Peaches in Preserving Liquid from the People's Republic of China

Non-Confidential Final Report

Dumping and Countervailing Duties Act 1988

Dumping Application

Trade Remedies Group

Ministry of Economic Development

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Abbreviations

The following abbreviations are used in this Report:

Act (the)	Dumping and Countervailing Duties Act 1988
Acton	Acton International Marketing Ltd
Agreement (the)	World Trade Organisation Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994
AHCOF	AHCOF International Development Co., Ltd
Anhui Suzhou	Anhui Suzhou Science Foodstuff Co., Ltd
B/L	Bill of Lading
Beijing Huiyuan	Beijing Huiyuan Group Feicheng Co., Ltd
C&F	Cost and Freight
Chic	Chic International Trading (Shanghai Pudong New Area) Co., Ltd
Chief Executive	Chief Executive of the Ministry of Economic Development of New Zealand
China	The People’s Republic of China
Customs	New Zealand Customs Service
Dalian Leasun	Dalian Leasun Food Co., Ltd
Davis	Davis Trading Company Ltd
Directus	Directus International Ltd
DMC	DMC NZ Ltd
DSB	Dispute Settlement Body
EBIT	Earnings Before Interest and Taxation
EP	Export Price
FIS	Free-into-Store
FOB	Free on Board
Guangxi Fungrich	Guangxi Fungrich Import & Export Co., Ltd
Hutchinson’s	Hutchinson’s (NZ) Ltd
HW	Heinz Wattie’s Ltd
Iceman	Zhejiang Iceman Foods Co., Ltd

Laiwu Prince	Laiwu Prince Import & Export Co., Ltd
LDC	Less Developed Countries
Lian Yun	Lian Yun Gang Tianle Food Co., Ltd
LLDC	Least Developed Countries
Ltd	Limited (limited liability company)
Marsanta	Marsanta Foods Ltd
MED USA	MED USA Ltd
Minister (the)	The Minister of Commerce of New Zealand
Ministry (the)	Ministry of Economic Development of New Zealand
[redacted]	[redacted]
Ningbo	Ningbo Free Trade Zone Manda International Trading Ltd
NIP	Non-Injurious Price
NSV	Net Sales Value
NZ	New Zealand
NZD	New Zealand Dollar
OANDA	www.oanda.com
PBC	The People's Bank of China
POI	Period of investigation (1 January 2005 to 31 December 2005)
Preserved peaches	Peaches in preserving liquid (The goods subject to investigation)
RMB	Chinese Yuan/Renminbi
ROI	Return on Investment
SKU	Stock Keeping Unit
USD	United States of America Dollar
VFD	Value for Duty
Wheeler	Wheeler (NZ) Ltd
WTO	World Trade Organisation
Zhejiang Cereals	Zhejiang Cereals, Oils & Foodstuffs Import and Export Co., Ltd

1. Executive Summary

Introduction

1. On 6 November 2005, the Ministry of Economic Development (the Ministry) accepted an application from Heinz Wattie's Limited (HW) , the sole New Zealand producer of peaches in preserving liquid (preserved peaches), for a dumping investigation into preserved peaches from the People's Republic of China (China) as being properly documented. On 21 February 2006 the Ministry initiated a dumping investigation into preserved peaches from China. Provisional anti-dumping duties were imposed by the Minister of Commerce on 17 July 2006.

Goods Subject to the Investigation

2. The goods subject to the investigation are described as follows and are referred to in this report as preserved peaches or subject goods:

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

Dumping

3. There were a significant number of parties exporting preserved peaches to New Zealand. The Ministry selected for investigation those suppliers that represented the largest percentage of the volume of exports which could reasonably be investigated. The exporters of preserved peaches investigated over the period of the investigation represented 95 per cent of imports.

4. Eighty one per cent of the subject goods investigated were dumped. The weighted-average dumping margin for China is 22 percent.

Material Injury

5. Import volumes of preserved peaches from China have increased significantly since 2003. The New Zealand industry's prices have been [redacted] undercut by the imports and its prices have been depressed and suppressed.

6. There is evidence that, over the injury period, dumped imports have caused a significant economic impact on the New Zealand industry. This is reflected in a [redacted] decline in profit and a decline in return on investment and in sales revenue.

Injury Factors Other than the Dumped Goods

7. The Ministry has concluded that there are factors other than the dumped goods that are causing injury to the domestic industry but is satisfied that the dumped imports are a cause of material injury.

Causal Link

8. The Ministry is satisfied that there is a causal link between the injury that has been suffered by HW and the existence of the dumped imports from China.

Provisional Measures

9. HW requested in its application for a dumping investigation, that provisional measures be considered. Provisional anti-dumping duties are only considered when requested by the applicant industry and may be applied under section 16 of the Act at any time after 60 days of investigation, when necessary to prevent material injury being caused during the investigation.

10. The Minister of Commerce imposed provisional measures on 17 July 2006, being satisfied, on a provisional basis, that the imports were dumped and by reason thereof causing material injury to the New Zealand industry, and that provisional anti-dumping duties were therefore necessary to prevent injury during the remainder of the investigation.

Conclusion

11. The Ministry has concluded that:

- Preserved peaches from China are being dumped;
- Dumped preserved peaches from China have caused material injury to HW;
- Factors other than the dumped goods have also caused injury to the New Zealand industry.

2. Proceedings

2.1 Grounds for the Application

12. On 6 November 2005 the Ministry accepted a properly documented application from HW. The application alleged that imports of peaches in preserving liquid (preserved peaches) from China were being dumped and by reason thereof causing and threatening to cause material injury to the New Zealand industry.

13. On 21 February 2006 the Chief Executive of the Ministry of Economic Development, of New Zealand (the Chief Executive) acting pursuant to section 10 of the Dumping and Countervailing Duties Act 1988 (the Act) formally initiated an investigation into the dumping of preserved peaches from China 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 is being caused.

14. In accordance with section 10 of the Act, the purpose of the Ministry's investigation is to determine both the existence and effect of the alleged dumping of preserved peaches from China.

15. On 17 July 2006, the Minister imposed provisional measures. The Minister provisionally found that the preserved peaches from China were being dumped and as a result had caused material injury to the New Zealand industry and that provisional measures were necessary to prevent injury during the remainder of the investigation.

16. On 20 July 2006, the Essential Facts and Conclusions (EFC) report for this investigation was provided to all interested parties, in accordance with section 10A of the Act, being written advice to the parties of the essential facts and conclusions that will likely form the basis for any final determination to be made under section 13 of the Act. All interested parties were given until 3 August 2006 to make submissions based on the contents of the EFC report.

17. It should be noted that this Report provides a summary only of the information, analysis and conclusions relevant to this investigation, and should not be accorded any status beyond that.

Grounds for the Application

18. HW claimed that as a result of the alleged dumping, material injury is resulting from price undercutting, price suppression and price depression which has caused declines in revenue and profits. HW claims that injury became evident in 2004.

2.2 Interested Parties

New Zealand Industry

19. The application was submitted by HW, which is the only manufacturer of preserved peaches. The Chief Executive was satisfied that the application was made by or on behalf of the New Zealand industry producing like goods, and had the amount of support required by section 10(3) of the Act.

Selection of Exporters

20. Due to the number of companies identified from New Zealand Customs Service (Customs) data as exporting the subject goods over the period of investigation (POI), the year ending 31 December 2005, the investigation of exporters has been limited to the largest percentage of the volume of the exports which can reasonably be investigated, in accordance with Article 6.10 of the World Trade Organisation (WTO) Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the Agreement).

21. To this initial selection the Ministry has also added Chic International Trading (Shanghai Pudong New Area) Co., Limited (Chic). Chic was not included in the original selection of exporters chosen by the Ministry due to the small volume exported to New Zealand during the POI. Chic requested under Article 6.10.2 of the Agreement that the Ministry determine an individual margin of dumping for it.

22. Those exporters within the selection represent 95 per cent of imports, by volume, over the POI. From this original selection it was found that the following exporters, (listed in alphabetical order) were exporting and/or manufacturing goods subject to this investigation:

Exporters

AHCOF International Development Co., Ltd	Beijing Huiyuan Group Feicheng Co., Ltd
Chic International Trading (Shanghai Pudong New Area) Co., Ltd	Dalian Leasun Food Co., Ltd
Guangxi Fungrich Import & Export Co., Ltd	Laiwu Prince Import & Export Co., Ltd
Zhejiang Cereals, Oils & Foodstuffs Import and Export Co., Ltd	Zhejiang Iceman Foods Co., Ltd

Importers

23. Details of the companies importing from the exporters above are set out below in alphabetical order.

Acton International Marketing Ltd

24. Acton International Marketing Ltd (Acton) imported preserved peaches from [redacted]. Acton did not complete an importers questionnaire.

Davis Trading Company Ltd

25. Davis Trading Company Ltd (Davis) imported preserved peaches produced by [redacted]. Davis did not complete an importers questionnaire, but did provide invoices and customs certificates from [redacted].

Directus International Ltd

26. Directus International Ltd (Directus) imported preserved peaches from [redacted]. Directus also procured [redacted] quantities of [redacted] preserved peach products [redacted]. [redacted] sales from [redacted] Directus imported preserved peaches from [redacted], an exporter outside of the selection. Directus provided a response to the Ministry's importers questionnaire.

DMC NZ Ltd

27. DMC NZ Ltd (DMC) imported preserved peaches from [redacted]. DMC sold preserved peaches to [redacted], who then on-sold to various customers including [redacted]. DMC did not complete an importers questionnaire.

Foodstuffs (Auckland) Co-operative Society Ltd

28. Foodstuffs (Auckland) Co-operative Society Ltd imported preserved peaches [redacted] from [redacted] and also from [redacted]. Foodstuffs (Auckland) did not complete an importers questionnaire.

Foodstuffs (South Island) Co-operative Society Ltd

29. Foodstuffs (South Island) Co-operative Society Ltd imported preserved peaches [redacted] from [redacted] and also from [redacted]. Foodstuffs (South Island) provided a response to the Ministry's importers questionnaire.

Foodstuffs (Wellington) Co-operative Society Ltd

30. Foodstuffs (Wellington) Co-operative Society Ltd imported preserved peaches [redacted] from [redacted] and also from [redacted]. Foodstuffs (Wellington) provided a response to the Ministry's importers questionnaire.

Heinz Wattie's Ltd

31. The applicant, HW, imported preserved peaches from [redacted] and [redacted]

Hutchinson's (NZ) Ltd

32. Hutchinson's (NZ) Ltd (Hutchinson's) imported preserved peaches from [redacted] through a [redacted], [redacted]. Hutchinson's provided a response to the Ministry's importers questionnaire.

Marsanta Foods Ltd

33. Marsanta Foods Ltd (Marsanta) imported preserved peaches from [redacted] and did not complete an importers questionnaire.

Wheeler (NZ) Ltd

34. Wheeler (NZ) Ltd (Wheeler) imported preserved peaches from [redacted]. Wheeler did not complete an importers questionnaire.

2.3 Imported Goods

35. The goods which are the subject of the application, hereinafter referred to as "preserved peaches", or "subject goods", are:

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

36. 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]*

37. Imports of preserved peaches, classified under the above tariff item and originating from China, are subject to the LDC Customs duty rate of 5.5 per cent.

2.4 Investigation Details

38. In this report years are ended 30 April and dollar values are New Zealand Dollars (NZD) unless stated otherwise. In tables, column totals may differ from individual figures because of rounding.

39. The period for considering claims of dumping is the year ended 31 December 2005, while the consideration of injury involves evaluation of data for 1 May 2002 to 30 April 2006. Tables relating to injury refer to quantities in kg and values in NZD.

40. References to values of preserved peaches are expressed in either a price per unit or a price per kilogram (kg).

2.5 Exchange Rates

41. When a conversion of currencies is required Article 2.4.1 of the Agreement provides that the conversion should be made using the exchange rate as at the date of sale or on the sale of foreign currency on forward markets if it is linked to the export sale involved. The date of sale can be the date of contract, purchase order, order confirmation, or invoice, whichever establishes the material terms of sale.

42. When converting the currencies, the Ministry has used the middle rate on the first day of each month (the middle rate) quoted by the People's Bank of China (the PBC). The Ministry has mainly used the middle rate that coincides with the date on the invoice of the export sale (the date of sale). In one instance, discussed in paragraph 44, the Ministry has used the date of the purchase order as the date of sale.

43. There was insufficient information to determine the date of sale for four exporters in the selection: Laiwu Prince; Beijing Huiyuan; Guangxi Fungrich; and Zhejiang Cereals. In most instances the Ministry has converted export prices from USD to RMB using the middle rates during the month the goods were imported into New Zealand. For Zhejiang Cereals the currency was converted from USD to RMB using the middle rates as at the date of the invoices and in the absence of an invoice for an export sale the currency was converted using the exchange rate for the month the goods were imported into New Zealand.

Submission by Dalian Leasun

44. Dalian Leasun advised that their appropriate date of sale was when the purchase orders were agreed, because the price, volume, and shipment date could not be re-negotiated. Based on the submission of further information by Dalian Leasun, the Ministry is satisfied that the purchase orders crystallise the material terms of sale and has therefore adopted the purchase order date as the date of sale for sales by Dalian Leasun.

2.6 Disclosure of Information

45. The Ministry makes all non-confidential information relating to the investigation available to any interested party through its public file system, which was explained to all interested parties to the investigation.

46. The Act and the Agreement are available from:

- www.legislation.govt.nz/browse_vw.asp?content-set=pal_statutes; and
- www.wto.org/english/docs_e/legal_e/19-adp.pdf or www.wto.org/english/docs_e/legal_e/19-adp.doc

47. Verification visits were carried out in accordance with Article 6.7 of the Agreement at Chic, Iceman, and Dalian Leasun. Copies of Verification Reports were provided to the exporters visited, and non-confidential copies have been placed on the Public File.

48. Information was requested, but not received, or not received to the extent requested, from the importers: Acton; Davis; DMC; Foodstuffs (Auckland); Marsanta; and Wheeler. The following exporters in the sample also did not provide required information: Beijing Huiyuan; Guangxi Fungrich; Laiwu Prince; and Zhejiang Cereals.

49. In view of the failure to provide all of the necessary information, decisions regarding these businesses have been made having regard to all available information, that is, on the basis of the best information available, in accordance with section 6 of the Act. Details of the information used, in the absence of information by those companies, and the conclusions drawn are shown in section four of this report.

50. Iceman submitted that it would assist its ability to respond to the EFC if certain information was provided or clarified and subsequently listed items which it wished to have more information on. The Ministry met with Iceman's representatives subsequent to receiving its submission and a number of the listed items were discussed and clarified. In this report, the Ministry has, where possible, provided a more descriptive account of how it reached its decisions in order to allow parties to better understand the Ministry's conclusions. However where interested parties have shown good cause to the Ministry not to disclose that information the Ministry will withhold it unless that party provides express permission that it be released.

3. New Zealand Industry

51. Section 3A of the Act provides the definition of “industry”:

> **3A. Meaning of “industry”—**For the purposes of this Act, the term "industry", in relation to any goods, means—
>
> (a) The New Zealand producers of like goods; or
>
> . (b) Such New Zealand producers of like goods whose collective output constitutes a major proportion of the New Zealand production of like goods.

52. “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

53. 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 other goods which have characteristics closely resembling the subject goods.

Imported Goods

54. The goods subject to the investigation (the subject goods) are:

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

55. The subject goods exported from China to New Zealand during the POI were predominantly 410g or 425g (N1M) cans, but also included 820g and 850g cans (A2.5), 3kg (A10) cans and 4 x 120g plastic pottles. Jars were also imported, and despite being included in the above subject goods definition, were not included in the investigation sample because of the very small quantity exported by their supplier. A significant proportion of the subject goods were imported by the applicant and marketed in New Zealand with the ‘Oak’ label.

56. Imported products contained either: yellow peach halves, slices, or dices. A very small number of preserved white peaches were also imported ([redacted]kgs), which are a different variety to the yellow clingstone ‘Golden Queen’ and ‘Wattie One’ peaches used by the domestic industry. However, because white peaches fall within the above subject goods definition and HW has not expressed any intention to exclude them, the Ministry has included these imports in the investigation.

57. Most of the preserved peaches imported during the POI were contained in either syrup or ‘light syrup’. Most of the imported 120g plastic pottles held diced peaches

in either mango or peach juice, but a very small quantity contained mango jelly. The Ministry considers that these are not subject goods because a jelly is not liquid under normal serving conditions, and hence peaches suspended in jelly are outside of the above subject goods description. The Ministry has therefore not included preserved peaches in jelly in this investigation.

58. Previous investigations have limited the subject goods to cans, but have included containers less then 410g in net weight. HW has previously argued (in the review of anti-dumping duties of canned peaches from South Africa) that canned preserved peaches were not like goods to peaches in plastic pottles because they: (i) constituted a new, growing market; (ii) were promoted differently to canned peaches without cannibalising the existing market, and; (iii) were targeted towards eating 'on the run' as a snack, rather than use in the home environment. With respect to the current investigation, [redacted] submitted that, as a new product, plastic packs are not displacing the popularity of cans.

59. Foodstuffs and Directus, in their questionnaire responses, pointed out that the smaller 120g packs of preserved peaches have no equivalent manufactured product in New Zealand.

60. Regarding preserved peaches from China, HW has submitted that 120g plastic pottles of preserved peaches are like the domestically produced peaches, stating that they have broader appeal than a snack and are treated as a convenient single serve container. Whilst HW does not make a preserved peach product in a pack smaller than 410g, it has submitted that the difference between packs is trivial since a 410g can is capable of being emptied into 3 snack-sized re-sealable containers for eating later. For this reason, and because size should not detract from substitutability, HW submitted that pottles should be included in the Ministry's examination, noting that HW has produced single-serve canned peaches in the past and retains the capacity to manufacture them again. The following consideration of whether the domestically produced goods are like the subject goods is based on what HW currently produces.

New Zealand Produced Goods

61. All the preserved peaches manufactured in New Zealand are packaged in cans at HW's Hastings plant. HW's domestically produced cans are sold under brand names 'Wattie's', 'Pam's', 'Oak', and 'Weight Watchers', in three sizes; 410g, 820g and 3 kg. The peaches are suspended in either: syrup, a 'lite' sucrose-based medium, or fruit juice. Cuts include: halves; slices; and dices.

62. In identifying like goods the Ministry uses the following framework to consider what goods produced in New Zealand are like goods to the subject goods, with no one of these considerations being necessarily determinative.

a. physical characteristics, which cover appearance, specifications including size and dimensions, production methods and technology.

b. function/usage. This covers consumer perceptions/expectations, end uses, and will lead to any conclusions on the issue of substitutability where relevant.

c. pricing structures.

d. marketing issues such as distribution channels, customers and advertising.

e. other. This can include tariff classification if applicable, and any other matters which could be applicable in the circumstances.

Physical Characteristics

Appearance

63. Nearly all imported preserved peaches considered by the Ministry over the POI are of the 'clingstone' variety, which are similar to the 'Golden Queen' and 'Wattie One' varieties produced in New Zealand. One [redacted] shipment contained preserved white peaches.

64. After pitting, peeling, and slicing, the recovery rate of peach matter destined for the can depends on the size of the peach. All the subject goods from China are cut into halves, slices or pieces manually, while the domestically produced goods are cut on an automated processing line. As well containing a lower proportion of peaches to preserving liquid than domestically produced goods (as identified on the label), the subject goods are visibly hand-cut and often not of a uniform shape.

65. Labels on the products vary, with the domestically produced goods carrying the Wattie's brand in a stylised dark green, and presented as a premium product, stating that they are made in New Zealand. The imported 410g containers are generally marketed as cheaper alternatives, and many of the labels reflect this perception of a budget product.

66. Whilst consumer tastes will determine the choice between different carriers and cuts of peaches, HW has submitted that each product style has the same basic appearance and taste.

67. The fruit juice and 'lite' Wattie's brand cans display a National Heart Foundation endorsement in the form of a tick to differentiate them as an alternative to the syrup based peaches. HW has nevertheless stated that customers seem to switch between all three carriers, with many people being more used to the more traditional syrup. The domestically produced goods carrying the Weight Watchers brand are [redacted]. The labels are distinguishable from the other HW brands and make it clear that the products are part of a complete diet plan.

Specifications

68. The domestically produced goods are cut into halves, slices or dices in what is principally an automated process. Stones are mechanically plucked from the peach, resulting in less waste and a more regular appearance. The texture of the peaches varies significantly across all preserved peaches, including domestically produced goods, imports from China and other imports, and this largely depends on the ripeness of the peach at harvest. The Ministry notes that Wattie's branded cans from New Zealand state that they contain not less than 66% peach material, while the subject goods from China all stated 60%.

69. The liquid in which peaches are preserved is known as the carrier, consisting of syrup, 'lite' saccharin, or fruit juice – either apple, pear or grape. HW submitted that the cost of production of each style of product is similar, [redacted], and that its preserved peaches, of the same cut, whether in syrup, juice or "lite" carriers, [redacted] are similar enough to not affect price comparability. It is the Ministry's view that the various carriers in which peaches are preserved share the same general physical characteristics.

70. The subject goods are packaged in containers including cans, glass jars, and plastic pottles. These containers are of various sizes, but the most commonly imported product is the 410g can. Cans have a longer shelf life and are less likely to allow discolouration of the fruit than a jar or plastic container. Some subject goods are cans with a pull-top lid, while all domestically produced goods require a separate can opener for consumption. The domestically produced goods, all being in cans, have a recessed base, allowing them to be stacked. The canned subject goods from China, including those carrying HW's Oak brand, can not be similarly stacked.

71. HW has emphasised the 'like' nature of all the subject goods, regardless of container. HW do not consider the differences in packaging constitute any particular deviation from a finding that their preserved peaches are like, or have characteristics closely resembling, the subject goods. Davis Trading submitted that the Ministry should not treat all pack sizes as like goods and were unsure that HW made a good like the 3kg can. However, while the 3kg can may be suited to different purposes to the 410g can, HW produces both.

72. The actual weight of each container varies slightly depending on the carrier and the peach content, with A10 cans often being as much as 3.2kg. When asked about the existence of products above 3.2kg but within the weight range specified in the subject goods description, HW advised that it was not aware of any products weighing more than 3.2kg. HW advised the description given in their application was intended to ensure no potentially substitutable products were excluded from the investigation, and therefore excluded from potential duties. The subject goods' stated weights are not always the same as the domestically produced products in the same sized cans, and there were some instances where subject goods were possibly labelled with gross instead of net weights.

Manufacturing Methods and Technology

73. Chinese canned peach production is highly labour intensive, with only sterilisation and cooking being automated.

74. In New Zealand, approximately 60 growers are contracted through agricultural consultants [redacted], who advise growers on orchard management, assess a predicted yield, and [redacted]. Once picked and delivered to HW's production facility all raw materials pass through a weighing station and are inspected, assessed and purchased according to the

terms of the contracts. Peaches are picked unripe and the majority cool-stored for up to four weeks.

75. Part of the peach crop purchased by HW is devoted to fruit salad products. HW's strategy is to ensure as much fruit salad is manufactured as possible, based on the total crop of pears. HW stated that it is the growers' only customer, historically taking the entire pear and peach crop. Because fruit salad recipes are more specific to New Zealand and not a globally traded standard, HW chooses to prioritise its local production of fruit salad products and therefore any shortfall in peach products, which are more like commodity products, are easy to procure from overseas suppliers. HW's application did not cover its fruit salad products, and the Ministry notes their considerable differences in appearance, taste, and production methods. Fruit salad has been excluded from previous peach investigations for not sharing the same physical characteristics as plain peach products.

