

**Hog Bristle Paintbrushes**  
**From**  
**The People's Republic of China**

**Non-Confidential**  
**Final Report**

**Dumping and Countervailing Duties Act 1988**  
**Sunset Review**

Ministry of Economic Development

April 2003

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## ABBREVIATIONS

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The following abbreviations are used in this Report:

Act (the)	Dumping and Countervailing Duties Act 1988
Almax	Almax Industries Ltd
Anti-Dumping Agreement	WTO Agreement on Implementation of Article VI of the GATT 1994
Chief Executive	Chief Executive of the Ministry of Economic Development
CIF	Cost, Insurance and Freight
EBIT	Earnings Before Interest and Tax
FIS	Free Into Store
FOB	Free on Board
Haydn	Haydn Brush Company Ltd
LDC	Less Developed Countries
LLDC	Least Developed Countries
Ministry (the)	Ministry of Economic Development
NIFOB	Non-Injurious Free on Board
NIP	Non-Injurious Price
NV(VFDE)	Normal Value (Value for Duty Equivalent)
Pac	Forum Island Members of the South Pacific Regional Trade and Economic Cooperation Agreement
PAL	Paint Aids Ltd
POD(R)	Period of Dumping (Review)
SR	Sri Lankan rupee
Tianjin	Tianjin DMC APPO Brush Materials Co Ltd
VFD	Value for Duty
WTO	World Trade Organisation



# 1. PROCEEDINGS

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## 1.1 Proceedings

1. On 31 May 1988 the Minister of Customs imposed anti-dumping duties on hog bristle paintbrushes from China following an investigation that established the goods were being dumped and had caused material injury to the New Zealand industry producing like goods.
2. On 2 April 1992 the rate of anti-dumping duty was reassessed by the Minister of Commerce following a review which found that hog bristle paintbrushes from China were still being dumped and that the New Zealand industry would suffer material injury if the anti-dumping duties were to be removed.
3. On 29 October 1997 the rate of anti-dumping duty was again reassessed by the Minister of Commerce following a further review which found that hog bristle paintbrushes from China were still being dumped and that the New Zealand industry would suffer material injury if the duties were to be removed.
4. On 25 October 2002 the Chief Executive of the Ministry of Economic Development (the Chief Executive) initiated a further review of the continued need for the imposition of anti-dumping duties, pursuant to section 14(8) of the Act, on the basis of positive evidence submitted by the New Zealand industry justifying the need for the review.
5. If the outcome of this review indicates that anti-dumping duties should continue to be applied, then the rate or amount of duty can be reassessed in accordance with section 14(6) of the Act.
6. In accordance with Article 11 of the WTO Anti-Dumping Agreement (the Agreement), the purpose of the Ministry's review is to examine whether the expiry of the duty would be likely to lead to a continuation or recurrence of dumping and injury.
7. The purpose of this report is to provide a summary of the matters established by the review team as a basis for a determination to be made under section 14(8) of the Act as to whether the expiry of the current anti-dumping duty would be likely to lead to the continuation or recurrence of dumping and injury. It should be noted that this report provides a summary only of the information, analysis and conclusions relevant to this review, and should not be accorded any status beyond that.

## 1.2 Reviews

8. Section 14(8) of the Act states:

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

9. Section 14(9) of the Act states:

Anti-dumping duty or countervailing duty applying to any goods shall cease to be payable on those goods from the date that is five years after —

- (a) The date of the final determination made under section 13 of this Act in relation to those goods; or
- (b) The date of notice of any reassessment of duty given under subsection (6) of this section, following a review carried out under subsection (8) of this section —

whichever is the later, unless, at that date, the goods are subject to review under subsection (8) of this section.

10. In terms of section 14(9)(b) of the Act, anti-dumping duties relating to the subject goods would, in the absence of a review, have ceased to apply as from 29 October 2002.

11. The provision of sections 14(8) and 14(9) of the Act give specific effect to Article 11 of the Anti-Dumping Agreement which provides additional guidance as follows:

11.1 An anti-dumping duty shall remain in force only as long as and to the extent necessary to counteract dumping which is causing injury.

11.2 The authorities shall review the need for the continued imposition of the duty, where warranted, on their own initiative or, provided that a reasonable period of time has elapsed since the imposition of the definitive anti-dumping duty, upon request by any interested party which submits positive information substantiating the need for a review. Interested parties shall have the right to request the authorities to examine whether the continued imposition of the duty is necessary to offset dumping, whether the injury would be likely to continue or recur if the duty were removed or varied or both. If, as a result of the review under this paragraph, the authorities determine that the anti-dumping duty is no longer warranted, it shall be terminated immediately.

11.3 Notwithstanding the provisions of paragraphs 1 and 2, any definitive anti-dumping duty shall be terminated on a date no later than five years from its imposition (or from the date of the most recent review under paragraph 2 if that review has covered both dumping and injury, or under this paragraph), unless the authorities determine, in a review initiated before that date on their own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time prior to that date, that the expiry of the duty would be likely to lead to a continuation or recurrence of dumping and injury. The duty may remain in force pending the outcome of such a review.

11.4 The provisions of article 6 regarding evidence and procedure shall apply to any review carried out under this Article. Any such review shall be carried out expeditiously and shall normally be concluded within 12 months of the date of initiation of the review.

Note: Footnotes excluded from the above Articles of the Agreement

12. On 25 October 2002, being satisfied that positive evidence justifying the need for a review had been provided, the Chief Executive initiated a review. A notice to this effect was published in the New Zealand *Gazette* of 31 October 2002. The existing anti-dumping duties will continue to apply pending the outcome of this review and any reassessment that may follow it.

## 1.3 Dumping and Injury for the Purposes of a Review

### Ministry's Approach to Sunset Reviews

13. The Ministry carries out sunset reviews on the basis of the above provisions in the Act and the Agreement. In interpreting Article 11 of the Agreement, the Ministry takes guidance from New Zealand legal reports, WTO Panel reports and approaches taken by other WTO member countries.

14. Article 11.3 infers a necessity to clearly demonstrate that, "...the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury" [*emphasis added*]. Some guidance regarding the interpretation of the phrase "would be likely" has been provided by the New Zealand Court of Appeal which interpreted the phrase to mean 'a real and substantial risk..., a risk that might well eventuate' (*Commissioner of Police Vs Ombudsman [1988] 1 NZLR 385*).

15. For further guidance on the level of evidence that is required to meet the "would be likely" criteria of Article 11.3, the Ministry also referred to the findings of the WTO panel report, *United States Anti-Dumping Duty on Dynamic Random Access Memory Semi Conductors (DRAMS) from Korea*, and to the approaches taken by the EU, US, Canada and Australia to sunset reviews.

16. The Ministry notes that the consideration of whether duties should be removed does not exist in isolation but is dependent on whether the evidence shows that the expiry of duty would be likely to lead to a continuation or recurrence of dumping and injury. In determining "likelihood", it is considered that regard should be had to the timeframe within which an event may occur. Article 11.3 of the Agreement makes no express reference to the length of time within which a continuation or recurrence of injury has to take place.

17. Mindful of the different factors involved in each case, and taking guidance from the sources referred to above, the Ministry approaches all investigations and reviews on a case-by-case basis. Based on its interpretation of the Agreement and the Act, the Ministry adopts the following general principles in considering injury in sunset reviews:

- The Ministry is required to establish whether the expiry of the anti-dumping duty would be likely to lead to a continuation or recurrence of dumping and injury.
- The test to be applied in respect of the likelihood of a continuation or recurrence of dumping and material injury is a positive one, i.e., the Ministry needs to be satisfied, based on positive evidence, that certain events are likely to occur, and that those events will cause dumping and material injury to the industry to continue or recur in the absence of anti-dumping duties.

- Interpretation of the phrase “would be likely” is guided by a court judgement referring to “a real and substantial risk..., a risk that might well eventuate”.
- In considering the likelihood of injury, the Ministry may refer to provisions in the Agreement that are helpful in assessing that likelihood and those provisions may include, where appropriate, the factors used in Article 3.7 in assessing a threat of injury.

18. In considering whether removal of the duty would be likely to lead to a recurrence of dumping and injury, the Ministry considers what is likely to happen in the foreseeable future. The extent to which the Ministry is able to make judgements on the likelihood of events occurring in the foreseeable future will depend on the circumstances of each case and, therefore, the foreseeable future will range from the imminent to timeframes longer than imminent.

## 1.4 Grounds for the Review

19. The New Zealand industry provided evidence that hog bristle paintbrushes from China are likely to be dumped should duties be removed. The industry claimed that dumped paintbrushes would be imported into New Zealand in large volumes should the duties be removed, that such imports would significantly undercut their prices and cause significant price depression.

20. The industry claimed that the likely volume and price effects would result in a recurrence of material injury so severe that it would be forced to shut down its manufacturing plant [REDACTED] removal of the duties.

## 1.5 Interested Parties

### New Zealand Industry

21. The application for a review was submitted by Haydn Brush Company Ltd (Haydn) and Paint Aids Ltd (PAL).

22. At the time of the last review in 1997 there were three New Zealand producers of paintbrushes, Haydn, PAL and Waterford Manners Ltd. PAL has advised that Waterford Manners Ltd no longer manufacture like goods in New Zealand and that it and Haydn are therefore the only remaining paintbrush manufacturers in New Zealand. The review team has been unable to locate any record of any paintbrush producers in New Zealand other than PAL and Haydn.

23. PAL advised in a letter dated 7 November 2002 that it no longer wished to participate in the review. PAL advised verbally, however, that in its opinion the information it had provided in its application for a review was enough to validate the retention of the duties.

24. The review team notes that while the information supplied by PAL (in conjunction with the information provided by Haydn) was sufficient to warrant the initiation of a review, it was limited in nature and has not been verified. Because of this and PAL's



written advice that it no longer wishes to participate in the review, the review team considers that PAL has effectively withdrawn its support for the review.






25. Section 3A of the Act states as follows:


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.

26. With the withdrawal of PAL from the review, the review team considered whether Haydn’s output of like goods constitutes a “major proportion” of the New Zealand production of like goods.

27. The goods manufactured in New Zealand that are considered to be like goods to the subject goods is set out in section 2.1 below. At the request of the review team, PAL provided its production of like goods over a recent one year period (the year ended October 2002). The review team has also obtained from Haydn its production of like goods over a one year period as close as possible to the year ended October 2002 (the year ended March 2002). The output of PAL and Haydn and their relative shares of total New Zealand production are shown in the table below.

PAL production year ended October 2002		
Haydn production year ended March 2002		
Total NZ production		

28. The table shows that Haydn’s output represents  percent of total New Zealand output of like goods. Neither the Act nor the Anti-Dumping Agreement defines what constitutes a “major proportion” in the context of the definition of “industry”. The review team does not believe that it should be interpreted to mean more than half, rather that it should be interpreted to mean a proportion that is significant, i.e., something that is not minor or insignificant.

29. At  percent of the total New Zealand output, the review team considers that Haydn’s output represents a major proportion of total New Zealand output in terms of section 3A of the Act. Haydn can therefore constitute the industry for the purposes of this review.

30. Haydn is a manufacturer of a wide range of hog bristle paintbrushes, including some specialty paintbrushes. Some of the specialty paintbrushes are made with synthetic bristle. Haydn also manufactures a range of high quality artists brushes. The company is also involved in the sale of a range of painting and decorating accessories (which it does not manufacture).

## Exporters and Manufacturers

31. Hog bristle paintbrushes of the type under review are not separately identified in the Tariff of New Zealand. Customs data for the period 1 October 2001 to 30 September 2002 was used to identify possible exporters and importers of hog bristle paintbrushes of the type under review (hereinafter referred to as the period of dumping (review) or POD(R)). Because of the large numbers of exporters identified over this period from the Customs data, exporters were selected for investigation, in accordance with Article 6.10 of the Anti-Dumping Agreement, on the basis of those exporting the largest volumes and which represented cumulatively 99 percent of all exports under the tariff item and statistical keys covering the goods under review.

32. The review has established that of the exporters selected for investigation as above, the following companies (listed in alphabetical order) exported to New Zealand hog bristle paintbrushes of the type under review:

Artrain Industrial Ltd  
Australian Brushware Corporation  
Jiangsu Yixing Foreign Trade Corporation  
Ningbo Best Source International Trading Company  
Rokset Industries Ltd  
Selleys Pty Ltd  
SPL Group Ltd

33. Selleys Pty Ltd and Rokset Industries Ltd are exporters only and not manufacturers in China. Australian Brushware Corporation advised that it is the owner of the manufacturer in China that supplied the paintbrushes exported to New Zealand, although it never identified the company by name. Because of a lack of co-operation, the review team was unable to identify the manufacturers supplying SPL Group Ltd, Ningbo Best Source International Trading Company, Jiangsu Yixing Foreign Trade Corporation and Artrain Industrial Ltd.

34. Exporters have identified the following Chinese manufacturers (listed in alphabetical order):

King Brush Company Ltd  
Shandong Oriental International Trading  
Shenzhen Teidiko  
Tianjin DMC APPO Brush Materials Ltd

Of the exporters and manufacturers listed above, only Tianjin DMC APPO Brush Materials Ltd (Tianjin) provided a questionnaire response.

35. All other exporters had the opportunity to provide submissions but these were not solicited directly.

## Importers

36. The companies identified from NZ Customs data as importing the subject goods from the above exporters over the period of investigation are (in alphabetical order):

Benchmark Building Supplies Ltd  
Ramset NZ Ltd  
Selleys Chemical Company NZ Ltd  
Standard International Trading  
Thomas Chiu Ltd  
Translucky International Trade

37. Of the importers listed above only Ramset NZ Ltd provided a questionnaire response.

38. All other importers had the opportunity to provide submissions but these were not solicited directly.

## 1.6 Subject Goods

### Scope of the Subject Goods

39. The goods which are the subject of the review, hereinafter referred to as hog bristle paintbrushes, or “subject goods”, are:

*Hog bristle paintbrushes for household or industrial use.*

40. The Ministry considers that, for purposes of any investigation or review and for the imposition of anti-dumping duties, paintbrush heads are like goods to paintbrushes as described above. Should the anti-dumping duties be continued they should apply to complete paintbrushes and to paintbrush heads. Any *Gazette* notice will include wording clarifying that the description of the goods subject to anti-dumping duties includes paintbrush heads. The Ministry has given this matter careful and extensive consideration and the main factors it considered are outlined in the following section of this report.

### Paintbrush Heads

41. A paintbrush head consists of hog bristles and a wedge, inserted and glued into a metal ferrule. The bristles would usually be trimmed. The paintbrush head does not have a handle.

42. The Ministry last year gave an opinion to a customs agent that paintbrush heads are not subject to the anti-dumping duty on hog bristle paintbrushes because the relevant *Gazette* notices did not refer to paintbrush heads or parts of paintbrushes. New Zealand paintbrush manufacturer Haydn Brush Co Ltd expressed concern that the Ministry’s opinion may result in circumvention of the anti-dumping duty. The review team considers that the question of whether paintbrush heads should be covered by the description of subject goods is a relevant consideration in this review and any reassessment of duties that may follow this review.

43. The Ministry has considered the following factors in deciding whether paintbrush heads are subject goods:

- The plain meaning of the description of subject goods.

- The essential characteristics of paintbrush heads relative to paintbrushes.
- The production of paintbrush heads.
- Market considerations.
- Other factors.

### **Description of the Subject Goods**

44. The description “hog bristle paintbrushes for household or industrial use” is described in the *Gazette* notice as being dispositive. A paintbrush is described in the *Concise Oxford Dictionary* (Tenth Edition) as “a brush for applying paint”.

45. The description of goods subject to anti-dumping duty encompasses a range of brushes that are hand-held and usually range in width up to 100 mm to allow for appropriate application of paint to different surfaces, for example door and window trimmings or weatherboards. The brushes have a characteristic shape in that usually they are relatively flat in terms of their depth when compared with their width, and the length and width of their bristles are designed to achieve the required level of paint coverage. A paintbrush head has the same characteristic bristle dimensions and shape.

### **Essential Characteristics**

46. A paintbrush head is a brush in that the bristles have been processed and assembled together permanently in the appropriate length with glue and a metal ferrule. A paintbrush head contains the fundamental characteristics of a paintbrush in that the bristles are assembled in the final form that gives the head the properties that allow it to take up, hold and release paint.

47. Paintbrushes commonly have handles. A paintbrush head can also be used to apply paint, albeit a handle would facilitate the process.

48. A paintbrush head also has the characteristic depth, width and length properties described above for a paintbrush. In terms of appearance, paintbrush heads are clearly identifiable as a major paintbrush component and could not be confused with any other product.

### **Method of Production**

49. Paintbrush heads are produced by a process involving debundling of bristles, insertion of bristles and wedge in a ferrule, gluing of bristles and wedge into the brush head, removal of loose bristles and trimming of bristles. Fully-finished paintbrushes result from attachment of a handle which may have been produced and painted in the same factory. The Ministry understands that a special machine is used to attach the paintbrush handles to the paintbrush heads.

50. The major element of paintbrush manufacture and costs of production involves the production of the paintbrush head. The paintbrush head is a captive part of the

production of fully-finished paintbrushes, i.e., it has no use other than for incorporation into a complete paintbrush.

### ***Market Considerations***

51. Paintbrushes are marketed and sold at different prices on the basis of the quality, density and shape of bristles. These differences, especially the quality and bristle density differences, are often accompanied by brand identification. There is no market in New Zealand, however, for paintbrush heads without handles, although the characteristics of the head are the main determinant in how the fully-finished paintbrush is to be marketed and sold. This fact indicates that it is the paintbrush head that possesses the essential characteristics of a paintbrush.

### ***Other Factors***

52. There are relatively few guidelines that the review team could find to consider where the boundaries of definition might lie that encompass only paintbrushes. The context within which this consideration takes place is that of international trade in goods and trade remedies actions. In the trade context, the review team considered the approach taken by Customs in deciding what goods were considered to be paintbrushes. In the trade remedies context, the review team considered the approach taken to like goods and noted that the concept of like goods was used in assessing normal values in the country of origin, in defining the domestic industry in the country of import and as a consequence was important in circumscribing the financial and other information that can be taken into account in an anti-dumping investigation.

### ***Tariff Classification***

53. Rule 2a of the General Rules for Interpretation of Part I of the Tariff states:

Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this Rule), presented unassembled or disassembled.

54. Customs has advised that, for purposes of the Tariff, ferrules complete with bristles would have the essential character of a complete paintbrush and would be so entered. Tariff classification, therefore, makes no distinction between a paintbrush and a paintbrush head.

