 (Estimate)
HW Domestic Sales*					
Difference from previous year					

\*includes imports by HW

181. According to the figures in the table above the volume of sales by HW decreased in 2004, increased in 2005 to a level greater than 2003 and is estimated to increase slightly in 2006, compared to 2005.

### Sales Revenue

182. The following table shows the actual net sales value or revenue since 2003 and the estimated amount for 2006.

**Table 5.8: Industry Sales Revenue for Years Ended April (per Kg)**

	2003	2004	2005	YTD 06 (Oct)	2006 (Estimate)
HW Revenue*					
Difference from previous year					

\*Includes HW's imports

183. As demonstrated in Table 5.8, revenue decreased in 2004 but increased in 2005 to a level higher than 2003. It is estimated to decrease in 2006 but will still be well above the levels of 2003 and 2004.

### Conclusion on Output and Sales

184. In 2005 sales volume and revenue increased to levels higher than 2003 and 2004. Sales volume is expected to increase further in 2006. Revenue is expected to decline slightly in 2006 compared to 2005, but will still be above 2003 and 2004 levels. There is evidence of a decline in sales volume and revenue in 2004 but not 2005.

## Market Share

185. The analysis of market share must take account of changes in the growth of the market as a whole. A decline in the share of the market held by the domestic industry, in a situation where the market as a whole is growing, will not necessarily indicate that injury is being caused to the domestic industry, particularly if the domestic industry's sales are also growing. There is no "entitlement" to a particular market share.

186. HW provided information on market share in its application.

**Table 5.9: Market Share for Years ended April (per Kg)**

	2003	2004	2005	YTD 06 (Sept)
Total HW Sales*				
<u>Imports</u>				
Imports from China** <sup>4</sup>				
Imports from other Countries**				
Total NZ Market				
<u>As a Percentage of Total NZ Market:</u>				
Total HW Sales				
Imports from China**				
Imports from other Countries**				

\*Includes HW's imports

\*\*Excludes HW 's imports

187. The table above shows the total New Zealand market for preserved peaches decreased in 2004 and then increased in 2005 to a level well above that of 2003.

188. Because HW has advised that it only imports to make up for unexpected shortfalls in domestic production, to get a better indication of how the subject goods have affected HW's market share, the Ministry has considered total HW sales as a percentage of the total New Zealand market. Total HW sales, as a percentage of the market, decreased in 2004 but increased in 2005 to a level marginally below the 2003 market share.

189. The loss of market share in 2004 is attributable, in approximately equal proportions, to gains in the market share by imports from China and imports from other countries. The gain in market share by HW in 2005 was entirely at the expense of imports from other countries, which also lost share to imports from China.

<sup>4</sup> Total imports from China, in years ended April, were; 261,528 kg (2003), 737,434 kg(2004), 2,232,050 kg (2005) and 525,374 kg (YTD 06 (Sept))



190. [REDACTED] HW imports of subject goods from China accounted for approximately [REDACTED]. This proportion has remained relatively static although HW imports from China are [REDACTED] for the YTD 06 (Sept).

## Conclusion on Market Share

191. There is evidence that HW's total market share declined in 2004. However market share improved in 2005 to level slightly below 2003. Any investigation will need to consider any evidence of loss of market share in 2006.

## Profits

192. Changes in net profit reflect changes in prices, sales volumes or costs. Dumped imports can impact on any or all of these. Normally, the extent of any decline in profit will be measured against the level achieved in the period immediately preceding the alleged commencement of injurious dumping.

193. HW claims that EBIT as a percentage of revenue has "gradually [REDACTED] from 2003" and that the "EBIT per tonne has reflected this [REDACTED]".