76. HW's preserved peach manufacturing is principally an automated process. After size sorting, a pitting machine sets up and splits each peach, plucking the stone, with a colour sorter catching un-pitted peaches for re-work. The halves are [redacted] to loosen the peel and then peeled by machine, to be sent down a particular line for slicing, dicing, or to be left in halves, based on size. The only domestically produced goods that are diced are made by HW for the Pam's brand.

77. Manual inspection takes place before the peaches continue along belts to automatic tumble fillers that dispense the product into cans. Syrup is reconstituted on site from water and either imported granulated sugar or artificial sweetener (saccharin) for the 'lite' liquid. The carrier is added and the cans are capped before being sterilised in a cooker. The canning and sterilisation equipment used for peaches is common to other product lines. The production of canned peaches is usually completed within three to four weeks of harvest because of the limited storage life of the raw fruit.

78. Cans are manufactured by [redacted], with tin plate sourced from [redacted]. The cans are stored [redacted] and referred to as [redacted]. The [redacted] is later palletised, where pallets are given a unique barcode and stacked 1.5m high, to be warehoused at another location in Hastings.

79. [redacted] are purchased from [redacted], and applied to the [redacted] depending on specific orders. [redacted] cans are then packed on trays, shrink-wrapped, and placed onto pallets for dispatch to customers. HW's imported stock arrives [redacted] the overseas supplier.

80. The Ministry notes the increasing use of plastics in packaging foods generally, and that overseas research and development has been instrumental in bringing down the cost relative to steel cans. Quality and shelf-life have also improved, leading HW to import the 4 x 120g packs of diced peaches. [redacted] also emphasised the growing use and gradually improving quality of plastic packaging. [redacted], whose main focus is exportation, stated that it is beginning to manufacture food products in plastic.

Function and Usage

81. The domestically produced goods are for retail and food service sale in New Zealand. It is HW's view that the domestically produced peaches serve the same general purpose as the subject goods, the only difference being that the subject goods may be packed in different containers, such as plastic or glass.

82. Because of size and composition, cans have the potential to limit end uses when compared with more versatile tear-top cans, plastic pottles, and resealable glass jars included in the subject goods description. The domestically produced goods in 410g and 820g cans are generally used as a topping in breakfasts or desserts prepared at home (as with fruit salad), while the larger 3kg cans are more suited to the food service industry. Davis Trading has submitted that 3kg cans are not like 410g cans for this reason. Whilst this particular distinction based on size is immaterial to a consideration of like goods (since the domestic industry manufactures both 410g and 3kg sizes), a key issue remains whether the goods produced by HW (the smallest being 410g) are like the subject goods in containers less than 410g in size, including 120g plastic pottles.

83. It was pointed out by HW that the smaller plastic pottles (120g packs of diced peaches) are more suited to packed lunches and as a 'snack on the go', due to size and ease of opening. The Ministry notes that no similarly sized or functional model is produced by the domestic industry – the smallest product, in a 410g can, is more than 3 times the size of the pottles and requires a can opener for consumption. As discussed above, HW has since also submitted that while pottles also function as more convenient single serve containers, a 410g can is capable of being emptied into 3 snack-sized re-sealable containers for eating later.

84. [redacted] Weight Watchers peaches are [redacted], they are marketed by another company for use as part of a wider product: weight-loss programs and diet plans. Because they are a component of a carefully calculated calorie intake, and marketed as part of a menu, their use can be distinguished because of consumer perceptions. The Weight Watchers brand has been excluded from like goods considerations in past dumping investigations.

Pricing Structures

85. The domestically produced goods, whether in syrup, 'lite' syrup, or juice, are [redacted]. HW generally regards preserved peaches to be a commodity product, competing on price, and stated that the domestically produced goods compete at the same general price points as the subject goods.

86. HW use price to market the Wattie's brand apart from competitors, stating that a higher price differentiates Wattie's peaches from alternatives and constitutes a premium based on trustworthiness and customer loyalty.

87. The Weight Watchers brand peaches are sold [redacted] and occupy the same shelf space as the Wattie's products. HW said that the Weight Watchers product is sold at a significant premium [redacted] part of a wider diet plan.

88. The subject goods imported by HW, carrying the Oak brand, trade at a lower price than HW's Wattie's branded cans, reflecting HW's view that globally traded preserved peaches are a commodity product. HW stated that the Oak brand [redacted] and make up any shortfall in local fresh peach supply. Fruit salad, while sharing the same shelf space as preserved peach products, is not a standard globally traded product that HW can easily source from abroad. For this reason, peaches grown in New Zealand are devoted to local fruit salad production as a priority, as discussed above at paragraph 75.

Marketing and Distribution Systems

89. Branding and advertising as a premium product, based on guaranteed quality and being the product of a long-standing New Zealand company, is crucial to HW marketing. HW incorporate a trade spend component into their pricing structure to assist supermarkets in promoting the Wattie's range via coupons and special price reductions. This is discussed starting at paragraph 378.

90. It is HW's view that imports of the 410g cans are generally priced cheaply to encourage foot traffic in supermarkets. The Wattie's brand, in contrast, is traded as an eminent product within the New Zealand market, based on guaranteed quality and the brand's status as a New Zealand cultural institution. The retail-sized products all share the same shelf space in supermarkets, regardless of cut, carrier, or container.

91. HW advertises its 120g plastic pottles on its website as being "…great for lunches and ideal for those people `on the go´". The 410g cans on the other hand "…make a delicious dessert or try them for breakfast with your favourite cereal." This distinction reinforces the Ministry's analysis of function and usage of the subject and like goods, above.

92. HW submitted that Weight Watchers peaches are not affected by market price changes in the same way as other HW products. They are also labelled differently to other HW products, specifically targeted towards consumers who are on the Weight Watchers diet plan, and marketed by the Weight Watchers franchise.

93. As discussed above, the fruit juice and 'lite' Wattie's brand cans display a National Heart Foundation endorsement which differentiates them as healthy alternatives to the syrup based peaches. HW has nevertheless stated that customers seem to switch between all three carriers, with many people being used to the more traditional syrup.

94. The subject goods and the domestically produced cans share the same distribution pattern, with supermarkets being the final point of retail sale for most goods. HW has four main customers that supply most New Zealand supermarkets. Progressive Enterprises Ltd (Progressive) operates their own distribution network from central warehouses in Auckland, Palmerston North, and Christchurch. Foodstuffs Auckland, Wellington, and South Island function as distinct, retailer-owned, co-operative companies under the federation body of Foodstuffs (New Zealand) Ltd (Foodstuffs), which is based in Wellington. HW will deliver products to the warehouses of its customers or on occasion directly to a retail point.

Other considerations

95. HW has provided the Ministry with the tariff item and statistical key that it considers would apply to the domestically produced preserved peaches if they were imported into New Zealand. The subject goods are currently entering under the same tariff item and statistical key.

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

Conclusion on Like Goods

97. The Ministry considers that the different forms of carrier and packaging are each specific models within the subject goods definition. The Ministry concludes that HW produces goods in New Zealand that, whilst not like 120g plastic pottles in all respects, nevertheless closely resemble them. The contents of the pottles are identical to the contents of some of the larger domestically produced canned goods. The differences in size and containers make pottles more versatile, but they remain only slightly dissimilar to cans, which can be opened by consumers in the home and then used in the same way. The Ministry also concludes that domestically produced cans closely resemble variously sized glass screw-top jars, for the same reasons.

98. The imports of 120g plastic pottles of preserved peaches in mango jelly have been excluded from the investigation because they are not in a preserving *liquid*, and are therefore outside the subject goods definition.

99. The Ministry considers HW's syrup based 'Pam's', 'Oak', and 'Wattie's' preserved peaches, in 410g, 820g, and 3kg cans, are almost identical to the subject goods due to identical can sizes, carrier, and function. Cuts differ, as well as price and marketing, but the consumer is faced with a choice between goods where the basic appearance and taste is the same, and where they may be used for identical purposes. HW produces other goods, namely preserved peaches in clear juice and saccharine solution, which are not necessarily like the subject goods in as many respects, but nevertheless have characteristics closely resembling the subject goods. These are discussed in more detail below.

100. The Ministry does not consider fruit salad to be like the subject goods, due to their considerable differences in appearance, taste, production and ease of procurement. Fruit salad has been excluded from previous peach investigations for these reasons.

101. The Ministry concludes that HW's Watties brand 'lite' products, in a saccharin-based carrier, are like the subject goods because:

- They are produced and packaged in the same way as the other Wattie's products, including the syrup-based cans;
- They have the same appearance and use as the other products, and a similar taste;

- Apart from the Weight Watchers brand, they are labelled, priced, and marketed the same way as the other cans.

102. The Ministry concludes that the Weight Watchers brand sliced preserved peaches are not like the subject goods because, [redacted]:

- They are sold at a significant premium above [redacted], and are not affected by the same market prices;
- They are branded and labelled according to the specifications of another company, to which HW [redacted];
- They are specifically targeted towards consumers on the Weight Watchers diet programme, and marketed through another company.

103. The Ministry concludes that HW's Watties brand products in clear juice are like goods to the subject goods because:

- They are produced and packaged in the same way as the other Watties products, including the syrup-based cans;
- They have the same appearance and use as the other products, and a similar taste;
- Apart from the Weight Watchers brand, they are labelled, priced, and marketed the same way as the other cans.

104. On the basis of the information available, the Ministry considers that the preserved peaches produced by HW, except for the Weight Watchers brand, are like goods to the subject goods.

3.2 New Zealand Industry

105. 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 per cent 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 6 months); and

b. More than 50 per cent 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.

106. HW is the only New Zealand manufacturer of preserved peaches and the Ministry is therefore satisfied the application met the domestic industry standing requirements of section 10(3)(a) of the Act.

4. Evidence of Dumping

107. Dumping occurs when an exporter sells goods to New Zealand at a price lower than they would sell the same goods in their country, as defined in Section 3(1) of the Act. In essence dumping is price discrimination between an export and domestic market.

4.1 Introduction

108. This section of the report explains how the Ministry established whether preserved peaches were being dumped, and the extent of any dumping, in the POI i.e. the year ended 31 December 2005.

109. The Ministry compared export prices and normal values on a transaction-to-transaction basis. This basis of comparison involves selecting an appropriate domestic value (or when no suitable domestic transactions exist, constructing a domestic transaction value) for comparison with each export transaction value. The Ministry was then able to compare the two values to establish whether or not each transaction was dumped and the extent of any dumping.

110. The comparison of export prices and normal values has been made on a model-to-model basis. The Ministry has split models on the basis of container size and has established margins of dumping for 120g, 410g, 820g and 3kg containers. The Ministry considers that dumping exists in relation to a model exported by an exporter or manufacturer if any of the transactions for a model are dumped with a margin greater than zero.

111. Only the volume of those transactions found to be dumped with a dumping margin greater than zero are included in the volume of dumped imports used in the analysis of injury. Non-dumped transactions from China are included in the volume of "other" (or non-dumped) imports for the analysis of injury. To estimate the volume of dumped imports in periods outside of the POI, the percentage of imports of the goods under investigation over the POI found to be dumped has been applied to the total imports of the goods under investigation in periods outside of the POI.

112. The Ministry uses a transaction-to-transaction basis for comparing export prices and normal values, rather than a weighted average-to-weighted average method, because this method identifies the individual transactions that are dumped. The Ministry considers this provides a more accurate representation of the extent of any dumping and is particularly suited to a small economy such as New Zealand where the number of transactions is relatively small.

113. The Ministry has used, in establishing export prices and normal values, verified financial information provided by some of the parties to the investigation. Some interested parties did not respond or adequately respond to the investigation questionnaires. In the absence of the required information, the Ministry has used the best available information to fill the gaps in information supplied by the parties, which is information provided by other exporters or interested parties. All information that has been supplied to the Ministry has been used in the preparation of this report where it is relevant and where it can be reasonably relied upon.

114. Except for Guangxi Fungrich, Laiwu Prince, and Zhejiang Cereals, where the comparison was made at the ex-exporter level, export prices and normal values were compared at the ex-factory level, which is the normal point of comparison referred to in Article 2.4 of the Agreement. To arrive at the ex-exporter and ex-factory values, the Ministry made a number of deductions from the base prices. The Ministry has also made adjustments to ensure that a fair comparison was made between export prices and normal values.

115. As outlined in paragraph 49, in the absence of required information, section 6 of the Act provides for a decision to be made having regard to all available information, that is, on the basis of the best available information. In view of the failure of interested parties referred to in paragraph 48 to provide all of the necessary information, the Ministry has used relevant information provided by Customs, Dalian Leasun and importers.

4.2 Export Prices

116. Export prices are the prices at which the goods are exported from China to New Zealand, adjusted to allow a fair comparison with the prices of goods sold in the country of manufacture, as required by section 4 of the Act.

117. Export prices have been established, in all instances, by deducting the adjustments for each exporter. An explanation of the base prices and adjustments for each exporter is described below under their respective headings.

AHCOF International Development

Export Sales Distribution

118. AHCOF exported directly to New Zealand, via a [redacted] based company, [redacted], AHCOF advised that it sources some preserved peaches from another manufacturer, [redacted] AHCOF provided a questionnaire response but the Ministry did not receive a response from [redacted].

119. Over the POI [redacted] supplied [redacted] kgs ([redacted] of 425g and [redacted] of 800g) of preserved peaches, sourced from AHCOF, to its New Zealand importer. This volume represents [redacted] importations.

Base Prices

120. The base prices are AHCOF's invoiced prices to the exporter [redacted] in USD.

121. In the absence of specific information on this matter the Ministry has used the invoice date of AHCOF's sales to [redacted] as the date of sale as it considers in terms of paragraph 4.1 of Article 2 of the Agreement that the date of the invoice has established the material terms of sale. The invoiced price has been converted to RMB using the PBC's middle rate as described in paragraph 42 above that applies on the date of the invoice.

122. The information provided by AHCOF and referred to below has not been verified, and may not be ideal in all respects. The Ministry does not consider, however, it is justified in disregarding the information as AHCOF has acted to the best of its ability (paragraph 5 of Annex II of the Agreement).

Adjustments

Costs from Ex-factory to FOB

123. AHCOF provided some details regarding the costs between ex-factory and FOB which are in USD on a per carton basis. In all instances, the costs have been converted to a cost per kg.

Handling

124. AHCOF stated that the cost of handling the goods is USD[redacted] per carton. On the basis of this information an adjustment of RMB[redacted] per kg has been made.

Export Packing

125. AHCOF advised that the cost to pack the goods for export to New Zealand is USD[redacted] per carton. There are no details as to what these costs relate to. On the basis of this information an adjustment of RMB[redacted] per kg has been made.

Inland Freight

126. The cost of inland freight provided by AHCOF is USD[redacted] per carton. The inland freight charge is for the transportation of the goods from Hefei province to Qingdao or Wuhu port, China. The Ministry has made an adjustment of RMB[redacted] per kg, on the basis of this information.

Port Charges and Clearance Fees

127. Even though AHCOF provided some costing information from ex-factory to FOB, no costs relating to charges incurred at the port of departure have been provided. It is reasonable to assume that these charges would apply to all export sales. In the absence of information from AHCOF, the Ministry has applied the best available information, that supplied by Dalian Leasun, and an adjustment has been made accordingly.

Cost of Credit

128. An adjustment for the cost of credit has been made using the credit terms of between [redacted] days extended by AHCOF to [redacted]. The interest rate is that of the PBC of 1.71%, which is the three month lump sum deposit rate.

Other Export Costs

129. It is reasonable to assume that a bank charge would apply since the currency of the sales is not the currency of the country of origin. The Ministry has made an adjustment based on information provided by Dalian Leasun. The Ministry has also

made an adjustment for the VAT documentation charges at the amount for which adjustments were made for Dalian Leasun.

Beijing Huiyuan Group Feicheng

Export Sales Distribution

130. Beijing Group exported preserved peaches directly to [redacted]. Beijing Group exported [redacted] kg of preserved peaches, which represent [redacted] importations.

131. Beijing Huiyuan did not provide a response to the questionnaire and nor did the importer, [redacted]. The Ministry has received some information from [redacted], who purchases preserved peaches from [redacted]. A customer of [redacted] provided details regarding [redacted] of these transactions which showed that these sales relate to 425g cans only. In the absence of information, and based on the average price in customs data, the Ministry has concluded that the other [redacted] transactions also relate to the sale of 425g cans.

Base Prices

132. The base prices have been established at the FOB level by using a combination of customs data and invoice information from a customer of the importer, [redacted]. Currencies have been converted using the PBC's middle rate, as described in paragraph 42 above, for the month in which the goods entered New Zealand.

Adjustments

Inland Freight

133. In the absence of information from the exporter the Ministry has made an adjustment using information provided by Dalian Leasun.

Port Charges and Clearance Fees

134. In the absence of information from the exporter the Ministry has made an adjustment using information provided by Dalian Leasun.

Other Export Costs

135. In using information provided by Dalian Leasun, other costs are also incurred by Dalian Leasun on export sales which are additional to those incurred on domestic sales. The Ministry has, accordingly, made an adjustment for: (i) VAT documentation charges and; (ii) bank charges, at the amounts for which these adjustments were made for Dalian Leasun.

Chic International Trading (Shanghai Pudong New Area) Co., Ltd

Export Sales Distribution

136. Chic sells directly [redacted]. Over the POI Chic made [redacted] small sale of preserved peaches [redacted]. The Ministry has established this sale is in the ordinary

course of trade, by virtue of being at the same price as subsequent sales of commercial quantities.

137. Over the POI Chic exported [redacted]kg of preserved peaches. This sale represented [redacted] transaction.

138. Chic provided a partial response to the exporter's questionnaire and the Ministry undertook a verification visit to verify the information provided and to obtain further information.

Base Prices

139. The base price is the invoiced FOB price converted to RMB at the PBC's middle rate as described in paragraph 42, above, that applies for the month of the date of the invoice.

Adjustments

Inland Freight

140. The Ministry has made an adjustment for inland freight based on verified information provided by Chic.

Port Charges and Clearance Fees

141. The Ministry has made an adjustment for customs charges, exit inspection, and quarantine charges based on verified information provided by Chic.

Bank Charges

142. The Ministry has made an adjustment for bank charges that apply to export sale transactions.

Cost of Credit

143. No adjustment has been made for the cost of credit because the terms are the same for both export and domestic sales.

Dalian Leasun Food Co., Ltd

Export Sales Distribution

144. Dalian Leasun exports directly to its New Zealand customer, [redacted]. Over the POI it exported [redacted] kgs in 3kg cans, which represent [redacted] transactions. The sales are made on an FOB basis in USD.

145. Dalian provided a partial response to the exporter's questionnaire and the Ministry undertook a verification visit to verify the information provided and to obtain further information.

Base Prices

146. The base prices used by the Ministry are the invoiced USD price(s) on an FOB basis converted to RMB using PBC's middle rate, as described in paragraph 42 above, that applies for the month of the date of sale, which was initially determined by the Ministry as the date of invoice. In response to the verification report, Dalian Leasun submitted that the appropriate date of sale is when the purchase order with [redacted] was agreed, because by this date, the material terms are set, and Dalian Leasun is bound to supply a fixed quantity at an agreed price. The Ministry has concluded this is appropriate, as discussed in paragraph 44.

Adjustments

Inland Freight

147. The Ministry has made an adjustment for the cost of inland freight from the factory to the port of export based on verified information from Dalian Leasun.

Freight Forwarder Application

148. The Ministry has made an adjustment based on verified information from Dalian Leasun for the charges that apply for a freight forwarder application fee, which Dalian Leasun is required to pay for selling goods on an FOB basis.

Documentation Charges

149. An adjustment has been made regarding the charges that apply in providing quarantine declarations and phytosanitary certificates, based on verified information from Dalian Leasun.

Cost of Credit

150. An adjustment for the cost of credit has been made using the credit terms of either [redacted] [redacted] [redacted] days extended by Dalian Leasun to the importer. The interest rate applied is that of the PBC of 1.71%, which is the three month lump sum deposit rate.

Port Charges and Clearance Fees

151. The Ministry has made an adjustment for B/L fees, port handling charges, terminal handling charges, and customs clearance fees, based on verified information from Dalian Leasun.

Other Export Costs

152. The Ministry has made an adjustment for the cost of VAT documentation charges and bank charges based on verified information from Dalian Leasun.

Guangxi Fungrich Import & Export Co

Export Sales Distribution

153. Guangxi Fungrich exports directly to its New Zealand customer, [redacted]. Guangxi stated that the goods it supplies to New Zealand are sourced from [redacted]. Guangxi Fungrich did not provide a questionnaire response and nor did [redacted].

154. Over the POI Customs data shows that Guangxi Fungrich supplied [redacted] kgs of preserved peaches to New Zealand which represents [redacted] transactions. The importer advised that all shipments are of 820g cans.

Base Prices

155. The Ministry considered at which level the comparison of export prices and normal values should be made. In the absence of information provided by the relevant parties, the only information available on which to establish base prices is Customs data, which records the sale from Guangxi Fungrich to [redacted]. The Ministry has therefore made this comparison at the ex-Guangxi Fungrich level.

156. A price per kg has been calculated from the declared foreign value (USD), on which VFD is established and statistical quantity. This value has been converted to RMB using PBCs middle rate, as described in paragraph 42 above, for the month of import into New Zealand.

Adjustments

Inland Freight

157. The Ministry has made an adjustment based on information provided by Dalian Leasun.

Port Charges and Clearance Fees

158. The Ministry has made an adjustment, for these costs, based on information provided by Dalian Leasun.

Other Export Costs

159. In using information provided by Dalian Leasun, other costs are also incurred by Dalian Leasun on export sales which are additional to those incurred on domestic sales. The Ministry has, accordingly, made an adjustment for VAT documentation charges and bank charges at the amount for which these adjustments were made for Dalian Leasun.

Laiwu Prince Import & Export Co., Ltd

Export Sales Distribution

160. Laiwu Prince exports directly to its New Zealand customer, [redacted]. Neither Laiwu Prince nor its importer provided a questionnaire response. The importer, however, did advise that its imports were of 425g cans only. According to data supplied by Customs, over the POI Laiwu Prince exported to New Zealand [redacted] kg of preserved peaches. These exports represent [redacted] transactions.

Base Prices

161. The Ministry considered at which level the comparison of export prices and normal values should be made. In the absence of information provided by the relevant parties, the only information available on which to establish base prices is Customs data, which records the sale from Laiwu Prince to [redacted]. The Ministry has therefore made this comparison at the ex-Laiwu Prince level.

162. A base price per kg has been calculated from the declared foreign value (USD), on which VFD is established and statistical quantity. This value has been converted to RMB using PBC's middle rate, as described in paragraph 42 above, for the month of import.

Adjustments

Inland Freight

163. The Ministry has made an adjustment based on information provided by Dalian Leasun.

Port Charges and Clearance Fees

164. The Ministry has made an adjustment for these costs based on information provided by Dalian Leasun.

Other Export Costs

165. In using information provided by Dalian Leasun, other costs are incurred by Dalian Leasun on export sales which are additional to those incurred on domestic sales. The Ministry has, accordingly, made an adjustment for the VAT documentation charges and bank charges at the amount for which these adjustments were made for Dalian Leasun.

Zhejiang Cereals, Oils & Foodstuffs

Export Sales Distribution

166. Zhejiang Cereals exports directly to New Zealand, via an intermediary, [redacted]. The New Zealand customer is [redacted].

