

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

**Non-Confidential  
Reassessment Report**

**Dumping and Countervailing Duties Act 1988**

Ministry of Economic Development

July 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
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
FOB	Free on Board
Haydn	Haydn Brush Company Ltd
LDC	Less Developed Countries
LLDC	Least Developed Countries
Minister (the)	Minister of Commerce
Ministry (the)	Ministry of Economic Development
NIFOB	Non-Injurious Free on Board
NIP	Non-Injurious Price
NV(VFDE)	Normal Value (Value for Duty Equivalent)
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
	Confidential information



# 1. Introduction

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## 1.1 Summary

1. The purpose of this report is to set out the considerations relating to the reassessment of anti-dumping duties on hog bristle paintbrushes from the People's Republic of China (China).
2. Anti-dumping duties on hog bristle paintbrushes were first imposed in 1988 and have been reviewed three times since then. A reassessment was carried out in conjunction with the first two reviews. A review, completed in April 2003, concluded that the continued imposition of anti-dumping duties on hog bristle paintbrushes from China is necessary to prevent a recurrence of material injury to the New Zealand industry producing like goods.
3. The review also concluded that paintbrush heads fall within the description of the goods subject to anti-dumping duty and proposed that the anti-dumping duties should, therefore, apply to complete hog bristle paintbrushes and to hog bristle paintbrush heads.
4. The review report proposed revised levels of anti-dumping duties as the basis for a reassessment of the anti-dumping duty, which was initiated on 23 April 2003.
5. Submissions on the reassessment were received from the two New Zealand producers of paintbrushes, Haydn Brush Company Ltd (Haydn) and Paint Aids Ltd (PAL). Neither producer opposed the type or amounts of anti-dumping duty proposed. PAL objected strongly however to the Ministry's view that paintbrush heads are covered by the existing duty.
6. The following summarises the submissions made by PAL:
  - Duty should not apply to paintbrush heads because:
    - The description of the goods subject to duty refers only to paintbrushes, not paintbrush heads and the duty therefore applies only to paintbrushes.
    - A paintbrush head is physically different to a complete paintbrush and cannot be used to apply paint without a handle.
    - Significant additional processing is required to make a complete paintbrush from a paintbrush head.
    - There is only an industrial market for paintbrush heads (for use in manufacturing complete paintbrushes) and not a retail market as there is for complete paintbrushes.
    - To do so would be inconsistent with precedents set in other cases.
    - The Ministry advised last year, on the basis of advice from its legal section, that paintbrush heads and handles when imported separately

would not be subject to the duty, and is now acting in a way inconsistent with that advice.

- To increase the scope of the goods subject to anti-dumping duty requires a new investigation and by not doing so the Ministry has denied PAL access to the procedures set out in the Act.
- It will not hesitate to seek a judicial review of the Ministry's findings should this become necessary.
- The paintbrush heads it imports are not dumped and the Ministry should therefore investigate these imports before making a decision on whether a separate rate of duty should apply to paintbrush heads.

7. The report has considered whether paintbrush heads fall within the description of the goods subject to the duty within the following framework:

- 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 relevant factors.
- Whether hog bristle paintbrushes and hog bristle paintbrush heads are like goods to imported hog bristle paintbrush heads.

8. The report notes that the advice the Ministry gave last year that paintbrush heads and handles when imported separately are not subject to the duty, was based on information and analysis available at that time. The report further notes that the additional analysis carried out during the review built on and developed the analysis undertaken last year and that the Ministry's legal section concurred with the conclusion reached during the review.

9. The report observes that interested parties have been given reasonable opportunity to defend their interests and make submissions, through the process of this reassessment. The report also notes that since a review has just been completed, a further limited review in respect of paintbrush heads should not be carried out for at least another six months and observes that the Anti-Dumping Agreement provides for accelerated reviews for new shippers.

10. The report concludes that:

- (a) Hog bristle paintbrush heads fall within the description of the goods subject to the anti-dumping duty.
- (b) The duties for complete paintbrushes should be reassessed to levels approximately 20 percent lower than the existing rates of anti-dumping duty.



(c) Separate and lower rates of duty should be established for paintbrush heads.

## **1.2 Proceedings**

11. 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.

12. On 2 April 1992, the rate of anti-dumping duty was reassessed by the Minister of Commerce (the Minister) 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.

13. On 29 October 1997, the rate of anti-dumping duty was again reassessed by the Minister 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.