194. The following table shows the level of profit since 2003.

**Table 5.10: Earnings Before Interest and Tax for Years ended April**

	2003	2004	2005	YTD 06 (Oct)	2006 (Estimate)
Tonnes*	[REDACTED]	[REDACTED]	[REDACTED]		[REDACTED]
Revenue (000)	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
EBIT (000)	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Change		[REDACTED]	[REDACTED]		[REDACTED]
% of 2003		[REDACTED]	[REDACTED]		[REDACTED]
EBIT as % of Revenue	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
EBIT per tonne	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Change		[REDACTED]	[REDACTED]		[REDACTED]

\*Includes HW's imports

195. HW stated that a reduction in EBIT for the 2006 year is based on the anticipated extra promotional spend required when "dumped product appears over the summer months". The Ministry notes that an increase in dumped imports may also have detrimental effects on other components of EBIT such as revenue and cost of productions.

196. The table above shows declines in EBIT as a percentage of revenue in 2004 and 2005. EBIT is estimated to [REDACTED] decline again in 2006 [REDACTED].

## **Conclusion of Profit**

197. There is evidence that HW's profits in relation to its preserved peaches business have declined in each of the years since 2003.

## **Productivity**

198. Productivity is the relationship between the output of goods and the inputs of resources used to produce them. Changes in productivity are affected by output levels and by the level of capacity utilisation.

199. HW has not provided any specific information regarding the number of staff or other resources specifically employed to produce like goods over the injury period therefore any investigation will need to obtain this information to determine if there has been any actual or potential declines in productivity as a result of the subject goods.

## **Return on Investments**

200. A decline in return on investments will result from a decline in returns with or without a relative increase in the investment factor being used. Movements in the return on investments affect the ability of the industry to retain and attract investment.

201. HW has not provided any specific information pertaining to its return on investments over the injury period. Any investigation will need to obtain this information to determine if there has been any actual or potential decline in return on investments as a result of the subject goods. HW stated that further reduction in return on assets, due to dumping, would force HW to discontinue its peach operations, which would in turn impact on HW's other seasonal crops.

## **Utilisation of Production Capacity**

202. The utilisation of production capacity reflects changes in the level of production, although in some cases it will arise from an increase or decrease in production capacity. In either case, a decline in the utilisation of production capacity will lead to an increase in the unit cost of production, and a consequent loss of profit.

203. HW has not provided any information regarding its production capacity over the injury period. Any investigation will need to obtain this information to determine if there has been any actual or potential declines in the utilisation of production capacity as a result of the subject goods. The Ministry notes that products that are produced seasonally do not easily lend themselves to analysis under this category. Further, previous investigations have shown HW's production levels have been contingent on the success of peach crops rather than the presence of dumped goods in the New Zealand market.

## Other Adverse Effects

204. When taking into account other adverse effects, the Ministry considers actual and potential effects on cash flow, inventory, employment, wages, growth, ability to raise capital and investments.

205. HW has not provided any information regarding other adverse effects. Any investigation will need to obtain this information to determine if there are any actual or potential declines of any of these factors which have been caused by the subject goods.

## Factors Affecting Domestic Prices

206. HW has not claimed that there are any other factors other than the subject goods that are affecting domestic prices. Factors that affect domestic prices, other than from dumped goods, will need to be examined in any investigation.

## Magnitude of the Margin of Dumping

207. There are significant dumping margins for the subject goods, which have been discussed earlier in this report. HW has not specifically commented on how the dumping margins have impacted on its economic indices but the magnitude of the margin of dumping needs to be considered in any investigation.

## 5.4 Other Causes of Injury

208. *Sections 8(2)(e) and (f) of the Act provide that the Chief Executive shall have regard to factors other than the dumped goods which have injured, or are injuring, the industry, including—*

- i. The volume and prices of goods that are not sold at dumped prices; and*
- ii. Contraction in demand or changes in the patterns of consumption; and*
- iii. Restrictive trade practices of, and competition between, overseas and New Zealand producers; and*
- iv. Developments in technology; and*
- v. Export performance and productivity of the New Zealand producers; and*

*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.*

## Volume and Prices of Goods not Sold at Dumped Prices

209. HW stated that there does not seem to be any injury attributable to non-dumped goods. Other imports as a percentage of the New Zealand market have decreased steadily since 2003. The largest volumes of preserved peaches from other countries other than China originated in Greece and Australia. Imports from Greece are

currently subject to anti-dumping and countervailing duties. The average VFD price of imports from Greece was NZD 1.57 per kg. The average VFD price of imports from Australia was NZD 2.15 per kg. Both of these average VFD prices are well above the average VFD relating to goods imported from China although any investigation will need to consider the extent that any material injury is caused by imports from countries other than China.