167. Zhejiang Cereals did not provide a questionnaire response. [redacted] did not provide a questionnaire response but it did provide copies of invoices from its supplier and those issued to the importer. These invoices included sales over the POI and sales that relate to periods outside the POI. The importer did not provide a questionnaire response but it did supply copies of some invoices and associated customs documents.

168. Over the POI Zhejiang Cereals supplied [redacted] kgs of preserved peaches, all in 3kg cans, that represents [redacted] transactions.

Base Prices

169. The Ministry considered at which level the comparison of export prices and normal values should be made. In the absence of sufficient information provided by the relevant parties, the only information available on which to establish base prices is the invoiced price at which the supplier, Zhejiang Cereals invoices the intermediary, [redacted]. The Ministry has therefore made this comparison at the ex-Zhejiang Cereals level.

170. Zhejiang Cereals sell to [redacted] on a cost and freight (C&F) (USD) basis to New Zealand. To establish the price at the FOB level, the Ministry has converted the overseas freight value declared to Customs and converted it to USD using the exchange rate used by Customs. This value has then been deducted from the C&F price which has subsequently been converted to RMB to a per kg price using PBC's middle rate, as described in paragraph 42 above, for the month of import.

Inland Freight

171. The Ministry has made an adjustment based on information provided by Dalian Leasun.

Port Charges and Clearance Fees

172. The Ministry has made an adjustment for these costs based on information provided by Dalian Leasun.

Other Export Costs

173. In using information provided by Dalian Leasun, other costs are incurred by Dalian Leasun on export sales which are additional to those incurred on domestic sales. The Ministry has, accordingly, made an adjustment for the VAT documentation charges and bank charges at the amount for which these adjustments were made for Dalian Leasun.

Zheijang Iceman Foods Co., Ltd

Export Sales Distribution

174. Iceman sells its goods directly to New Zealand via a [redacted] intermediary [redacted]. [redacted] then sells the goods to New Zealand customers, [redacted] and [redacted] on [redacted] basis and to some smaller customers, such as [redacted]

[redacted] on [redacted] basis. Over the POI Iceman supplied [redacted] kgs of preserved peaches ([redacted] kgs of 410g cans, [redacted] kgs of 820g cans and [redacted] kgs of 3kg cans). These exports represent [redacted] transactions.

175. Iceman provided a questionnaire response and the Ministry undertook a verification visit at the company in China.

Base Prices

176. The base prices used by the Ministry are the invoiced USD price(s) on [redacted] basis converted to RMB using PBC's middle rate, as described in paragraph 42 above, for the month of the date of sale.

Adjustments

177. The following adjustments are based on verified information provided by Iceman. The adjustments are the costs, charges and expenses incurred in preparing the goods for shipment to New Zealand.

Packaging

178. The Ministry has made an adjustment for the cost of packaging. The cost per kg differs depending upon which size of preserved peaches that is exported.

Handling Costs

179. The Ministry has made an adjustment for the cost of loading containers in preparation for exporting to New Zealand.

Inland Freight

180. The Ministry has made an adjustment for the cost of transporting the goods from the factory in Shandong to the port of export, Qingdao.

Terminal Handling Charge

181. An adjustment has been made for terminal handling charges at the port of export.

Documentation Charge

182. The Ministry has made an adjustment for the preparation of documents required for the Chinese Customs Authority.

Customs Inspection

183. An adjustment has been made for the cost of customs inspections required on export sales.

Other Export Costs

Bank Charges

184. The Ministry has made an adjustment for bank charges. These charges are in USD which have been converted to RMB using PBC's middle rate, as described in paragraph 42 above, for the month of the date of sale.

Cost of Credit

185. An adjustment for cost of credit has been made based on [redacted] days credit extended by Iceman to its customer. The interest rate used is the PBC three month lump sum deposit rate of 1.71%.

4.3 Normal Values

Introduction

186. The normal value is the price the foreign manufacturers or exporters sell like goods in their own country. The types of sales that can be used to determine normal values are set out in section 5 of the Act.

187. Where sufficient information has not been provided or is not available, normal values can be established under section 6 of the Act. The provisions of section 6 allow the Chief Executive to ascertain normal values having regard to all available information. As a result of having no information supplied by some manufacturers and exporters, the Ministry has had to derive some normal values for the POI on the basis of the best information available.

188. The Act prescribes that if there are no like goods sold on the domestic market by the exporter, normal values can be established by other sellers of like goods (section 5(1)).

189. The normal values have in most cases been established on the basis of verified information provided by Dalian Leasun, which sells like goods on the domestic market to those exported to New Zealand. Information from Dalian Leasun was used when insufficient or no information had been provided by exporters or it was established that they did not sell like goods on the domestic market.

190. Over the POI Dalian Leasun's domestic sales of preserved peaches were [redacted] tonnes which is greater than the volume exported by each of the manufacturers/exporters in the Ministry's selection. Article 2.2 of the Agreement states that domestic sales for the purpose of establishing normal values shall normally be in excess of 5 per cent of export sales of the subject goods. The Ministry is satisfied that Dalian Leasun's domestic sales are of sufficient volume in terms of Article 2.2 of the Agreement, are in the ordinary course of trade at arm's length, and can be used to establish normal values for other manufacturer/exporters.

191. Normal values have been calculated by deducting or adding to the base prices the adjustments shown under their respective headings below.

Differences in the Treatment of VAT

192. The Chinese government stipulates that all units and individuals engaged in the sales of goods, provision of processing, repairs and replacement services, and importation of goods within the territory of China shall pay VAT of 17 percent.

193. Under the Chinese government's export tax rebate policy, where a product is exported, the exporter can claim back a proportion of the VAT cost they have incurred in purchasing the inputs for that product (the domestic content). The exporters of preserved peaches can claim back input VAT at a rate of 13 per cent of this domestic content cost. When preserved peaches are sold on the domestic market, the seller can claim back all of the VAT paid on inputs.

194. The net effect of comparing an export sale with a domestic sale is that the inputs subject to VAT used in producing the domestically sold goods are four per cent less than the inputs subject to VAT used in the exported goods. In all instances an upward adjustment has been made to normal values of four per cent of the proportion of domestic content of the cost of production that is subject to VAT.

195. In establishing an adjustment for VAT export rebate, the Ministry calculated the proportion of domestic content (excluding direct labour, services and selling and administration costs) of the good from the cost of production data. For Chic, Iceman and Dalian Leasun the percentage was based on their own cost of production figures. For all other exporters in the selection, it was based on the cost of production figures of Dalian Leasun, due to lack of information for the specific exporter.

Initial Submission by Iceman

196. Iceman submitted that the method used by the Ministry in determining the amount of the adjustment for VAT is incorrect. Iceman submitted that VAT is not considered an input cost but accounted for in a separate account and therefore not reflected in the cost of production figures.

197. VAT liability arises on the sale of goods or taxable services on the date on which the sale sum is received or the date documented evidence of right to collect the sale sum is obtained. The production process starts with a number of inputs, such as raw peaches and sugar, that are subject to VAT. The Ministry has looked at the local content that makes up the cost of production figures verified by the Ministry to establish the proportion that local content represents of the finished good. From this figure, the Ministry has calculated an adjustment based on the selling price, the proportion of local content and the difference between VAT incurred on domestic sales and the VAT refunded on export sales.

198. Iceman stated that "The VAT rebate policy for export sales is a tax policy executed by the Chinese government, which is allowed by WTO regulations, for the purpose of encouraging export practice of Chinese enterprises. Most WTO members, including developing countries and developed countries, have a tax policy regarding the exemption of an exported product from duties or taxed borne by the like product when destined for domestic consumption, so the VAT rebate is in conformity with WTO regulations."

199. In making the adjustment the Ministry is not questioning the Chinese government's tax rebate policy. The Ministry is required to consider in establishing normal values the provisions of the Act and the Agreement. If the Ministry finds that there are any differences between the domestic sales and export sales which affect price comparability, it is obligated to make an adjustment. The effect of the Chinese Government policy is to impose a tax on goods manufactured for export. This is clearly a difference in taxation between exported goods and goods sold on the domestic market for which an adjustment is required in order to ensure a fair comparison between export prices and normal values.

Iceman's Submission in Response to the Essential Facts and Conclusions Report

200. Iceman made further submissions following the EFC on this matter. It submitted that the upward adjustment to normal values for VAT differences was incorrectly made. Iceman noted that if the adjustment was appropriate a further explanation of the Ministry's methodology was necessary in order to assist Iceman's understanding of the reason for the adjustment.

201. Iceman submitted that due to the fact that it accounts for VAT separately, in accounting terms, the difference in the amount of VAT that it can claim back between domestic and export sales does not affect the final price that the good is sold for, and as such requires no adjustment under Section 5(3)(c) of the Act, because the difference in tax does not affect price comparability.

202. The Ministry has considered Iceman's submission carefully but has decided to follow its interim conclusions on this matter. The Ministry does not consider that Iceman's accounting treatment of VAT indicates that the difference between the VAT rebates is not reflected in Iceman's prices. The Ministry's analysis of this matter is discussed in full here to assist Iceman's understanding of the reason for the adjustment. The overall effect of the Chinese government's differential treatment of VAT is that for two sets of identical inputs, that are processed into identical goods and sold by the same company, one on the domestic market and the other for export, the exported good costs the company more to make and sell because it is not eligible for a full VAT refund on inputs, which the domestic sale is entitled to. This difference, of 4 per cent of the cost of inputs, equates to approximately [redacted] per cent of the sale price.

203. The Ministry considers that, because the costs to make the two sales are different, there is a high likelihood that this difference in cost is reflected in the price. Therefore the Ministry considers that a reasonable presumption can be made that price comparability is affected by the difference in VAT treatment. The Ministry considers that due allowance should be made to restore price comparability, unless a party can show that no adjustment is necessary i.e. in spite of the difference in VAT policy, all other things being equal, the prices for the two goods are the same.

204. Over the POI Iceman's sales were almost exclusively made to export customers. This means that for substantially all sales by Iceman it cannot claim the full 17 percent, because its sales are exports. On the other hand a high proportion of Dalian Leasun's sales of preserved peaches were in the domestic market, approximately [redacted] percent, for which the full VAT amount can be claimed. Due to the

high proportion of sales of preserved peaches made by Dalian Leasun and Iceman in the domestic and export markets respectively, and given that Dalian Leasun's sales have been used to establish normal values, the Ministry considers the likelihood of the VAT rebate being incorporated into prices is further increased.

205. Iceman has submitted that because it accounts for VAT separately and that the difference is not reflected in Iceman's prices, no adjustment should be made. However the Ministry does not consider that the accounting information provided by Iceman is determinative in this situation and does not think Iceman has provided sufficient information to satisfy the Ministry that the VAT policy *does not* affect price comparability. Because it is the relationship between the prices of two identical goods, one sold domestically and the other for export which raises the presumption that price comparability is affected, a party in this situation needs to show that the relationship between the prices of these goods is not affected by the difference in VAT treatment.

206. The Ministry has also considered how its Australian counterparts, the Australian Customs Service, Trade Measures Branch, have treated this matter. Australia is also a WTO member and therefore subject to the fair comparison requirement in Article 2.4 of the Agreement, reflected in Section 5(3)(c). This requirement, incorporated into Australian legislation by Section 269TAC(8) of the Customs Act 1901, places the same onus on the authority to adjust for differences that effect price comparability. The Ministry notes in recent Australian dumping investigations regarding products from China, that an upward adjustment for "the net difference in VAT expense" has been made to normal values.[1] The Ministry considers the Australian Customs' treatment of the differences in the VAT supports the Ministry's approach although was not determinative in the Ministry reaching its own conclusion.

Further Submission by Iceman

207. Iceman later provided the Ministry with a cost breakdown, a bill of lading, and an invoice to [redacted] for a 410g can of peach slices exported to New Zealand, in order to demonstrate that the VAT rebate is not passed on to its customers. The Ministry has already gathered this information through Iceman's questionnaire response and a thorough verification visit to the factory in Jinhua. As stated above the Ministry does not consider the accounting treatment of Iceman to be indicative of whether it would recoup the extra VAT cost in its export profit.

208. To support the contention that the difference in VAT treatment does not affect price comparability, Iceman cited an Ernst & Young "China Update"[2] relating to changes in VAT for exporters, used by the Ministry in researching this matter. The Ministry considers that comments in the "China Update" support the Ministry's position. The China update provides that changes to the VAT rebate policy (in 2004)

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[1] See for example: "Certain Silicon from China" (Trade Measures Report 81) http://www.customs.gov.au/webdata/resources/notices/REP84.pdf (last accessed 10/08/06).

[2] http://www.ey.com/global/download.nsf/China_E/China_Update_October_2003/$file/China%20Update%20October%202003.pdf (last accessed 10/08/06).

will "trigger a series of price negotiations between the exporters and their up-stream suppliers…", i.e. unlike domestic transactions, which are not affected. On an enterprise level it is difficult to isolate the VAT component of price negotiations and Iceman has not referred to the results of such negotiation. However the change in policy, on a macro level, means that those Chinese export products subject to the policy have all become more expensive both absolutely and in relation to the identical good sold domestically and as such, in the absence of evidence to the contrary, the Ministry considers an adjustment appropriate.

209. Iceman also made reference to the last sentence of Article 2.4 of the Agreement. That provides that the "authorities shall indicate to the parties in question what information is necessary to ensure a fair comparison and shall not impose an unreasonable burden of proof on those parties". The Ministry has requested and received sufficient information from Iceman and has accordingly made an adjustment. The Ministry does not consider it has imposed unreasonable burden of proof on Iceman, in terms of providing information concerning the difference in taxation between export and domestic sales, and as indicated above, Iceman has provided all information the Ministry considers necessary to make an accurate adjustment to restore price comparability. In the absence of positive evidence to the contrary, the Ministry has determined that the difference in taxation is likely to have affected a fair comparison, and has made an adjustment accordingly. The Ministry further notes that the WTO Panel decision *EC – Tube or Pipe Fittings*[3] the panel stated that:

> "[t]he issue of which specific "allowances" should be made in any case depends very much on the particular facts of the case. The last part of the last sentence of Article 2.4, that the authorities "shall not impose an unreasonable burden of proof" on interested parties, *does not remove the burden from interested parties to substantiate their assertions* concerning claimed adjustments. (emphasis added)

210. The Ministry considers this statement supports the Ministry's interpretation of the last sentence of Article 2.4, which is the burden of proof standard relates to the request for information from the parties and not to interested parties submissions concerning claimed adjustments or the authorities conclusions relating to fair comparisons. Where a party wishes to make submissions contrary to the Ministry's interim conclusions the onus is on that party to provide evidence to support its assertions. As stated above the Ministry does not consider Iceman has done so.

AHCOF International Development

Introduction

211. AHCOF does not sell preserved peaches on the domestic market in China. Normal values are therefore based on verified information provided by Dalian Leasun.

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3 *European Communities – Anti-dumping duties on Malleable cast iron tube or pipe fittings From Brazil*, (WT/DS219/R 7 March 2003 (WTO Panel Report) paras. 7.157-7.158.

Base Prices

212. The base prices are those shown in Dalian Leasun's price list. The prices relate to 360g glass jars and 850g cans of preserved peaches and are those that apply from [redacted] 2005 as the invoices issued by AHCOF to its exporter, [redacted] were [redacted] 2005.

213. The price list shows the free-into-store (FIS) price per case inclusive of VAT. The Ministry has converted the case price to a price per kg and deducted the VAT component to establish a base price.

Adjustments

Inland Freight

214. The Ministry has made a downward adjustment for the cost of inland freight based on information provided by Dalian Leasun.

Commission

215. The Ministry has made a downward adjustment, based on information provided by Dalian Leasun.

216. In establishing provisional normal values, the Ministry did not make an adjustment for commission on domestic sales. This adjustment has decreased the normal value from that shown in the provisional measures report.

Cost of Container

217. An upward adjustment has been made, based on information provided by Dalian Leasun, for the difference between the cost of the can and the cost of the glass jar. The upward adjustment has been made where the base price is the sale of preserved peaches in a glass jar. No adjustment has been made where the base price is the sale of a canned product.

Cost of Production

218. The Ministry has made a downward adjustment, based on information provided by Dalian Leasun, for the difference in the cost of production (excluding the difference in the cost of container) of preserved peaches in a can compared with that of a jar. The adjustment has been made only in instances where the base price is the sale of preserved peaches in a jar. No adjustment was made where the base price is the sale of a canned product.

Labelling

219. An upward adjustment has been made, based on information provided by Dalian Leasun, to transactions only where the base price is the sale of preserved peaches in a glass jar, for the difference in the cost of labelling between peaches in jars and cans.

Packaging

220. A downward adjustment has been made, based on information provided by Dalian Leasun, for the extra cost that is incurred, to minimise breakages in packing glass jars for transportation. The adjustment has been made only where the base price is the sale of preserved peaches in a glass jar. No adjustment has been made where the base price is the sale of a canned product.

Difference in treatment of VAT

221. The Ministry has made an upward adjustment on the basis explained from paragraph 192 for the difference in the treatment of VAT between export and domestic sales.

Cost of Credit

222. The Ministry has made a downward adjustment based on information provided by Dalian Leasun for the cost of extending credit to its domestic customers.

Beijing Huiyuan Group Feicheng

Introduction

223. Beijing Huiyuan did not provide a response to the questionnaire. To establish normal values the Ministry has used verified information provided by Dalian Leasun.

Base Prices

224. The base prices are those shown in Dalian Leasun's price list converted to a per kg price exclusive of VAT. The prices relate to the sales of 360g glass jars of preserved peaches which apply from [redacted] 2005 for [redacted] transactions and from [redacted] 2005 for the [redacted] being the dates nearest to the date of import.

Adjustments

Inland Freight

225. The Ministry has made a downward adjustment based on information from Dalian Leasun.

Commission

226. The Ministry has made a downward adjustment, based on information provided by Dalian Leasun.

227. In establishing provisional normal values, the Ministry did not make an adjustment for commission on domestic sales. This adjustment has decreased the normal value from that shown in the provisional measures report.

Cost of Container

228. An upward adjustment has been made, based on information provided by Dalian Leasun, for the difference between the cost of the can and the cost of the glass jar.

Cost of Production

229. The Ministry has made a downward adjustment, based on information provided by Dalian Leasun, for the difference in the cost of production (excluding the difference in the cost of container) of preserved peaches in a can compared with that of a jar.

Labelling

230. An upward adjustment has been made, based on information provided by Dalian Leasun, for the difference in the cost of labelling between peaches in cans and jars.

Packaging

231. A downward adjustment has been made, based on information provided by Dalian Leasun, for the extra cost that is incurred to minimise breakages in packing glass jars for transportation, which is not incurred on export sales of canned product.

Difference in Treatment of VAT

232. The Ministry has made an upward adjustment on the basis explained from paragraph 192 for the difference in the treatment of VAT between export and domestic sales.

Cost of Credit

233. The Ministry has made a downward adjustment based on information provided by Dalian Leasun for the cost of extending credit to its domestic customers.

Chic International Trading (Shanghai Pudong New Area) Co., Ltd

Introduction

234. Chic sells on the domestic market a like good to that exported to New Zealand.

235. Sales on the domestic market were made in the ordinary course of trade in arms length transactions. Domestic sales were not made at a loss and exceeded the export volume. The Ministry is satisfied that Chic's domestic sales can be used to establish normal values.

Domestic Sales Distribution

236. Chic sells preserved peaches to a wholesaler, which on-sells to the retail market. Depending upon the type and size of preserved peaches, they are

transported by truck and rail to Shanghai, or to other areas of China. The equivalent size to that exported to New Zealand is transported to Shanghai only.

237. The Ministry considers that to allow a fair comparison between export price and normal value, domestic sales by Chic should be compared with those export sales also made by Chic, as opposed to a comparison at the ex-factory level. Due to the financial and management interests that Chic's owners have in the supplying factories, the Ministry considers the domestic and export sales made by Chic to be the first arms length sale.

Base Prices

238. Chic provided copies of all purchase orders and corresponding invoices relating to sales of like goods. The Ministry used the price per case relating to the invoice made as close as possible to the time of the export sale, and converted it to a price per kg to establish a base price. The base price is exclusive of VAT.

Adjustments

Inland Freight

239. Domestic sales are made on a FIS basis. The goods are transported by truck and rail from the factory to Shanghai. The Ministry made a downward adjustment based on verified information for the cost of freight from the factory to the customer's warehouse in Shanghai.

Discounts/Rebates

240. Chic does not offer any discounts or rebates and the invoiced price is the final price.

Cost of Credit

241. The credit terms are the same for both export and domestic sales. The Ministry has not made an adjustment for extending credit to its domestic customers.

Difference in Treatment of VAT

242. The Ministry has made an upward adjustment on the basis explained from paragraph 192 for the difference in the treatment of VAT between export and domestic sales.

Physical Characteristics

243. Sales of [redacted] on the domestic market are [redacted] ([redacted]) from preserved peaches [redacted]. Consequently, the production of [redacted] incurs extra costs when compared with the production and sale of [redacted] exported to New Zealand. The Ministry is satisfied that these differences do affect price comparability and to make a fair comparison adjustments are required which are shown below under their respective headings.

Packaging

244. The Ministry made a downward adjustment for the cost of extra packaging based on verified information.

Extra Carrier

245. The Ministry has made a downward adjustment for the cost of extra carrier.

Direct Labour

246. A downward adjustment was made for the cost of additional labour based on verified information.

[redacted]

247. The Ministry made a downward adjustment for the cost of the [redacted] that is [redacted] in the production of [redacted].

Dalian Leasun Food Co., Ltd

Introduction

248. Dalian Leasun sells on the domestic market a like good to that exported to New Zealand. Dalian focuses mainly on sales on the domestic market in China. Most of the products are packaged in glass jars in sizes of 360g, 820g and 1.16kg. Cans are sold in larger sizes of 850g and 3kg.

249. Over the POI Dalian Leasun's domestic sales figures totalled [redacted] tonnes which is considerably greater than the [redacted] tonnes that it exported to New Zealand. The Ministry is satisfied that sales were not made at a loss, were in the ordinary course of trade and at arm's length and therefore were capable of comparison with export sales to New Zealand.

250. Dalian Leasun stated that most of its customers on the domestic market were wholesalers and it treated the New Zealand importer of its goods as it did any other buyer prepared to pay an agreed price for a substantial volume. The Ministry considered, under these circumstances, that no adjustment for a difference in the level of trade was warranted.

Domestic Sales Distribution

251. Dalian Leasun sells its products to wholesalers. There is usually one wholesaler to one city but in the case of a larger city there may be two wholesalers. Dalian Leasun's products are sold in approximately 100 cities.

252. All sales are on an FIS basis and the goods are transported by road or by rail depending upon how far the wholesaler is located from Dalian Leasun's factory.

Base Prices

253. Dalian Leasun's list prices were verified against invoiced domestic sales. List prices were considered most appropriate to establish base prices.

254. The base price is the list price that applied on the date of sale, which has been converted to a per kg price exclusive of VAT.

Adjustments

Terms and Conditions of Sale

Commission

255. Dalian Leasun offers a `commission´ (effectively a rebate or discount) on domestic sales if the wholesaler orders a regular amount and sells an agreed quantity. Verified information shows that most domestic sales qualify for this allowance and accordingly, a downward adjustment for commission has been made.

Damaged Product

256. Dalian Leasun reimburses their clients for damaged goods or if complaints have been made. The Ministry considers that both damage and customer complaints allowances are essentially customer service costs and unlikely to affect the price of specific goods. Consequently no adjustment has been made.