### ***Like Goods***

55. The Ministry's like goods analysis is contained below in section 2.1. The Ministry has concluded in its like goods analysis, that paintbrush heads and paintbrushes possess close similarities in terms of physical characteristics (including appearance, size and dimensions, components, production methods and technology), function and usage; and tariff classification.

56. The Ministry considers there are no material differences between imported paintbrush heads and domestically-produced hog bristle paintbrush heads. The Ministry also considers that, using its standard framework for considering like goods issues, finished paintbrushes are like goods to imported paintbrush heads and that there is no essential difference between paintbrushes and paintbrush heads.

57. While neither tariff classification analysis nor like goods analysis can be linked directly by law to the question of what goods are covered by a duty direction, both analyses do provide examples of principles applied to define certain goods in the context of international trade. In this sense, the fact that both tariff and like goods analyses view paintbrush heads as essentially paintbrushes, provides support for the Ministry's view that paintbrush heads should be treated in the same way as paintbrushes, where that term is used, and that paintbrush heads are in fact essentially paintbrushes and not any other good.

### ***Circumvention***

58. The imposition of anti-dumping duties sometimes leads to attempts to circumvent the duties. Assembly of a product in the country of import is recognised internationally as one of the ways in which firms may attempt to circumvent an anti-dumping duty. The Ministry considers that the opportunity for firms to circumvent anti-dumping duties should be limited or the purpose of the Act and the effectiveness of New Zealand's trade remedies regime would be undermined.

59. Action against goods that circumvent anti-dumping duties cannot be taken in the absence of a sound legal basis. The Minister could not, for example, direct the imposition of anti-dumping duty on paintbrushes made in a country other than China without a full dumping investigation reaching a positive final determination. The situation involving hog bristle paintbrush heads is considerably different. The brushes are made in China and are essentially the same as those subject to anti-dumping duty but are lacking a relatively minor component part. The paintbrush heads do not become something other than a paintbrush, just because the handle has been removed.

### ***Conclusion on Subject Goods***

60. Based on the reasoning above, paintbrush heads are considered to be like goods to paintbrushes and, as such should be subject to the same anti-dumping duty as complete paintbrushes originating from China. In summary, paintbrush heads have the same essential characteristics as paintbrushes, are made in the same way, are captive within the final stages of the production process, and would be perceived as and treated commonly as paintbrushes.

61. To ensure that paintbrush heads can be made subject to the same anti-dumping duty as complete paintbrushes from China, the review team proposes that any *Gazette* notice that may be required for continuation of duties, termination of duties, or any future reviews or reassessments should read as follows:

#### ***Description of Goods***

Hog bristle paintbrushes for household or industrial use.\*

\*Note: This description includes hog bristle paintbrush heads.

62. The review team notes that this matter was being considered separately to the review until it became apparent, after the interim report had been released, that the Ministry had strong grounds for re-visiting its earlier opinion on paintbrush heads. The Ministry considered that the matter was relevant to the review and that reporting on its considerations in the review would allow parties to understand the Ministry's viewpoint. The Ministry is also recommending a reassessment of anti-dumping duties on hog bristle paintbrushes and notes that interested parties can make submissions about the coverage of the anti-dumping duties during the reassessment process.

## Tariff Classification

63. The New Zealand Customs Department has stated that the hog bristle paintbrushes for household or industrial use enter under the following tariff classifications:

9603		Brooms, brushes (including brushes constituting parts of machines, appliances or vehicles), hand operated mechanical floor sweepers, not motorised, mops and feather dusters; prepared knots and tufts for broom or brush making; paint pads and rollers; squeegees (other than roller squeegees):
[9603.10.00	-	<i>Brooms and brushes, consisting of twigs or other vegetable materials bound together, with or without handles]</i>
[9603.20.00	-	<i>Tooth brushes, shaving brushes, nail brushes, eyelash brushes and other toilet brushes for use on the person, including such brushes constituting parts of appliances]</i>
[9603.30.00	-	<i>Artists brushes, writing brushes and similar brushes for the application of cosmetics]</i>
9603.40.00	-	Paint, distemper, varnish or similar brushes (other than brushes of sub-heading 9603.30); paint pads and rollers
02D	. .	Paint Brushes
11C	. .	Distemper, varnish or similar brushes
[19J	. .	<i>Paint pads and rollers]</i>

64. The statistical keys for tariff item 9603.40.00 will change effective from 1 May 2003 to the following:

9603.40.00	-	Paint, distemper, varnish or similar brushes (other than brushes of sub-heading 9603.30); paint pads and rollers
	. .	Paint Brushes

03B	. . .	Hog bristle
04L	. . .	Synthetic filament
05J	. . .	Combination hog bristle and synthetic filament
08C	. . .	Other
11C	. .	Distemper, varnish or similar brushes

65. Applicable duty rates are:

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

### **Country of Export**

66. Section 3(6) of the Act provides as follows:

For the purposes of this Act, where, during the exportation of goods to New Zealand, the goods pass in transit from a country through another country, that other country shall be disregarded in ascertaining the country of export of the goods.

and section 5(5) provides:

Where

- (a) The actual country of export of goods imported or intended to be imported into New Zealand is not the country of origin of the goods; and
- (b) The [Chief Executive] is of the opinion that the normal value of the goods should be ascertained for the purposes of this Act as if the country of origin were the country of export,—
  - the [Chief Executive] may direct that the normal value of the goods shall be so ascertained

67. In the current review, the subject goods were imported from China and Australia. For the purpose of ascertaining normal values, the subject goods exported from Australia have been treated as though the country of export was China.



## 1.7 Investigation Details

68. In this report, unless otherwise stated, years are March years and dollar values are NZ\$. In tables, column totals may differ from individual figures because of rounding. The term VFD refers to value for duty for Customs purposes.

69. The period of dumping (review) (POD(R)) is 1 October 2001 to 30 September 2002, while the investigation of injury involves evaluation of historical data for the period 1 April 1999 to 31 March 2002 and the evaluation of data forecasting the effect of the removal of duties.

## 1.8 Exchange Rates

70. Article 2.4.1 of the Anti-Dumping Agreement provides as follows:

When the comparison under paragraph 4 [of Article 2] requires a conversion of currencies, such conversion should be made using the rate of exchange on the date of sale<sup>8</sup>, provided that when a sale of foreign currency on forward markets is directly linked to the export sale involved, the rate of exchange in the forward sale shall be used. Fluctuations in exchange rates shall be ignored and in an investigation the authorities shall allow exporters at least 60 days to have adjusted their export prices to reflect sustained movements in exchange rates during the period of investigation.

<sup>8</sup> Normally, the date of sale would be the date of contract, purchase order, order confirmation, or invoice, whichever establishes the material terms of sale.

71. In this report normal values are expressed in US dollars, export transactions take place in Australian dollars, and any injurious effect is reflected in NZ dollars. The invoice date has been used to establish the date of export sales in the case of exports by Selleys Pty Ltd. For exports by SPL Group Ltd, in the absence of invoices, the date of sale has been estimated from the average length of time between the date of invoice and the date of importation for exports by Selleys Pty Ltd. Australian dollar prices have been converted into US dollars at the date of sale using the NZ Customs exchange rate.

## 1.9 Disclosure Of Information

72. The Ministry of Economic Development makes available all non-confidential information to any interested party through its Public File system.

73. Article 6.7 of the Anti-Dumping Agreement provides as follows:

In order to verify information provided or to obtain further details, the authorities may carry out investigations in the territory of other Members as required, provided they obtain the agreement of the firms concerned and notify the representatives of the government of the Member in question, and unless that Member objects to the investigation. The procedures described in Annex I shall apply to investigations carried out in the territory of other Members. Subject to the requirement to protect confidential information, the authorities shall make the results of any such investigations available, or shall provide disclosure thereof pursuant to paragraph 9, to the firms to which they pertain and may make such results available to the applicants.

74. As noted above, of the manufacturers and exporters of the subject goods identified only Tianjin provided a questionnaire response. Tianjin did not agree to a verification visit.

75. Article 6.8 of the Anti-Dumping Agreement provides as follows:

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

76. Information was requested, but not received or not received in a timely fashion or to the extent required, from the following manufacturers, exporters and importers (listed in alphabetical order):

*Exporters/Manufacturers*

- Artrain Industrial Ltd
- Australian Brushware Corporation
- Jiangsu Yixing Foreign Trade Corporation
- King Brush Company Ltd
- Ningbo Best Source International Trading Company
- Rokset Industries Ltd
- Selleys Pty Ltd
- Shandong Oriental International Trading
- Shenzhen Teidiko
- SPL Group Ltd

*Importers*

- Benchmark Building Supplies Ltd
- Selleys Chemical Company NZ Ltd
- Standard International Trading
- Thomas Chiu Ltd
- Translucky International Trade

77. In view of the failure to cooperate, information relating to these exporters and importers is based on the facts available.

78. Section 10(1) of the Act provides as follows:

Subject to subsection (2) of this section, within 150 days after the initiation of an investigation under section 10 of this Act, the [Chief Executive] shall give to the parties to the investigation referred to in section 9(b) of this Act written advice of the essential facts and conclusions that will likely form the basis for any final determination to be made under section 13 of this Act.

79. While this provision does not apply to reviews, the Ministry attempts as far as possible to follow investigation procedure in reviews. An Interim Report containing essential facts and conclusions was released to all known interested parties on 21 March 2003, being 147 days after initiation of the review. Written comments were received only from one interested party, Almax Industries, and its submissions were taken into account in preparing this Final Report.



## 2. NEW ZEALAND INDUSTRY

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80. Section 3A 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.

“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:

### 2.1 Like Goods

81. 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.

82. The subject goods have been identified in section 1.6 of this Report as:

*Hog bristle paintbrushes for household or industrial use*

The Ministry has clarified that hog bristle paintbrush heads are to be included within this description.

### Like Goods History

83. In the original investigation and the first review it was determined that the New Zealand industry produced like goods to the subject goods. In the second review it was determined that the hog bristle paintbrushes produced by the New Zealand industry were like goods to the subject goods, except for radiator brushes produced by Haydn. Radiator brushes are industrial type brushes where the ferrule is bent at an angle and the handle is much longer than normal, enabling the brush to be used in situations where space is limited or access to surfaces is obstructed.

84. The review team has seen no evidence to change its view that radiator brushes are not like goods. [REDACTED]

85. The review team is satisfied that the normal hog bristle paintbrushes produced by Haydn are substantially the same as those produced at the time of the original investigation and the first and second reviews, and in respect of these types of paintbrushes is therefore still producing like goods. (Haydn does not manufacture paintbrushes with synthetic bristle other than some “[REDACTED] brushes”, which are considered below under “specialist brushes”).

## **Paintbrushes (Including Heads)**

86. While the review team and past teams are satisfied that the New Zealand industry produces paintbrushes that are like goods to imported paintbrushes, the Ministry has never considered whether hog bristle paintbrushes or hog bristle paintbrush heads made by New Zealand producers are like goods to imported hog bristle paintbrush heads. This matter is considered below.

87. In deciding like goods issues, the Ministry uses the following framework to guide its considerations:

- (a) Physical characteristics, which covers appearance, size and dimensions, components, production methods and technology.
- (b) Function/usage. This covers consumer perceptions/expectations, end uses, and will lead to any conclusions on the issues of substitutability where relevant.
- (c) Pricing structures.
- (d) Marketing issues such as distribution channels and customer advertising.
- (e) Other. This can include tariff classification if applicable and any other matters which could be applicable in the circumstances.

## **Physical Characteristics**

### ***Appearance***

88. Paintbrush heads made in New Zealand have the same basic appearance as imported paintbrush heads, and may differ only in cosmetic aspects such as the colour of bristles and ferrules.

89. Paintbrush heads differ in appearance from finished paintbrushes only in that the latter have attached handles, whereas paintbrush heads do not. In all other respects, relating to bristles, ferrules and overall appearance, paintbrush heads closely resemble paintbrushes.

### **Size and Dimensions**

90. Imported paintbrush heads and domestically-produced paintbrush heads would presumably be in reasonably standard sizes for production of paintbrushes in size widths of 12mm, 25mm, 38mm, 50mm, 63mm, 75mm and 100mm. The volume of bristles in imported and locally-produced heads would be similar depending on the quality of paintbrush that was being produced.

91. Finished paintbrushes have the same sizes and dimensions as paintbrush heads. They differ only in respect of the additional dimensions of the handle. The essential size and dimension characteristics of this type of product relates to the width, length and depth of the bristles and the width determines the size of the ferrule. The goods are sold according to their width in the common dimensions of 12mm, 25mm, 38mm, 50mm, 75mm and 100mm. Both paintbrush heads and paintbrushes share these common characteristics.

### **Components**

92. The imported paintbrush heads and the domestically-produced paintbrush heads and paintbrushes have the same components, namely bristles, wedge, glue and ferrule, except that the former have a few additional components, namely plastic or wooden handle, and a nail or screw. These additional components do not add to the essential character of the product as a paintbrush, they merely complete the finished paintbrush. The essential character of a paintbrush is already inherent in a paintbrush head.

### **Production Methods**

93. The production process from start to paintbrush head and finally to finished paintbrush consists of the following:

- Debundling of bristles;
- Insertion of bristles and wedge in ferrule;
- Gluing of bristles and wedge into the brush head;
- Removal of loose bristles (flirting);
- Trimming of bristles;
- Handle production;
- Handle painting (optional);
- Attaching the handle (handling);
- Nailing the brush head to the handle (tacking); and
- Packaging.

The imported heads may be processed to include the gluing stage or further processed to include flirting and trimming.

94. The subject goods and the domestically-produced paintbrush heads and paintbrushes share the same production steps. There are some relatively minimal

additional processes needed to complete a paintbrush from a paintbrush head - namely at least handle production, optional painting, attaching the handle, tacking and packaging.

### **Technology**

95. No information is available that indicates the use of different technology for production of paintbrush heads and paintbrushes.

### **Function and Usage**

96. Imported paintbrush heads and the domestically-produced paintbrush heads are similar in that their function is to form a paintbrush and they have no function other than that of applying paint. The usage of paintbrush heads and paintbrushes is limited by their purposeful construction to act as an applicator of paint. They are used to apply paint and they are designed, made and used for no other function.

### **Pricing**

97. No prices are available for imported and domestically-produced paintbrush heads. The Ministry understands that a paintbrush head would constitute the major part of the value of a finished paintbrush and that, if sold, paintbrush heads would be somewhat cheaper than finished paintbrushes.

### **Marketing Issues**

98. The Ministry is unaware of marketing or distribution of paintbrush heads and the domestically-produced paintbrush heads in New Zealand. Paintbrush heads may be imported by a New Zealand paintbrush assembler or by an importer and sold to a paintbrush assembler. Local producers of paintbrush heads pass on the head in the production line for completion as a paintbrush.

99. Paintbrushes are actively marketed and distributed in the New Zealand market. Each category of brush is aimed at a different segment of the market, with DIY brushes being of the lowest quality, handyman brushes being of better quality, tradesman brushes being of high quality and elite brushes being the very highest quality. Paintbrush heads incorporate all of these quality characteristics of paintbrushes. Sales of finished paintbrushes are made from importer, manufacturer or assembler to retail outlets or may be made via distributors or warehouses.

### **Other Relevant Matters**

100. The imported paintbrush heads and the domestically-produced paintbrush heads are similar in that they would be classified under the same tariff item in the Tariff of New Zealand as paintbrushes. Paintbrush heads are considered by Tariff rule of interpretation 2(a) to have the essential character of a finished paintbrush.

### **Conclusions Relating to Paintbrush Heads**

101. On the basis of the information available, the Ministry considers that goods described as hog bristle paintbrush heads and fully-finished paintbrushes produced





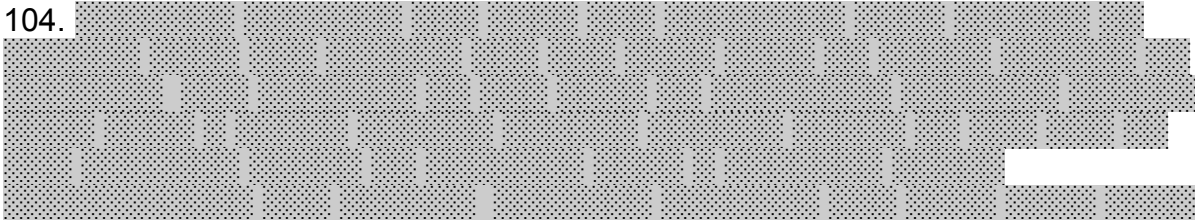
by the New Zealand industry, while not like imported paintbrush heads and paintbrushes in all respects, have characteristics very closely resembling paintbrush heads and paintbrushes, to the extent that paintbrush heads and paintbrushes are essentially the same goods. Paintbrush heads and paintbrushes possess the following close similarities:

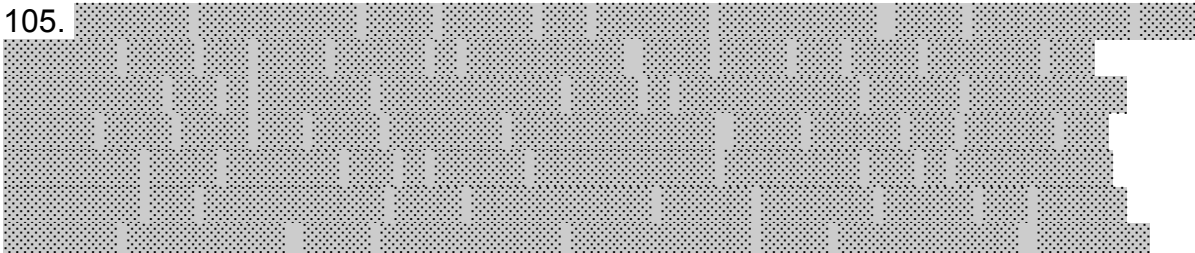
- Physical characteristics, including appearance, size and dimensions, components, production methods and technology;
- Function and usage; and
- Tariff classification.

102. There are no material differences between imported paintbrush heads and domestically-produced hog bristle paintbrush heads. The Ministry also considers that, using its standard framework for considering like goods issues, finished paintbrushes are like goods to imported paintbrush heads and that there is no essential difference between paintbrushes and paintbrush heads.

### Specialist Brushes

103. The current review has established that Haydn produces, in addition to normal hog bristle paintbrushes, a number of specialist brushes described as “ brushes”, “ brushes” and “paperhangers brushes”.