### **Contraction in Demand or Changes in the Patterns of Consumption**

210. HW advised that there does not appear to be any contraction in demand or changes in the patterns of consumption. From the information available to it at this stage the Ministry notes that the New Zealand market for preserved peaches appears to be expanding in volume.

### **Restrictive Trade Practices of, and Competition Between, Overseas and New Zealand Producers**

211. HW stated that it “does not believe there is any evidence of restrictive trade practices of, and competition between, overseas and New Zealand producers”.

### **Developments in Technology**

212. HW does not believe that there is any evidence of technology development relevant to the consideration of material injury.

### **Export Performance and Productivity of the New Zealand Producer**

213. HW advised that it exports a [REDACTED] volume of canned peaches to the Pacific Islands. HW advised that these exports have been excluded from the financial data provided in support of the application.

### **Imports by the Industry**

214. In accordance with section 8(2)(f) of the Act the Chief Executive is to have regard to the nature and extent of importations of dumped goods by the New Zealand producers of like goods, including the value, quantity, frequency, and purpose of any such importations.

215. HW has provided the imported quantity on a yearly basis over the injury period and the purpose.

216. HW has imported subject goods from China in each of the years since 2003. Over the injury period HW has imported a significant amount of the total imports from China [REDACTED]. HW also imports from [REDACTED]. HW stated that its imports from China were “[REDACTED]”.

217. HW advised that it “endeavours to source New Zealand grown peach fruit for its canning operations” but that there is not always a sufficient surplus to guard against fluctuations if there has been a bad growing season from weather or disease with a

consequent poor harvest or low production yields. Consequently HW stated it imported canned peaches to overcome shortfalls in crop failure situations.

218. Any investigation will need to consider whether or not exports from HW's supplier are at dumped prices and will need to consider in detail, in terms of section 8(2)(f) of the Act, the nature and extent of imports made by HW, including the value, quantity, frequency and purpose.

## **Other**

219. No evidence was provided of any other cause of material injury.

## **Conclusion on Other Causes of Injury**

220. There is no evidence that material injury has been caused by other factors. Any investigation will need to consider these factors in more detail, including any evidence provided by parties other than HW.

## **5.5 Conclusions Relating to Injury**

### **Volume Effects**

221. There is sufficient evidence of a significant increase in the volume of imports of subject goods both in absolute terms and in relation to production and New Zealand consumption from 2003 to 2005.

### **Price Effects**

222. There is sufficient evidence of price undercutting, and price suppression. There is no evidence of price depression in relation to the pre-injury period of 2003.

### **Economic Impact**

223. There is sufficient evidence of a consequent economic impact in the form of a decline in profits. There is evidence that market share decreased in 2004, although it returned to only slightly below the 2003 level in 2005. There is no evidence of a decline in sales volume and revenue to levels below the pre-injury period.

224. The Ministry was not provided with any information of an economic impact on productivity, return on investments, utilisation of production capacity, factors affecting domestic prices, cash flow, inventories, employment, wages, growth and the industry's ability to raise capital and investments.

### **Causal link**

225. The Ministry must be satisfied under 10(1) of the Act that:

Subject to this section, on receipt of a properly documented application made by or on behalf of New Zealand producers of like goods and on being satisfied that sufficient evidence has been provided that—

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

(b) By reason thereof material injury to an industry has been or is being caused or is threatened or the establishment of an industry has been or is being materially retarded,—

the [Chief Executive] may initiate an investigation to determine both the existence and the effect of any alleged dumping or subsidisation of any goods.