Entrance Charges

257. Before a product is sold into a new area or supermarket an entrance charge is normally paid to the wholesaler or supermarket. The Ministry considered that these charges were one-off costs and not an ordinary component of the selling price. No adjustment was made for entrance charges.

Promotions

258. Various in-store promotions by supermarkets are funded by Dalian Leasun. The Ministry considered this expenditure is in the nature of general advertising and not devoted to a particular sale so does not have a direct effect on the net price. No adjustment was made for promotional costs.

259. The decision regarding general advertising expenditure is consistent with the Ministry's treatment of trade spend by the New Zealand industry, HW (refer to paragraph 376). This is because the co-operative advertising spend undertaken by HW relates to the particular sales made at the time the expense is incurred, while (according to information made available to the Ministry) Dalian Leasun's promotional funding is a general expense and not specific to particular sales.

Packaging

260. Dalian Leasun's exports are 3x3kg cartons, while its domestic sales are 6x3kg. A downward adjustment has consequently been made to normal values by the

Ministry to reflect the higher cost of domestic cardboard per kg, based on information provided by Dalian Leasun.

Cost of Credit

261. Dalian Leasun offers [redacted] credit facility to its domestic customers, which are dependent upon the volume and regularity of orders. The Ministry considered the purchasing arrangement of the New Zealand importer who if it was a domestic customer would be offered a credit term of [redacted] days. The Ministry has made a downward adjustment for the cost of extending credit for [redacted] days. The interest rate is that of the PBC of 1.71%, which is the three month lump sum deposit rate.

Inland Freight

262. The Ministry has made a downward adjustment for inland freight based on verified information.

Difference in Treatment of VAT

263. The Ministry has made an upward adjustment on the basis explained from paragraph 192 for the difference in the treatment of VAT between export and domestic sales.

Physical Characteristics

264. Base prices used to establish normal values relate to sales of 3kg cans which is the same size and type of container exported to New Zealand. However, domestic sales are diced peaches whereas export sales are sliced peaches. Dalian Leasun does not differentiate its prices based on the different cuts therefore no adjustment has been made.

Guangxi Fungrich Import & Export Co

Introduction

265. Guangxi Fungrich did not provide a response to the questionnaire. However, as noted in paragraph 153 above, it is known that it sources its products from [redacted]. As noted in paragraph 155 above, in the absence of information from [redacted], normal values have been compared to export prices at the ex-Guangxi Fungrich level.

266. To establish normal values the Ministry has used verified information provided by Dalian Leasun.

Base Prices

267. The base prices are those shown in Dalian Leasun's price list converted to a per kg price exclusive of VAT. The prices are for 850g cans of preserved peaches that apply from [redacted] 2005 for [redacted] and [redacted]

[redacted] 2005 for the [redacted] transactions, being the dates nearest to the dates of the export sales to New Zealand.

Adjustments

Margin

268. In the absence of information from the relevant parties the Ministry has added a margin to the base price because if Guangxi Fungrich were to sell like goods on the Chinese domestic market it would expect a margin as it does on export sales. This adjustment is made because as an exporter, Guangxi Fungrich must purchase its goods from a manufacturer, [redacted]. This means that any comparisons of export transactions with normal values are made at a different level of trade to Dalian Leasun, which manufactures its own goods.

269. The margin is based on information from [redacted] which is an intermediary for sales between [redacted] and [redacted] and sells the same size product (820g) as Guangxi Fungrich.

Inland Freight

270. The Ministry has made a downward adjustment for inland freight based on information provided by Dalian Leasun.

Commission

271. The Ministry has made a downward adjustment, based on information provided by Dalian Leasun.

272. In establishing provisional normal values, the Ministry did not make an adjustment for commission on domestic sales. This adjustment has decreased the normal value from that shown in the provisional measures report.

Cost of Credit

273. The Ministry has made a downward adjustment based on information provided by Dalian Leasun for the cost of extending credit to its domestic customers.

Difference in Treatment of VAT

274. The Ministry has made an upward adjustment on the basis explained from paragraph 192 for the difference in the treatment of VAT between export and domestic sales.

Laiwu Prince Import & Export Co., Ltd

Introduction

275. Laiwu Prince did not provide a response to the questionnaire. As noted in paragraph 161 above, in the absence of information normal values have been compared to export prices at the ex-Laiwu Prince level.

276. To establish normal values the Ministry has used verified information provided by Dalian Leasun.

Base Prices

277. The base prices are those shown in Dalian Leasun's price list, which have been converted to a price per kg exclusive of VAT. The prices relate to the sales of 360g glass jars of preserved peaches that apply from [redacted] 2005, being the dates nearest to the date of export.

Adjustments

Margin

278. In the absence of information from the relevant parties the Ministry has added a margin to the base price because if Laiwu Prince were to sell like goods on the Chinese domestic market it would expect a margin as it does on export sales. This adjustment is made because as an exporter, Laiwu Prince must purchase its goods from a manufacturer. This means that any comparisons of export transactions with normal values are made at a different level of trade to Dalian Leasun, which manufactures its own goods.

279. The margin is based on information from [redacted] which is an intermediary for sales between [redacted] and [redacted] and sells the same size product (410g can) as Laiwu Prince.

Inland Freight

280. The Ministry has made a downward adjustment for inland freight based on information provided by Dalian Leasun.

Commission

281. The Ministry has made a downward adjustment, based on information provided by Dalian Leasun.

282. In establishing provisional normal values, the Ministry did not make an adjustment for commission on domestic sales. This adjustment has decreased the normal value from that shown in the provisional measures report.

Cost of Container

283. An upward adjustment has been made, based on information provided by Dalian Leasun, for the difference between the cost of the can and the cost of the glass jar.

Cost of Production

284. The Ministry has made a downward adjustment, based on information provided by Dalian Leasun, for the difference in the cost of production (excluding the difference in the cost of container) of preserved peaches in a can compared with that of a jar.

Labelling

285. An upward adjustment has been made, based on information provided by Dalian Leasun, for the difference in the cost of labelling between peaches in cans and jars.

Packaging

286. A downward adjustment has been made, based on information provided by Dalian Leasun, for the extra cost that is incurred to minimise breakages in packing glass jars for transportation, which is not incurred on export sales of canned product.

Difference in Treatment of VAT

287. The Ministry has made an upward adjustment on the basis explained from paragraph 192 for the difference in the treatment of VAT between export and domestic sales.

Cost of Credit

288. The Ministry has made a downward adjustment based on information provided by Dalian Leasun for the cost of extending credit to its domestic customers.

Zhejiang Cereals, Oils & Foodstuffs

Introduction

289. Zhejiang Cereals did not provide a response to the questionnaire. However, some information, that relates to export sales only, was provided by the intermediary and importer. As noted in paragraph 169 above, in the absence of sufficient information normal values have been compared to export prices at the ex-Zhejiang Cereals level.

290. To establish normal values the Ministry has used verified information provided by Dalian Leasun.

Base Prices

291. The base prices are those shown in Dalian Leasun's price list, which have been converted to a price per kg exclusive of VAT. The prices are those that apply from [redacted] 2005, being the dates nearest to the date of export.

Adjustments

Margin

292. In the absence of information from the relevant parties the Ministry has added a margin to the base price because if Zhejiang Cereals were to sell like goods on the Chinese domestic market it would expect a margin as it does on export sales. This adjustment is made because as an exporter, Zhejiang Cereals must purchase its goods from a manufacturer. This means that any comparisons of export

transactions with normal values are made at a different level of trade to Dalian Leasun, which manufactures its own goods.

293. The margin is based on information from [redacted] which is an intermediary for sales between [redacted] and [redacted] and sells a like product.

Inland Freight

294. The Ministry has made a downward adjustment for inland freight based on verified information provided by Dalian Leasun.

Terms and Conditions of Sale

Commission

295. The Ministry has made a downward adjustment based on information provided by Dalian Leasun.

Cost of Credit

296. The Ministry has made a downward adjustment based on information provided by Dalian Leasun for the cost of extending credit to its domestic customers.

Difference in Treatment of VAT

297. The Ministry has made an upward adjustment on the basis explained from paragraph 192 for the difference in the treatment of VAT between export and domestic sales.

Zhejiang Iceman Foods Co., Ltd

Introduction

298. Zhejiang Iceman sold a small volume of preserved peaches on the domestic market over the POI. The Ministry considered these sales in terms of Article 2.2 of the Agreement i.e. whether they constituted five per cent or more of export sales to New Zealand and whether they were in the ordinary course of trade to determine if they could be used to establish normal values. The Ministry also considered that if they did represent less than five per cent of export sales, whether they could be used if the evidence demonstrated that such sales were of a sufficient magnitude to provide for a proper comparison.

299. The Ministry found that Iceman's domestic sales represented [redacted] per cent of export sales to New Zealand. Information presented to the Ministry indicated that the majority of sales on the domestic market were not in the ordinary course of trade, by virtue of being made at a loss and at prices that did not provide for the recovery of costs within a reasonable period of time. The Ministry, therefore, considered that domestic sale information was inappropriate for comparison with export sales.

300. The Ministry, therefore, used verified information provided by Dalian Leasun to establish normal values.

Base Prices

301. The base prices are those shown in Dalian Leasun's price list, which have been converted to a price per kg excluding VAT. The prices are those that applied to all sizes from [redacted] 2005 and 360g jar and 3kg can price from [redacted] 2005. The relevant period was based on the nearest date to the date of export.

Adjustments

Inland Freight

302. The Ministry has made a downward adjustment for inland freight based on information provided by Dalian Leasun.

Commission

303. A downward adjustment has been made based on information provided by Dalian Leasun.

Physical Characteristics

Cost of Production

304. The Ministry has made a downward adjustment for the differences in the cost of production between sales of Iceman and those of Dalian Leasun.

Cost of Container

305. In instances where the list price of a 360g glass jar of preserved peaches has been used, an upward adjustment has been made, based on information provided by Dalian Leasun, for the difference between the cost of the can and the cost of the glass jar.

Labelling

306. In instances where the list price of a 360g glass jar of preserved peaches has been used an upward adjustment has been made, based on information provided by Dalian Leasun, for the difference in the cost of labelling between peaches in cans and jars.

Cost of Packaging and Separator

307. A downward adjustment has been made for the cost of packaging based on information provided by Iceman. In instances where the base price refers to the sale of 360g glass jar, an additional cost for the cardboard separator has been included in the adjustment, based on information provided by Dalian Leasun.

Submission by Iceman

308. Iceman submitted that the Ministry's use of Dalian Leasun's 360g glass jars to establish normal values for comparison with export sales of 410g cans is incorrect.

Iceman submitted that a more accurate evaluation of export prices and normal values would be based on products with similar packaging materials – i.e. canned products – and not similar sizes.

309. Given the large number of adjustments made, Iceman asked why comparison with "another like good" for establishing normal values was not considered. Iceman suggested that because the costs of producing and selling a 360g glass jar are too different for an effective per kg comparison with a canned good, the ex-factory normal value of a 410g product should be based on Dalian Leasun's per kg sales price of a 850g can.

310. Normal values are determined as set out in section 5 of the Act. If like goods are not sold by the exporter, normal values are, if possible, established by using prices of other sellers of like goods in terms of section 5(1).

311. As stated in paragraph 189, the Ministry is satisfied that domestic sales of Dalian Leasun can be used to establish normal values for Iceman for all sizes of preserved peaches. Further, the Ministry regards the 360g glass jar sold by Dalian Leasun to be the most appropriate product for comparison with the exported 410g can.

312. In concluding that the 360g jar was the most appropriate product for comparison, the Ministry considered the variation in per kg prices between different container sizes, both in China and NZ and the like goods considerations discussed in section 3.1. In China, smaller sized retail goods (such as 360g and 410g) were priced consistently higher per kg than commercial foodservice and wholesale oriented preserved peaches (3kg). The per kg prices of 820g and 850g products were between the two, but closer to the large 3kg cans. In suggesting that the Ministry consider comparing 850g sales of Dalian Leasun with 410g sales, Iceman has not addressed how an adjustment is to be made to reflect these per kg differences.

313. The Ministry considers that end users demand specific sizes for different uses from either retail supermarkets or wholesalers. Therefore the comparability of the different models within the subject goods description is driven more by size of the container than the material composition or manufacturing process. This means that the different container sizes are subject to, inter alia, different marketing practices, distribution channels, end use, and pricing strategies in each country depending on consumer preferences and particular market conditions. A reasonable conclusion is therefore that a 360g pack of preserved peaches is more like a 410g pack than a 850g or 3kg pack, regardless of container type. This accords with the Ministry's like goods analysis in paragraph 97.

314. Iceman noted that in instances where the Ministry established normal values for 820g and 3kg cans, for comparison with export sales of the same size cans, there was no dumping, but a comparison between jars and cans resulted in a positive margin.

315. The Ministry considers that different dumping margins for different models are a normal consequence of firm's pricing decisions in different markets. This reflects the price discrimination that the Act and the Agreement were enacted to address and

cannot be indicative of incorrectly matched like goods per se. The Ministry considers that because physical differences between can and glass containers have been adjusted for, any remaining differences are likely to be due to the pricing behaviour of the seller.

316. Article 2.4 of the Agreement requires a fair comparison to be made between the export price and normal value. Section 5(3)(c) of the Act requires the Ministry's comparison to make due allowances for any differences that affect price comparability. The variation in the cost of production, container, labelling, and packing material has thus been allowed for in adjusting normal values. In establishing a due allowance for differences in the cost of the container, the Ministry used cost information over the POI provided by Iceman and compared that with the cost information provided by Dalian Leasun. The net weight of the goods was used to calculate a cost per kg for comparative purposes.

317. The manufacturing process (cost of production) includes the costs of materials, direct labour, and overheads. The Ministry compared Iceman's costs to manufacture the 410g can and Dalian Leasun's cost to manufacture a 360g glass jar and accordingly made a downward adjustment to the normal value reflecting that difference.

318. Iceman further submitted that the adjustments made by the Ministry should incorporate different selling expenses between jars and cans, such as discounts, rebates, promotion, and shelf expenses. Iceman stated that there are significant differences in selling expenses in the domestic market for 360g glass jars. Iceman said that once the domestic sales reach a certain amount, the selling expenses (such as discount, rebate, promotion and shelf life expense etc) will increase greatly, while there are no such expenses for the exported product.

319. In instances where differences may exist, it must be demonstrated how those differences affect price comparability. The Ministry considers that the general selling expenses Iceman is referring to are of the nature of general advertising and are not specific to a particular sale and, unlike cost of production and inputs, have no direct effect on the per unit price. Demand promotion or general advertising is hence considered by the Ministry to be a second-order influence on pricing behaviour, and therefore not quantifiably attributable to actual sales. The Ministry did, however, make a downward adjustment to normal values for those discounts and rebates granted by Dalian Leasun which reduced the net invoice price paid by customers, and which can be traced to specific transactions.

Cost of Credit

320. The Ministry has made an adjustment based on information provided by Dalian Leasun for the cost of extending credit to its domestic customers.

Difference in Treatment of VAT

321. The Ministry has made an upward adjustment on the basis explained from paragraph 192 for the difference in the treatment of VAT between export and domestic sales.

4.4 Dumping Margins

Comparison of Export Price with Normal Value

322. **Appendix One** shows the ranges of normal values, export prices and dumping margins, and the dumping margin as a percentage of export price for different container sizes.

323. Article 5.8 of the Agreement provides that there shall be immediate termination in cases where the authorities determine that the margin of dumping is *de minimis*. The margin of dumping is considered to be *de minimis* if this margin is less than 2 per cent, expressed as a percentage of the export price. The Ministry has established that the dumping margin, established for the purposes of Article 5.8, using the method described in Section 4.1, is 22 percent.

324. Over the POI preserved peaches were exported to New Zealand in four different sizes. None of the exporters in the selection exported all four types. The comparison of export price and normal values established, on the basis of weight averaging the dumped transactions, that for two container sizes no dumping occurred in regards to the preserved peaches exported over the POI.

Submission by Iceman

325. In its response to the Ministry's verification report for that company, Iceman advised it considered that, in determining dumping margins, the Ministry has used a method "incorporating the practice of zeroing". Iceman noted that the WTO Dispute Settlement Body (DSB) had found the practice of zeroing to be inconsistent with members obligations under the Agreement, in particular Article 2.4.2, and cited *EC - Bed Linen*[4], *US - Softwood Lumber*[5] and *US - Zeroing*[6] as examples of this.

326. Although the above DSB decisions relate to specific types of zeroing, (so called 'model' and 'simple' zeroing), the Ministry understands zeroing, generally, to be the practice of assigning a value of zero to comparisons between export price and normal value, where the export price is greater than the normal value (a "negative" margin). To date the DSB has found the zeroing methodology inconsistent with the Agreement only in so far as it relates to comparisons between normal values and export prices made using the weighted average to weighted average method, one of two principal methods for establishing dumping margins laid down in Article 2.4.2 of the Agreement.

327. The Ministry's methodology, on the other hand, consists of comparing export prices and comparable normal values on a transaction-to-transaction basis, the other

4 *European Communities — Anti-dumping duties on imports of Cotton-type Bed Linen from India* (WT/DS/141/R) 30 October 2000 and (WT/DS141AB/R) 1 March 2001.
5 *United States - Final Dumping Determination on Softwood Lumber from Canada* (WT/DS264/R) 13 April 13 and (WT/DS264/AB/R) 11 August 2004.
6 *United States - Laws, Regulations and Methodology for Calculating Dumping Margins ("Zeroing")* (WT/DS294/R) 31 October 2005 and (WT/DS294/AB/R) 18 April 2006.

principal method permitted by Article 2.4.2. The Ministry's methodology focuses on those transactions which are dumped and does not attach notional values to those un-dumped transactions as zeroing does. Un-dumped transactions are treated as such and are removed from the calculation of the dumping margin and the volume of dumped imports for the purpose of injury analysis. The Ministry considers its practice to be quite distinct from the zeroing methodology discussed above and that its methodology is consistent with the obligations placed upon it by the Agreement and DSB jurisprudence.

Submission by Chic

328. During the POI Chic exported only [redacted] small shipment, of [redacted] [redacted] which was not dumped. Chic has submitted that because this exportation was not dumped, no anti-dumping duty should apply to any other types and sizes of preserved peaches that it may export in future. Chic argued that this interpretation was "in line with the relevant provisions of the [Agreement], as interpreted by the Appellate Body in various cases, such as [*EC - Bed Linen*]".

329. Residual provisional anti-dumping duties were imposed at rates equal to the overall weighted-average margin of dumping calculated for each container size. The residual provisional duty applied to any exporters who were not part of the selection investigated; and to those exporters in the sample who did not export that container size during the POI. If final anti-dumping duties are imposed, the Ministry considers that residual anti-dumping duties should be imposed on the same basis (although the method used to impose duties may differ from that used to impose provisional duties) except that final duties would not be imposed on container sizes that are dumped where the dumping margin is less than two percent. The residual provisional anti-dumping duties imposed included a rate for 3 kg containers that were dumped but at a margin of dumping of less than two percent. Further investigation since the provisional dumping margins were calculated has established that 3 kg containers are now un-dumped and no final duty for 3kg containers is proposed.

330. Section 14(1) of the Act provides the basis of the Ministry's approach, and states in relevant part as follows:

> At any time after the Minister makes a final determination under section 13 (1) of this Act in relation to goods, the Minister may give notice of the rate or amount of duty determined under subsection (4) of this section (which notice may be given simultaneously with, or at any time after, the notice given under section 13 (2) of this Act) and there shall, with effect on and from the applicable date referred to in section 17 of this Act, be imposed,–
>
> (a) <u>In respect of those goods that are dumped</u>, a duty to be known as anti-dumping duty: [Emphasis added]

331. Under section 14(1) of the Act anti-dumping duty can only be imposed in respect of those goods that are dumped. In this case, there are a number of distinct sizes of container in which the subject goods are exported to New Zealand with prices per kilogram that vary depending on the container size. In order to ensure a fair comparison, export prices and normal values relating to preserved peaches in the same size containers have been compared (or where this was not possible, adjustments have been made to take account of differing container sizes) on a transaction-to-transaction basis.

332. Applying this method, based on those transactions that were dumped, has allowed the Ministry to:

(a) determine whether each container size exported by each exporter under investigation was dumped; and

(b) determine whether each container size exported over the POI was dumped taking into account exports by all exporters under investigation.

333. Where a container size exported by an exporter is not dumped, or the dumping margin is *de minimis*, as with exports by Chic of peaches in [redacted] containers, then no anti-dumping duty is proposed for exports by that exporter for that size of container. As a corollary, where a container size exported by an exporter is dumped at a dumping margin greater than *de minimis*, then a rate of anti-dumping duty is proposed for exports by that exporter for that size (based on the dumping margin particular to that exporter for that container size.)

334. Where an examination of exports by all exporters under investigation has established that exports of peaches in a particular container size are dumped at a dumping margin greater than *de minimis* then, as required by section 14(1) of the Act, a residual anti-dumping duty is proposed for that container size. At the same time, if the same examination has established that a particular container size is not dumped or dumped but at a *de minimis* margin, then no anti-dumping duty is proposed for that container size (as is the case with peaches in 120g and 3kg containers.)

335. The proposal that a residual rate be imposed against each container size that is dumped means that exporters who did not export during the POI a container size subject to a residual rate will only have duty levied on their exports should they subsequently *begin* to export that container size. It also means the residual rate will apply to any exporters outside of the selection investigated and to any new exporters who did not export the subject goods during the POI. The imposition of residual rates of duty in this way does not mean that a duty has been imposed against Chic *per se*, rather it means that Chic (and any other exporters without separate rates of duty for the container sizes to which the residual rates apply) will be subject to those residual rates should they *begin* to export the relevant container sizes.

336. The Ministry notes that under section 14(6) of the Act, an exporter subject to a residual rate of duty would be eligible to request a reassessment in order to establish a margin of dumping for that particular container size if it considered that the residual rate did not reflect its margin of dumping. The Ministry further notes that under section 14(10) of the Act, the Minister has a general discretion to grant refunds, and a particular discretion to require refunds following reassessments, of any duty paid at a higher rate during the reassessment.

337. The Ministry considers that imposing duty in the manner explained above provides the domestic industry the protection to which it is entitled, because it focuses on the container sizes that are dumped and causing injury. At the same time it does not impose anti-dumping duty on container sizes that were not dumped by individual exporters. It also best reflects the dumping found between the different container sizes, i.e. 120g and 3kg containers are not dumped and the 410g and

820g containers are dumped at significant margins, with the great majority of the dumped import volumes being of the 410g containers. The Ministry therefore considers it represents the fairest and most accurate method of imposing anti-dumping duties.

338. The Ministry also considers this approach to be consistent with the Agreement. The Appellate Body decision specifically referred to by Chic, *EC – Bed Linen*[7]*,* found that in applying the weighted average-to-weighted average methodology, it was not permissible to apply the practice of "zeroing" when aggregating the results of model-by-model comparisons. The Appellate Body also found that "whatever the method used to calculate the margins of dumping, in our view, these margins must be, and can only be, for the *product* under investigation as a whole"[8].

339. In this case the dumping margin for the product as a whole, as recorded in **Appendix One**, is greater than *de minimis*. The Ministry does not consider the *EC - Bed Linen* case requires anti-dumping duty be imposed on all of the models making up the product as a whole when a model-by-model analysis shows that some models are not dumped. Rather, as noted above, the Ministry considers a fairer method is to impose duty only on those models that are dumped, and where an exporter is not dumping a particular model that on an aggregate basis is dumped, not to impose duties on that exporter for that model.