104.  are made in the following sizes: 25mm, 38mm, 50mm, 75mm, 100mm, 125mm, 150mm, 200mm, and 250mm.

105.  are made in the following sizes: 50mm, 60mm, and 69mm.

106. Paperhanging brushes are largely used for smoothing out wallpaper onto the wall, but can also be used to apply paint. Paperhanging brushes are made in the following sizes: 125mm, 150mm, 200mm, 250mm, and 300mm. Paperhanging brushes made in 200mm, 250mm and 300mm sizes do not have an extended handle, the handle being broad and flat and shaped to allow it to be easily grasped by the operator. Paperhanging brushes made in 125mm and 150mm sizes have an extended handle like that on an ordinary paintbrush. All paperhanging brushes are made in essentially the same way as ordinary paintbrushes and all are made with hog bristle. Paperhanging brushes are distributed in the same way as ordinary paintbrushes but are [REDACTED]

107. The review team considered whether these specialist brushes are like goods to the subject goods, using the Ministry's framework for considering like goods described above.

### Physical Characteristics

108. [REDACTED] brushes differ from a normal hog bristle paintbrush in [REDACTED] and in some being made with synthetic bristle. [REDACTED] brushes are also made in some sizes that are much larger than those at which a normal hog bristle paintbrush is available. The production method for [REDACTED] brushes also differs from normal hog bristle brushes in being [REDACTED]

109. [REDACTED] brushes have significantly different physical characteristics from a normal hog bristle paintbrush in being [REDACTED]. The production method for [REDACTED] brushes also differs from normal hog bristle brushes in being [REDACTED]

110. The larger paperhanging brushes differ from ordinary hog bristle paintbrushes in not having an extended handle. All paperhanging brushes are significantly larger than ordinary paintbrushes.

### Function/Usage

111. [REDACTED] brushes have a different use to ordinary hog bristle paintbrushes, being to [REDACTED]. [REDACTED] brushes would not be substitutable for a normal hog bristle paintbrush.

112. [REDACTED] brushes are used for painting, but for a [REDACTED]. [REDACTED] brushes would not usually be substitutable for normal hog bristle paintbrushes because their [REDACTED] would limit the way they could be used.

113. Paperhanging brushes have a different function to a normal hog bristle paintbrush, being largely used to smooth out wallpaper. It is unlikely paperhanging brushes would usually be substitutable for normal hog bristle paintbrushes because of their large size.

## Pricing Structures

114. All three types of brushes are [REDACTED] than normal hog bristle paintbrushes and are therefore clearly distinguishable on this basis.

## Marketing

115. [REDACTED] brushes are [REDACTED] (Normal hog bristle paintbrushes are sold direct to retailers). [REDACTED] brushes are also [REDACTED]. [REDACTED] Paperhanging brushes are marketed in the same way as normal hog bristle paintbrushes.

## Other

116. It is likely that all three types of brushes would be classified under the same tariff item as normal hog bristle paintbrushes and cannot therefore be distinguished on this basis. The review team is not aware of any other matters which are relevant to this issue.

## Conclusion on Specialist Brushes

117. The review team concludes that [REDACTED] and paperhanging brushes are not like goods to the subject goods because of the following differences:

- (a) All three types of brushes have significantly different physical characteristics to normal hog bristle paintbrushes.
- (b) All three types of brushes have different end-uses and are not generally substitutable for normal hog bristle paintbrushes.
- (c) All three types of brushes are [REDACTED] than normal hog bristle paintbrushes.
- (d) [REDACTED] and [REDACTED] brushes are marketed differently to normal hog bristle paintbrushes.

118. The review team notes that the three types of specialist brushes considered above are only produced in very small quantities and therefore their exclusion from like goods does not have any material impact on the considerations relating to the continuation or recurrence of injury should duties be removed.

## Conclusion on Like Goods

119. On the basis of the information available, the Ministry considers that goods described as hog bristle paintbrush heads and paintbrushes produced by the New Zealand industry, while not like imported paintbrush heads and paintbrushes in all

respects, have characteristics very closely resembling imported paintbrush heads and paintbrushes.

120. The Ministry concludes that fully-finished paintbrushes are like goods to imported paintbrush heads and that there is no essential difference between paintbrushes and paintbrush heads.

121. The review team concludes that [REDACTED] and paperhanging brushes are not like goods to the subject goods.

## **2.2 New Zealand Industry**

122. As noted in section 1.5 above, at the time of the last review in 1997 there were three New Zealand producers of paintbrushes, Haydn, PAL and Waterford Manners Ltd. PAL has advised that Waterford Manners Ltd no longer manufacture like goods in New Zealand and that it and Haydn are therefore the only remaining paintbrush manufacturers in New Zealand. The review team has been unable to locate any record of any paintbrush producers in New Zealand other than PAL and Haydn.

123. The application for the review was made by Haydn and PAL. As recorded in section 1.4 above, since the review was initiated PAL has advised that it no longer wishes to participate in the review. As also recorded in section 1.4, the review team considers that Haydn's production constitutes a "major proportion" of the total New Zealand industry's production in terms of section 3A of the Act, and Haydn is therefore considered to constitute the New Zealand industry for the purposes of this review.

124. Both Haydn and (prior to its withdrawal from the review) PAL were asked to provide additional information relevant to the issue of the likelihood of a continuation or recurrence of injury, should duties be removed. Detailed information was received from Haydn.

## **2.3 Imports Of Hog Bristle Paintbrushes**

125. Imports of paintbrushes of the type under review are not separately identified in the Tariff of New Zealand.

126. In estimating the volume of imports of hog bristle paintbrushes of the type under review the review team was hampered by a lack of information from interested parties. While most of the exporters and importers identified from NZ Customs data responded to an initial enquiry asking whether they exported or imported paintbrushes of the type under review, no exporters provided a questionnaire response and only one Chinese manufacturer and one New Zealand importer provided a response to the Ministry's questionnaires.

127. The proportion of the subject goods included under the relevant tariff item and statistical keys was therefore estimated as follows:

- Where an importer or exporter advised that they had exported or imported the subject goods over the POD(R) from China, it was assumed that their exports or

imports over the POD(R) were either all subject goods or all not subject goods (depending on how they answered an initial enquiry asking if they exported or imported the subject goods over the POD(R)).

- Where an exporter or importer did not respond to the initial enquiry asking if they had exported or imported the subject goods from China or where importations were outside of the sample, but anti-dumping duty was paid on the importation, it was assumed that all of the goods in that importation were the subject goods.
- The volume of paintbrushes imported over the POI determined to be subject goods and not subject goods on the basis set out above, were added and the proportions of each calculated. On this basis 16 percent of the imports were the subject goods.

128. The proportion that imports of the subject goods represented of total imports, calculated on the basis set out above has been applied to NZ Customs data relating to imports from China in order to estimate the volume of imports of the subject goods.

129. As a check on the import volumes calculated on the basis set out above, the review team extracted from NZ Customs data for each year the volume of imports on which anti-dumping duty was paid. If the volume of imports calculated on this basis in any one year was higher than the volume estimated as above, then the volume of imports of the subject goods in that year was taken as the volume of imports on which anti-dumping duty was paid.

130. The volume of imports of hog bristle paintbrushes from countries other than China was estimated by applying the proportion that the subject goods represented of total imports from China, calculated on the basis set out above, to NZ Customs data for imports from other countries.

131. As noted in section 1.6 above, NZ Customs has advised that paintbrush heads would be entered under the same tariff classification as a paintbrush. The import volume figures estimated as above will therefore include any imports of hog bristle paintbrush heads. The import volumes since the last review of paintbrushes of the type subject to review, estimated on the basis set out above, are shown in the table below.

**Table 2.1: Import Volumes of Subject Goods  
(Years Ended March)**

	1998	1999	2000	2001	2002	YTD (to 30 Sept.)
China	7,879	19,189	47,424	53,442	157,343	77,802
Other	131,706	125,560	182,117	116,739	105,399	74,194
Total	139,585	144,749	229,541	170,181	262,742	151,996

132. The table shows that the volume of imports of the subject goods from China has increased significantly over the period from 1998 to 2002.

## 2.4 New Zealand Market

133. The following table shows the New Zealand market for hog bristle paintbrushes. The import volume figures are those used in Table 2.1 above. Haydn was able to provide its sales volume figures only from the year ended March 2000. Because Haydn is considered to be the New Zealand industry for the purposes of this review, the New Zealand industry's sales volume figures exclude PAL who has withdrawn from the review.

**Table 2.2: NZ Market for Hog Bristle Paintbrushes  
(Years Ended March)**

	2000	2001	2002	YTD (to 30 Sept.)
Imports of Subject Goods	47,424	53,442	157,343	77,802
Other Imports	182,117	116,739	105,399	74,194
NZ Sales				
Total NZ Market				

## **3. REVIEW OF DUMPING**

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

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

### **3.1 Introduction**

135. The focus of this section of the report is to establish whether expiry of the anti-dumping duty would be likely to lead to continuation or recurrence of dumping.

136. For purposes of this analysis, the review team first established whether hog bristle paintbrushes from China were still being dumped and the extent of any dumping in the year ended 30 September 2002.

137. The review team faced a lack of co-operation from most Chinese manufacturers, exporters and importers. No exporters provided a questionnaire response and only one Chinese manufacturer and one New Zealand importer provided a response to the Ministry’s questionnaires. The lack of co-operation meant that the review team had to assess any available information and use the best available information. The review team could only compare export prices and normal values on a transaction-to-transaction basis where individual types and sizes of paintbrushes were able to be identified.

138. Export prices and normal values are usually compared at the ex-factory level, which is the normal point of comparison referred to in Article 2.3 of the Anti-Dumping Agreement. In the absence of information from interested parties, the review team was able to make only limited deductions from the base export prices.

139. In the absence of required information, the New Zealand legislation (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 using best available information, the review team has borne in mind the commercial context in which the information has been provided.

### **3.2 Findings of Investigation and Reviews**

#### **Original Investigation**

140. The original investigation, in 1988, found that dumping was occurring across the total range of hog bristle paintbrushes imported from China. Dumping margins established were found to range between 248% and 920% per brush, expressed as a percentage of export price.

## **First Review**

141. The first review, in 1992, categorised hog bristle paintbrushes into industrial, handyman and tradesman brushes and concluded that dumping was still occurring in all three categories, with dumping margins ranging from 2% to 602%.

142. Under the legislation that existed at that time, China was considered to be a non-market economy and normal values, on which the duties were based, were established on the basis of paintbrushes sold in the domestic market of a surrogate country, Sri Lanka. Sri Lanka was chosen as a surrogate country for China because it operated a market economy at a similar level of development as China, and a Sri Lankan paintbrush manufacturer was willing to co-operate in the review.

## **Second Review**

143. The second review, in 1997, concluded that dumping was still occurring with dumping margins ranging from 269% to 606%.

144. Because no exporters co-operated with the review, normal values, on which the duties continued to be based, were established by updating the normal values from the 1992 review by movements in the wholesale price index for Sri Lanka and by the movement in the exchange rate between the Sri Lankan rupee (SR) and the US dollar.

## **3.3 Purpose of Review of Dumping**

145. The Ministry's "sunset" reviews are intended to determine whether the expiry of the existing anti-dumping duties after five years would be likely to lead to a continuation or recurrence of dumping and injury and therefore whether there is a continued need for the imposition of anti-dumping duties. Questions to be asked in relation to dumping are:

- Whether the goods under review continue to be dumped and, if so, the extent of that dumping.
- The likelihood of a continuation of any such dumping should anti-dumping duties be removed.
- Where imports of the goods subject to anti-dumping duty have ceased or are no longer dumped, the likelihood of a recurrence of dumping should anti-dumping duties be removed.

146. The likelihood of dumped imports is considered in section 4.

## **3.4 Export Prices**

147. Export prices are determined in accordance with section 4 of the Act which provides, inter alia, as follows:



(1) Subject to this section, for the purposes of this Act, the export price of any goods imported or intended to be imported into New Zealand which have been purchased by the importer from the exporter shall be—

(a) Where the purchase of the goods by the importer was an [arm's] length transaction, the price paid or payable for the goods by the importer other than any part of that price that represents—

(i) Costs, charges, and expenses incurred in preparing the goods for shipment to New Zealand that are additional to those costs, charges, and expenses generally incurred on sales for home consumption; and

(ii) Any other costs, charges, and expenses resulting from the exportation of the goods, or arising after their shipment from the country of export;

## **Exporters**

148. The review team has identified in section 1.5 above a number of Chinese manufacturers, exporters and importers of the subject goods from China, using the methodology outlined above in section 2.3. Most of these parties did not respond or did not respond fully to questionnaires.

149. Where information relating to a particular importation has not been provided by either a manufacturer, exporter or importer, the review team has been unable to establish export prices for individual types and sizes of paintbrushes to allow it to carry out a detailed transaction-to-transaction comparison of export prices with normal values, which is the Ministry's preferred approach.

150. The review team has, therefore, focussed on imports where sufficient detailed information has been provided. A sunset review involves a prospective analysis of whether dumping is likely to continue or recur if anti-dumping duties are removed. Part of this analysis involves considering whether dumping is still present, and the review team considers that the most accurate assessment of this is possible by examining only those importations where adequate information has been provided to allow paintbrush sizes and types to be identified. Export prices for the following suppliers have, therefore, been assessed.

- Selleys Pty Ltd
- SPL Group Ltd

## **Selleys Pty Ltd**

### ***Export Sales Distribution***

151. Customs data shows that the country of origin of the subject goods is China, and that the goods have been exported from Australia by Selleys Pty Ltd to the New Zealand importer, [REDACTED]. Reference to invoices and to business directories indicate that the New Zealand importer is [REDACTED].

152. On 13 November 2002, Selleys Pty Ltd advised, through its representative Bell Gully Trade Group, that the company and its New Zealand importer no longer wished to participate in the review. Selleys Pty Ltd did, however, provide invoices detailing its exports of subject goods to New Zealand during the POD(R).

153. Selleys Pty Ltd identified [REDACTED] as its Chinese supplier, however, this company advised, after Selleys Pty Ltd's withdrawal from the review, that the paintbrushes identified by Selleys Pty Ltd, as being exported from Australia to New Zealand, were not its products.

### **Base Price**

154. The actual FOB transaction prices, as shown on invoices provided by Selleys Pty Ltd, for each size of brush were used as base prices for assessing ex-factory export prices. The review team was able to establish from Customs' details of one import entry that a shipment of paintbrushes had been assessed for anti-dumping duty as industrial brushes. All paintbrushes were described similarly, and the review team therefore treated all shipments as industrial brushes.

### **Arm's Length Transactions**

155. Selleys Pty Ltd and the New Zealand importer appear to be related companies, through the common ownership of [REDACTED]. The review team does not have information that would allow it to establish whether the prices paid by the importer are influenced by this relationship. Due to the absence of co-operation from the New Zealand importer, the review team also does not have information that would allow it to construct export prices by deduction from the first arm's length sale in New Zealand.

156. In these circumstances, the review team considers that FOB values per size shown on invoices are the best information available from which export prices may reasonably be assessed.

### **Adjustments**

#### *Preparation for Export*

157. The review team was provided with no information that would allow it to make deductions for the costs of moving the goods from the factory to the wharf.

#### *Exporters' Margins*

158. In the absence of information from exporters relating to their margins, a deduction for the Australian exporter's margin of [REDACTED] percent has been made. This is the same adjustment as that made for exporters' margins in the original investigation.

#### *Other Adjustments*

159. No information was available that would allow any other adjustments to be made.

### **Export Price Calculations**

160. Export prices were calculated by deducting from the base prices the amounts for the adjustments referred to above.

### **SPL Group Ltd**

#### **Export Sales Distribution**

161. Customs data shows that the country of origin of the subject goods is China, and that the goods have been exported from Australia by ITW Proline and imported into New Zealand by Ramset Fasteners Ltd (Ramset). The importer advised that it was known as Ramset New Zealand, a division of ITW New Zealand Ltd whose parent company is Illinois Tool Works Inc, Chicago. It named its Australian supplier as SPL Group Ltd and noted its understanding that SPL Group buys the paintbrushes from an Australian importer.

162. SPL Group did not respond to the exporters questionnaire, but did identify its Chinese supplier as [REDACTED] of Hong Kong. [REDACTED] advised that it acts as an agent and sources the subject goods from a manufacturer in mainland China, but did not name the Chinese manufacturer. The Chinese manufacturer did not respond to a manufacturers questionnaire.

163. The New Zealand importer responded to the importers questionnaire and referred to subsequent supply of invoices and import entries, but these were not received by the Ministry. Ramset did, however, identify the imported brushes as being Tradesman brushes in terms of bristle volume, although details provided by NZ Customs indicated that one brush size was [REDACTED] brush and the review team treated that brush size as such. The review team did not have information on the composition of sets which would allow it to make any comparison.

#### **Base Price**

164. Base prices are the FOB values in Australian dollars, which in this case are equivalent to values for duty for Customs purposes.

#### **Arm's Length Transactions**

165. The New Zealand importer is related to SPL Group through common ownership by the ITW group of companies. The review team does not have information that would allow it to establish definitively whether the prices paid by the importer are influenced by this relationship. Due to the absence of co-operation from the New Zealand importer, the review team also does not have information that would allow it to construct export prices by deduction from the first arm's length sale in New Zealand.

166. The New Zealand importer advised that the subject goods are sourced specifically for Kmart and sold at prices set by their head office. SPL Group has an agreement to supply Kmart and Ramset supplies Kmart in New Zealand on SPL Group's behalf. Ramset noted that its relationship with SPL Group does not

influence the price it pays for paintbrushes. From time-to-time Ramset asks SPL Group to apply to Kmart for price increases so that Ramset is not selling at a loss. However, information provided by Ramset on its cost build-up to selling prices, shows that it sold [REDACTED] over the year ended 30 September 2002.

167. The fact that Ramset does not wish to sell at a loss may indicate that the price paid by the New Zealand importer is not influenced by its relationship with SPL Group. For the purposes of assessing whether imports of Chinese paintbrushes are still being dumped, the review team has taken prices paid by the importer Ramset as being at arm's length.

### **Adjustments**

#### *Preparation for Export*

168. The review team was provided with no information that would allow it to make deductions for the costs of moving the goods from the factory to the wharf.

#### *Exporters' Margins*

169. In the absence of information from exporters relating to their margins, a deduction for each exporter's margin of [REDACTED] percent has been made. This is the same adjustment as that made for exporters' margins in the original investigation. The review team assumes that the Hong Kong agent and the Australian exporter will each have applied a margin, and deductions at the above rate have been made for each of these parties.