226. In addition, Article 5.2 of the Agreement states as follows:

An application under paragraph 1 shall include evidence of (a) dumping, (b) injury within the meaning of Article VI of GATT 1994 as interpreted by the Agreement and (c) a causal link between the dumped imports and the alleged injury ...

227. HW has provided sufficient evidence that the subject goods from the China are dumped and has also provided sufficient evidence that it has suffered material injury.

228. The final question to be addressed under Article 5.2 is whether there is sufficient evidence that the dumping has caused (and is causing) material injury. Dumping does not need to be the only cause of material injury or even the major cause of the injury, but must be a cause of material injury.

229. HW provided specific information relating to imports of preserved peaches from China for the month of February 2005. In that month a shipment of subject goods was imported via the [REDACTED] with a VFD of NZD [REDACTED] per kg.

230. HW also provided retail market share figures for:

- MAT to 5 April 2005,
- the quarter to 10 April 2005; and
- the four weeks to 10 April 2005.

231. These figures were split by supermarket region for an aggregate amount for all New Zealand. The statistics relating to [REDACTED] showed that the [REDACTED] brand, which HW stated is sourced from China, had achieved a [REDACTED] [REDACTED]. In the two preceding data periods the [REDACTED] brand had held [REDACTED] percent of that account for the MAT year to 5 April 2005 and [REDACTED] percent in the quarter to 10 April 2005 (which takes in much of the summer months). HW brands had accounted for [REDACTED] percent of the MAT share in that account but that share had dropped to [REDACTED] percent in the four weeks to 10 April 2005.

232. HW stated that the ability of importers to gain such a significant share of a key account exposes HW to declining volume market share and profitability. HW stated that the loss of market share following those dumped February imports demonstrates the causal link between dumping and material injury. HW also stated that price depression and suppression, attributable to the dumped imports, also “reflects the causal link [between dumping and injury]”.

233. HW has supplied evidence of significant margins of dumping, a rapid increase of allegedly dumped imports since 2003, price undercutting and price suppression that coincided with a significant reduction in profitability commencing in the financial year 2003. HW predicts that ongoing erosion of profits will result in loss of market share and sales in the year ahead.

234. The Ministry adopts a two-limb approach to determining causality. The first test focuses on the dumped imports and asks whether there has been material injury from the dumped goods and involves essentially the application of the criteria in sections 8(1) and 8(2)(a)-(d) of the Act. This test accepts that there is an inference that where material injury occurs it is caused by dumping. The second test examines whether there are any known factors apart from the dumped imports that are also injuring the industry. If there are such other factors, it must be established whether the injury caused by the other factors breaks the inferred "causal link" established under the first test. If there is no manifest cause of material injury apart from the dumped goods, then the causal link under the first test is confirmed.

235. There is no evidence of other causes of injury sufficient to break the inferred link between the subject goods and material injury.

236. While any investigation will need to establish whether there is a causal link between dumping and material injury the Ministry considers, for the purpose of initiation, that there is sufficient evidence of a causal link between the dumping of the subject goods and material injury to the New Zealand industry.





## **6. Conclusions**

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237. On the basis of the information available, there is sufficient evidence for the purposes of initiation that:

- a. preserved peaches from the People's Republic of China are being dumped;  
and
- b. by reason thereof material injury to the industry has been or is being caused.



## 7. Recommendations

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238. It is recommended on the basis of the conclusions reached and in accordance with section 10 of the Dumping and Countervailing Duties Act 1988:

- a. that the Chief Executive initiate an investigation to establish whether imports of subject goods from People's Republic of China are being dumped and thereby causing material injury to the New Zealand industry producing like goods; and
- b. that the Chief Executive sign the attached *Gazette* Notice, and give notice to interested parties in accordance with section 9 of the Act.

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Investigating Team  
Tariff Policy and Trade Rules Group

Agreed

Anne Corrigan  
Manager  
Tariff Policy and Trade Rules Group  
Regulatory and Competition Policy Branch

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