Volume of Dumped Imports

340. Section 11(1) of the Act provides that where the Minister is satisfied, in respect of some or all of the goods under investigation, that there is insufficient evidence of dumping or injury to justify proceeding with the investigation, then the investigation shall be terminated. 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.

341. The Agreement deals with the negligibility of dumped imports under Article 5.8 and provides that volumes of dumped imports are negligible if they are less than 3 per cent of total imports of like goods, unless countries which individually account for less than three per cent of imports of like goods collectively account for more than seven per cent of imports of like goods.

342. The fourth Ministerial Conference at Doha in November 2001 decided that a number of implementation-related issues and concerns in the anti-dumping area needed to be addressed. One such issue was to ensure the maximum possible predictability and objectivity in the application of timeframes when determining the volume of dumped imports that can be considered negligible. New Zealand notified the WTO Committee on Anti-dumping Practices in document G/ADP/N/100/NZL of 24 January 2003, that, in determining negligible import volumes, it will use "the

7 Appellate Body Report, above n 4.
8 Appellate Body Report See above, n 4, para 53.

period of data collection for the dumping investigation" as its preferred timeframe in all future investigations. The period of data collection for considering negligibility is the POI, i.e. 12 months to 31 December 2005.

343. The Ministry has excluded in its calculation the imports of the New Zealand industry from all categories. The volume of dumped and non-dumped goods as well as imports from other countries, for the POI from 1 January to 31 December 2005, and the percentage that dumped and non dumped imports represent of total imports of like goods, is shown in Table 4.2 below.

Table 4.2: Volume of Dumped Imports (Year Ended 31 December 2005)

	Volume	**%**
Dumped Imports from China (excluding HW imports)	[redacted]	[redacted]
Non-Dumped Imports from China (excluding HW imports)	[redacted]	[redacted]
Other Imports	[redacted]	[redacted]
Total Imports	[redacted]	100%

344. On the basis of this information, dumped imports of the subject goods from China are not negligible.

4.5 Conclusions Relating to Dumping

345. The investigation has established that 1,470,530 kgs of preserved peaches from China have been dumped during the POI. Dumping margins as a percentage of export prices range from -34 per cent (un-dumped) to 391 per cent (dumped).

5. Evidence of Injury

5.1 Material Injury

346. The basis for considering material injury is set out in section 8 of the Act. The Ministry interprets section 8 to mean that injury is to be considered in the context of the impact on the industry arising from the volume of the dumped goods and their effect on prices.

347. Section 8 also sets out a number of factors and indices which the Chief Executive shall have regard to, although noting that this is without limitation as to the matters the Chief Executive may consider. These factors and indices are considered under the relevant headings below.

348. The demonstration of a causal relationship between the dumped imports and the injury, or threat thereof, must be based on an examination of all relevant evidence and any known factors other than the dumped imports, which are injuring, or threatening to injure, the domestic industry. Any injury caused or threatened by factors other than dumping must not be attributed to the dumped imports.

349. The historical financial information in the injury analysis section of this report is presented in years ended 30 April, which aligns with HW's financial year, and covers the period 1 May 2002 to 30 April 2003, the last non-injurious period, to 30 April 2006.

350. HW provided the Ministry with financial information as requested for the purpose of injury analysis. HW utilises a standard costing system and the financial information provided relating to preserved peaches is based on standard costs being allocated to sales occurring within the financial period. This has subsequently been adjusted for variances from standard cost, using variance data provided by HW.

351. The Ministry is required to consider the injurious effects on the New Zealand industry producing goods like the imported subject goods. In order to consider injury in terms of HW's domestic production of preserved peaches only, the Ministry has, set out financial information relating to the income and expenditure associated with sales of New Zealand domestic production only.

352. In order to separate the financial data relating to domestic production from the overall financial information relating to HW's preserved peach business, the Ministry requested and received from HW information on the volume and cost of imported goods, by financial year. In order to establish the annual sales volume of imports, and determine the volume of domestically produced goods, the Ministry has used finished goods purchase price variance (PPV) data provided by HW, which provides the volume and Free into Store (FIS) costs of imported preserved peaches. Because imports are allocated to the PPV data [redacted], the Ministry considers the date of allocation to the PPV data to be representative of the actual date of sale for imported goods.

353. The Ministry has deducted the costs and volume of imported goods from the total sales volume of preserved peaches in each year to establish the sales volume and standard costs associated with domestically produced goods sold that year (sales of domestic production). HW has also provided the Ministry with a manufacturing variance analysis and fixed overhead costs relating specifically to peaches, rather than the fruit and vegetable standard overhead rate which was originally supplied as part HW's application, to allow the Ministry to adjust the standard costs and to establish the actual cost of production for domestically produced preserved peaches as well as the actual cost of total HW's sales of like goods (total HW sales).

354. Following the release of the EFC report HW identified that the fixed overhead variance was understated due to an error. The Ministry has corrected this error in the HW P&L, which has reduced profitability in all years but has reduced 2003 profit substantially. As discussed in other parts of this report, due to a severe frost the crop of raw peaches was very small in 2003 and the per unit fixed costs attributable to peaches were significantly higher than other years, substantially reducing profitability. 2003 is the non-injurious year proposed by HW, from which to compare subsequent year's financial information in order to determine the injurious effect of the dumped goods. HW also proposed that profit margins in 2003 form a component of HW's non-injurious prices (NIPs). Due to the actual profitability result in 2003 being significantly below HW's earlier estimations, HW has proposed that the NIP be established using a different method and that the Ministry take into account the fact that 2003 profitability was seriously effected by the small crop size when considering the injurious effect of the dumped goods on HW. To the extent possible, the Ministry has taken this factor into account when considering injury. The determination and calculation of HW's NIPs is discussed below at paragraph 381.

355. The PPV data also provides the stock keeping unit (SKU) which identifies the brand, container size, cut and carrier of the imported goods. Using this information, sales of imports and domestically produced like goods have been determined on an SKU basis, for the purposes of better considering price effects and economic impact on the sales of domestic production. Where the imported quantity of a particular SKU is greater than total sales of that SKU during the year, sales of domestic production is assumed to be zero and the residual imported quantity is assumed to be sold 'first' in the following year.

356. The injurious effect of dumped imports may also be considered in relation to HW's total preserved peach business. For this reason, information relating to HW's total preserved peach business is also included in this report as part of, consolidating information relating to HW's domestic and import operations.

357. Consideration of HW's total income and expenses relating to sales of preserved peaches (total HW sales) also allows the Ministry to consider the injurious effects of the dumped goods because:

- the volume of domestic production depends on the size of the peach crop from HW's contracted growers and the size of the crop has fluctuated significantly because of disease and weather events; and

- HW 'tops up' its domestic production with imports which, on an SKU basis, are priced the same and incur the same selling costs as domestic production.[9]

358. Based on the Ministry's conclusions in relation to like goods, the Ministry has extracted all sales of the Weight Watchers product from the injury analysis.

5.2 Import Volumes

359. 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.

360. All dumped and 'other import' volumes are based on customs data for the relevant financial year. Depending on the date of import, the injurious effects of dumped imports may therefore be felt in the following year, when the goods are sold. Import volumes relating to HW have been established on the basis of the method described above in paragraph 352, and are therefore substantially more likely to be sold in the year of import.

361. Table 5.1 below shows the volume of subject good imports into New Zealand that are dumped and compares them with HW's domestic, imported and total sales and the total New Zealand market. Over the POI 81 per cent of imports from China have been found to be dumped. For the purpose of this table it has been assumed that the same proportion of imports of the subject goods was dumped for the other periods shown. Import data in the following table has been adjusted to remove that proportion of non-subject goods found in the Ministry's selection of exporters investigated. Imports by HW have also been removed from both dumped imports from China and other imports. Total HW imports are under "Sales of imports by HW". The reason for this is discussed in paragraph 499 below.

Table 5.1: Import Volumes (kg)

	2003	2004	2005	2006
Dumped Imports from China**	[redacted]	[redacted]	[redacted]	[redacted]
Other Imports**	[redacted]	[redacted]	[redacted]	[redacted]
Sales of NZ Domestic Production	[redacted]	[redacted]	[redacted]	[redacted]
Sales of Imports by HW	[redacted]	[redacted]	[redacted]	[redacted]
Total HW Sales*	[redacted]	[redacted]	[redacted]	[redacted]

9 Although imported and domestically produced goods of the same SKU would be priced the same, due to the mix of SKU's in different years, actual average prices between domestic and imported preserved peaches will vary.

NZ Market	[redacted]	[redacted]	[redacted]	[redacted]
<u>Change on previous year:</u>				
Dumped Imports from China**		[redacted]	[redacted]	[redacted]
Other Imports**		[redacted]	[redacted]	[redacted]
Sales of NZ Domestic Production		[redacted]	[redacted]	[redacted]
Sales of Imports by HW		[redacted]	[redacted]	[redacted]
Total HW Sales*		[redacted]	[redacted]	[redacted]
NZ Market		[redacted]	[redacted]	[redacted]
<u>Percentage Change:</u>				
Dumped Imports from China**		[redacted]	[redacted]	[redacted]
Other Imports		[redacted]	[redacted]	[redacted]
Sales of NZ Domestic Production		[redacted]	[redacted]	[redacted]
Sales of Imports by HW		[redacted]	[redacted]	[redacted]
Total HW Sales*		[redacted]	[redacted]	[redacted]
NZ Market		[redacted]	[redacted]	[redacted]
<u>Dumped Imports from China as a Percentage of:</u>				
Sales of NZ Domestic Production	[redacted]	[redacted]	[redacted]	[redacted]
Sales of Imports by HW	[redacted]	[redacted]	[redacted]	[redacted]
Total HW Sales*	[redacted]	[redacted]	[redacted]	[redacted]
NZ Market	[redacted]	[redacted]	[redacted]	[redacted]

*Includes HW's imports

**Excludes HW's imports

362. There have been significant increases in the volumes of dumped imports both in absolute terms and relative to total HW sales and the NZ market since the pre-injury period of 2003.

363. Between 2003 and 2006 the volumes of dumped imports increased significantly in absolute terms. Between 2003 and 2006 the volume of dumped imports increased by 100 per cent and relative to total HW sales from [redacted] to [redacted] per cent. Between 2003 and 2006, the volume of dumped imports also increased relative to the total market from [redacted] per cent in 2003 to [redacted] per cent in 2006. Dumped imports from China have decreased in 2006, as a percentage of both New Zealand industry sales and the total market. It is possible that recent import volumes from China may have reduced

due to the uncertainty created by the initiation of the investigation to which this report relates. Dumped imports are still significant and are well in excess of 2003 volumes.

5.3 Price Effects

Price Undercutting

364. 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.

365. In order to assess price undercutting, prices of the imported and domestically manufactured product must be compared at the same level of trade to ensure that the existence and extent of any price undercutting is correctly assessed. In determining the correct level of trade the Ministry looks at the first point at which the imported and domestically manufactured products compete in the New Zealand market.

Level of Trade

366. HW essentially sells preserved peaches to two large customers, Progressive Enterprises and Foodstuffs NZ Ltd, (the supermarket chains), although Foodstuffs NZ Ltd (Foodstuffs) is split into three regional co-operative companies. The supermarket chains sell goods at the retail level, through affiliated supermarkets and via 'cash and carry' food service operations, such as James Gilmour & Co Ltd, which cater to commercial customers. Between them the supermarket chains control almost the entire grocery retail market in New Zealand, and are also major players in the food service sector of the grocery market.

367. HW advised that it considers the correct comparison is HW's ex-factory prices with importers' ex-wharf prices. HW advised that many importers also sell to the supermarket chains. The Ministry notes that [redacted] and possibly [redacted], all sold subject goods to the supermarket chains during 2005.

368. [redacted]. The supermarket chains satisfy most of their private label requirements through importing but have awarded a [redacted] amount of their private label business to HW during the injury period and also buy HW's own branded product, and branded product from other importers.

369. The supermarket chains' decision is to compare prices of the overseas supplier, [redacted], with the prices of other importers and with HW's prices (both are FIS prices). The Ministry considers that the supermarket chains could also purchase directly from overseas suppliers if it was in their best interests.

370. Consequently HW competes with overseas suppliers directly and through New Zealand importers, to supply preserved peaches to the supermarket chains.

371. Two of the importers ([redacted] and [redacted]) appear to sell primarily to the food service sector or food manufacturers. The others appear to sell either exclusively to the supermarket chains or a mixture of supermarket and food service customers. HW did not comment on whether it would sell goods to those importers. Assuming they could purchase from HW all of the other importers also face the choice of either buying from HW or importing. Iceman proposed, in response to the EFC report, that this is not always the case, because HW does not have the capacity to meet market demand. The Ministry's assessment of level of trade considers the purchasing decisions faced by customers and importers. While it is true that HW could not supply the entire market demand from domestic supply, the Ministry does not consider this factor excludes HW from the sourcing decision faced by companies when purchasing preserved peaches, as in almost all cases HW is capable of supplying the order with either domestic or imported product.

372. Because the choice that the supermarket chains and the other importers face is whether to purchase from HW or to import from elsewhere, the Ministry considers, for price undercutting purposes, the appropriate comparison is between HW's ex-factory price and the ex-wharf import price.

Price Undercutting

373. For the year ended 31 December 2005, FOB prices into New Zealand have been adjusted to include costs between FOB and ex-wharf, based on information supplied by the importer or in the absence of that using a combination of Customs data, for freight and insurance and information provided by [redacted] or [redacted].

374. Import prices per kg at the ex-wharf level for each container size have been compared with the New Zealand industry's 2005 average Net Sales Value (NSV) for each container size. The NSVs represent HW's list selling prices net of all trade spend. Trade spend represents the various forms of promotional expenditure undertaken by Watties as part of selling its products but does not include general marketing expenses such as advertising.

375. The Ministry has discussed with HW the nature of the various components of trade spend and HW's treatment of these within its accounting system. In previous anti-dumping investigations involving HW peaches, particular components of the trade spend had been treated differently based on the Ministry's understanding of how HW's selling and accounting systems treated the various components of trade spend.

376. The co-operative advertising component of the trade spend had been treated as a general selling and administrative spend rather than a direct discount or rebate on the price of peaches. As a result, the co-operative advertising was not deducted from the list selling price but all the other components of the trade spend were held to be appropriately deducted from the list selling price to reach a NSV.

377. The Ministry has approached the trade spend, as with all matters in the current investigation, mindful of the approach taken in previous anti-dumping cases involving peaches but having regard to the circumstances of the present case.

378. HW explained to the Ministry in detail the various components that make up trade spend. Some of the costs could be described as [redacted]. However, from this explanation it was clear that each of trade spend matrices related to decisions that were made in relation to the sale of peaches. Each of the promotional spend types was made at an [redacted]. The co-operative spend, while [redacted] for offering a [redacted] reduction in the list selling price of the relevant peach SKU.

379. In assessing whether the co-operative spend, in addition to the other types of trade spend, should be deducted from the list price to achieve a net selling price, the Ministry has considered whether that particular spend was related to the sale of a certain volume of peaches. The information provided by HW indicated that promotion, of which co-operative advertising was a component, resulted in direct lifts in sales volume. This is distinct from spending that was in relation to the sale of HW products in general such as brand awareness or customer rewards for the whole value of their business to HW. The Ministry is satisfied that all of the trade spend items relate directly to the sale of identifiable volumes of peaches at a certain point in time, meaning that co-operative advertising is treated by both HW and its customers as a discount. The Ministry, therefore, has deducted all of these costs from the list sales price to reach the net sales price achieved.

380. Because HW sells on an FIS basis the NSVs have also been adjusted to remove freight to customer. The Ministry has established average ex-factory NSVs for each of the three sizes of containers HW produces and compared these with the weighted average prices of dumped imports. On this basis [redacted] per cent of the imports from China are undercutting HW's 2005 average prices. Dumped imports from China are undercutting HW's average prices by between [redacted] and [redacted] per cent (as a percentage of the relevant NSV).

Non-injurious Prices

381. In a situation where dumping has caused price depression and/or price suppression (as is the case described in the following paragraphs), the Ministry may consider the extent to which imports are undercutting the NZ industry's unsuppressed selling prices, i.e. prices which would have existed in the absence of dumping. HW advised initially submitted that the profit margin achieved in the latest non-injurious period, i.e. 2003, should be added to current costs of production for each container size made by HW, to establish unsuppressed selling or non-injurious prices (NIPs). This proposal was made on the basis that those prices reasonably represent what would be achieved, all other things being equal, in the absence of dumped goods. Due to the correction of the error in HW's financial information discussed in paragraph 353, HW subsequently submitted that the profit margins from the 2003 year would be greatly decreased and should be "normalised" to reflect what an average profit would be in a year with a normal peach crop. HW proposed that a profit margin to derive a NIP be established by using the average crop size over the injury period and applying that to 2003 financial information.

382. Given the effect that crop size has on profitability and the artificiality of using an average, the Ministry considers that a more effective means of determining a NIP is to use actual prices (NSVs), which are not generally subject to variation based on crop size as a basis. The Ministry notes that prices in 2003 are unaffected by the dumped goods, making them a suitable basis to establish a NIP.

383. HW advised that commodities such as sugar and tin plate have substantially increased in price in the last 12 months and proposed that to form a NIP for 2006 the 2003 NSV be adjusted upward to reflect the extent that HW could pass on any increases in the cost of production to its customers. HW provided information relating to its standard cost buckets, for sliced peach in syrup for each container size for 2003 and 2006. Where possible, the Ministry was able to match some of these standards with information collected during the verification visit. The information shows an increase in standard cost of between [redacted] and [redacted] per cent between 2003 and 2006.

384. HW provided commentary relating to each cost bucket, concerning the extent that costs could reasonably be expected to flow on to prices. HW advised that in most cases the increases in standard were not able to be passed on but that the actual cost of [redacted] and tin costs and the increases in [redacted] were all costs that it expected to be able to incorporate into its prices. HW advised that it had generally been able to factor [redacted] increases into its price negotiation process, and therefore could reasonably expect to recover this cost increase, while the increase in tin plate was of a commodity product and also faced by competitors. The increase in production costs that HW submitted would be reflected in prices in the absence of dumping is between [redacted] and [redacted] percent, depending on the container size.

385. The Ministry compared HW's proposed price increase with Statistics New Zealand data relating to the Producer Price Index (PPI) "other food manufacturing" sector ('other' than dairy) and with the Consumer Price Index (CPI) "food group" between 2003 and 2006.[10] Since 2003 the CPI has increased by 4.3 per cent while the PPI for the other food manufacturing sector has increased by 2.8 percent.

386. Given the limited amount of time available to consider HW's proposed adjustment to the NIP to reflect cost increases, the Ministry has determined that the 2003 actual prices should be adjusted only by the PPI movement between 2003 and 2006, which represents the average increase in prices for other food manufacturers over that period. The lower increase in the PPI data may be indicative of increased competition in that sector, and by preferring it to the CPI data or HW's submission, may incorporate some of the effect of increased competition in the New Zealand market. Given that a NIP consisting solely of HW's 2003 prices would translate into a NIFOB that is significantly greater than a reference price based on normal values, the Ministry's decision to use a PPI adjustment and not to incorporate HW's proposed increases into the NIP is immaterial in terms of establishing a lesser duty.

10 http://www.stats.govt.nz/default.htm.

387. HW also proposed that NIPs should be established using the specific profit margin for each can size in 2003 rather than an average of 410g, 820g, and 3kg cans, and that the margins achieved on house brand sales be extracted from the calculation of the reasonable profit margin for those NIPs.

388. The Ministry considered this submission in the EFC report and noted that using the specific margins for each container size is a reasonable adjustment to the NIP. Accordingly separate NIPs have been established for each container size, reflecting the actual selling price achieved for a particular container size in the non-injurious period.

389. HW has also proposed that sales of the various house brands (the 'private label' business: 'Pam's'; [redacted]; and [redacted]) be excluded from calculation of the profit margin for the purpose of calculating NIPs.

390. HW advised that its 2003 profit margin is understated due to the effect of a significant volume of house brands in the sales mix for that year. HW submitted it [redacted]. HW also advised that it has [redacted] beyond 2006, and that going forward, its profit margins are [redacted].

391. The Ministry does not consider it appropriate to exclude the sale of house brands when determining the profit margin for NIPs. The Ministry considers it appropriate to consider all the NZ industry's sales of like goods, regardless of brand, when determining the profit margin obtainable in the absence of dumped goods. Article 3.1 of the Agreement requires a determination of injury to be based on 'positive evidence' of the effect on prices in the domestic market for 'like products'. Section 8 of the Act identifies the considerations for the Ministry in determining whether or not any material injury has been or is being caused or is threatened to an industry, and Section 3A defines "industry" as the New Zealand producers of 'like goods'.

392. A restriction of like goods based on the particular label, for the purpose of establishing NIPs, would not be consistent with the rest of the injury analysis, which includes house brand data. For the house branded cans of preserved peaches to be like the subject goods for the purposes of dumping and other injury, but unlike them and not considered for establishing NIPs, would give 'like goods' two different meanings, which is unlikely to be the outcome envisaged by the Act.

393. Whilst consideration of the future direction of HW's domestic operations may constitute a more forward-looking analysis, injury is an empirical concept (reflecting the objective examination of 'positive evidence'), relying on all relevant evidence (i.e. relating to 'like goods') from 2003 where HW is not subjected to injury from competition from dumped goods. HW has advised that although it has not [redacted] for next year and that [redacted].

394. The Ministry considers that by tendering for house brand supply, the return was sufficient to draw volume away from HW's own brands because, in supplying house

brands, total sales volume and revenue increase while the profit margin (on a per kg basis), decreases. In this respect, HW does have control over these profit margins, and a strategic operations decision may be a cause of injury distinct from the effects of dumped imports.

395. In the absence of dumped goods, HW must compete with other imported goods, although may be able to command some premium above the prices of these imports, due to the values of its various brands. The extent to which HW's aggregate NIP is higher than un-dumped imports may reflect a premium attached to HW's brands, or may indicate that the NIP is too high and should be adjusted downward to reflect current market conditions. Aggregate prices of imports from Australia have been increasing in price over the injury period relative to both HW's NIP and actual prices. This indicates that HW's NIP does not require a downward adjustment due to the effect of Australian imports. In relation to un-dumped imports from China the Ministry has concluded that the volume is only a relatively small proportion of imports from China. The Ministry considers that un-dumped imports from China are unlikely to be a significant cause of downward price pressure due to the small volume although because they are undercutting HW's prices by a significant amount, they may inflict some price pressure. Bearing in mind that the PPI adjustment was the lowest of the potential adjustments for increases in cost and may be representative of increased competition, the Ministry considers that no explicit adjustment needs to be made to the NIP to reflect increased competition from imported preserved peaches. The Ministry is not aware of any other changes in economic conditions between 2003 and 2006 unrelated to dumping which may have affected the profit margin available on preserved peaches.

396. Based on the above analysis the Ministry has calculated a NIP for each of the three sizes of containers HW produces using 2003 actual prices for each can size, adjusted upward by the PPI movement between 2003 and 2006 to reflect increases in the cost of production that HW might reasonably expect to pass on to customers. The Ministry is satisfied that this is an appropriate method of establishing a NIP in this investigation because it primarily consists of 2003 prices, which were unaffected by crop variations and the effect of dumped goods.

397. The Ministry has compared HW's NIPs with the ex-wharf price of dumped imports from China. This comparison shows significant price undercutting of HW's NIPs. Dumped imports from China are undercutting HW's NIPs by between [redacted] and [redacted] per cent (as a percentage of the NIP).