#### *Other Adjustments*

170. No information was available that would allow any other adjustments to be made.

### **Export Price Calculations**

171. Export prices were calculated by deducting from the base prices the amounts for the adjustments referred to above.

## **3.5 Normal Values**

172. Normal values are determined in accordance with section 5 of the Act, which, *inter alia*, provides as follows:

(1) Subject to this section, for the purposes of this Act, the normal value of any goods imported or intended to be imported into New Zealand shall be the price paid for like goods sold in the ordinary course of trade for home consumption in the country of export in sales that are arm's length transactions by the exporter or, if like goods are not so sold by the exporter, by other sellers of like goods.

(2) Where the [Chief Executive] is satisfied that the normal value of goods imported or intended to be imported into New Zealand cannot be determined under subsection (1) of this section because—

- (a) There is an absence of sales that would be relevant for the purpose of determining a price under that subsection; or
- (b) The situation in the relevant market is such that sales in that market that would otherwise be relevant for the purpose of determining a price under subsection (1) of this section are not suitable for use in determining such a price; or
- (c) Like goods are not sold in the ordinary course of trade for home consumption in the country of export in sales that are arm's length transactions by the exporter and it is not practicable to obtain within a reasonable time information in relation to sales by other sellers of like goods that would be relevant for the purpose of determining a price under subsection (1) of this section, —  
the [Chief Executive] may determine that the normal value, for the purposes of this Act, shall be either—
  - (d) The sum of—
    - (i) Such amount as is determined by the [Chief Executive] to be the cost of production or manufacture of the goods in the country of export; and
    - (ii) On the assumption that the goods, instead of being exported, had been sold for home consumption in the ordinary course of trade in the country of export, —
      - (A) Such amounts as the [Chief Executive] determines would be reasonable amounts for administrative and selling costs, delivery charges, and other charges incurred in the sale; and
      - (B) An amount calculated in accordance with such rate as the [Chief Executive] determines would be the rate of profit on that sale having regard to the rate of profit normally realised on sales of goods (where such sales exist) of the same general category in the domestic market of the country of export of the goods; or
  - (e) The price that is representative of the price paid for similar quantities of like goods sold at arm's length in the ordinary course of trade in the country of export for export to a third country.
- (3) Where the normal value of goods imported or intended to be imported into New Zealand is the price paid for like goods, in order to effect a fair comparison for the purposes of this Act, the normal value and the export price shall be compared by the [Chief Executive] —
  - (a) At the same level of trade; and
  - (b) In respect of sales made at as nearly as possible the same time; and
  - (c) With due allowances made as appropriate for any differences in terms and conditions of sales, levels of trade, taxation, quantities, and physical characteristics, and any other differences that affect price comparability.

173. In certain circumstances, normal values can be established under section 6 of the Act, which provides as follows:

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

(2) For the purposes of subsection (1) of this section, the [Chief Executive] may disregard any information that the [Chief Executive] considers to be unreliable.

174. The information available for use in assessing normal values consists of the following information. The information was either provided by interested parties or obtained by the review team:

- Estimated normal values provided by Haydn and PAL;
- Sri Lankan Wholesale Price Index information to March 2002;
- Chinese price indices (ex-factory, CPI and retail);
- Exchange rate information;
- Recent Chinese domestic prices provided by a Chinese manufacturer.

175. The review team approached the use of this information as described below to decide on the best information available for assessing normal values.

**Applicant Industry Information**

176. In their application for a review, both Haydn and PAL estimated current Chinese normal values by taking Chinese export prices and adjusting these upwards by the percentage amount that a Chinese manufacturer (30 to 40%) and a Taiwanese agent (38%) advised would be needed to reach the level of Chinese domestic prices. The following tables show those estimated normal values, for handyman and tradesman brushes only, in US dollars using a figure of 38 percent to uplift export prices.

**Table 3.1: Normal Values Estimated by NZ Industry**

Brush Size	Handyman Brushes (US\$/Brush)	Tradesman Brushes (US\$/Brush)
25mm	[REDACTED]	[REDACTED]
38mm	[REDACTED]	[REDACTED]
50mm	[REDACTED]	[REDACTED]
63mm	[REDACTED]	[REDACTED]
75mm	[REDACTED]	[REDACTED]
100mm	[REDACTED]	[REDACTED]

**Updated Surrogate Normal Values**

*1997 Review*

177. In the first review in 1992, normal values were based on information from a producer in Sri Lanka, which country acted as a surrogate for China. This approach was consistent with the Act as it then stood. Normal values were set in US dollars because of the predominance of export sales to New Zealand that were made in US dollars. In the 1997 review, in the absence of co-operation from Chinese exporters and manufacturers, the review team considered that the best information available on

normal values related to normal values established in the first review and that these values should be updated.

178. The 1997 review team attempted to update normal values by using Chinese price movements and movements in Chinese exchange rates. The team considered information in the *International Monetary Fund International Financial Statistics May 1997* and the *Penn-World Results Database* on the Internet, but no producer price index figures or wholesale price index figures were available for China that could have been used to update normal values.

179. The 1997 review team resorted to updating normal values using price and exchange rate movement information for Sri Lanka. Figures were obtained from the *International Monetary Fund International Financial Statistics May 1997*. Normal values established in the first review were first updated using a Wholesale Price Index (WPI) and then were adjusted to reflect exchange rate movements between the Sri Lankan rupee and the US dollar. In effect, the normal values for each category and size of paintbrush in the first review were increased by the percentage that the Sri Lankan WPI had increased between reviews and then decreased by the percentage by which the rupee had depreciated in value against the US dollar over the same period.

180. The WPI is designed to measure prices at an early stage of the distribution system (i.e. the first significant commercial transaction). In practice, the WPI covers a mix of agricultural and industrial goods at a variety of stages in production and distribution and includes imports and import duties. The review team considered the WPI to be an appropriate indicator of price movements for establishing normal values for the review.

181. The normal values were assessed at the following amounts in US dollars:

**Table 3.2: Normal Values Updated for 1997 Review**

Size (mm)	Group 1 (Industrial)	Group 2 (Handyman)	Group 3 (Tradesman)
25	0.63	0.64	0.65
38	0.89	0.90	0.92
50	1.33	1.36	1.36
63	1.66	1.70	1.71
75	1.97	2.01	2.05
100	2.68	2.70	2.79

182. The review team revisited the 1997 calculations and found that the calculation for depreciation of the Sri Lankan rupee (SR) against the US\$ was incorrect. The miscalculation resulted in normal values being overstated in the 1997 review by between 5 and 7 percent. The recalculated normal values for 1996 (the period examined in the 1997 review) are as follows:

**Table 3.3: Normal Values Corrected for 1997 Review**

Size (mm)	Group 1 (Industrial)	Group 2 (Handyman)	Group 3 (Tradesman)
25	0.60	0.60	0.61
38	0.84	0.85	0.87
50	1.26	1.29	1.29
63	1.56	1.61	1.62
75	1.85	1.89	1.93
100	2.52	2.55	2.63

*Current Review*

183. The review team applied the 1997 review team's methodology to the normal values established in the 1997 review. The 1997 review team established normal values for the calendar year 1996 and these have been corrected by the current review team. The average WPI index figure for Sri Lanka in 1996 was 120.5 and in the year to 31 March 2002 was 159.7. By extending the trend on a straightline basis through these two points, the review team estimated that the average WPI index figure for the calendar year 2002 would be 167.2. The difference between 1996 and 2002 represents a wholesale price increase over the period of 38.8 percent.

184. Based on average annual figures from OANDA, the United States dollar appreciated against the SR by 73 percent. In 1996, the average rate of exchange was 55.31 SR to the US dollar and in 2002 the rate was 95.78. This means that the SR depreciated against the US dollar by 42 percent in the same period.

185. The review team took the corrected 1996 normal values as per Table 3.3 above and increased them by the WPI movement of 38.8 percent and then decreased the results by the depreciation of the Sri Lankan currency of 42 percent against the US dollar. The estimated normal values are shown in the following table and are 24 to 25 percent lower than the normal values calculated and used in the 1997 review.

186. Normal values updated using this method are as follows:

**Table 3.4: Normal Values Updated to 2002 Using Sri Lankan Information**

Size (mm)	Group 1 (Industrial)	Group 2 (Handyman)	Group 3 (Tradesman)
25	0.48	0.48	0.49
38	0.67	0.68	0.69
50	1.01	1.04	1.04



63	1.25	1.29	1.30
75	1.48	1.51	1.54
100	2.02	2.04	2.11

### **Updating Normal Values Using Chinese Statistical Information**

187. The review team examined information contained in the *China Statistical Yearbook 2002*, compiled by the National Bureau of Statistics of China. Price indices that might be relevant in updating normal values were as follows. The descriptions given against each index are as stated in the Yearbook.

- Ex-factory Price Index of Industrial Products – “reflects the trend and degree of changes in general ex-factory prices of all industrial products, including sales of industrial products by an industrial enterprise to all units outside the enterprise, as well as sales of consumer goods to residents.”\_
- Consumer Price Index (CPI) – “reflects the trend and degree of changes in prices of consumer goods and services purchased by urban and rural residents . . . ”
- Retail Price Index (RPI) – “reflects the general change in retail prices of commodities. The change and adjustment in retail prices directly affect the living expenditure of urban and rural residents . . . ”

188. No Wholesale Price Index was available.

189. The review team considered that the best indicator of movements in ex-factory domestic prices would be a price or value indicator that was located early in the distribution chain. The ex-factory price indices appeared to be calculated from data relating to both domestic and export sales and was likely to reflect, therefore, external influences on prices. For this reason, the review team rejected use of the ex-factory price indices.

190. The review team considered the use of the CPI index, but rejected this use on grounds that the CPI reflects movements in consumers’ prices of items other than goods, such as services.

191. The review team considered that the most reliable indicator of movements in domestic prices of goods in China was in the form of retail price index information. The retail price index in 1991 was 213.7 and in 2001 was 351.6. The review team used the average movement over the most recent four years to estimate the retail price index for 2002 as 344.3. On this basis, retail prices increased between 1991 and 2002 by 61.1%. The review team increased 1991 normal values in US dollars by this percentage.

192. Exchange rate information for 1991 was not available from the OANDA currency conversion site on the internet. The review team took Customs exchange rates for 1991 and established that the simple average was 5.29 Renminbi to the US dollar. The average interbank rate from OANDA for 2002 was 8.29 Renminbi to the US

dollar. This means that the Renminbi depreciated against the US dollar by 36 percent between 1991 and 2002. The review team decreased the estimated 2002 US dollar normal values by this percentage.

193. The normal values arrived at using this method are considered to be calculated from the best available information and are shown in the table below under the heading Base Prices.

**Chinese Producer Information**

194. Tianjin DMC APPO Brush Materials Co Ltd (Tianjin) provided a partially-completed response to the manufacturers questionnaire, but declined a verification visit by the review team. Tianjin noted that it supplied only about [REDACTED] percent of its production in the local market, which is lower than the 5 percent sufficient domestic sales quantity figure in footnote 2 of the Agreement. Tianjin supplied prices for sales of two types of paintbrushes sold to the Chinese domestic market. Both brushes appeared to be at the high quality end of the range of available paintbrushes as the volume of bristle was much higher than the lowest volume for Tradesman brushes.

195. Tianjin advised that it was privately-owned by British company Delbanco Meyer & Company Limited, its accounts are audited by KPMG, and neither costs of inputs nor domestic selling prices are subject to any price controls or restrictions.

196. Tianjin advised that its domestic sales are to only one chain of stores and that it is not related to its domestic customer. Costing information provided by Tianjin indicates that domestic sales are not being made at a loss. The review team assumes that the domestic prices provided by Tianjin do not include the Chinese value-added tax (VAT) of 17 percent.

197. No other information was provided that would allow these prices to be tested or verified. In view of the fact that domestic sales quantities may not be in sufficient quantities to establish normal values, that the review team has not established by verification whether sales are at arm’s length in the ordinary course of trade, and that the prices are unverified, the review team considers that it cannot rely on these prices to establish normal values. Tianjin has advised that it did not supply brushes imported into New Zealand and as such it is not an interested party to this review in terms of any obligations under the “best information available provisions” of Annex II of the Agreement. The review team has, however, used these prices as a possible indicator of the extent to which its assessment of normal values is correct.

**Table 3.5: Unverified Chinese Domestic Prices 2002**

Size (mm)	Group 1 (Industrial)	Group 2 (Handyman)	Group 3 (Tradesman)
25	NA	NA	[REDACTED]
38	NA	NA	[REDACTED]
50	NA	NA	[REDACTED]

63	NA	NA	
75	NA	NA	NA
100	NA	NA	NA

### **Other Information**

198. No other information in respect of recent export prices and normal values was available to the review team.

### **Best Information Available on Normal Values**

199. The 1992 review aimed to establish a surrogate normal value for China, by using Sri Lankan normal values. At that time, Chinese normal values were not considered to be reliable as the government of China was considered to have a substantial monopoly of the trade of the country and determined or substantially influenced the domestic price of goods in that country. The legislative provision that specifically provided for the surrogate normal value approach in these circumstances was removed on 1 January 1995.

200. The important point to remember is that the Sri Lankan normal values were considered to represent Chinese normal values. In the absence of information from Chinese manufacturers and sellers, the best approach to use in updating normal values would be to use price indices and exchange rates relating to China. The reason for using Sri Lankan information to update the normal values was because no Chinese information was available.

201. This situation has now changed. Chinese price indices are available from at least 1991. Chinese exchange rate information is available from 1991 in the form of either Customs exchange rates or OANDA information.

202. The review team considers that, in the absence of verified information from Chinese producers, the best method for updating normal values is that using as much information relating to Chinese domestic prices and Chinese exchange rates as possible.

203. The verification team has, therefore, updated the 1991 surrogate normal values to 2002 normal values by:

- adjusting the values upwards by the extent to which the Chinese retail price index has increased between 1991 and 2002; and
- adjusting the revised values downwards by the extent to which the Chinese currency has depreciated against the US dollar between 1991 and 2002.

204. The recalculated normal values are 20 to 21 percent lower than the normal values calculated and used in the 1997 review, due partly to each of the following factors:

- the use of Chinese information rather than Sri Lankan information to update the values;
- the fact that retail prices have declined overall since the 1996 review period and the exchange rate has remained relatively stable; and
- the calculation error in the 1997 review.

205. The recalculated Chinese normal values have been compared with normal values that could be calculated using other information and the review team has made the following observations.

- Estimated normal values provided by PAL and Haydn – the recalculated normal values are lower than normal values estimated by PAL, by between 10 and 15 percent, and 15 to 20 percent higher than normal values estimated by Haydn;
- Sri Lankan Wholesale Price Index and exchange rate information – the recalculated normal values are 5 percent higher than normal values calculated using Sri Lankan information;
- Recent Chinese domestic prices provided by a Chinese manufacturer for four sizes of two brands of high quality tradesman brushes - the recalculated Chinese normal values fell within the range of prices provided for three brush sizes and for one brush the recalculated values were higher than both Chinese domestic prices. The recalculated normal values were 10 to 15 percent higher than the average domestic prices provided by the Chinese manufacturer.

### **Base Prices**

206. The base normal values, based on price and exchange rate information relating to China, are shown in the following table.

**Table 3.6: Normal Values Updated to 2002 Using Chinese Information**

Size (mm)	Group 1 (Industrial)	Group 2 (Handyman)	Group 3 (Tradesman)
25	0.51	0.51	0.52
38	0.71	0.72	0.73
50	1.06	1.10	1.10
63	1.32	1.36	1.37
75	1.57	1.60	1.63
100	2.14	2.16	2.23







207. No information was provided or available that would allow any adjustments to be made to the recalculated normal values. The normal values are, therefore, those values shown in the preceding table in US dollars per brush.

### 3.6 Comparison Of Export Prices and Normal Values







208. In order to establish whether imports over the POD(R) were dumped, the review team compared the export prices, established as explained above in section 3.3, with the normal values, assessed as explained above in section 3.4. Comparisons of export prices and normal values and the calculation of dumping margins have been done on a transaction-to-transaction basis.

209. The results of these comparisons show that the following dumping margins existed. Dumping margins are also shown as a percentage of export prices.




**Table 3.7: Selleys Pty Ltd: Range of Dumping Margins US\$**

Size (mm)	Group 1 (Industrial)	Group 2 (Handyman)	Group 3 (Tradesman)
25		NA	NA
38		NA	NA
50		NA	NA
63		NA	NA
75		NA	NA
100		NA	NA

**Table 3.8: Selleys Pty Ltd: Weighted Average Percentage Dumping Margins**

Size (mm)	Group 1 (Industrial)	Group 2 (Handyman)	Group 3 (Tradesman)
25		NA	NA
38		NA	NA
50		NA	NA
63		NA	NA
75		NA	NA
100		NA	NA

**Table 3.9: SPL Group Ltd: Range of Dumping Margins**

Size (mm)	Group 1 (Industrial)	Group 2 (Handyman)	Group 3 (Tradesman)
12		NA	NA
25	NA	NA	
38	NA	NA	NA
50	NA	NA	

63	NA	NA	NA
75	NA	NA	
100	NA	NA	

**Table 3.10: SPL Group Ltd: Weighted Average Percentage Dumping Margins**

Size (mm)	Group 1 (Industrial)	Group 2 (Handyman)	Group 3 (Tradesman)
12		NA	NA
25	NA	NA	
38	NA	NA	NA
50	NA	NA	
63	NA	NA	NA
75	NA	NA	
100	NA	NA	

### Volume of Dumped Imports

210. All paintbrushes examined were being dumped during the POD(R). Weighted average dumping margins ranged up to 770 percent of the export price. Industrial brushes are being dumped at margins that are significantly higher than margins at which tradesman brushes are being dumped.

## 3.7 Likelihood of Continuation or Recurrence of Dumping

### Introduction

211. The Ministry's approach to sunset reviews is recorded above in section 1.3. In considering the likelihood of a continuation or recurrence of dumping, the review team has applied the general principles set out in this section of the report.

212. According to Article 11.3 of the Anti-dumping Agreement, the present review must also focus on the likelihood of a continuation or recurrence of dumping should the anti-dumping duties be allowed to expire.

### Submissions from Interested Parties

#### *New Zealand Industry*

213. Haydn stated that if anti-dumping duties were removed, the company "would expect prices of Chinese brushes to be much in line as at present . . .".

214. Haydn stated that it understands that “the dumping duty for bristle brushes from the PRC in the USA still stands at 300%” and that this indicated a need to protect US industry [from dumping].

215. PAL, in its application for a review, provided evidence of dumping. No additional information was provided by PAL on the likelihood of continuation of dumping.

#### *Chinese Exporters*

216. The only Chinese-based company to provide information for the review was Tianjin. During the POD(R) it appears that none of the paintbrushes made by Tianjin was exported to New Zealand. Tianjin did, however, make a number of comments about its business if the anti-dumping duties were to be removed. Tianjin would carry on its business in the same way and it would only sell at a profit. Tianjin would have a better chance to compete in the New Zealand market “on a fair play basis” if the duties were to be removed. No inventory is held and Tianjin has no spare capacity, but would grow if there were a need. Tianjin knows of no market that is able to absorb any excess Chinese exports. Tianjin stated that it has “never dumped anything anywhere”.

#### *New Zealand Importers*

217. Almax Industries Ltd (Almax), a potential importer, was the only interested party to respond to the Interim Report. Almax raised the issue of whether a Chinese producer could be considered to be dumping if it does not manufacture for the Chinese market and exports all its production.

### **Ministry’s Considerations**

#### *Dumping Margins and Duties*

218. In the original investigation in 1988 and in each subsequent review most imports of hog bristle paintbrushes from China have been found to be dumped. In the current sunset review, all of the paintbrushes examined were found to be dumped. Dumping margins in the investigation and subsequent reviews have been significant and have ranged up to several hundred percent of export price.

219. Hog bristle paintbrushes from China have been dumped consistently for the past 15 years, despite the imposition and reassessment of anti-dumping duties. This history of dumping and the large magnitude of the margins of dumping indicate that dumping is likely to continue in the foreseeable future.

#### *Import Volumes*

220. As noted in section 4 below under “Import Volumes”, import volumes decreased after the original imposition of anti-dumping duties and after each reassessment of duties following reviews. These trends indicate that dumping of additional import volumes would recur if anti-dumping duties were to be removed. In the current review, the review team notes that dumped imports increased markedly in the year ended March 2002 and this trend was sustained in the period to 30 September 2002.

The large magnitudes of dumping found in the POD(R) – the year ended 30 September 2002 – combined with the significant increase in volumes of dumped imports indicate clearly that dumping is likely to continue in the foreseeable future if anti-dumping duties were to be removed.

### *Export Prices*

221. In assessing the likelihood of continuation or recurrence of dumping, the review team needs to consider the effect of the current duties on pricing. The current duties are set in the form of Normal Value (Value for Duty Equivalent) (NV(VFDE)) amounts. These amounts reflect ex-factory normal values plus export costs up to the level of the Customs VFD – that is, undumped prices at the VFD level. Imports at prices below the NV(VFDE) amounts are considered to be dumped and the anti-dumping duty collected is the amount by which the actual VFD amounts are lower than the NV(VFDE) amounts.

222. Exporters and importers could avoid payment of anti-dumping duties by pricing up to the level of the NV(VFDE) amounts. The review team has no evidence of this practice and notes that, in the POD(R), anti-dumping duty totalling NZ\$63,138 was paid on imports with a VFD of NZ\$125,156, representing a duty rate of 50 percent. In addition, the export prices examined by the review team indicate that shipments are still being dumped to a significant extent. The review team is not aware of any other matters that would be likely to affect export prices in the foreseeable future.

### *Normal Values*

223. There is no evidence to suggest that normal values will change significantly in the foreseeable future.

224. In response to Almax's submission that if the company exporting the product does not manufacture for the local market then it cannot be dumping, the review team notes that the Act provides for such a situation in section 5 which is quoted in section 3.5 above. This section of the Act allows normal values to be determined where there is an absence of relevant sales on the domestic market of the country of export, through the use of sales by other sellers of like goods, the construction of a normal value or the use of sale prices to third countries. In addition, section 6 allows the Chief Executive to determine normal values having regard to all available information if normal values cannot be determined under the provisions of section 5.

225. It is therefore possible to establish, as has been done in this review, if a company is dumping in the absence of sales on the domestic market in the country of export, using the provisions of the Act referred to in the paragraph above.

### *Conclusion*

226. On the basis of the analysis above the review team considers there are clear indicators that, if anti-dumping duties are removed, dumping is likely to continue in the foreseeable future.



### **3.8 Conclusions Relating To Dumping**

227. The review team concludes that paintbrushes imported over the POD(R) were dumped.

228. The review team concludes that paintbrushes will continue to be dumped should anti-dumping duties be removed.



## 4. REVIEW OF INJURY

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### 4.1 Injury for the Purposes of a Review

229. Section 8 of the Act deals with injury to a New Zealand industry and *inter alia* states:

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

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

(2) Without limiting the generality of subsection (1) of this section, and without limiting the matters that the [Chief Executive] may consider, the [Chief Executive] shall have regard to the following matters:

- (a) 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:
- (b) 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:
- (c) The extent to which the effect of the dumped or subsidised goods is or is likely significantly to depress prices for like goods of New Zealand producers or significantly to prevent price increases for those goods that otherwise would have been likely to have occurred:
- (d) 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:

## Likelihood of a Continuation or Recurrence of Injury

230. The Ministry's approach to sunset reviews is recorded in section 1.3 above. In considering the likelihood of a continuation or recurrence of injury, the review team has applied the general principles set out in this section of the report.

231. The Ministry carries out reviews on the basis of the above provisions in the Act and the Agreement. The Ministry interprets these provisions to mean that the likelihood of a continuation or recurrence of injury should duties be removed is to be considered in the context of the likely impact on the industry arising from the likely volume of the dumped goods and their likely effect on prices.

## 4.2 Import Volumes

232. *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.*

233. As noted in section 2.3 above, the tariff item and statistical keys covering the subject goods includes a wider range of paintbrushes than paintbrushes of the type subject to review. The volume of imports of the subject goods from China and other countries has been calculated on the basis set out in section 2.3. The figures for the volume of dumped goods considered in this section of the report are based on the proportion of subject goods identified as dumped in section 3.6. In this section of the report it was determined that 100 percent of the subject goods imported over the period of investigation were dumped. It has therefore been assumed that all imports of the subject goods from China over all of the period under review were dumped.

234. The following table sets out the volume of imports of dumped subject goods and the volume of other imports of hog bristle paintbrushes, together with the New Zealand production and consumption figures. As noted in section 1.5 above, Haydn's production is considered to be a "major proportion" of total New Zealand production and Haydn (as the only cooperating New Zealand producer) is considered to constitute the New Zealand industry for the purposes of this review. The New Zealand production figures therefore are those of Haydn only.









**Table 4.1: Import Volumes  
(Years Ended March)**

	2000	2001	2002	YTD (to 30 Sept.)
Dumped Imports	47,424	53,442	157,343	77,802
Other Imports	182,117	116,739	105,399	74,194
NZ Industry Sales				
Total NZ Market				

Change in:

- Dumped Imports	6,018	103,901
- Other Imports	-65,378	-11,340
- NZ Industry Sales		
- Total NZ Market		

Dumped Imports as % of:

- NZ Industry Sales				
- Total NZ Market				

235. The import volumes of dumped subject goods have from 2002 increased significantly in relation to both New Zealand production and consumption.

236. The Ministry notes that the trends in the volumes of dumped imports shown in the table must be treated with caution in the absence of information from PAL. For example, the apparent increase in dumped imports relative to New Zealand production and consumption may be due in part to Haydn losing sales to PAL.

237. However, the percentage increase in the volume of dumped imports in 2002 is likely to be greater than any increase in the total market which may have been evident had information from PAL been available. The review team also notes that, due to a lack of co-operation from parties, there is some uncertainty over the volume of imports of the subject goods. It is also noted that Haydn has not claimed that it has been materially injured by imports of the subject goods.

### Likely Import Volumes Should Duties be Removed

238. The likelihood of a recurrence of significant volumes of dumped imports sufficient to cause material injury is related to factors such as:

- The volume of imports before and after the imposition of anti-dumping duties.
- The price advantage (in the absence of duties) which such imports may hold.
- The capacity of the Chinese hog bristle paintbrush industry to substantially increase its exports to New Zealand.
- The ease of entry into the New Zealand market.
- The ability of importers to handle a significant increase in imports.
- The ease of distribution of the goods in New Zealand.

### *Import Volumes before and after Imposition of Duties*

239. The original investigation completed in 1988 showed a significant increase in the volume of dumped imports from China in the period from 1 July 1987 to 31 March 1988. The first review completed in 1992 showed a significant decline in the volume of imports of the subject goods following the imposition of anti-dumping duties to relatively minor levels in relation to New Zealand production and consumption.

240. The second review completed in 1997 showed a continued decline in the volume of imports of the subject goods in 1993, 1994 and 1995. Import volumes in 1996 and 1997 were at about the same level as those in 1995. The import volumes from 1993 to 1997 (particularly those from 1995 to 1997) were negligible relative to New Zealand production and consumption. The reason for the further decline in import volumes from 1993 may be related to the increase in the level of duties as a result of the reassessment carried out following the 1992 review.

241. The evidence from the original investigation, the two subsequent reviews and this current review indicates that the volume of imports has been affected by the imposition of duties and their subsequent reassessment, suggesting that the removal of duties may result in an increase in import volumes.

### *Prices*

242. The price undercutting analysis in section 4.3 below shows that the subject goods, when anti-dumping duty is excluded, undercut the prices of Haydn's paintbrushes by a significant margin and concludes that if the duty was removed, there is likely to be a recurrence of significant price undercutting. It is also concluded in section 4.3 that there is likely to be a recurrence of significant price depression and suppression, should the duty be removed. The extent of the price undercutting provides a clear incentive to import the subject goods should the duty be removed.

### *Capacity of Chinese Industry*

243. In its application for this review, Haydn provided copies of correspondence with a Chinese hog bristle paintbrush manufacturer in which the manufacturer stated that it produces 150,000 hog bristle paintbrushes per day, which equates to an annual production of 54.6 million brushes, based on the factory working seven days per week. Haydn contrasted the production from this one Chinese factory with the total New Zealand industry's production, which as recorded in section 1.5 above, is approximately [REDACTED] brushes per annum or only [REDACTED] percent of the annual production of this one Chinese producer.

244. Haydn also said in its application that it understands that there are several factories in each of the Chinese provinces making hog bristle paintbrushes, which it submitted clearly indicates that the Chinese industry has the capacity to substantially increase exports to New Zealand. No evidence was provided to support this statement.

245. Haydn also referred to what it claimed to be the recent imposition by the United States of anti-dumping duty on natural bristle paintbrushes from China and submitted that this indicates Chinese manufacturers will have surplus stock to be disposed of.

The review team's own research shows that the United States has had anti-dumping duty in place against natural bristle paintbrushes and brush heads from China since 1986, the continued need for the duties being confirmed in a sunset review completed in June 1999.

246. The review team has examined the findings of the United States International Trade Commission (ITC) made as part of the 1999 sunset review, as they relate to the capacity of the Chinese natural bristle paintbrush industry. The ITC noted that since the original investigation an investment in capital equipment is likely to have increased output substantially. The ITC said that there were also more paintbrush producers, at least 48 independent producers as of 1998, compared with a smaller number in 1984. The ITC also observed that while it did not have specific data on capacity levels, the record showed that seven of the producers had a collective capacity of 130 million brushes, which suggested that the total capacity for all producers may be substantially greater. In that case, the ITC said that the Chinese producers could easily supply the entire current U.S. market.

247. The review team notes that the findings of the United States were made in 1999, but considers it unlikely that the capacity of the Chinese industry would have changed to such an extent that it no longer had the ability to substantially increase its exports to New Zealand, given the evident size of the industry relative to the New Zealand market. The more recent information provided by Haydn in its application for this review about the capacity of a single producer, confirms that it is likely that the Chinese industry could easily increase its exports to New Zealand to a level likely to be injurious to the New Zealand industry.

#### *Ease of Entry into New Zealand Market*

248. Haydn has submitted that retail chains already have Chinese suppliers of synthetic bristle paintbrushes and other hardware items in place and would therefore find it easy to import hog bristle brushes. Haydn has claimed that there are at least [REDACTED] importers and retailers ready to import paintbrushes immediately if the duties are removed. Haydn has also argued that [REDACTED] are sufficiently large to import a whole 20 foot container load of paintbrushes, which Haydn estimates could hold about 43,500 mixed paintbrushes.

249. The review team is not aware of any barriers to the entry of the subject goods. The review team notes that the normal import duty on imports of the subject goods from China is currently only 5.5 percent, which is significantly lower than the duty which applied at the time of the original investigation (25 percent), and is therefore unlikely to be a significant disincentive to imports.

#### *Ability of Importers and Distribution System*

250. As noted above, retailers already import synthetic bristle paintbrushes and other hardware items from China. There are therefore already in place well established retailers and distribution systems for paintbrushes and related products and it is unlikely that the addition of hog bristle paintbrushes would prove any difficulty.

251. It is also noted that a New Zealand importer, [REDACTED], projected a large increase in the volume of its paintbrush imports (to [REDACTED] paintbrushes) in the period from October 2002 to September 2003. It is unclear, because of a lack of further co-operation from this company, whether these imports were contingent on the removal of the anti-dumping duty. This information does illustrate, however, that importers have the ability to significantly increase the volume of their imports.

### **Conclusion on Import Volumes**

252. The review team concludes that over the period covered by this review, import volumes of the subject goods from 2002 have increased significantly relative to New Zealand production and consumption.

253. The review team further concludes that should duties be removed there is likely to be a significant increase in the volume of dumped imports, on the basis that:

- The trends in import volumes before and after the imposition of duties indicates that the level of import volumes are responsive to the existence of the duties, suggesting that an increase in imports is likely if duties were to be removed.
- Prices of the subject goods significantly undercut the New Zealand industry's prices, in the absence of anti-dumping duty.
- The Chinese hog bristle paintbrush industry has the capacity to substantially increase its exports to New Zealand.
- There are no barriers to entry to the New Zealand market.
- Importers and retailers have the ability to import and distribute a significant increase in the volume of hog bristle paintbrushes from China.

## **4.3 Price Effects**

### **Price Undercutting**

254. 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.

255. Price undercutting reflects the extent to which prices of the imported goods are lower than those of domestic products. The prices of dumped imports and domestic production are compared at the point of first competition in New Zealand, i.e., the first point of sale in the New Zealand market. This will normally be the ex-factory price for goods produced in New Zealand and the importer's ex-store price for imports. This approach ensures that differences in distribution costs and margins do not confuse the impact of dumping. This approach therefore compares importer's prices, including relevant selling and administration costs, which involve similar cost



elements to those in the New Zealand manufacturer's selling price, but not including cost elements relating to the distribution of goods.

256. The purpose of the price undercutting comparison is to establish whether or not there is price undercutting attributable to dumping. It should be noted that the determination that price undercutting exists is not by itself a determination of the extent of injury, i.e., the margin of price undercutting is not a measure of the extent of economic impact on the industry. This impact is to be measured in terms of the factors and indices set out in s.8 (2)(d) of the Act.

257. Price undercutting was not examined in the original investigation, this not being a specific statutory requirement at that time. For the same reason, price undercutting was not considered in the first review. The second review found significant price undercutting when anti-dumping duty was excluded from the price of imports examined over the period of investigation. The second review also found there was likely to be a recurrence of adverse price effects should the duty be removed.

#### *Level of Trade*

258. Haydn makes virtually all of its sales directly to retail outlets, with delivery being made from the factory direct to the retail outlets, although in the case of some large retail chains delivery is made to a warehouse operated by the chain from where they arrange delivery to their retail outlets.

259. The point at which paintbrushes produced by Haydn first compete in the New Zealand market is therefore the sale by Haydn to retail outlets and the relevant level of trade is consequently at the ex-factory level. The level of trade was also at the ex-factory level in the last review.

260. As noted above, only one importer, Ramset NZ (Ramset) provided a questionnaire response and this response was only a partial one. Ramset imports from SPL Group Ltd through ITW Proline in Australia. In their response Ramset advised that all of the paintbrushes it has imported have been for Kmart and are dispatched direct to Kmart along with other product. The point at which paintbrushes imported by Ramset first compete on the New Zealand market is therefore the sale by Ramset to Kmart and the relevant level of trade is consequently at the ex-importer's store level.

261. As also noted above, Selleys Pty Ltd did not provide a questionnaire response, but did provide copies of its invoices covering its exports to [REDACTED] over the period of investigation. It has been assumed that [REDACTED] sell these paintbrushes onto retailers in the New Zealand market and therefore the relevant level of trade is at the ex-importer's store level.

#### *Relevant Prices for Comparison*

262. In their questionnaire response Ramset provided its cost build-up to selling price for 12mm, 25mm, 50mm and 75mm paintbrushes. Two cost build-ups were provided for two different styles of 25mm brushes, although both fall within the category of tradesman brushes. The cost build-ups show anti-dumping duty as a separate item

enabling it to be excluded. It is not clear if the selling price is an ex-store or a delivered to customer price, but is assumed to be ex-store. Copies of invoices were not provided.

263. Ramset did not provide cost build-up to selling price information for the 100mm brushes it also imported. The review team has estimated the selling price using the costs and margins calculated from the other sizes of brush for which information was provided.

264. The review team notes that the information provided by Ramset shows that the [REDACTED]. The review team considers that the actual selling price should be used for a price undercutting comparison, rather than a theoretical price calculated using an allowance for an importer's margin as the actual selling price (excluding anti-dumping duty) is likely to represent the price at which the goods would be sold if the duty were to be removed.

265. As noted above in section 3, SPL Group and Ramset are related companies. Ramset has advised that this relationship does not influence the price it pays SPL Group for paintbrushes. For price undercutting purposes, the review team has taken the prices paid by Ramset as being at arm's length.

266. All of the Chinese paintbrushes exported by Selleys Pty Ltd over the period of investigation incurred anti-dumping duty so it has been assumed that all of the brushes are of the type under review. From these invoices the review team calculated the weighted average FOB price per brush in NZ dollars, the NZ dollar price being calculated using the NZ Customs exchange rate at the date of import. As noted in section 3 above, Selleys Pty Ltd and [REDACTED] appear to be related companies. Because of a lack of cooperation it is not known if this relationship has influenced the price charged by Selleys Pty Ltd. For price undercutting purposes, the review team has taken the prices paid by [REDACTED] as being at arm's length.