398. The Ministry has compared the prices of non-dumped imports from China at the ex-wharf level with HW's aggregate NIP. The Ministry has also compared the aggregate price of non-dumped imports from Australia between 2003 and 2006 at the ex-wharf level with HW's aggregate NIP. The Ministry considers that a comparison on an aggregate level is indicative of actual import prices because import volumes and HW's sales reflect, to a degree, the actual sales mix of the New Zealand market. On this basis the Ministry concludes that non-dumped imports from China are undercutting HW's aggregate NIP by [redacted] percent. Non-dumped imports from Australia have consistently undercut HW's NIP but only by between [redacted] per cent, in 2003 and [redacted] per cent in 2006.

Conclusion on Price Undercutting

399. The analysis clearly indicates that dumped preserved peaches are [redacted] undercutting HW's actual and unsuppressed selling prices.

Price Depression

400. 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.

401. Price depression occurs when prices are lower than those in a market unaffected by dumping, usually in a previous period, in this case 2003. The following table shows HW's average NSVs (per kg) over the period under investigation. The average selling price is established on the same basis as discussed above.

Table 5.2: Average Selling Prices per kg (Total HW Sales)

	2003	2004	2005	2006
Average price (NSV)	[redacted]	[redacted]	[redacted]	[redacted]
Change from previous year		[redacted]	[redacted]	[redacted]
% of 2003		[redacted]	[redacted]	[redacted]

402. At an aggregate level of analysis, HW's total NSV per kg increased [redacted] in 2004. The Ministry considers this was due to the [redacted] during that financial year. Since 2005, HW's NSV per kg has gradually decreased to a level slightly below the 2003 level.

403. The following table shows HW's average NSVs (per kg) over the period under investigation, relating to the sale of domestically produced goods only.

Table 5.3: Average Selling Prices per kg (Sales of Domestic Production)

	2003	2004	2005	2006
Average price (NSV)	[redacted]	[redacted]	[redacted]	[redacted]
Change from previous year		[redacted]	[redacted]	[redacted]
% of 2003		[redacted]	[redacted]	[redacted]

404. HW's average NSV (per kg) for sales of domestically produced like goods have also followed a similar trend to the NSV for total HW sales. After a [redacted] increase in NSV in 2004, the aggregate NSV has declined to a level in 2006 that is lower than in 2003.

Conclusion on Price Depression

405. On an aggregate level there is evidence of price depression, in respect of both total HW sales and sales of domestic production.

Price Suppression

406. 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.

407. The Ministry generally bases 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 profit and earnings before interest and taxation (EBIT) when 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.

408. The following table shows HW's gross profit, EBIT, cost of goods sold and other costs relative to sales revenue, on a per kg basis, in relation to HW's total sales of preserved peaches.

Table 5.4: Price Suppression: Revenue and Gross and Net Margins (Total HW Sales)

	2003	2004	2005	2006
Net Sales Value (per kg)	[redacted]	[redacted]	[redacted]	[redacted]
Gross Profit	[redacted]	[redacted]	[redacted]	[redacted]
EBIT	[redacted]	[redacted]	[redacted]	[redacted]
Cost of Goods Sold	[redacted]	[redacted]	[redacted]	[redacted]
Other costs	[redacted]	[redacted]	[redacted]	[redacted]
<u>As a percentage of Net Sales Value (per kg)</u>				
Gross Profit	[redacted]	[redacted]	[redacted]	[redacted]
EBIT	[redacted]	[redacted]	[redacted]	[redacted]
Cost of Goods Sold	[redacted]	[redacted]	[redacted]	[redacted]
Other costs	[redacted]	[redacted]	[redacted]	[redacted]

409. In relation to total HW sales, the gross profit per kg, which decreased in 2004, has increased in 2006 to a level marginally above that in 2003, although

considerably lower than in 2005. EBIT per kg in 2006 is also higher than in 2003 but again considerably lower than in 2005. The cost of goods sold per kg has increased in 2004, decreased in 2005, and increased in 2006. These fluctuations are primarily due to the allocation of factory overhead to fluctuating volumes of domestic production and the changing cost of importing. Because domestic production in 2005 and 2006 is similar, the increase in the cost of goods sold in 2006 is likely to be at least partly attributable to increases in the cost of production, although the cost of importing also increased in 2006. In 2006 gross profit as a percentage of NSV is slightly above 2003 levels but cost of goods sold has decreased by [redacted] percentage points between 2003 and 2006 as a percentage of NSV. Over the same period, other costs remained static, as a percentage of NSV. EBIT as a percentage of NSV in 2006 is slightly above 2003.

410. The following table shows HW's gross profit, EBIT, cost of goods sold and other costs relative to sales revenue, on a per kg basis, in relation to HW's sales of domestically produced goods.

Table 5.5: Price Suppression: Revenue and Gross and Net Margins (Sales of Domestic Production)

	2003	**2004**	**2005**	**2006**
Net Sales Value (per kg)	[redacted]	[redacted]	[redacted]	[redacted]
Gross Profit	[redacted]	[redacted]	[redacted]	[redacted]
EBIT	[redacted]	[redacted]	[redacted]	[redacted]
Cost of Production	[redacted]	[redacted]	[redacted]	[redacted]
Other costs	[redacted]	[redacted]	[redacted]	[redacted]
<u>As a percentage of Net Sales Value (per kg)</u>				
Gross Profit	[redacted]	[redacted]	[redacted]	[redacted]
EBIT	[redacted]	[redacted]	[redacted]	[redacted]
Cost of Production	[redacted]	[redacted]	[redacted]	[redacted]
Other costs	[redacted]	[redacted]	[redacted]	[redacted]

411. The above table shows price suppression data in relation to sales of domestic production only. The most significant indicator of price suppression is EBIT per kg as a percentage of sales revenue. This decreased [redacted] between 2003 and 2006, indicating that increases in total costs are not being recovered in prices. Both cost of production and other costs have increased between 2003 and 2006, although increases in the cost of production are more significant, increasing by [redacted] per cent over the injury period.

412. Production volumes sold in 2004 are [redacted] below 2003. The volumes sold in 2005 and 2006 are also below the volume of 2003 sales but only by [redacted] and [redacted] per cent respectively. The Ministry notes that changes in production volumes due to

crop availability has an impact on cost of production (its significance depending on the extent of the changes in volume) and this may have contributed to the price suppression seen between 2003 and 2006.

Conclusion on Price Suppression

413. In respect of sales of domestic production, there is evidence that HW's average prices have been suppressed since 2003.

Conclusion on Price Effects

414. There is evidence of significant price undercutting by dumped imports from China and evidence of price depression and price suppression.

415. The evidence therefore indicates that HW has chosen to reduce prices, in order to compete with the dumped goods which are undercutting HW's average prices. HW has reduced its prices despite [redacted] increases in the cost of goods sold. The Ministry considers that the reduction in prices is due to the substantial undercutting by dumped and un-dumped imports.

5.4 Economic Impact

416. 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

417. HW's output is contingent on the peach crop size and to a lesser extent the pear crop size because HW dedicates a percentage of its peach crop to fulfilling its fruit salad production each year. The fruit salad volume is governed by the availability of raw pears, raw peaches, and the total demand for fruit salad. HW processes the entire raw peach crop available each year from its contract growers. Consequently, HW's output is unlikely to be affected by the presence of the subject goods in the market and output is not a useful indicator of injury caused by the dumped goods.

Sales Volume and Revenue

418. 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. The following table shows HW's

sales volume and revenue from both imported and domestically produced preserved peaches.

Table 5.6: Sales Volume and Revenue (Total HW Sales)

	2003	2004	2005	2006
HW Total Sales Volume	[redacted]	[redacted]	[redacted]	[redacted]
Change from previous year		[redacted]	[redacted]	[redacted]
% Change on previous year		[redacted]	[redacted]	[redacted]
% of 2003		[redacted]	[redacted]	[redacted]
HW Total Sales Revenue	[redacted]	[redacted]	[redacted]	[redacted]
Change from previous year		[redacted]	[redacted]	[redacted]
% Change on previous year		[redacted]	[redacted]	[redacted]
% of 2003		[redacted]	[redacted]	[redacted]

419. HW's total sales volumes and total net sales revenue have increased since 2003, after a drop in 2004. Total sales volume and revenue in 2006 have increased by [redacted] and [redacted] per cent respectively, since 2003, reflecting the reduction in revenue per kg, shown above under 'price depression'.

420. The following table shows HW's sales volume and revenue relating to domestically produced preserved peaches.

Table 5.7: Sales Volume and Revenue (Sales of Domestic Production)

	2003	2004	2005	2006
HW Domestic Production Sales Volume	[redacted]	[redacted]	[redacted]	[redacted]
Change from previous year		[redacted]	[redacted]	[redacted]
% Change on previous year		[redacted]	[redacted]	[redacted]
% of 2003		[redacted]	[redacted]	[redacted]
HW Domestic Production Sales Revenue	[redacted]	[redacted]	[redacted]	[redacted]
Change from previous year		[redacted]	[redacted]	[redacted]
% Change on previous year		[redacted]	[redacted]	[redacted]
% of 2003		[redacted]	[redacted]	[redacted]

421. HW's sales volumes and net sales revenue, relating to sales of domestic production have decreased since 2003, although both have fluctuated due to crop

availability. Sales revenue has decreased by a more significant factor than sales volume due to depression of HW's prices.

422. The Ministry considers the reduction in sales volume is due to crop size but the reduction in sales revenue is caused by crop size and to a lesser extent price depression.

Conclusion on Output and Sales

423. In relation to HW's total sales of preserved peaches, there is no evidence of loss of total sales volume or revenue between 2003 and 2006.

424. In relation to HW's sales of domestically produced preserved peaches, there is evidence of reductions in sales volume and revenue between 2003 and 2006. The Ministry considers that most of the reduction is due to the availability of raw peaches for like goods production, however some of the reduction in sales revenue is due to price depression and can therefore be attributed to the dumped goods.

Market Share

425. 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.

426. The table below shows market share and changes in market share. Non-dumped imports from China are included in the "other imports" figures.

Table 5.8: Market Share (kg)

	2003	2004	2005	2006
Dumped Imports from China**	[redacted]	[redacted]	[redacted]	[redacted]
Other Imports**	[redacted]	[redacted]	[redacted]	[redacted]
Sales of NZ Domestic Production	[redacted]	[redacted]	[redacted]	[redacted]
Total HW Sales*	[redacted]	[redacted]	[redacted]	[redacted]
NZ Market	[redacted]	[redacted]	[redacted]	[redacted]
<u>Change on previous year:</u>				
Dumped Imports from China**		[redacted]	[redacted]	[redacted]
Other Imports**		[redacted]	[redacted]	[redacted]
Domestic Production Sales**		[redacted]	[redacted]	[redacted]

Total HW Sales*		[redacted]	[redacted]	[redacted]
NZ Market		[redacted]	[redacted]	[redacted]
<u>Percentage Share held by:</u>				
Dumped Imports from China**	[redacted]	[redacted]	[redacted]	[redacted]
Other Imports**	[redacted]	[redacted]	[redacted]	[redacted]
Domestic Production Sales**	[redacted]	[redacted]	[redacted]	[redacted]
Total HW Sales*	[redacted]	[redacted]	[redacted]	[redacted]

*Includes HW's imports

**Excludes HW's imports

427. The size of the New Zealand market for preserved peaches has been increasing gradually. HW has advised that generally growth is between zero and two per cent annually. Based on the Ministry's assessment of the market, between 2003 and 2006, the market for preserved peaches grew by [redacted] percent. As discussed at paragraph 363, it is possible that import volumes have decreased in the final months of 2006 due to the initiation of the investigation that this report relates to.

428. The market share of domestically produced goods shows a decrease since 2003. Sales of domestically produced goods are affected by crop volumes each year, so a better indication of HW's market share includes its imports, i.e. total HW sales. The market share of total HW sales increased [redacted] by [redacted] percentage points, between 2003 and 2006.

429. Between 2003 and 2006, the market share of dumped imports increased by [redacted] percentage points, at the expense of other imports, which decreased by [redacted] percentage points. Between 2003 and 2006, dumped imports from China increased, as a percentage of total HW sales from [redacted] to [redacted] percent.

430. The retention of market share by HW is consistent with the findings on price effects, i.e. that by reducing prices and/or not increasing prices when cost of goods sold is increasing HW is attempting to retain market share in the face of significant price undercutting by the dumped imports.

Conclusion on Market Share

431. There is no evidence of a decline between 2003 and 2006 in the market share held by HW. This appears to be largely attributable to HW's response to the dumped goods.

432. The Ministry notes that it is not necessary for evidence of a loss of market share to be present in order for a finding to be made that dumped imports have been a cause of material injury to a New Zealand industry. A New Zealand industry's approach to competing with dumped imports will vary from case to case and will be reflected in the way in which any economic impact from dumped imports is manifested in the various injury factors that the Ministry must consider. In this case

economic impact is visible in relation to HW's profits and return on investments, discussed below.

Profits

433. 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 commencement of dumping.

434. The following table shows an analysis of the earnings before interest and tax (EBIT) achieved by HW on sales of domestically produced and imported preserved peaches sold in the New Zealand market.

Table 5.9: Earnings before Interest and Tax (Total HW Sales)

	2003	2004	2005	2006
Total EBIT	[redacted]	[redacted]	[redacted]	[redacted]
Change from previous year		[redacted]	[redacted]	[redacted]
Change from 2003		[redacted]	[redacted]	[redacted]
Total EBIT per kg	[redacted]	[redacted]	[redacted]	[redacted]
Change from previous year		[redacted]	[redacted]	[redacted]
Change from 2003		[redacted]	[redacted]	[redacted]

435. In relation to total HW sales there has been an increase in EBIT from 2003 to 2006, although there have been significant fluctuations in profit over the period. Since 2003, earnings before interest and tax (EBIT) have increased in absolute terms and on a per kg basis, although both declined in 2006 compared to 2005. The [redacted] 2003 and in 2004 can be attributed in significant part to the very poor peach crop in late 2003, and [redacted].

436. The following table shows an analysis of the EBIT achieved by HW on sales of domestically produced preserved peaches sold in the New Zealand market.

Table 5.10: Earnings before Interest and Tax (Sales of Domestic Production)

	2003	2004	2005	2006
Domestic Production EBIT	[redacted]	[redacted]	[redacted]	[redacted]
Change from previous year		[redacted]	[redacted]	[redacted]
Change from 2003		[redacted]	[redacted]	[redacted]
Domestic Production EBIT per kg	[redacted]	[redacted]	[redacted]	[redacted]

Change from previous year	[redacted]	[redacted]	[redacted]
Change from 2003	[redacted]	[redacted]	[redacted]

437. In relation to HW's sales of domestically produced preserved peaches, EBIT has declined [redacted] between 2003 and 2006. The [redacted] drop in EBIT in 2004 was in large part due to the [redacted] peach crop in 2003. Although EBIT for domestic production is affected by the volume of sales of domestically produced goods, the [redacted] EBIT in 2006 appears to be due to price depression and suppression given that the volume of sales of domestic production in 2006 was only [redacted] per cent less than in 2005. The reduction in EBIT per kg from 2003 to 2006 was NZD [redacted], which translates into NZD [redacted] based on 2006 domestic sales volume.

Conclusion on Profits

438. In relation to HW's total sales of preserved peaches, there is no evidence of a reduction of EBIT between 2003 and 2006.

439. In relation to HW's sales of domestically produced preserved peaches, there has been a [redacted] loss of EBIT due to the depression and suppression of prices attributable to dumped imports.

440. The divergent profitability results for HW's total preserved peach business and the domestic production component indicate that where the volume of raw peaches available for like goods production is low, resulting in less domestic production over which to allocate factory overhead and, when combined with price depression and suppression, means that HW's imports are [redacted] profitable than domestically produced peaches. Imports are therefore principally responsible for the increase in HW's profits between 2003 and 2006 relating to total sales of preserved peaches. This conclusion is also borne out in the information in Tables 5.4 and 5.5.

Productivity

441. Productivity is the relationship between the output of goods and the input of resources used to produce them. Changes in productivity are affected by output levels and by the level of capacity utilisation. Table 5.10 below shows the annual production volume of preserved peaches per employee engaged in production and total hours engaged in production.

Table 5.11: Sales Volume per Production Employee and Hour of Production Labour

	2003	2004	2005	2006
Domestic Production	[redacted]	[redacted]	[redacted]	[redacted]
Seasonal Staff		[redacted]	[redacted]	[redacted]
Permanent Staff		[redacted]	[redacted]	[redacted]

Total Staff	[redacted]	[redacted]	[redacted]
Total Hours	[redacted]	[redacted]	[redacted]
Production volume per production employee	[redacted]	[redacted]	[redacted]
Production volume per hour of production	[redacted]	[redacted]	[redacted]

442. In absolute terms both productivity indicators provided by HW showed increases in productivity since 2003. In relation to domestic production volume, both productivity indicators show improvements since 2004. HW advised these were a reflection of recent efficiencies introduced in the seasonal manufacturing area. HW noted that the volume of raw peaches also has a major effect on establishing the hours and staff numbers allocated to peaches for any given year.

Conclusion on Productivity

443. There is no evidence that productivity has been adversely affected by the dumped imports.

Return on Investments

444. A decline in return on investments (ROI) 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.

445. The following table shows EBIT from sales of HW's domestic production as a percentage of total assets. Total assets represent that proportion of assets which HW estimates is employed in the production of preserved peaches in New Zealand.

Table 5.12: Return on Investments

	2003	2004	2005	2006
Assets Peaches	[redacted]	[redacted]	[redacted]	[redacted]
Assets Other F&V	[redacted]	[redacted]	[redacted]	[redacted]
Other F&V % Peach	[redacted]	[redacted]	[redacted]	[redacted]
Assets Total Peaches	[redacted]	[redacted]	[redacted]	[redacted]
EBIT	[redacted]	[redacted]	[redacted]	[redacted]
Return on Assets	[redacted]	[redacted]	[redacted]	[redacted]

446. Between 2003 and 2006, ROI has declined from [redacted] per cent to [redacted] per cent, despite an increase in assets related to production of preserved peaches being responsible for improvements in productivity. As discussed above, automation of

certain parts of the production line has occurred but any improvements in efficiency have not prevented declines in profitability and ROI.

Conclusion on Investments

447. There is evidence of a significant decline in ROI.

Utilisation of Production Capacity

448. 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.

449. The total production capacity of canned peaches is limited by the storage life of the raw fruit, available storage, and the competition for the parts of the canning line which are common to other seasonal fruit and vegetables. Total capacity is also affected by the quantity of raw peaches available for like goods production each year, so is not a good indicator of injury. Although the potential production capacity for peaches is higher, HW advised it normally budgets for a total peach crop of between [redacted] to [redacted] tonnes, of which approximately [redacted] is devoted to fruit salad products, depending on the pear crop. This leaves approximately [redacted] tonnes available for canned peach production. HW has also advised that its recovery rate of raw peaches to finished product, including liquid, is 1 to [redacted], so [redacted] tonnes of raw peaches would supply approximately [redacted] tonnes of finished product.

450. The following table shows total HW sales, sales of domestic production, total raw peach crop (from the previous season) and the annual budgeted total domestic production, based on the above analysis, and establishes the proportions of total HW sales represented by the total raw peach crop, budgeted and actual domestic sales volumes and the proportion of budgeted volume represented by sales of domestic production.

Table 5.13: Utilisation of Production Capacity

	2003	2004	2005	2006
Total HW Sales	[redacted]	[redacted]	[redacted]	[redacted]
Domestic Production	[redacted]	[redacted]	[redacted]	[redacted]
Total Peach Crop for Production	[redacted]	[redacted]	[redacted]	[redacted]
Budgeted Production	[redacted]	[redacted]	[redacted]	[redacted]
Total Raw Peach crop as % of total HW Sales	[redacted]	[redacted]	[redacted]	[redacted]
Budgeted Production as % of total HW Sales	[redacted]	[redacted]	[redacted]	[redacted]
Domestic Production as % of total	[redacted]	[redacted]	[redacted]	[redacted]

HW Sales				
Sales of Domestic Production as a % of Budgeted Production	[redacted]	[redacted]	[redacted]	[redacted]

451. The utilisation of budgeted production capacity has fluctuated from 2003 to 2006, depending on the crop available for like goods production. The total peach crop available for like goods production in each year is in most years greater than the budgeted production of peaches, if a proportion was not allocated to fruit salad. That amount is, however insufficient to satisfy the total demand for HW preserved peach products. Iceman pointed out in its response to the EFC report that the Ministry had incorrectly concluded that the budgeted production was sufficient to satisfy total demand for HW preserved peach products. This statement has been corrected.

452. On the basis of the above information, and recognising that allocation of factory overhead to domestic production makes small volumes of preserved peaches uneconomical, it appears HW would benefit from increasing the peach crop to provide greater certainty that sufficient peaches will be available for like goods production. In certain years, such as 2004, injury can be attributed to the lack of peaches available for like goods production, but in 2005 and 2006, where a substantial domestic crop has been harvested in the preceding season, the Ministry considers injury has been caused by significant price undercutting and resulting price depression and suppression.

Conclusion on Utilisation of Production Capacity

453. There is no evidence of a decline in utilisation of domestic production capacity that can be attributed to dumped imports. However there does appear to be an underutilisation of domestic production capacity due to the limited availability of raw peaches for like goods production.

Factors Affecting Domestic Prices

454. This element requires consideration of factors other than dumped imports that are likely to affect domestic prices. Such factors may relate to changes in the cost structure of the domestic industry and prices of competing or substitute goods or changes in sales practices. Trends in pricing data must be evaluated in the context of the prevailing conditions of competition in the market, including an analysis of the effects of factors other than dumped imports.

455. HW advised that exchange rates can affect domestic prices because a high dollar makes import competition attractive. The recent drop in the value of the New Zealand dollar may mean a drop in demand for imported preserved peaches although the comments in paragraph 363 indicate that significant dumped imports will continue in the absence of anti-dumping duties.

456. HW also noted that New Zealand food safety requirements may affect prices due to added compliance costs, although did not quantify the extent to which these requirements affected cost of production.

457. On the basis of information discussed below at paragraph 482 the Ministry considers that the price of non-dumped imports may have an effect on domestic prices.

Conclusion on Factors Affecting Domestic Prices

458. Non-dumped imports may have contributed to the extent to which HW has been able to increase its prices and thereby contributed to the injury suffered by HW.

Magnitude of the Margin of Dumping

459. The magnitude of the margin of dumping can be a useful indicator of the extent to which injury can be attributed to dumping, particularly when it is compared with the level of price undercutting.

460. The weighted-average dumping margin for China is 22 percent. High dumping margins cover a significant proportion of imports, with dumped transactions all dumped by 10 per cent or greater. On a transaction-to-transaction basis, positive dumping margins range from 10 per cent to 391 percent.

461. Dumped imports from Chinese exporters are undercutting HW's prices, on a weighted average basis, by between [redacted] and [redacted] percent. Using the range of dumping margins in paragraph 460 above, this indicates that between [redacted] and [redacted] per cent of the price undercutting can be attributed to the margin of dumping.

462. The extent to which dumped imports are undercutting HW's NIP is greater than the amount of price undercutting of HW's actual prices, between [redacted] to [redacted] percent. This indicates a range of [redacted] to [redacted] per cent of the NIP undercutting is attributable to the margin of dumping, based on the range of dumping margins in paragraph 460 above.

Conclusion on the Magnitude of the Margin of Dumping

463. A significant proportion of the price undercutting by dumped imports from China is due to the margin of dumping, indicating that the magnitude of the dumping margins has been a significant cause of material injury. Un-dumped goods are not undercutting HW's average NSVs by as great a margin as dumped goods.