267. The only information provided during this review relating to the cost of importing paintbrushes after FOB to ex-store is that provided by Ramset. The costs from FOB to ex-store provided by Ramset were therefore used to calculate these costs. An allowance for the importer's profit margin was based on the average margin taken by Ramset.

268. Haydn provided its average net selling prices for the year ended 30 September for each size of paintbrush in each of the four categories of paintbrushes it produces, i.e., Do-It-Yourself (DIY), Handyman, Trade and Elite. [REDACTED]. [REDACTED], a deduction has been made for the [REDACTED] to calculate an ex-factory price.

269. As noted under the review of dumping in section 3 above, the exports by Selleys Pty Ltd to [REDACTED] have been treated as Industrial type paintbrushes and the exports by SPL Group Ltd to Ramset as Tradesman type paintbrushes (except for 12mm brushes which have been treated as Industrial type).

270. However, because there is some uncertainty about the types of paintbrushes involved, a price undercutting comparison has been carried out against all four

categories of paintbrush produced by Haydn. The comparison of prices and the amount of price undercutting, when anti-dumping duty is excluded, are shown in the tables below.

**Table 4.2: Price Undercutting SPL Group**

<b>Haydn Ex-Factory Selling Price</b>	12mm	25mm	25mm	50mm	75mm	100mm
- DIY	██████	██████	██████	██████	██████	██████
- Handyman	N/A	██████	██████	██████	██████	██████
- Trade	N/A	██████	██████	██████	██████	██████
- Elite	N/A	██████	██████	██████	██████	██████
<b>Ex-Store Selling Price</b>	██████	██████	██████	██████	██████	██████
<b>Price Undercutting</b>						
- DIY	██████	██████	██████	██████	██████	██████
- Handyman	N/A	██████	██████	██████	██████	██████
- Trade	N/A	██████	██████	██████	██████	██████
- Elite	N/A	██████	██████	██████	██████	██████
<b>Price Undercutting %</b>						
- DIY	██████	██████	██████	██████	██████	██████
- Handyman	N/A	██████	██████	██████	██████	██████
- Trade	N/A	██████	██████	██████	██████	██████
- Elite	N/A	██████	██████	██████	██████	██████

**Table 4.3: Price Undercutting Selleys**

	25mm	38mm	50mm	63mm	75mm	100mm
<b>Haydn Ex-Factory Selling Price</b>						
- DIY	██████	██████	██████	██████	██████	██████
- Handyman	██████	██████	██████	██████	██████	██████
- Trade	██████	██████	██████	██████	██████	██████
- Elite	██████	██████	██████	██████	██████	██████
<b>Ex-Store Selling Price</b>						
██████	██████	██████	██████	██████	██████	██████
<b>Price Undercutting</b>						
- DIY	██████	██████	██████	██████	██████	██████
- Handyman	██████	██████	██████	██████	██████	██████
- Trade	██████	██████	██████	██████	██████	██████
- Elite	██████	██████	██████	██████	██████	██████
<b>Price Undercutting %</b>						
- DIY	██████	██████	██████	██████	██████	██████
- Handyman	██████	██████	██████	██████	██████	██████
- Trade	██████	██████	██████	██████	██████	██████
- Elite	██████	██████	██████	██████	██████	██████

271. As noted above, the paintbrush types used in the calculation of dumping margins were industrial type for exports by Selleys Pty Ltd, and industrial and tradesman for exports by SPL Group Ltd. The comparable paintbrushes produced by Haydn to industrial and tradesman brushes are respectively DIY and Trade.

272. If the price undercutting comparison is focused on these paintbrush types, the percentage price undercutting margins for exports by Selleys Pty Ltd and SPL Group range from ██████ to ██████ percent and ██████ to ██████ percent respectively.

**Likelihood of Price Undercutting Should Duties be Removed**

273. In its application for a review Haydn estimated the ex-wharf cost of a range of paintbrush sizes from China, based on quoted FOB prices from a Chinese manufacturer. Haydn compared these estimated costs with its prices at the ex-

factory level and estimated price undercutting margins ranging from 10.5 to 15.5 percent (as a percentage of Haydn's ex-factory price).

274. The tables above show a significant level of price undercutting, when anti-dumping duties are excluded. Significant amounts of anti-dumping duty were paid on the importations on which price undercutting was calculated, suggesting that prices may not have been adjusted upwards to take account of the reference prices on which duties are calculated. However, an increase in the prices of these importations to reduce the incidence of anti-dumping duty cannot be completely discounted.

275. The evidence therefore indicates that if duties were removed prices are likely to be similar to those which have been found to be significantly undercutting the prices of the New Zealand industry. There is no evidence to suggest that prices would rise should anti-dumping duties be removed. If prices were to change as a result of the removal of duties, it is therefore likely only to be a reduction in prices.

### ***Conclusion on Price Undercutting***

276. The prices of hog bristle paintbrushes, excluding anti-dumping duty, imported over the period of investigation significantly undercut the New Zealand industry's prices.

277. In the absence of anti-dumping duty, it is likely that hog bristle paintbrushes from China would undercut the New Zealand industry's prices by at least the same margin as the importations over the POD(R).

### **Price Depression**

278. 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.

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

280. The original investigation found that one of three New Zealand producers whose prices were examined had cut its prices as a result of competition from dumped imports. The first review concluded that because of the large difference between the price of dumped imports and the New Zealand industry's prices, there would likely be industry wide price depression and suppression should the duty be removed.

281. There was evidence of actual price depression in the second review, but this was not attributable to dumped imports. The second review concluded that there was a likelihood of Chinese paintbrushes entering New Zealand at prices that would have a significant depressing effect on domestic prices, should the duty be removed.

282. The following table shows Haydn's average selling average net FIS selling price per brush.

**Table 4.4: Price Depression  
(Years Ended March)**

	2000	2001	2002	YTD (to 30 Sept.)
Average Selling Price	██████████	██████████	██████████	██████████
% 2000	100%	██████████	██████████	██████████

283. The table shows a small decline in average prices since 2001. Average selling prices are not available by category of paintbrush, so it is not known if a change in the sales mix has contributed to the small decline in average prices. The review team also notes that the per unit cost of production has declined over the period under review, which may have allowed Haydn to sell at lower prices. It is not known, however, if the decline in the cost of production has resulted from a change in the product mix or gains in efficiency, or both.

284. Haydn has not claimed that dumped imports of the subject goods have depressed its prices and this would not be expected with anti-dumping duties in place.

**Price Suppression**

285. 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.

286. The Ministry has generally based its assessment of price suppression on positive evidence, in particular the extent to which cost increases have not been recovered in prices. Cost increases not recovered in prices will be reflected in declines in gross profit and EBIT expressed as a percentage of sales. Where cost savings have been made, the lack of any price increase will not normally be regarded as price suppression.

287. The original investigation found that all of the three producers whose prices were examined had suppressed their prices as a result of dumped imports. The first review concluded that because of the large difference between the price of dumped imports and the New Zealand industry’s prices, there would likely be industry wide price depression and suppression should the duty be removed.

288. There was no evidence of actual price suppression over the whole of the period examined for injury in the second review. The second review concluded that there was a likelihood of Chinese paintbrushes entering New Zealand at prices that would have a significant suppressing effect on domestic prices, should the duty be removed.

289. The following table shows Haydn's cost of production and selling and administration expenses relative to sales revenue (current year to date information on cost of production and selling and administration expenses is not available).

**Table 4.5: Price Suppression  
(Years Ended March)**

	2000	2001	2002
Net Sales Revenue	██████████	██████████	██████████
Cost of Production	██████████	██████████	██████████
S&A Expenses	██████████	██████████	██████████
Total Costs	██████████	██████████	██████████
As % of Sales Revenue:			
- Cost of Production	██████████	██████████	██████████
- S&A Expenses	██████████	██████████	██████████
- Total Costs	██████████	██████████	██████████

290. The table shows that the cost of production has declined relative to sales revenue and that selling and administration expenses have fluctuated, but over all of the period have remained at a similar level relative to sales revenue. Total costs have also fluctuated, but over all of the period have declined relative to sales revenue.

291. Haydn has not claimed that its prices have been suppressed as a result of dumped imports and this would not be expected with the anti-dumping duties in place.

### **Likelihood of Price Depression/Suppression Should Duties be Removed**

292. In its application for the review, Haydn estimated from the ex-wharf costs of Chinese paintbrushes, referred to above under "Likelihood of Price Undercutting Should Duties be Removed", a wholesale selling price, which it compared to its equivalent wholesale selling prices. Haydn said on the basis of this price comparison, if it was to meet these prices it would need to depress its prices to below the cost of production. Haydn has subsequently submitted that removal of the duty would result in the complete closure of its hog bristle paintbrush manufacturing operation ██████████ ██████████ ██████████, based on the length of time it would take for importers to arrange shipments into New Zealand.

293. Haydn has also provided a forecast showing the effects on its total company operation (of which the production of like goods is a major part), should the duty be removed. The forecast assumes the cessation of the production of like goods and the sale of existing inventory of components at a significant loss. The forecast is

therefore simply a forecast of the results of the other parts of the company's operation should paintbrush manufacturing cease. As the forecast assumes cessation of production, there would be no sales and therefore no prices to be depressed.

294. The review team has examined the level of price undercutting shown in the tables above under "Price Undercutting", which range from [REDACTED] to [REDACTED] per brush. The financial results relating to Haydn's production of like goods shows an EBIT per brush from the financial years 2000 to 2002 respectively of [REDACTED], [REDACTED] and [REDACTED], showing that a depression of its prices to match the prices of the Chinese imports would result in significant losses. This indicates that any price depression to match the price of dumped imports would need to be so significant that Haydn would operate at a loss.

### ***Conclusion on Price Depression/Suppression***

295. There is evidence that prices have been depressed, but there is no evidence this can be attributed to imports of the subject goods. There is no evidence of price suppression.

296. It is likely that should the duty be removed, imports of the subject goods would enter the New Zealand market at prices which, if they were to be matched by the New Zealand industry, would result in a recurrence of significant price depression and suppression.

## **4.4 Economic Impact**

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

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

### **Output and Sales**

298. 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.

299. Evidence was found in the original investigation of a loss of sales attributable to dumped imports in respect of two of the four New Zealand producers. Evidence from the first review showed a decline in output and sales revenue, but this was not attributed to dumped imports. The first review concluded that there would be a large



decline in output and sales revenue, such that it would likely result in the demise of the New Zealand industry, should the duty be removed. The Ministry concluded in the second review that, given the likely volume and price effects should the duty be removed, it was likely that there would have been flow-on effects which would have caused a recurrence of a material economic impact on sales and output.

*Output*

300. The following table shows Haydn's output, by numbers of paintbrushes.

**Table 4.6: Output  
(Years Ended March)**

	2000	2001	2002
Nos. of Paintbrushes	██████████	██████████	██████████
Change on Previous Year		██████████	██████████
% 2000	100%	██████████	██████████

301. The table shows that output has fluctuated over the period under review and that there has been a small overall decline in output.

302. Haydn has not claimed that its output has been affected by dumped imports and this would not be expected with the duties in place.

*Sales*

303. The following table shows Haydn's sales by volume and value.

**Table 4.7: Sales  
(Years Ended March)**

	2000	2001	2002	YTD (to 30 Sept.)
Nos. of Paintbrushes	██████████	██████████	██████████	██████████
Change on Previous Year		██████████	██████████	
% 2000	100%	██████████	██████████	
\$(000)	██████████	██████████	██████████	██████████
Change on Previous Year		██████████	██████████	
% 2000	100%	██████████	██████████	

304. The table shows a small decline in both the volume and value of sales over the period under review.

305. Haydn has not claimed that its sales have been affected by dumped imports and this would not be expected with the duties in place.

### **Likelihood of Adverse Economic Impact Should Duties be Removed**

306. As noted above, Haydn has provided a forecast showing the effects on its total company operation (of which the production of like goods is a major part), should the duty be removed. The forecast assumes the cessation of the production of like goods and the sale of existing inventory of components at a significant loss. As the forecast assumes cessation of production, there would be no output or sales.

307. The review team has concluded there is likely to be a significant increase in the import volumes of the dumped goods, should the duty be removed. As noted above under price depression/suppression, the extent of the price undercutting in all brush types and sizes exceeds the average EBIT achieved per brush, indicating that Haydn cannot operate at a profit if it was to match the likely prices of the subject goods in the absence of the duty.

### **Conclusion on Output and Sales**

308. There has been a small decline in output and in the volume and value of sales. While Haydn has not claimed any material injury from imports of the subject goods, the increase in such imports from March year 2002 suggests that these imports may have had some impact on Haydn's output and sales.

309. The likely volume and price effects resulting from the removal of the duty are likely to result in a consequent recurrence of an adverse economic impact on output and sales.

### **Market Share**

310. 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.

311. There was evidence that two of the New Zealand producers had lost market share to dumped imports in the original investigation. The first review noted that while the New Zealand industry had suffered a loss of market share, this was attributable to an increase in imports from countries other than China. The first review found that if the duty was removed, there would be a further reduction in the market share held by the New Zealand industry. The situation in the second review was similar to that of the first, i.e., there was a decline in the market share held by the New Zealand industry attributable to other imports. It was also concluded that the removal of the duty was likely to lead to a recurrence of material economic impact on market share.

312. The following table shows market share and changes in market. Because Haydn is considered to be the New Zealand industry for the purposes of this review, the New Zealand industry's sales volume figures are those of Haydn only.

**Table 4.8: Market Share  
(Years Ended March)**

	2000	2001	2002	YTD (to 30 Sept.)
Dumped Imports	47,424	53,442	157,343	77,802
Other Imports	182,117	116,739	105,399	74,194
NZ Industry Sales				
Total NZ Market				
Change in Volume:				
- Dumped Imports		6,018	103,901	
- Other Imports		-65,378	-11,340	
- NZ Industry Sales				
- Total NZ Market				
% Share Held By:				
- Dumped Imports				
- Other Imports				
- NZ Industry Sales				

313. There has been some fluctuation in the market share held by the New Zealand industry, but over all of the period under review, there has been a significant decline in the market share held by the New Zealand industry. Over all of the period under review, the table shows there has been a significant increase in the market share held by dumped imports and a decline in the share held by other imports.

314. As noted above under "Import Volumes" in section 4.2, the trends in market share shown in the table must be treated with caution in the absence of information from PAL. For example, the apparent loss of market share by Haydn to dumped imports may in fact be due in part to sales lost to PAL. However, the percentage increase in the volume of dumped imports in 2002 is likely to be greater than any increase in the total market which may have been evident had information from PAL been available. The review team also notes that, due to a lack of co-operation from parties, there is some uncertainty over the volume of imports of the subject goods.

315. Haydn has made no claims that its market share has been adversely affected by imports of the subject goods although the table above suggests it has lost some market share to the subject goods.

### Likelihood of Adverse Economic Impact Should Duties be Removed

316. Haydn has claimed that if the duty was removed its market share would diminish to zero [REDACTED]. As previously noted, the financial forecast provided by Haydn assumes the cessation of production, should the duties be removed, which would result in a total loss of market share.

### Conclusion on Market Share

317. The New Zealand industry has lost market share to dumped imports over the period under review, although in the absence of information from PAL it is not possible to accurately quantify the extent of this loss.

318. Given the likely import volume and price effects and the likely consequent economic impact on sales and output, it is likely there will be a significant adverse impact on market share should the duty be removed.

### Profits

319. Changes in net profit reflect changes in prices, sales volumes or costs. Dumped imports can impact on any or all of these.

320. In the original investigation it is noted that profits were lost commensurate with the loss of sales and market share. The first review did not examine trends in actual profits, but concluded that increased imports resulting from the removal of the duty would result in trading losses for all of the producers making up the New Zealand industry. The second review found there had been an increase in profit over all of the period under review and concluded that the removal of the duty would be likely to cause a recurrence of a material economic impact on profits.

321. The following table shows details of Haydn's earnings before interest and tax.

**Table 4.9: Earnings Before Interest and Tax  
(Years Ended March)**

	2000	2001	2002
EBIT	[REDACTED]	[REDACTED]	[REDACTED]
Change on previous year		[REDACTED]	[REDACTED]
As % of 2000		[REDACTED]	[REDACTED]
As % of revenue	[REDACTED]	[REDACTED]	[REDACTED]

EBIT per brush	
Change on previous year	
As % of 2000	

322. EBIT has fluctuated over the period under review, but over the whole of the period has increased in absolute terms, in relation to revenue and on a per brush basis.

323. Haydn has not claimed any material loss of profits as a result of imports of the subject goods.

### **Likelihood of Adverse Economic Impact Should Duties be Removed**

324. As previously noted, the financial forecast provided by Haydn assumes the cessation of production, should the duty be removed, which would result in a total loss of profit.

### **Conclusion on Profits**

325. EBIT has increased over the whole of the period under review.

326. Given the likely import volume and price effects and the likely consequent economic impact on sales and output, it is likely there will be a significant adverse impact on profits should the duty be removed.

### **Productivity**

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

328. Productivity was not specifically considered in either the original investigation or the two subsequent reviews.

329. The following table shows sales revenue per full time equivalent manufacturing employee.

**Table 4.10: Productivity  
(Years Ended March)**

	2000	2001	2002
Sales revenue (\$000)			
No. of manufacturing staff			
Revenue per staff member (\$000)			

330. Over the whole of the period under review, the table shows a significant increase in sales revenue per employee, indicating there has been an increase in productivity.

331. Haydn has not made any claims of a loss of productivity due to imports of the subject goods.

### **Likelihood of Adverse Economic Impact Should Duties be Removed**

332. Haydn has noted that its productivity would disappear if the duty was removed, as it would cease manufacturing like goods.

### **Conclusion on Productivity**

333. There has been an increase in productivity over the period under review.

334. The removal of the duty is likely to result in a significant adverse impact on productivity.

### **Return on Investments**

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

336. Return on investments was not addressed in the original investigation or the first review. The second review found that there had been a decline in return on investments over the whole of the period under review, but noted this was not attributable to imports of the subject goods. The second review concluded that the removal of the duty was likely to result in a recurrence of a significant economic impact on return on investments.

337. Haydn provided information showing the return on shareholders funds for the whole of the company's operation, for the financial years 1998 to 2001. Haydn advised that it was not a practical proposition to isolate shareholders funds to that part relating to the domestic production and sale of like goods.

338. Haydn has not made any claims of a decline in its return on investment as a result of imports of the subject goods.

**Likelihood of Adverse Economic Impact Should Duties be Removed**

339. Haydn did not specifically consider the impact on return on investments of the removal of the duty. However, as noted previously, its forecast of the impact of the removal of the duty assumes a cessation of manufacture, which would reduce the return to zero.

**Conclusion on Return on Investments**

340. There is insufficient evidence to determine trends in the return on investments in the period under review.

341. Given the likely impact on profits of the removal of the duty, it is likely there will be a corresponding significant adverse impact on return on investments.

**Utilisation of Production Capacity**

342. 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.

343. There was evidence in the original investigation that Haydn had underutilised its capital investment for a period as a result of threat of injury from imports of the subject goods. The first review concluded that the removal of the duty would result in a large decline in capacity utilisation. The second review found there had been a decline in capacity utilisation, due to a significant increase in capacity as a result of new investment. The second review concluded that the removal of the duty would result in a significant economic impact on capacity utilisation.

344. The following table shows Haydn’s production capacity compared to its sales volume and the resulting capacity utilisation.

**Table 4.11: Utilisation of Production Capacity  
(Years Ended March)**

	2000	2001	2002
Capacity			
Sales			
% Utilisation			

345. The table shows a small decline in capacity utilisation over the period under review. Haydn has not claimed that its capacity utilisation has been affected by imports of the subject goods.

## **Likelihood of Adverse Economic Impact Should Duties be Removed**

346. Haydn did not specifically consider the impact of the removal of the duty on capacity utilisation should the duty be removed. However, as noted previously, its forecast of the impact of the removal of the duty assumes a cessation of manufacture, which would reduce capacity utilisation to zero.

### ***Conclusion on Utilisation of Production Capacity***

347. There has been a small decline in capacity utilisation over the period under review.

348. Given the likely impact of the removal of the duty on output and sales it is likely there will be a corresponding significant adverse impact on capacity utilisation.

## **Factors Affecting Domestic Prices**

349. The review team is not aware of an adverse economic impact by the subject goods on factors affecting domestic prices, or of any likely impact, should the duty be removed.

## **Magnitude of the Margin of Dumping**

350. 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.

351. The magnitude of the margin of dumping was considered in the original investigation and in the two previous reviews in the context of whether a lesser duty or duty at the full margin of dumping should be applied. Both the original investigation and the two previous reviews concluded that duty should be imposed at the full margin of dumping.

352. The review of dumping in section 3 has shown large dumping margins for the two exporters for whom margins of dumping could be calculated.

353. The review team has examined the level of price undercutting when the weighted average dumping margins found in section 3 above are added back to estimated ex-importer's store prices. This comparison was carried out only for those paintbrush types exported by SPL Group and Selleys Pty Ltd, as recorded under price undercutting above. That is, the exports by Selleys Pty Ltd to [REDACTED] have been treated as Industrial type paintbrushes and the exports by SPL Group Ltd to Ramset as Tradesman type paintbrushes (except for [REDACTED] brushes which have been treated as [REDACTED] type).

354. The weighted average dumping margins found in section 3 above were calculated in US dollars and were converted into NZ dollars using the average US dollar/NZ dollar interbank exchange rate for the year ended 30 September 2002. This average exchange rate was taken from the OANDA internet site and the average exchange rate over this period was 1NZ\$ = US\$0.4445.



355. The above exercise showed that there was still significant price undercutting by paintbrushes exported by both SPL Group and Selleys Pty Ltd, a significant proportion of which is attributable to dumping.

### ***Conclusion on Magnitude of Margin of Dumping***

356. The large dumping margins found in section 3 have contributed significantly to the large price undercutting margins calculated above.

357. It is likely that the removal of the duty would result in large dumping margins contributing significantly to a recurrence of price undercutting and a consequent adverse economic impact.

## **Other Adverse Effects**

### **Cash Flow**

358. Cash flow was not considered in the original investigation. The first review noted that the projected loss of sales resulting from the removal of the duty would reduce cash flows throughout the industry to uneconomic levels. Cash flow was not addressed in the second review.

359. Haydn advised that it is not practical to isolate the cash flow relating to its domestic production and sale of like goods from its other operations.

360. Haydn has not claimed any adverse impact on its cash flow as a result of imports of the subject goods.

### ***Conclusion on Cash Flow***

361. There is insufficient evidence to draw any conclusions on trends in cash flow over the period under review.

362. The likely impact of the removal of the duty on sales and profits is likely to result in a significant adverse economic impact on cash flow.

### **Inventories**

363. The original investigation did not consider the economic impact on inventories. The first review considered evidence that the removal of the duty would result in the industry having to write-off a substantial amount of unused components (particularly bristle) and having to incur significant inventory holding costs. The first review concluded that the costs of holding unused inventory of hog bristle would have a significant effect on the viability of the industry. The second review found no evidence of a significant build up of inventory over the period under review but concluded that the removal of the duty would result in a recurrence of a material economic impact on inventories.

364. The following table shows the value of Haydn's inventory of fully made up paintbrushes and paintbrush heads as at 31 March.

**Table 4.12: Inventories  
(As at 31 March)**

	2000	2001	2002
Value of inventory (\$000)	[REDACTED]	[REDACTED]	[REDACTED]
Sales revenue (\$000)	[REDACTED]	[REDACTED]	[REDACTED]
Inventory as % of sales	[REDACTED]	[REDACTED]	[REDACTED]

365. The table shows an increase in inventory in absolute terms and in relation to the value of sales. Haydn has not claimed that imports of the subject goods have adversely impacted on its level of inventory.

366. Haydn has commented that if the duty is removed, there would need to be [REDACTED]. Haydn has estimated that [REDACTED].

**Conclusion on Inventories**

367. There has been an increase in inventories over the period under review, but this is unlikely to be attributable to imports of the subject goods.

368. The likely impact of the removal of the duty on output and sales is likely to result in a significant adverse economic impact on inventories.

**Employment and Wages**

369. The original investigation found that the New Zealand industry was not replacing staff that had left, not employing new staff and employing temporary staff, as a result of dumped imports. The first review concluded that the continued employment of 70 percent or more of staff was threatened by the import of dumped paintbrushes, should the duty be removed. There was evidence of a significant increase in employee numbers in the second review, which concluded that the removal of the duty would result in a recurrence of a material economic impact on employment. Neither the original investigation nor the two subsequent reviews specifically considered wages.

370. The following table shows the number of full time equivalent workers employed directly in the production of like goods.

**Table 4.13: Employment**

As at 31 March 2000	■
As at 31 March 2001	■
As at 31 March 2002	■

371. The table shows employee numbers were the same from 2000 to 2001 and declined in 2002. Haydn advised that the drop in the number of employees from 2001 to 2002 resulted from a decision

Haydn said the reduced numbers were being covered by existing staff working overtime.

372. Haydn has submitted that should the duty be removed, that employees engaged in the production and sale of like goods would reduce to zero.

373. The following table shows the average hourly rate (including overtime and bonuses) paid to workers employed in the production of like goods.

**Table 4.14: Wages**

Year ended 31 March 2000	■
Year ended 31 March 2001	■
Year ended 31 March 2002	■

374. The table shows an increase in wages in each year over the period under review. Haydn has not claimed that wage rates have been affected by imports of the subject goods.

375. Haydn has noted that as it is forecast that employee numbers will reduce to zero should the duty be removed, wage rates will effectively also be zero.

### ***Conclusion on Employment and Wages***

376. Employee numbers have declined and while this is not attributable to imports of the subject goods, it is related to the Wage rates have increased over the period under review.

377. The likely economic impact of the removal of the duty on other factors previously considered is likely to result in a significant adverse economic impact on employment and wages.

## **Growth**

378. Growth was not specifically considered in either the original investigation or the two previous reviews.

379. Haydn advised that the growth in its business in the two and half years to 30 September 2002 has been a [REDACTED], which it attributed to poor weather conditions. Haydn has not claimed that its growth has been affected by imports of the subject goods.

380. Haydn has not specifically commented on the impact of the removal of the duty on its ability to grow its business, but the financial forecast previously referred to assumes a cessation of production of like goods, which would extinguish all growth.

### **Conclusion on Growth**

381. There is no evidence of adverse impact on growth attributable to imports of the subject goods, over the period under review.

382. The likely economic impact of the removal of the duty on other factors previously considered is likely to result in a significant adverse economic impact on growth.

## **Ability to Raise Capital and Investments**

383. The original investigation concluded that any investment in the industry is considered uneconomic when the evidence shows that the industry cannot compete in the market place against low price dumped Chinese paintbrushes. The first review concluded that any increase in dumped imports was likely to have an adverse effect on the industry's ability to raise capital and attract investment. The second review noted that both producers had made significant capital investments since the previous review and concluded that the removal of the duty was likely to cause a recurrence of a material economic impact on investment.

384. Haydn has advised that since the last review it has on a number of occasions been successful in [REDACTED] and general [REDACTED] such as [REDACTED]. Haydn has not claimed that its ability to raise capital and investments has been affected by imports of the subject goods.

385. Haydn has submitted that should the duty be removed, the other parts of its business would be placed in a [REDACTED] which would not only affect its [REDACTED]. As previously noted, the financial forecast provided by Haydn relating to its domestic production and sale of like goods assumes a cessation of production.

### **Conclusion on Ability to Raise Capital and Investments**

386. There is no evidence of adverse impact on the ability to raise capital and investments attributable to imports of the subject goods, over the period under review.

387. The likely economic impact of the removal of the duty on other factors previously considered is likely to result in a significant adverse economic impact on ability to raise capital and investments.

### **4.5 Other Causes Of Injury**

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

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

the nature and extent of importations of dumped or subsidised goods by New Zealand producers of like goods, including the value, quantity, frequency and purpose of any such importations.

389. The original investigation examined whether reductions in normal tariff rates and the removal of import licensing from imports from Australia had been a cause of injury to the New Zealand industry and concluded that they had not had a significant injurious effect. The first review examined whether imports from countries other than China had been a cause of injury and concluded that such imports had been a cause of injury.

390. The second review was carried out under the same legislation as the present review and therefore examined other possible causes of injury in terms of the same factors set out in the legislation quoted above. The second review concluded that there was no evidence of injury to the New Zealand industry attributable to factors other than dumped imports.

### **Non-Dumped Imports**

391. Haydn estimates that the annual volume of non-dumped hog bristle paintbrush imports is [REDACTED] paintbrushes, which it said would be mainly brushes made in [REDACTED] imported from [REDACTED]. Haydn said from its observations the retail pricing of these brushes is [REDACTED], but noted that it was not privy to the margins taken by the retailers.

392. Imports of hog bristle paintbrushes from countries other than China have declined each year over the March years 2000 to 2002 and the volume of such imports in March year 2002 is below that recorded in any of the years from 1993 to 1997. The share of the New Zealand market held by other imports has also declined in each March year from 2000 to 2002, although there was a sharp increase in market share in the six months to 30 September 2002.

393. The review team notes that it is not possible to derive any useful information on the price of imports from other countries from the Customs data because the data does not show the size or type of paintbrush. No other information is available on prices from other countries.

394. Haydn has made no claim that there has been any significant change in the competition from imports from other countries over the period under review, although the review team notes that the volume of imports from other countries is significantly [REDACTED] than that estimated by Haydn.

395. In considering non-dumped imports in the context of a review, the review team notes that such imports are not affected by the current anti-dumping duty, and therefore their price and availability will not change if the duty is removed. The New Zealand industry has demonstrated over a long period that it is able to compete with non-dumped imports. The impact of non-dumped imports on the New Zealand industry is therefore not likely to change if the duty is removed.

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

396. Haydn has noted that a [REDACTED] in demand in recent years can be attributed to poor weather conditions affecting painting outdoors. Haydn also advised that it is not aware of any change in consumer preferences and said the comparatively new paint application products such as paint pads and improvements in spray painting technology, have not affected the market for paintbrushes.

397. The review team notes that the total New Zealand market shrank from March years 2000 to 2001 but grew again strongly in 2002 to a level higher than in 2001.

398. In considering this factor in the context of a review, the review team notes that any contraction in demand or changes in the patterns of consumption that may be impacting on the New Zealand industry, are unlikely to be of such a nature and significance as to be affected by the removal of the duty.

### **Restrictive Trade Practices and Competition**

399. Haydn said there is healthy competition between the two New Zealand paintbrush manufacturers. The review team has no evidence of any restrictive trade practices being operated by either the New Zealand industry or overseas producers.

### **Developments in Technology**

400. Haydn said that new technologies in brush making are few and far between, but advised that since the last review it has developed a new [REDACTED]

[REDACTED]

401. The review team has no evidence that the New Zealand industry has been affected by developments in technology.

### **Export Performance and Productivity of NZ Producers**

402. Haydn exports to Australia and to various Pacific Islands. The financial data considered above relating to Haydn excludes exports and there is no evidence that Haydn's export activities have had any adverse impact on it.

403. There is no evidence of any poor productivity having had an adverse impact on the New Zealand industry. Productivity was examined in section 4.4 above where it is concluded that there had been an increase in productivity over the period under review.

### **Other Factors**

404. Haydn advised that it does [REDACTED]

405. Ramset noted that it had earlier purchased paintbrushes for its customer Kmart from manufacturers in New Zealand and from suppliers in Australia. Ramset observed that because of the anti-dumping duty it initially attempted to avoid being involved with hog bristle paintbrushes made in China. Ramset said it decided in 2001 that it was unable to purchase from the New Zealand manufacturer for the following reasons:

- (a) It was unable to carry the resulting level of inventory if it had ordered the minimum 5,000 pieces of any one unit, as requested by the New Zealand manufacturer.
- (b) The advice that a minimum order quantity was required came after a frustrating four months when it was unable to obtain delivery of the orders it had in place with the New Zealand manufacturer. The only way for it to maintain a high order fill rate to Kmart while at the same time keeping its inventory at manageable levels was to buy all of the required paintbrushes from the supplier of Kmart in Australia, SPL Group Ltd.
- (c) Kmart requires packaging that is specific to Kmart, and at the time it had brushes made in New Zealand, it purchased and supplied this material for the New Zealand manufacturer.

406. Haydn advised that the small quantities involved did not make it economic to produce paintbrushes to the specifications and requirements of Kmart, which included special painting of handles and non-standard bristle lengths. Haydn also commented that Ramset was not able to provide the necessary packaging subsequent to the first order. The review team notes that the volume of paintbrushes

now being imported by Ramset is relatively small (██████████ brushes over the year ended 30 September 2002).

407. Almax stated in its response to the Interim Report, that Haydn has not proven that it would suffer “material injury” from the removal of duty. Almax stated that “material injury” is not clearly defined and that profit would probably be considered to be a major component of injury. Almax claimed that if Haydn switched to importing paintbrushes it would “make plenty of margin” if the duties were removed.

408. It is the review team’s view that if Haydn was likely to close its manufacturing plant and become an importer to compete in the market as a result of the effects of dumped goods following the removal of the duty, this would clearly show a recurrence of injury was likely, as the effect would be the complete shutdown of the industry. The review team notes that simply because the same legal entity (Haydn Brush Co Ltd) may continue to exist as an importer rather than a manufacturer, should the duties be removed, does not mean that material injury to the manufacturing industry has not occurred.

409. Almax also stated in its response to the Interim Report, that not enough information has been released to make, among other things, a judgement of the effect on profits or the effect on employees of the company, should the focus of the company change (i.e. become an importer). Almax stated that the number of firms producing paintbrushes has declined even while the duties have been in place, indicating in its view that there may be no future in the manufacturing of paintbrushes.

410. The review team notes that it must consider an industry as it is in its current state, and that even though the number of companies making up the industry has declined, there is clearly still an industry in place and the effects of the removal of the duty must be gauged in relation to the industry as it now stands. The review team also notes that information supplied to the Ministry by the industry on financial performance etc. is clearly competitive information that has been accepted as confidential in accordance with the guidelines in section 10 of the Act.

411. Almax also stated in its response to the Interim Report, that the current price of paintbrushes is higher than it should be and is quite unfair. It stated that New Zealanders are paying more for paintbrushes than they should be to protect one company and a small number of jobs. The review team notes that anti-dumping legislation is in place to protect New Zealand industry from injury resulting from unfair trade through the dumping of goods and does not contain any requirements concerning the size of the New Zealand industry.

412. Almax stated in its response to the Interim Report, that it thought PAL had withdrawn from the industry (i.e. ceased manufacture). As noted in section 1.5 above, PAL withdrew from the review but is, as far as the review team is aware, still manufacturing paintbrushes.

413. Almax further stated in its response to the Interim Report, that the increase in imports of synthetic paintbrushes will likely cause the “inevitable demise of New Zealand manufacturing within the next two or three years”. Almax noted that the



current duties are causing it (Almax) injury because it cannot supply existing retail chains, which require common product in their Australian and New Zealand stores “because of the punitive nature of the anti-dumping duties”.

414. The review team notes that synthetic brushes have never been subject to anti-dumping duty and have therefore always competed with the hog bristle paintbrushes produced by the New Zealand industry unencumbered by anti-dumping duty. The removal of the anti-dumping duty from hog bristle paintbrushes will therefore not change the competitive position of the New Zealand industry in relation to synthetic bristle paintbrushes. The review team also notes that the Act does not provide for the injury to importers to be taken into account when considering whether trade remedies should be imposed or when carrying out a review of existing duties.

### **Imports by the Industry**

415. Haydn has not imported the subject goods from China over the period under review.

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

416. There is no clear evidence of material injury to the New Zealand industry attributable to factors other than dumped goods. Those factors considered above, to the extent that may impact on the New Zealand industry, will continue to affect the industry in the same way regardless of whether or not the duty is removed. These factors can therefore be clearly distinguished from the injurious effects likely to arise should the duty be removed.

## **4.6 Conclusions Relating To Injury**

417. The review team concludes that:

### ***Volume and Price Effects***

- (a) Import volumes of the subject goods from 2002 have increased significantly relative to New Zealand production and consumption.
- (b) The prices of hog bristle paintbrushes, excluding anti-dumping duty, imported from China over the POD(R) significantly undercut the New Zealand industry’s prices.
- (c) There is evidence that prices have been depressed, but there is no evidence this can be attributed to imports of the subject goods. There is no evidence of price suppression.

### ***Economic Impact***

- (d) There has been a small decline in output and in the volume and value of sales, which may be attributable to dumped imports.