464. HW has proposed that it is those imports which are dumped by the largest margins which are causing a substantial proportion of injury, because HW brands must compete at various price points relative to the lowest price competitor. This means that HW's brands are benchmarked against its lowest priced competitor. HW also advised that the lowest priced goods create price expectations in the market which HW must conform to, or risk losing sales. It follows that injury is predominately caused by the substantially dumped goods, those which affect prices in the market, rather than goods that are undercutting HW's prices by only small amounts, and which most HW brands are normally priced above anyway.

Other Adverse Effects

Cash Flow

465. HW advised that due to the uneven distribution of expenditure and revenue relating to the production and sale of peaches, it would not add value to the Ministry's analysis of injury for HW to provide cash flow analysis relating to peaches. The Ministry agrees with this.

Inventories

466. Production over a relatively short period, once a year, means that inventory is at its peak soon after production. HW advised that it manages its inventory system and the presence of the dumped goods has no effect on HW's inventory levels. HW did provide inventory data for December 2004 to January 2006. This showed that inventory levels in January 2006 were similar to levels in January 2005. The Ministry considers that there has been no adverse effect on HW's inventory levels. HW also provided balance date inventory for 2003 to 2006. This showed that the domestic crop made up the substantial part of the inventory except in 2003 when frost seriously affected the domestically produced volume.

Employment

467. The table below shows the number of full time seasonal and permanent employees that HW estimates are engaged in the domestic production of like goods during the production season.

Table 5.14: Total Employee Numbers

	2003	2004	2005	2006
Seasonal Staff		[redacted]	[redacted]	[redacted]
Permanent Staff		[redacted]	[redacted]	[redacted]
Total Staff		[redacted]	[redacted]	[redacted]
Change from previous year			[redacted]	[redacted]
% of 2004			[redacted]	[redacted]

468. The total number of employees engaged in the production of like goods has declined from [redacted] seasonal full time equivalents in 2004 to [redacted] in 2006. HW did not provide data relating to 2003. HW consider the decline in employees engaged in production of like goods during the peach season is due to recent efficiencies introduced in the seasonal manufacturing area and not due to the effect of dumped goods. Given that HW processes the entire peach crop available from its contracted growers each year, the Ministry concludes there is no evidence of an adverse effect on employment.

Wages

469. The following table shows average hourly wage rates for staff engaged directly in the production of preserved peaches.

Table 5.15: Average Wage Rates

	2003	2004	2005	2006
Seasonal Labour Rates	[redacted]	[redacted]	[redacted]	[redacted]
Change from previous year		[redacted]	[redacted]	[redacted]
% of 2003		[redacted]	[redacted]	[redacted]

470. Average production wage rates have increased gradually between 2003 and 2006 by [redacted] percent. There is no evidence that dumped imports have had an adverse effect on wage rates.

Growth

471. HW's sales volumes have increased over the injury period however its profits have been [redacted] reduced due to price depression and suppression, limiting HW's ability to grow its preserved peach business.

472. HW has made no specific claims in terms of growth and the Ministry considers any detrimental effects on growth will be reflected in other injury indicators such as profit and return on investment. The Ministry therefore concludes that there is no evidence of an adverse impact on growth as a result of dumped imports.

Ability to Raise Capital

473. HW advised that it had pursued an opportunity for capital expenditure that was likely to create further production efficiencies, but that its proposal seeking investment from the Heinz head office had been [redacted] created by the presence of the subject goods in the New Zealand market.

474. The Ministry asked HW to provide more specific evidence of this capital expenditure proposal [redacted]. HW provided commentary from internal staff in New Zealand describing how the capital proposal had been [redacted] The Ministry considers the connection between these comments and the effects of the dumped goods is inconclusive.

475. The Ministry concludes there is no documented evidence that dumped imports have affected HW's ability to raise capital or investments.

5.5 Other Causes of Injury

476. 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

vi. 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.

Introduction

477. In considering whether factors other than dumping have had an adverse impact on the New Zealand industry, the Ministry does not need to be satisfied that factors other than dumping have not been a cause of injury to HW and must only be satisfied that dumping has been *a* cause of material injury to HW. Dumping therefore does not need to be the only cause of material injury, or even the major cause of material injury, simply *a* cause of material injury. However where economic indicators show that an industry has suffered injury, if factors other than dumping have been the real cause of the injury, it is important that such injury not be attributed to dumping.

478. When examining injury, the Ministry normally seeks to review data over a period both before and after the time period when injury due to dumping is alleged to have commenced. Data over a period before the commencement of injury then serves as a baseline against which subsequent performance can be measured. In dumping investigations it is usual that the onset of injury claimed by an industry occurs within a reasonably well-defined time period and this is demonstrated by declines in various economic indicators. If it is claimed that factors other than dumping are the cause of that injury then those other factors could be expected to have had a particular impact within the period when the economic indicators show the onset of injury. If there are factors other than dumping causing injury to an industry, but those other factors have been constant over the period under review, then it is unlikely that the onset of injury could be attributed to those other factors.

479. In this investigation the non-injurious year is 2003. Profitability during this year is substantially affected by the low volume of domestic production. Although this year is not ideal in all respects for a pre-injurious period because although it is unaffected by dumping, it is affected by other injurious factors, namely the availability of raw peaches for like goods production.

480. The Ministry's investigation and comments by other interested parties, including HW have raised a number of issues as causes or potential causes of injury to HW. These which are dealt with in the following paragraphs.

Non-dumped Imports

481. For the purposes of considering injury, non-dumped imports exclude HW's imports but include non-dumped imports from China and imports from all other countries. The main sources of non-dumped imports in 2005 were Australia (84 per cent), China (6 per cent) and Greece (3 per cent). The market share of non-dumped imports ('other imports' in Table 5.8) has decreased from [redacted] per cent in 2003 to [redacted] per cent in 2006, after an increase in 2005, due to [redacted].

482. A comparison of the average landed values (excluding HW's imports) from each country, represented by the average New Zealand VFD plus CIF costs, tariff and duties, with HW's aggregate NSV indicates that almost all average landed values of non-dumped imports in 2005 from countries other than China were undercutting HW's aggregate NSV, by between [redacted] and [redacted] percent. Non-dumped imports from Australia undercut HW's aggregate NSV by [redacted] percent, while imports from Greece undercut HW's aggregate NSV by [redacted] percent.

483. The Ministry has carried out a comparison of actual ex-wharf prices of the non-dumped imports from China, with HW's average NSVs for each size, in the same manner as described in paragraph 398. This analysis shows price undercutting on a weighted-average basis by non-dumped imports from China is [redacted] per cent. Individual imports undercut HW's NSVs by between [redacted] and [redacted] percent.

484. Foodstuffs considered that the greatest growth in competitor activity came from Australian sourced preserved peaches. HW noted that there was an increased presence in the market from Australian producer SPC Ardmona (SPC) but refuted Foodstuffs' contention, stating that HW considered it had suffered material injury during the period SPC was inactive in the New Zealand market after frosts destroyed SPC's crop in 2004. HW considered SPC's recent gain in market share was a return to traditional levels and was not a material cause of injury.

485. In response to the EFC report, Iceman submitted that increased competition from undumped imports has been given insufficient weight by the Ministry. Iceman submitted that "New Zealand supermarkets report increased activity in the New Zealand market by SPC." As stated in the EFC report, the Ministry has considered the volume of non-dumped imports from Australia over the injury period, which is contained in the following table. The data shows that the level of imports from Australia has been relatively constant throughout the injury investigation period. Imports from Australia peaked in 2004 due to the Pam's brand being sourced from Australia in that year. Since 2004 import volumes from Australia have decreased. Import volumes in both 2005 and 2006 are both significantly below 2003 levels.

Table 5.16 Import Volumes per kg from Australia (kg)

	2003	2004	2005	2006
Imports from Australia**	[redacted]	[redacted]	[redacted]	[redacted]
Change from previous year		[redacted]	[redacted]	[redacted]

% of 2003	[redacted]	[redacted]	[redacted]

**Excludes HW's imports

486. The Ministry has also conducted aggregate price analyses of imports from Australia since 2003. This shows the aggregate price per kg of imports from Australia at the ex-wharf level has increased by [redacted] per cent since 2003. Compared to HW aggregate prices, Australian aggregate prices were [redacted] per cent below HW aggregate prices in 2003. They are now only [redacted] per cent below HW's aggregate NSV for 2006.

487. Price undercutting analysis indicates that non-dumped imports may have been a cause of injury to the New Zealand industry. However price undercutting by non-dumped imports has not been as significant as by dumped imports. In addition, the fact that the market share for other imports has been decreasing indicates that they have not impacted on HW to the same extent as dumped imports, which have increased.

Demand or Consumption Changes

488. As mentioned previously, the total market for preserved peaches in New Zealand is growing. There has been recent growth in sales of pottled peaches in the New Zealand market which may indicate a change in consumer preferences. HW advised that plastic packaging accounted for approximately [redacted] per cent of the preserved peach market currently, but was growing. HW considered that growth was sustainable in the short term, but HW considered it unlikely that plastic would overtake cans as the predominant packaging method for preserved peaches, based on overseas experience. HW advised that plastic was still a relatively new production method, but quality and cost effectiveness were improving rapidly.

489. HW does not produce preserved peaches in plastic pottles domestically and imports preserved peaches in 120g plastic containers, in packs of four.

490. One exporter and a number of importers submitted that sale of preserved peaches in plastic cups do not compete directly with canned preserved peaches. It was contended that peaches in plastic cups expand the market for preserved peaches generally, as the plastic cup appeals to a wider range of consumers who may be seeking a more conveniently snack sized option or who like to take the product with them outside the home.

491. There is no indication that there is a reduction in consumer demand for peaches in cans, in preference to peaches in plastic containers. Although there appears to be a growth in plastic packaging it is difficult to ascertain whether this is demand or supply driven. The Ministry considers that there is no evidence that demand or consumption changes are causing injury to HW.

Restrictive Trade Practices

492. HW advised it was not aware of any restrictive trade practices which might be affecting its business. HW did consider that its prices had been eroded by the price

pressure placed on it by the supermarket chains, discussed below under Price Pressure from Supermarket Chains. No other parties have raised trade practices as a potential cause of injury.

Developments in Technology

493. HW did not consider that developments in technology were affecting its competitiveness. HW noted that its operation was largely automated, especially when compared to the Chinese producers which it understood to be predominantly manual operations.

494. HW advised that the technological advancement of its own production facility was being hindered by the effect of the dumped Chinese preserved peaches in New Zealand. This includes the development of a plastic packaging facility as well as the proposal discussed in paragraph 474. The Ministry considers that there is no evidence that developments in technology have contributed materially to injury to the New Zealand industry.

Export Performance and Productivity

495. HW exports small quantities of preserved peaches each year. The financial information HW provided excludes data that relates to its export business, so none of the adverse effects mentioned above are incorporated in financial data relating to HW's export operation. The Ministry considers that there is no evidence that HW's export performance has contributed materially to injury to the New Zealand industry.

Imports by the Industry

496. HW imports subject goods from China and other sources. Apart from the small plastic pottles, which HW does not have the facilities to produce, HW advised it imports to supplement its domestic production to meet the demand for its branded products and any house brands it supplies to the supermarket chains. HW advised that its domestic peach crop regularly failed to reach forecast levels due to climatic conditions or crop disease, which resulted in shortfalls in domestic crop capable of satisfying demand. The volume of imports by HW is therefore contingent on the peach crop size, and to a lesser extent the pear crop, as discussed in paragraph 417. The following table shows sales of HW's imports from all countries and from China, relative to sales of domestically produced like goods.

Table 5.17 Imports by HW (kg)

	2003	2004	2005	2006
Sales of NZ Domestic Production	[redacted]	[redacted]	[redacted]	[redacted]
Total Imports	[redacted]	[redacted]	[redacted]	[redacted]
- % of Sales of NZ Domestic Production	[redacted]	[redacted]	[redacted]	[redacted]
Imports from China	[redacted]	[redacted]	[redacted]	[redacted]

- % of Sales of NZ Domestic Production	[redacted]	[redacted]	[redacted]	[redacted]

497. The above table shows that HW has imported significant volumes of preserved peaches since 2003 and that a significant proportion of HW's imports are from China.

498. Although HW's imports are significant, they do not appear to be displacing domestic production because HW appears to process the entire available domestic peach crop each year. During the injury period, importing has been a constant feature of HW's business. The Ministry does not consider that the increased material injury is caused by HW's importing activity. The Ministry notes that the cost of importing increased in 2006 therefore it is unlikely that HW's imports could cross subsidise domestic production in order to allow HW to lower prices while retaining profit margins.

499. The Ministry has included imports by HW in its analysis of dumping, in order to establish margins of dumping. The Ministry has excluded imports by HW from the volumes of subject and dumped imports from China and from other imports for the purposes of considering whether dumped imports have caused material injury to HW, including whether the volume of dumped imports is negligible. For the purpose of considering market share HW's total imports have been added to domestic production to represent NZ industry sales.

Other Matters

Price Pressure from Supermarket Chains

500. The supermarket chains appear to be applying pressure on HW to consistently lower prices for preserved peach products. The Ministry has considered it appropriate to investigate the extent to which this pressure is independent of the downward pressure to HW's prices as a result of the imported subject goods from China.

501. HW advised that preserved peaches are a "foot traffic" item, which can be sold for substandard margins, due to the spin-off sales they create in other products. Because of this the supermarket chains place emphasis on negotiating competitive prices for preserved peaches, both when negotiating prices for house brand and HW brands.

502. HW advised that the presence of dumped goods at low price points provide extra 'leveraging' power to the supermarket chains when negotiating prices for peach products, because HW has to compete with these prices at specific price points above them or potentially lose shelf space. Even though different brands compete at different price points, HW considered that all brands were benchmarked on the lowest price good in the market.

503. HW [redacted]

[redacted]. The Ministry considers that this example indicates that the dumped goods are [redacted] lower prices. This also indicates that although the price depression caused by dumped goods is exerted through the supermarket chains, the effect of the dumped goods appears to be independent of and additional to potential injury caused by normal price pressure from the supermarket chains, to the extent that it allows the supermarkets to exert pressure on HW to compete with prices that are lower than undumped goods from China.

The Availability of Raw Peaches for Like Goods Production

504. The cost per unit of domestic production is dependent to a significant degree on the total volume produced. This is due to the allocation of factory overhead to domestic production. The total volume of domestic production is dependent on the availability of raw peaches for like goods production, which is further limited by the allocation of raw peaches to fruit salad products.

505. It is likely that the limited availability of raw peaches for like goods production and the consequent low domestic production volumes during the period of injury analysis do mean that sales of like goods are less profitable than they would be if production volumes were greater. However, the Ministry considers that the extent to which this has resulted in injury to HW is limited, particularly in 2006 where the sales of domestic production, from the 2005 crop, are significant.

506. Iceman submitted in response to the EFC report that material injury has been caused by a failure to meet market demand, due to the lack of peaches available for like goods production. Iceman submits this is due to both an insufficient crop size and due to HW prioritising peaches to fruit salad production.

507. Iceman submitted that it understands HW requires approximately 6000 tonnes of raw peaches in order to make production of canned peaches economic. The Ministry assumes this figure includes the volume allocated to fruit salad also. Iceman noted that the quantity of peaches supplied to HW for processing over recent years reached that target in only one year, 2004.

508. The Ministry does not consider that HW's peach business must be able to meet domestic demand or be profitable in order to be capable of being a domestic industry for the purposes of an anti-dumping investigation. Although HW's domestic peach business, when taken as a separate business unit, has not been profitable during the injury period, the Ministry considers that the financial position of HW's peach business has declined over the injury period and this is substantially due to the price effects of dumped goods.

509. Iceman further submitted that because it was normal for HW to import and apply for shortfall concessions of the normal tariff, that consideration should be given to the removal of the normal tariff. Periodically the government requires the Ministry to conduct reviews of the normal tariff rates across the entire tariff. The Ministry considers that a submission such as this should be made in response to requests for submissions during a tariff review process rather than during an anti-dumping investigation, which limits its recommendations to matters within the Minister's powers under the Act and the Agreement.

510. Iceman submitted that, based on previous behaviour, it was difficult not to draw an inference that HW may be using dumping legislation to "manage competitors and hence distort the market". The Ministry notes Iceman's comments but considers it has met it's obligations under the relevant legislation in each investigation it has conducted. In each affirmative determination goods from the relevant country have been found to be dumped and causing injury to the domestic industry. Any duties are only imposed to the extent necessary to remove injury to the domestic industry, and cannot exceed the margin of dumping. The New Zealand industry is also subject to the duties should it import from the countries against which the duties have been imposed.

511. As discussed above Iceman also considered material injury has been caused by HW's decision to prioritise peach crop to fruit salad production. As with the argument about the insufficiency of domestic crop to satisfy demand for its product, this factor has been constant throughout the injury period. Unlike with the insufficiency of domestic crop size, the priority given to fruit salad does not necessarily mean that the profitability of HW's peach business is negatively affected. This is because fixed overheads are allocated across the total peach and fruit salad production, therefore the balance between peach and fruit salad does not effect the allocation of this overhead, but the total crop does. The Ministry considers the injurious effects of these factors have been relatively constant throughout the period. The Ministry also considers that the decline in HW's profits during the injury period can be linked to the reduction in HW's prices, due to price depression and suppression, rather than any effect of HW's production decisions as proposed by Iceman.

512. Iceman submitted that the Ministry review the "relative production capacity between the [total peach crop for fruit salad] and compare this with [the total peach crop, between 2003 and 2006]." The Ministry has discussed the concept of capacity in paragraph 449. Because true capacity of a given product is contingent on a number of factors the Ministry considers that utilisation of production capacity is not a good indicator of injury. However the Ministry has considered the relationship between the crops of peaches and pears and the total production of canned peaches, pears and fruit salad. This analysis confirms HW's comments that it allocates a proportion of peaches to fruit salad production based on pear crop that season. Also as noted above the proportion the peach crop allocated to the production of fruit salad and peaches has no significant impact on the profitability of the peach production.

Conclusion on Other Factors

513. There is evidence that non-dumped imports and price pressure from supermarkets have contributed to the injury suffered by HW through suppression of its prices and the subsequent impact of this on HW's profitability. It is also likely that the availability of peaches for like good production has affected the profitability of HW's preserved peach business.

514. There is no evidence that factors other than those referred to in the paragraphs above have been a significant cause of injury to HW.

5.6 Causal Link

515. Article 3.5 of the WTO Agreement states in relevant part as follows:

> It must be demonstrated that the dumped imports are, through the effects of dumping, as set forth in paragraphs 2 and 4, causing injury within the meaning of this Agreement. The demonstration of a causal relationship between the dumped imports and the injury to the domestic industry shall be based on an examination of all relevant evidence before the authorities. The authorities shall also examine any known factors other than the dumped imports which at the same time are injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the dumped imports…

516. Article 3.5 of the Agreement is reflected in section 13(1) of the Act which requires that the Minister make a final determination as to whether or not the goods 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."

517. The Ministry considers that the dumping of goods must be a cause of material injury in its own right, for a positive finding of material injury to be made. However dumping does not need to be the singular cause of material injury, or even the major cause of material injury, only <u>a</u> cause of material injury to the domestic industry and any injury arising from other factors should not be attributed to the dumped imports.

518. 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 section 8(1) and 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.

First Causal Link Limb

519. The injury analysis shows from 2003 to 2005 dumped imports from China, increased by 100 percent, as shown in Table 5.1. Over the same period dumped imports as a percentage of the total New Zealand market have increased from [redacted] to [redacted] percent. Dumped imports as a percentage of total HW sales have increased from [redacted] per cent in 2003 to [redacted] per cent in 2006. In nominal terms the volume of dumped imports in the New Zealand market has increased significantly. There has also been an increase in volume of dumped goods relative to the total market and total HW sales.

520. The evidence available shows there is [redacted] price undercutting by dumped imports. There is evidence of price depression between 2003 and 2006, and price suppression. The economic impact is consistent with HW reducing its prices in response to price undercutting from dumped imports *and* increases in the cost of

production in order to retain market share and sales volume. In 2006 this has impacted on HW in [redacted] reduction in profits and a reduction in return on investments and sales revenue. These effects became evident in 2006 and coincide with the increases in dumped imports from 2003 and a [redacted] increase in the cost of production in 2006.

521. The Ministry consequently considers there is an inference that the increase in the volume of dumped goods, material price undercutting, price depression and suppression effects and the consequent economic impact outlined in the paragraphs above can be attributed to dumped imports from China.

Second Causal Link Limb

522. The Ministry has found that factors other than dumped subject goods are causing material injury to the New Zealand industry.

523. The extent to which non-dumped imports have caused injury can be assessed through consideration of the volumes of un-dumped imports over the injury period and the extent of price undercutting. The Ministry considers that because non-dumped imports are declining while the volume of dumped goods from China is increasing and because dumped imports from China are undercutting HW's NSVs by a significantly greater proportion than non-dumped imports, it is likely that the injurious effect of dumped imports is significantly greater than un-dumped imports.

524. As discussed above pressure is being applied by the supermarket chains to lower prices of like goods. The Ministry considers that although the price depression caused by dumped goods is manifest via the supermarkets' distribution network, the effects of dumping is additional to injury caused by normal price pressure. Because the supermarket chains can use dumped imports to leverage this pressure, the extent to which the goods are dumped can be considered the extent to which the injury caused by dumped goods is additional to any normal price pressure which may be a cause of injury in itself. Due to the magnitude of the dumping margins the Ministry has established in this investigation, the Ministry considers that the additional price depression attributable to the dumped goods is significant. Although price pressure from the supermarket chains may be a cause of injury the Ministry considers it is not of sufficient magnitude to break the causal link between the injury and the dumping.

525. Iceman advised that following the poor crops in New Zealand and Australia in 2003 and 2004, the market looked to Chinese supply to satisfy demand and "liked what it got". Iceman proposed that this encouraged the supermarkets to "bring pressure on [HW] to lower its prices" and that "this is a significant factor causing material injury to [HW]". The Ministry agrees with Iceman that the supermarket chains have used the prices of goods from China [redacted] and that it is a cause of injury to HW, as discussed above. Iceman then concludes that this breaks the causal link between injury and [dumped imports from China]. The Ministry however does not agree with this conclusion and considers that it is reasonable to conclude that the price pressure from supermarkets based on the prices of dumped imports from China in fact *supports* the causal link.

526. As stated above the Ministry considers that dumped goods provide the supermarket chains extra leverage, over that which could be applied in circumstances where undumped goods were the lowest priced product in the market. Because dumped imports substantially undercut HW and are the lowest price in the market the Ministry considers that it is reasonable to conclude that the prices of these goods have allowed the supermarket chains to impose considerable pressure on HW to reduce prices. Undumped imports from China, which also undercut HW's prices, undoubtedly contribute to this pressure but because they are substantially less in volume (only 19 per cent of imports from China), and higher in price than dumped imports, the Ministry does not consider that they are a substantial cause of material injury and as such not sufficient to break the inferred link between dumping and injury.

527. The Ministry has also considered whether the limited availability of raw peaches for like goods production has been a cause of injury. The Ministry has concluded that although HW might be more profitable if it processed a greater volume of like goods each year, the injury identifiable in 2005 and 2006 is not due to the availability of raw peaches, but is primarily due to the price effects of the dumped imports.

528. Dumped imports must be <u>a</u> cause of <u>material</u> injury in order for a finding of material injury to be sustained. The Ministry does not consider that the Act or Agreement provides that dumped imports must be the sole cause of material injury.