- (e) The New Zealand industry has lost market share to dumped imports over the period under review, although in the absence of information from PAL it is not possible to accurately quantify the extent of this loss.
- (f) EBIT has increased over the whole of the period under review.
- (g) There has been an increase in productivity over the period under review.
- (h) There is insufficient evidence to determine trends in the return on investments in the period under review.
- (i) There has been a small decline in capacity utilisation over the period under review.
- (j) There is no evidence of an adverse economic impact by the subject goods on factors affecting domestic prices.
- (k) The large dumping margins found in section 3 have contributed significantly to the large price undercutting margins calculated above.
- (l) There is insufficient evidence to draw any conclusions on trends in cash flow over the period under review.
- (m) There has been an increase in inventories over the period under review, but there is no evidence this is attributable to imports of the subject goods.
- (n) Employee numbers have declined and while this is not attributable to imports of the subject goods, it is related to the [REDACTED]. [REDACTED]. Wage rates have increased over the period under review.
- (o) There is no evidence of adverse impact on growth attributable to imports of the subject goods, over the period under review.
- (p) There is no evidence of adverse impact on the ability to raise capital and investments attributable to imports of the subject goods, over the period under review.
- (q) Factors other than dumped imports have not been a cause of material injury to the New Zealand industry.

418. The review team concludes that while there is some evidence of a small economic impact on the New Zealand industry which may be attributable to dumped imports, there is no evidence of material injury attributable to such imports.

*Likelihood of Recurrence of Injury Should the Duty be Removed*

419. The review team concludes that should the duty be removed:

- (a) There is likely to be a significant increase in the volume of dumped imports.

- (b) It is likely that hog bristle paintbrushes from China would undercut the New Zealand industry's prices by a significant margin, and there is likely to be significant price depression and suppression.
- (c) The likely magnitude of the margin of dumping is likely to contribute significantly to a recurrence of price undercutting and consequently to a recurrence of material injury.
- (d) Consequent upon the likely volume and price effects, it is likely there would be a recurrence of an adverse economic impact on output and sales, market share, profits, productivity, return on investments, utilisation of production capacity, cash flow, inventories, employment and wages, growth, and ability to raise capital and investments.

420. The review team therefore concludes that if the duty was removed, material injury to the New Zealand industry due to dumped imports of the subject goods, is likely to recur.



## 5. CONCLUSIONS

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421. On the basis of the information available, it is concluded that should the anti-dumping duty be removed, it is likely that the subject goods will continue to be dumped and there will be a recurrence of material injury to the New Zealand industry.

422. The review team accordingly concludes:

- a. Anti-dumping duties on hog bristle paintbrushes from China should not be revoked; and
- b. That there should be a reassessment of the anti-dumping duty on hog bristle paintbrushes from China following the completion of this review.



## 6. Reassessment of Anti-dumping Duties

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The reassessment of anti-dumping duty following the completion of a review is provided for by section 14(6) of the Act as follows:

(6) The [Chief Executive] may initiate a reassessment of any rate or amount of anti-dumping or countervailing duty determined under subsection (4) of this section, including any elements of any formula used to establish such a rate or amount, —

(a) On the initiative of the [Chief Executive]; or

(b) Where a request for a reassessment is submitted to the [Chief Executive] by an interested party who submits evidence justifying the need for a reassessment; or

(c) Following the completion of a review carried out under subsection (8) of this section —

and the Minister may determine a new rate or amount in accordance with subsection (4) of this section, and, in that event, shall give notice of the new rate or amount.

Sections 14 (4) and 14 (5) of the Act refer to the rate or amount of duty as follows:

(4) The anti-dumping duty or countervailing duty in the case of goods to which this section applies shall be a rate or amount determined by the Minister, —

(a) In the case of dumped goods, not exceeding the difference between the export price of the goods and their normal value; and

(b) In the case of subsidised goods, not exceeding the amount of the subsidy on the goods.

(5) In exercising the discretion under subsection (4) of this section, the Minister shall have regard to the desirability of ensuring that the amount of anti-dumping or countervailing duty in respect of those goods is not greater than is necessary to prevent the material injury or a recurrence of the material injury or to remove the threat of material injury to an industry or the material retardation to the establishment of an industry, as the case may require.

### 6.1 Basis of Reassessment

423. Under the provisions of section 14(6) of the Act, the rate or amount of anti-dumping duty may be reassessed following the completion of a review. This section of the report therefore provides the basis for a recommendation to initiate a reassessment immediately following the completion of this review which will be based on, and reflect the findings of the review.

## Existing Levels of Duty

424. In the original investigation and in the two subsequent reviews the investigation and review teams examined the level of duty that would be required respectively to remove the material injury or prevent a recurrence of material injury attributable to dumped imports. In all three cases, the teams concluded that a duty set at less than the margin of dumping would not be sufficient to remove or prevent a recurrence of injury.

425. Following the 1997 review, anti-dumping duties were reassessed and imposed at the full margin of dumping. Anti-dumping duty was to be collected to the extent that the Customs value for duty was less than Normal Value (Value for Duty Equivalent) (NV(VFDE)) amounts established for different types and sizes of paintbrushes. This method of imposing and collecting anti-dumping duty is explained in the next section.

## Method of Imposing Duty

426. 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) a specific amount per unit of product;
- (b) *an ad valorem* rate; and
- (c) a reference price approach

427. 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 NV (VFDE) amounts, or the non-injurious price (NIP), by means of Non-Injurious Free on Board (NIFOB) amounts.

428. The main objective of an anti-dumping duty is to remove the injurious impact of 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. 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.

429. 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 subject to the duty are imported.<sup>1</sup> 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. The Ministry applies the same practice in a reassessment.

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<sup>1</sup> Plasterboard from Thailand, Reassessment, September 1999.



430. A specific duty, based on the monetary value of a margin of dumping, has the advantages of being convenient to apply and impossible to evade by incorrectly stating the value for duty (VFD). A specific rate 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. A specific duty expressed as a monetary amount can really operate 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, such an approach does not deal with the problem of changes in export prices for reasons other than exchange rate movements or movements in normal values.

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

432. 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 value for duty of the goods. Nevertheless, a reference price does have the advantage that it clearly signals to the exporter and importer what level of price is non-dumped or non-injurious, and provided it is carefully described, the problem of evasion can be dealt with.

433. A reference price method is therefore considered the best method of assessing and collecting anti-dumping duties in the circumstances presented in this case.

## **6.2 Amount Of Anti-Dumping Duty**

### **Introduction**

434. 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. In the situation of a review and reassessment where the presence of an existing duty is likely to have resulted in an increase in

export prices, an analysis of the need for a lesser duty based on the level of price undercutting related to the margin of dumping, is not useful. To establish whether a lesser duty should apply, the review team has therefore approached the issue by firstly calculating a NIFOB and secondly calculating a NV(VFDE) to check that the NIFOB has not exceeded the margin of dumping. 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.

435. The Ministry has assessed and collected anti-dumping duties on the basis of three categories of paintbrush that are distinguished by different cubic volumes of bristle, increasing in volume from industrial to handyman and then to tradesman. The volume of bristle for sizes in each of the three categories are shown in the following table.

Table 6.1: Range of Cubic Volume of Bristle (mm<sup>3</sup>)

Size (mm)	Industrial	Handyman	Tradesman
25	0 - 11,500	11,501 - 15,000	>15,000
38	0- 20,000	20,001 - 25,000	>25,000
50	0 - 33,500	33,501 - 36,000	>36,000
63	0 - 38,000	38,001 - 44,000	>44,000
75	0 - 45,000	45,001 - 55,000	>55,000
100	0 - 65,000	65,001 - 90,000	>90,000

### Calculation of NIFOBs

436. NIFOB are calculated by deducting from the industry's NIP those costs and importer's margin arising after FOB up to the level of trade at which the imported product first competes with the New Zealand industry's product. Under price undercutting above, the relevant level of trade at which the goods first compete on the New Zealand market was determined to be ex-factory (for Haydn) and ex-store (for the imported product).

### Calculation of NIPs

437. The review has found evidence of some injury to Haydn, but not material injury, attributable to imports of the goods subject to anti-dumping duty. In this situation, and taking account of the information available, the review team considers Haydn's NIPs to be the actual net selling prices achieved by Haydn over the POD(R).

438. Haydn provided its average net selling prices for the year ended 30 September for each size of paintbrush in each of the four categories of paintbrushes it produces, i.e., Do-It-Yourself (DIY), Handyman, Trade and Elite. Both Trade and Elite brushes are produced for the tradesman market. A weighted average tradesman brush

selling price was therefore calculated from data relating to both types of brush to obtain a NIP for the Tradesman category. The NIPs for the industrial and handyman categories are the actual average net selling prices achieved by Haydn over the year ended 30 September 2002 for its DIY and Handyman brushes respectively.

[REDACTED], a deduction was made for the [REDACTED] to calculate ex-factory prices.

### NIFOB Amounts

439. 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 the paintbrushes are sold at the ex-store level, the sale price equates to the NIP. NIFOB values are calculated, therefore, by taking the industry's NIP at the ex-factory level and deducting costs and margins that would be incurred by importers between the FOB level and the ex-store level to arrive at the NIFOB values.

440. In calculating the NIFOB amounts, the review team has taken the costs between FOB and ex-store from information provided by [REDACTED]

441. The following tables show the calculations for NIFOBs in each of the three categories of paintbrushes.

Table 6.2: Industrial NIFOB per Unit

	25mm	38mm	50mm	63mm	75mm	100mm
NIP - Ex-Factory	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Less Costs & Margins after FOB to Ex-Store						
- Ocean Freight	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
- Local Fees	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
- Duty 5.5%	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Total Deductions	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Margin %	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
NIFOBs (NZ\$)	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Exchange Rate Year Ended Sept 2002	0.44	0.44	0.44	0.44	0.44	0.44
NIFOBs (US\$)	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Table 6.3: Handyman NIFOB per Unit

	25mm	38mm	50mm	63mm	75mm	100mm
NIP - Ex-Factory						
Less Costs & Margins after FOB to Ex-Store						
- Ocean Freight						
- Local Fees						
- Duty 5.5%						
Total Deductions						
Margin %						
NIFOBs (NZ\$)						
Exchange Rate Year Ended Sept 2002	0.44	0.44	0.44	0.44	0.44	0.44
NIFOBs (US\$)						

Table 6.4: Tradesman NIFOB per Unit

	25mm	38mm	50mm	63mm	75mm	100mm
NIP - Ex-Factory						
Less Costs & Margins after FOB to Ex-Store						
- Ocean Freight						
- Local Fees						
- Duty 5.5%						
Total Deductions						
Margin %						
NIFOBs (NZ\$)						

Exchange Rate Year Ended Sept 2002	0.44	0.44	0.44	0.44	0.44	0.44
NIFOBs (US\$)						

### Calculation of NV(VFDE) Amounts

442. NV(VFDE) amounts are calculated by adding to normal values the costs incurred by exporters between the ex-factory and FOB levels. The NV(VFDE) therefore represents an undumped price at the FOB level.

443. In this case, the costs incurred between the ex-factory level and FOB were not provided by Chinese exporters. The Ministry has used the exporter's margin of [redacted] percent (of the VFD) used in the original investigation as representing all costs and margins between the ex-factory and FOB levels and normal values have been adjusted upwards accordingly to arrive at NV(VFDE) amounts.

444. The following table shows the NV(VFDE) amounts in US dollars calculated in this review.

Table 6.5: NV(VFDE) Amounts 2002 US\$

Size (mm)	Industrial	Handyman	Tradesman
25	0.53	0.53	0.54
38	0.75	0.76	0.77
50	1.12	1.15	1.15
63	1.39	1.43	1.44
75	1.65	1.68	1.71
100	2.24	2.26	2.34

### Comparison of NIFOB and NV(VFDE) Amounts

445. The NIFOB values are greater than the NV(VFDE) amounts in US dollars in all cases, except for two comparisons of industrial paintbrushes. For industrial paintbrushes, except for two sizes, the NIFOB values are between [redacted] percent and [redacted] percent higher than the NV(VFDE) amounts. For handyman paintbrushes, the NIFOB values are between [redacted] percent and [redacted] percent higher than the NV(VFDE) amounts. For tradesman paintbrushes, the NIFOB values are between [redacted] percent and [redacted] percent higher than the NV(VFDE) amounts.

446. The comparison indicates that anti-dumping duties should be imposed on the basis of NV(VFDE) amounts, except for two of the industrial type paintbrushes where

a lesser duty in the form of a NIFOB is sufficient to remove injury. Normally a NIFOB value would be expressed in New Zealand dollars, since it is based on the New Zealand industry’s NIP. For the following reasons, the review team considers that the NIFOB value should be expressed in the same currency as the NV(VFDE) amounts, namely Renminbi:

- The proposed amounts are indicative only and have been calculated for purposes of comment in any reassessment;
- For purposes of consistency and ease of understanding;
- Only two of the amounts are in the form of a NIFOB value, and there was a difference of only 2% and 3% percent between the NIFOB and NV(VFDE) amounts in those cases.

### Proposed Anti-dumping Duties

447. In the last review, the review team noted that normal values in the first review had been set in US dollars and considered that NV(VFDE) amounts should remain in US dollars “because of the predominance of the US dollar in world trade and the need to ensure that fluctuations between the New Zealand dollar and the US dollar do not impact on normal values used as the basis for the NV(VFDE) amounts.

448. The review team notes that, while normal values were set in US dollars in the first review in 1991, they have been updated in this review using price index movements and exchange rate movements relating to China. The Ministry considers that the NV(VFDE) amounts should be expressed in the currency of the country of origin, since normal values and costs to FOB would normally be established in the country of origin and representation of NV(VFDE) in the currency of the country of origin ensures that exchange rate movements do not result in collection of anti-dumping duty above the margin of dumping.

449. The NV(VFDE) per kilogram amounts in Renminbi were calculated by converting the NV(VFDE) amounts in US\$ per unit using the average US\$/Renminbi exchange rate for the POD(R), which according to the [www.oanda.com](http://www.oanda.com) website was 1 US\$ = 8.29 Renminbi. For purposes of conversion of the NIFOBs to Renminbi, the exchange rate for the same period was 1 NZ\$ = 3.68 Renminbi.

450. The following table shows the proposed NV(VFDE) amounts and two NIFOB amounts in Renminbi. The brushes on which NIFOB amounts apply have not been identified pending consideration of any implications for the protection of confidential information.

Table 6.6: NV(VFDE) Amounts\* Renminbi

Size (mm)	Industrial	Handyman	Tradesman
25	4.40	4.40	4.49
38	6.19	6.28	6.37

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50	9.25	9.52	9.52
63	10.63	11.85	11.94
75	13.65	13.91	14.18
100	17.96	18.76	19.39

\* Includes two NIFOB values in Renminbi.

451. If anti-dumping duty is collected on the basis of these proposed reference amounts, the value for duty of paintbrushes at the FOB level would be converted to Renminbi using the New Zealand Customs exchange rate at the date of importation. If the value for duty was less than the relevant reference amount, anti-dumping duty would be collected to the extent of the difference between the value for duty and the reference amount.

452. The proposed anti-dumping duties for hog bristle paintbrushes from China are 20 percent lower than those applied in 1997.

453. Any reassessment would need to consider whether alternative NIFOB amounts should also be imposed to ensure that exchange rate movements do not result in collection of duties at more than the margin of dumping. The review team notes that in most cases NIFOB amounts were significantly higher than NV(VFDE) amounts, indicating that alternative NIFOB amounts may not be necessary.

454. The review team also notes that two exporters' margins were applied in calculating export prices for SPL Group. The reassessment team will need to consider whether two exporters' margins should be applied to reference price calculations for SPL Group and other suppliers. Such an approach would result in higher NV(VFDE) amounts.

455. The review team also proposes that, should paintbrushes of sizes other than those shown above be imported, duty should be based on a reference price proportionate to the rate established for the nearest paintbrush size.

456. As discussed in section 1.6 above, the Ministry considers that hog bristle paintbrush heads fall within the description of goods subject to anti-dumping duty. The reassessment will examine whether a separate rate of duty should be established for paintbrush heads.

### **6.3 Developing Country Considerations**

457. For purposes of dumping investigations and the imposition of anti-dumping duties, China is considered to be a developing country. Article 15 of the Agreement provides that special regard be given to developing country members of the WTO as follows:

It is recognized 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 under this Agreement. Possibilities of

constructive remedies provided for by this Agreement shall be explored before applying anti-dumping duties where they would affect the essential interests of developing country Members.

458. In any reassessment, submissions from Chinese exporters and the Government of the People's Republic of China about possible constructive remedies or any effect of remedies on China's essential interests as a developing country will be taken into account. The Ministry considers that lesser duties (that is, duties that remove injury but not the full margin of dumping) and price undertakings are forms of constructive remedies. The Panel in the *EC-Bed Linen* case was also of the view that "the imposition of a "lesser duty" or a price undertaking would constitute "constructive remedies" within the meaning of Article 15..."<sup>2</sup>

459. In any reassessment, the Ministry will consider whether any lesser duties are appropriate. This report indicates that a lesser duty is appropriate for two sizes of industrial brush.

460. There has been a general lack of co-operation from Chinese producers and exporters and no Chinese party has offered to enter into a price undertaking. In any event the Act does not provide for price undertakings to be accepted in a reassessment. This option is only available during the course of an investigation initiated under section 10 of the Act.

461. The Ministry also considers that the reference price approach to the calculation of duties constitutes a form of *de facto* price undertaking that can be taken advantage of by all Chinese exporters, while also avoiding any additional administrative burden for the exporters. In other words, Chinese exporters could raise their prices to the level of the reference prices and retain any additional profit. The reference price approach taken by the Ministry therefore offers a constructive remedy that offers benefits to exporters while avoiding any further burden or disincentive for Chinese exporters that might arise through the offering and accepting of a price undertaking.

## Conclusion

462. The discussion and calculations set down in this section are proposed as the basis for any reassessment of anti-dumping duties.

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<sup>2</sup> Report by the Panel on European Communities-Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India, WT/DS141/R, 30 October 2000, at paragraph 6.229.



# 7. Recommendations

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463. On the basis of the information obtained during the review, the review team recommends:

- 1. that the Chief Executive complete the review by agreeing that the continued imposition of anti-dumping duties on hog bristle paintbrushes imported from China is necessary to prevent a recurrence of material injury to the New Zealand industry producing like goods;
- 2. that based on the proposal in section 6 of this report, the Chief Executive initiate a reassessment of the rate of the anti-dumping duty on hog bristle paintbrushes from China immediately following the completion of this review; and
- 3. that the Chief Executive sign the attached *Gazette* notice relating to the completion of the review and the initiation of the reassessment.

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Review Team

Recommendation Accepted

Anne Corrigan  
Manager, Trade Remedies Group  
Acting under delegated Authority from the Chief Executive.

23 April 2003