529. The Ministry is consequently satisfied that the other causes of injury are not sufficient to break the inferred causal link that dumped imports from China have caused material injury to the New Zealand industry.

5.7 Conclusions Relating to Injury

Import Volumes

530. There is evidence that dumped import volumes of the subject goods have increased significantly in absolute terms and have increased relative to total HW sales and the total New Zealand market from 2003 to 2006.

Price Effects

531. There is evidence of [redacted] price undercutting of HW's actual 2005 prices and HW's NIP by dumped imports from China.

532. There is evidence of price depression since 2003.

533. There is evidence indicating that prices have been suppressed since 2003.

Economic Impact

534. There is evidence that the New Zealand industry has suffered the following adverse effects, attributable to dumped imports:

- a [redacted] decline in profit;

- a decline in return on investments; and
- a reduction in sales revenue.

535. There is insufficient or no evidence of injury attributable to dumped imports, reflected in:

- reductions in sales volume;
- a decline in market share;
- a decline in productivity;
- an increase in inventories;
- a negative impact on wages;
- an adverse impact on the ability to raise capital or investments;
- a significant decline in utilisation of production capacity;
- a decline in cash flow;
- a decline in employment; and
- a negative impact on growth

Other Causes of Injury

536. There is evidence that material injury has been caused by other factors. There is evidence of price undercutting by non-dumped imports which may have contributed to price depression and suppression and also to the reduction in profits and return on investments. It is possible that the ongoing price pressure from supermarkets and the limited quantity of raw peaches available for like goods production have been causes of injury also.

Finding of Material Injury

537. The Ministry is satisfied, having considered all the mandatory requirements, in addition to considering other relevant factors, both as presented by interested parties to this investigation and those discovered in the course of the investigation, that the domestic industry has suffered material injury during the POI. The Ministry is further satisfied that the material injury suffered was in significant part caused by the dumped imports from China such that the New Zealand industry has suffered material injury attributable to dumped imports.

6. Conclusions

538. On the basis of the information available, it is concluded that:

a. the goods under investigation are being dumped; and

b. by reason thereof material injury to an industry has been caused.

7. Anti-Dumping Duties

7.1 Introduction

539. Section 14 of the Act sets out the requirements in regards to the imposition of anti-dumping duties.

7.2 Method of Imposing Duties

540. Anti-dumping duties can be applied in a number of ways and can be imposed as a rate or amount, including any rate or amount established by a formula. The basic approaches are:

- a specific amount per unit of product;
- an *ad valorem* rate; and
- a reference price approach.

541. The objective of the anti-dumping duty is to remove injury attributable to dumping, and is not to punish the exporter or to provide protection to an industry beyond the impact of the dumping. In deciding on the form of duty, considerations relating to ease of administration, ability to ensure the dumping margin is not exceeded, fairness between parties, and predictability all need to be taken into account.

542. Section 14(4) of the Act provides that the Minister must not impose a duty that exceeds the margin of dumping for the dumped goods. The Solicitor-General has advised that the references to "export price" and "normal value" in this section are to be read as references to the export prices and normal values established in the investigation or to the values at the time the goods subjected to the duty are imported.[11] Given this, the Ministry's approach is to adopt a form of duty that minimizes the possibility of exceeding the margin of dumping on shipments subsequent to the imposition of the duty by the Minister.

Specific Duty

543. A specific duty is a set amount per unit of product based on the monetary value of a margin of dumping. It has the advantages of being convenient to apply and impossible to evade by incorrectly stating the value for duty and clearly indicates to the importer the amount of duty payable. However, difficulties can arise where there is a wide range of goods involved, where exchange rates fluctuate to the extent that the margin of dumping will be exceeded without constant reassessments of the specific amount, or where the exporter otherwise changes prices so that the duty is either greater than the margin of dumping or less than the margin of dumping previously established.

11 Plasterboard from Thailand, Reassessment, September 1999.

544. A specific duty, expressed as a monetary amount, can only operate effectively only when prices and exchange rates are consistent and stable and where the transaction-to-transaction comparison does not result in a range of different dumping margins. An alternative approach to deal with this problem is to express a specific duty as a formula, being the difference between equivalent prices to the normal value and the export price of a particular shipment, with the values for the normal value and export price being fixed. When those elements of the formula are expressed in terms of the currency of each transaction, the problem of exchange rate movements can be dealt with. However, a formula approach does not deal with the problem of changes in export prices for reasons other than exchange rate movements or movements in normal values such as a price change.

Ad Valorem Duty

545. An *ad valorem* duty is a duty based on the margin of dumping and is expressed as a percentage of the dutiable value. An *ad valorem* duty is convenient to apply and is not substantially affected by exchange rate movements. However, collusion between exporters and importers can lead to the manipulation of the invoice value of the goods concerned. *Ad valorem* rates are often appropriate where there is a large range of goods or where new models appear, provided that the transaction-to-transaction comparison does not result in a range of different dumping margins.

546. Because an *ad valorem* duty is imposed proportionate to the export price of the goods, a particularly low export price (and therefore a potentially more injurious export price) will result in a lower amount of duty, which may not be sufficient to remove injurious dumping. Conversely, a particularly high export price (and therefore likely to be less injurious), will attract a higher amount of duty, which may be higher than is necessary to remove injurious dumping.

547. An *ad valorem* rate gives an indication of the impact of the duty, but is not as clear an indication as the other forms of duty.

Reference Price Duty

548. Under the reference price approach, the duty payable is the difference between the transaction price and a reference price. The reference price would normally be based on the normal value, by means of Normal Value (Value for Duty Equivalent) (NV(VFDE)) amounts, or the non-injurious price (a price at which imports would not cause injury to the New Zealand industry), normally at the Free on Board (FOB) level. A NV(VFDE) amount represents the un-dumped value of the goods at the FOB level.

549. A reference price duty has advantages in that it is best able to deal with movements in the export price and exchange rates (if expressed in the currency of the normal value), and is particularly appropriate for dealing with situations where a lesser duty is applicable. However, it has been argued that it is more easily evaded than the other forms of duty, by overstating the VFD of the goods. Nevertheless, a reference price does has the advantage of clearly signalling to exporters and importers what price is un-dumped or non-injurious and the problem of evasion can be dealt with. In addition, a reference price duty only collects duty when the goods are priced below the non-injurious or un-dumped reference price. It therefore

collects duty only to the extent necessary to remove injurious dumping and avoids over-collecting duty.

Conclusion

550. It is the normal practice of the Ministry to impose duties through the use of reference prices, when appropriate, for the reasons outlined above. In the absence of any reasons why a reference price duty should not be used (as applies in this case) the Ministry concludes that a reference price duty specific to the size of the subject goods which were found to be dumped i.e. 410g and 820g sizes.

Developing Country Considerations

551. For the purposes of dumping investigations and the imposition of anti-dumping duties, China is considered to be a developing country and therefore Article 15 of the Agreement applies. Article 15 requires that special regard must be given by developed country members to the special situation of developing country members when considering the application of anti-dumping measures. The possibility of constructive remedies is to be explored before applying anti-dumping duties where they would affect the essential interests of a developing country member.

552. The Ministry has not received a submission from the government of China about possible constructive remedies or about the affect of anti-dumping duties on its essential interests as a developing country.

553. The WTO Dispute Settlement Panel in *Cotton-Type Bed Linen from India* was of the view that "the imposition of a "lesser duty" or a price undertaking would constitute "constructive remedies" within the meaning of the Article 15…"[12]

554. In paragraph 564 below the Ministry has considered whether duties at less than the margin of dumping (lesser duties) should apply and has concluded that each of the proposed reference prices should be set at the full margin of dumping. No offers of price undertakings were received. The Ministry considers that to the extent that it is able to do so by the Act, it has explored the possibilities of constructive remedies provided for by Article 15 of the Agreement.

Amount of Anti-dumping Duty

Non-dumped Goods

555. In section 4 above the comparison of export prices and normal values shows that exports of subject goods in 120g and 3kg container sizes were not dumped and therefore it is proposed these sizes will not be subject to an anti-dumping duty.

556. Imports by the New Zealand industry will be subject to anti-dumping duty as the duty can only provide a remedy for HW's domestic production of preserved peaches.

12 Appellate Body Report, above n 4 at para 6.229.

Consideration of Lesser Duty

557. Section 14(5) of the Act requires that the Minister have regard to the desirability of ensuring the amount of duty is not greater than is necessary to prevent material injury to the New Zealand industry. To establish whether a lesser duty should apply to preserved peaches, the Ministry has firstly calculated a Non-Injurious Free-On-Board amount (NIFOB), based on HW's NIP and secondly calculated a NV(VFDE) to check that the NIFOB does not exceeded the margin of dumping. The calculation of HW's NIP is discussed from paragraph 381. If the NIFOB is less than the NV(VFDE), then the NIFOB amount, which is a form of lesser duty, will apply. If the NIFOB is greater than the NV(VFDE) then the NV(VFDE) will apply, i.e., duty will be imposed at the full margin of dumping.

Calculation of NIFOBs

558. The New Zealand industry's NIPs are the basis on which a NIFOB amount is calculated. NIFOBs are calculated by deducting from the industry's NIP, those costs that arise after FOB up to the level of trade at which the imported product first competes with the New Zealand industry's product. The purpose of a NIFOB value is to ensure that the price of imported product, when considered at the FOB level, is such that when it is sold at the relevant level of trade, the sale price equates to the NIP. At paragraph 372 the Ministry determined the level of trade at which the goods first compete on the New Zealand market was determined to be ex-wharf for all importers.

559. In calculating the NIFOB amounts at the ex-wharf level of trade, the Ministry has established the costs between FOB and ex-wharf from information provided by Customs (overseas insurance and freight costs), Hutchinson's and Foodstuffs (Wgtn). For two exporters some import transactions were free of import duty (i.e. normally applied at 5.5 percent) under a concession. The Ministry would usually under these circumstances not deduct the normal tariff duty. Historically the New Zealand industry has applied for a concession from the normal tariff duty, for a period of time, when it has resorted to importing preserved peaches due to an insufficient domestic crop. The Ministry is mindful that a reference price would apply in the future and the subject goods may or may not be exempt from normal tariff duty. The Ministry has calculated NIFOBs that include and exclude normal tariff duty. In both instances the NIFOB is [redacted] greater than the NV(VFDE). In Table 7.1 below, in consideration of whether a lesser duty should apply the Ministry has deducted the normal tariff duty to calculate a NIFOB.

Calculation of NV(VFDE)s

560. NV(VFDE) amounts are calculated by adding to normal values the costs incurred by exporters between the level at which a fair comparison is made (normally ex-factory) and the FOB levels. The NV(VFDE) therefore represents an undumped price at the FOB level.

561. In all instances where the transactions were found to be dumped there were no changes to the normal values over the POI. The costs applied to increase the normal values to the FOB level were the adjustments used in the calculation of ex-

factory export prices. Where there was a difference in the figures in each transaction, a weighed average amount was calculated for the adjustment.

562. The Ministry established that different distribution methods were used to export preserved peaches to New Zealand which incurred different costs before arrival in New Zealand depending on the distribution chain. In calculating NV(VFDE) amounts an additional adjustment has been made for an exporter's margin where the subject goods are exported to New Zealand via an intermediary. This adjustment has been made for export sales by AHCOF and Iceman. In the case of Iceman the Ministry has established two reference prices. Iceman predominantly sells via a [redacted] intermediary, who sells to New Zealand customers on terms FOB China. However because Iceman also sells directly to its intermediary [redacted], a rate has also been set where that company, [redacted], is the importer. This rate is lower because it excludes the margin taken by [redacted].

563. The margins were based on information provided by interested parties. The margin for Iceman was based on information from Iceman and [redacted]. The margin for goods supplied by AHCOF was based on the information provided by its intermediary [redacted].

Comparison of NIFOB and NV(VFDE) Amounts

564. The following tables show the calculation and comparison of the NIFOB and NV(VFDE) amount for each exporter. For the purpose of comparing the NIFOB with the NV(VFDE), the NV(VFDE) amounts have been converted to NZD using the latest published Customs exchange rate during the POI of December 2005, to reflect the movement in the exchange appreciation on the RMB over the POI. The exchange rate is NZD1.00:RMB5.66.

565. The comparison shows that a NV(VFDE) amount should apply in all cases. It is proposed that reference prices be set as a NV(VFDE) amounts in RMB since normal values and costs to FOB have been established in the country of origin and representation of NV(VFDE) in RMB ensures that exchange rate movements do not result in collection of anti-dumping duty above the margin of dumping.

566. The following table show the comparative values.

Table 7.1: Comparison of NIFOB and NV(VFDE) Amounts

Size(g)	NIP per kg	Costs from FOB to Ex-wharf	NIFOB (NZD)	Normal Value (RMB)	Costs from NV to FOB	NV(VFDE) (RMB)	NV(VFDE) NZD	NIFOB or NV(VFDE)
AHCOF International Development								
410	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	NV(VFDE)
820	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	NV(VFDE)
Beijing Huiyuan Group Feicheng								
410	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	NV(VFDE)
Guangxi Fungrich Import & Export Co., Ltd								
820	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	NV(VFDE)
Laiwu Prince Import & Export Co., Ltd								
410	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	NV(VFDE)
Zhejiang Iceman Foods Co., Ltd (via intermediary)								
410	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	NV(VFDE)
Zhejiang Iceman Foods Co., Ltd (Direct)								
410	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	NV(VFDE)

Residual Rate of Duty

567. It is necessary to establish a residual rate of duty that will apply to exporters not investigated in this investigation and to exporters within the Ministry's selection, who did not export all container sizes.

568. The Ministry has investigated a selection of exporters and producers under paragraph 10 of Article 6 of the Agreement, representing the largest percentage of the exports that could reasonably be investigated. As a consequence, the provisions of paragraph 4 of Article 9 of the Agreement apply in setting residual duties.

569. Paragraph 4 of Article 9 of the Agreement requires that in setting a residual rate it is not to exceed the weighted average margin of dumping of the selected exporters of producers and the Ministry is required to disregard any zero and *de minimis* margins and margins established in the circumstances of Paragraph 8 of Article 6 of the Agreement. Paragraph 8 of Article 6 of the Agreement provides that in cases where an interested party refuses access to, or otherwise does not provide necessary information within a reasonable period or significantly impedes the investigation, a determination may be made on the basis of the facts available.

570. To establish a residual rate of duty the Ministry has excluded all zero and *de minimis* transactions and the transactions of Laiwu Prince, Guangxi Fungrich and Beijing Huiyuan as they did not provide the necessary information and a determination was made on the basis of the facts available. The remaining transactions are those of AHCOF and Iceman.

571. The Ministry considers that the residual rate of duty can be determined on the basis of information relating to AHCOF and Iceman. Even though the information used to establish normal values was information provided by Dalian Leasun, AHCOF and Iceman did not refuse access to or fail to provide necessary information or impede the investigation. AHCOF provided information on export sales but could not give information on domestic sales as no sales on the domestic market of a like good exist. Iceman provided information on export and domestic sales but the domestic sales were not considered suitable for establishing normal values due to those sales not being in the ordinary course of trade.

572. The residual duty rate in the form of a NV(VFDE), has been calculated by adding to the weighted average normal values established from AHCOF and Iceman, the weighted average costs incurred by AHCOF and Iceman from the point of ex-factory to the FOB price to New Zealand. The residual NV(VFDE) will apply to exporters outside of the selection and also to exporters in the selection where a separate reference price has not been set.

Reassessment for Exporters and Container Sizes not Investigated

573. The Act, at section 14(6), provides for the initiation of a reassessment on the initiative of the Chief Executive or at the request of an interested party who submits evidence justifying the need for a reassessment. The Ministry would not normally carry out a reassessment for at least six months after the completion of an investigation in order to allow sufficient time for the operation of the duties to be properly assessed.

574. However, paragraph 5 of Article 9 of the Agreement provides that authorities shall promptly carry out an accelerated review, for the purpose of establishing individual dumping margins for any exporter or producer of that product in the exporting country who has not exported the product to the importing country during the period of investigation. The Ministry considers this provision would allow exporters in the Ministry's selection who did not export a particular size during the investigation, to apply for a separate rate for that size.

575. The Ministry also interprets Article 9.5 to apply to parties who have exported the goods under investigation to New Zealand during the period of investigation, but who were not one of those exporters or producers selected for investigation under paragraph 10 of Article 6 of the Agreement.

Summary of Proposed Exporter Specific and Residual Reference Prices

576. The following table summarises the reference prices of NV(VFDE) amounts proposed for each producer where the type of subject goods were found to be dumped.

Table 7.2: Proposed Reference Prices (RMB per Kg)

	410grams	**820grams**
AHCOF International Development	[redacted]	[redacted]
Beijing Huiyuan Group Feicheng	[redacted]	*
Chic International Trading (Shanghai Pudong New Area) Co., Ltd	*	*
Dalian Leasun Food Co., Ltd	*	*
Guangxi Fungrich Import & Export Co., Ltd	*	[redacted]
Laiwu Prince Import & Export Co., Ltd	[redacted]	*
Zhejiang Cereals, Oils & Foodstuffs Import & Export Co., Ltd	*	*
Zhejiang Iceman Foods Co., Ltd (via intermediary)	[redacted]	0
Zhejiang Iceman Foods Co., Ltd (Direct)	[redacted]	0
Other Exporters Reference Price	8.02	7.54

* The Other Exporters Reference Price for that container size applies.

577. For exports of those container sizes where the symbol * is displayed in the table above, it is proposed that the "Other Exporters Reference Price", provided at the bottom of the table, applies for that container size.

578. Almost all of the preserved peaches investigated fall within one of four container sizes: 120g, 410g, 820g and 3kg (or close alternatives). Duties are proposed only for the 410g and 820g sizes. Where the containers are not one of the specified sizes, it is proposed that the closest size be used to determine the rate of duty. For example, duty for a 300g container would be established using the rate set for 410g containers. If the closest size is either 120g or 3kg, it is proposed no duty would be payable.

Effective Dates

579. Section 14(2) of the Act requires that anti-dumping duty shall be collected and paid on the demand of Customs the day after the date the notice of the rate or amount of duty determined is published in the *New Zealand Gazette*. The rate or amount determined is payable from the day after the date of the Minister's decision to impose provisional measures but the collection of any final duties by Customs is possible the day after the date of publication in the *Gazette*.

Refunds of Anti-Dumping Duty

580. Provisional anti-dumping duties were imposed by the Minister of Commerce on 17 July 2006 under section 16(1) of the Act. Section 16(5) of the Act allows the

Minister to approve the refund of any provisional anti-dumping duty paid that was in excess of any final anti-dumping duty.

581. It is possible that some provisional anti-dumping duty has been paid that is greater than would have been paid under the final duties proposed above. The Ministry recommends that the Minister approve the refund of any excess duty paid.

Impact of Anti-Dumping Duties

582. For those container that were dumped i.e. the 410g and 820g container sizes, the proposed reference prices will increase the purchase prices into New Zealand by approximately between 12 and 384 per cent depending upon the supplier and the product. The substantial volume of imports during the POI were dumped by margins between 12 and 20 percent, so most imports of the sizes found to be dumped will be faced with increases of this magnitude. No duty is proposed for imports of 120g and 3kg containers, so prices of this size will not be affected by the imposition of anti-dumping duties.

583. The increase in prices to importers of the 410g and 820g container sizes means it is possible that consumers will pay a higher price, however it is difficult to gauge the extent of any price increase to consumers as there is competition from imports from other countries and even if prices increases are passed on to supermarkets, the extent to which they will increase prices to consumers is unclear, as supermarkets tend to sell preserved peaches at low prices as a foot traffic item to attract customers. Any increase in prices will mitigate the downward pressure on HW's prices caused by dumped imports from China.

8. Recommendations

584. It is recommended on the basis of the information obtained during the course of the investigation into the dumping of preserved peaches from China:

1. That the Minister determine pursuant to section 13 of the Act that in relation to the importation or intended importation of preserved peaches from China:

    a. Goods are being dumped; and

    b. by reason thereof material injury to an industry has been or is being caused.

2. That the Minister, having made a determination under section 13 of the Act, give notice pursuant to section 14(1) of the rate or amount of duty determined under section 14(4) of the Act to be imposed in respect of the preserved peaches from China that are dumped.

3. That where the amount of provisional anti-dumping duty imposed under section 16(1) of the Act exceeds the amount of duty determined under section 14(4) of the Act, the Minister requires the New Zealand Customs Service to remit the amount of the excess duty paid.

4. That the Minister sign the attached Gazette notice, and give notice of the final determination and imposition of duties in respect of China, to interested parties in accordance with sections 9, 13 and 14 of the Act.

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Investigating Team
Tariff Policy and Trade Rules Group

9. Appendix One

RANGES OF NORMAL VALUES, EXPORT PRICES AND DUMPING MARGINS

	AHCOF			Beijing Huiyuan			Chic International Trading			Dalian Leasun			Guangxi Fungrich			Laiwu Prince			Zhejiang Iceman			Zhejiang Cereals			Dumping margin for container size
	High	To	Low	High	To	Low	High	To	Low	High	To	Low	High	To	Low	High	To	low	High	To	Low	High	To	Low	
120g																									
Normal Values	-		-	-		-	[redacted]	to	[redacted]	-		-	-		-	-		-	-		-	-		-	
Export Prices	-		-	-		-	[redacted]	to	[redacted]	-		-	-		-	-		-	-		-	-		-	
Dumping Margins							[redacted]	to	[redacted]																
Dumping Margins as a % of export price							-15%	to	-15%																
Weighted Ave Dumping Margin								Undumped																	Undumped
410g																									
Normal Values	[redacted]	to	[redacted]	[redacted]	to	[redacted]	-		-	-		-	-		-	[redacted]	to	[redacted]	[redacted]	to	[redacted]	-		-	
Export Prices	[redacted]	to	[redacted]	[redacted]	to	[redacted]	-		-	-		-	-		-	[redacted]	to	[redacted]	[redacted]	to	[redacted]	-		-	
Dumping Margins	[redacted]	to	[redacted]	[redacted]	to	[redacted]										[redacted]	to	[redacted]	[redacted]	to	[redacted]				
Dumping Margins as a % of export price	71%	to	71%	391%	to	276%										48%	to	44%	14%	to	10%				
Weighted Ave Dumping Margin		71%			374%												46%			12%					22%
820g																									
Normal Values	[redacted]	to	[redacted]	-		-	-		-	-		-	[redacted]	to	[redacted]	-		-	[redacted]	to	[redacted]	-		-	
Export Prices	[redacted]	to	[redacted]	-		-	-		-	-		-	[redacted]	to	[redacted]	-		-	[redacted]	to	[redacted]	-		-	
Dumping Margins	[redacted]	to	[redacted]										[redacted]	to	[redacted]				[redacted]	to	[redacted]				
Dumping Margins as a % of export price	31%		31%										23%	to	-2%				-14%	to	-16%				
Weighted Ave Dumping Margin		31%												21%						Undumped					26%
3000g																									
Normal Values	-		-	-		-	-		-	[redacted]	to	[redacted]	-		-	-		-	[redacted]	to	[redacted]	[redacted]	to	[redacted]	
Export Prices	-		-	-		-	-		-	[redacted]	to	[redacted]	-		-	-		-	[redacted]	to	[redacted]	[redacted]	to	[redacted]	
Dumping Margins										[redacted]	to	[redacted]							[redacted]	to	[redacted]	[redacted]	to	[redacted]	
Dumping Margins as a % of export price										-17%	to	-17%							-8%	to	-27%	-10%	to	-34%	
Weighted Ave Dumping Margin											Undumped									Undumped			Undumped		Undumped