14. 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.

15. On 23 April 2003, the Ministry of Economic Development (the Ministry) completed the review and the Manager, Trade Remedies Group, acting under delegated authority from the Chief Executive, determined that the continued imposition of anti-dumping duties on hog bristle paintbrushes from China is necessary to prevent a recurrence of material injury to the New Zealand industry producing like goods.

16. Following completion of the review, the Manager, acting under delegated authority from the Chief Executive, initiated a reassessment of the amount of anti-dumping duty on 23 April 2003 pursuant to section 14(6) of the Act.

17. Section 14(6) of the Dumping and Countervailing Duties Act 1988 (the Act) states:

(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.

18. The final report on the review included a section which set out a proposed basis for reassessing the anti-dumping duties, which was based on and reflected the findings of the review.

### **1.3 Subject Goods**

19. The goods which are the subject of the anti-dumping duties, hereinafter referred to as “hog bristle paintbrushes”, “paintbrushes”, or “subject goods”, are:

*Hog bristle paintbrushes for household or industrial use.*

### **1.4 Interested Parties**

20. The final report on the review was sent to all interested parties, who were invited to make submissions on the proposed basis for reassessing the anti-dumping duties and on any other matters that they considered relevant to the reassessment, including any alternative means of reassessing the anti-dumping duties and whether paintbrush heads should be subject to the duty. The reassessment team only received submissions from the two New Zealand producers of paintbrushes, Haydn and PAL.

#### **New Zealand Industry**

21. The only two producers of hog bristle paintbrushes in New Zealand are:

- Haydn Brush Company Ltd.
- Paint Aids Ltd.

22. The application for the review was made by Haydn and PAL. After the review was initiated PAL advised that it no longer wished to participate in the review.

#### **Exporters**

23. The following exporters to New Zealand of hog bristle paintbrushes of Chinese origin were identified during the review (listed in alphabetical order):

- 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.

## Chinese Manufacturers

24. The review team was unable to identify all Chinese manufacturers of hog bristle paintbrushes exported to New Zealand. The following Chinese manufacturers were identified during the review (listed in alphabetical order):

- King Brush Company Ltd.
- Shandong Oriental International Trading.
- Shenzhen Teidiko.
- Tianjin DMC APPO Brush Materials Ltd (Tianjin).

25. Tianjin provided information, but may not have exported paintbrushes to New Zealand.

## Importers

26. The following New Zealand importers (in alphabetical order) were identified during the review:

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

## 1.5 Existing Anti-dumping Duties

27. 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.

28. 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 section 3 of this report.



## 2. Goods Subject to Anti-dumping Duty

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### 2.1 Introduction

29. The Ministry last year gave an opinion to a customs agent that paintbrush heads were 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. The opinion was given to the customs agent following an enquiry from the agent asking if paintbrush heads and handles, when imported separately for assembly in New Zealand into complete paintbrushes, would be subject to the anti-dumping duty. 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 considered that the question of whether paintbrush heads should be covered by the description of the subject goods was a relevant consideration in the recently completed review and is a relevant consideration in this reassessment of anti-dumping duties.

30. PAL has stated that it "wishes to make clear that this issue was not part of the original or subsequent review carried out by the Ministry on paintbrushes". The Ministry confirms that this issue was not considered in either the original investigation or the first two reviews. The Ministry notes that this issue was not considered prior to the most recent review because there was no need to do so, i.e., prior to the enquiry from the customs agent last year the issue had never been raised and there were no known imports of hog bristle paintbrush heads from China.

31. 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 relevant factors.
- Whether hog bristle paintbrushes and hog bristle paintbrush heads are like goods to imported hog bristle paintbrush heads.

### 2.2 Description of the Subject Goods

32. The goods are described in the *Gazette* notice as "hog bristle paintbrushes for household or industrial use". The *Gazette* notice further states that "The goods are currently classified under Tariff Item and Statistical Keys 9603.40.00 02D and 11C of the Tariff of New Zealand, which classification is provided for convenience and Customs purposes only, the written description being dispositive." [The Ministry notes that dispositive was not referred to in the completion of review/initiation of reassessment *Gazette* notice but was used in the initiation of review *Gazette* notice].

33. PAL submits that making the description of the goods dispositive means paintbrush heads are not included in the goods description and are therefore excluded from all consideration.

34. The Merriam-Webster online dictionary (<http://www.m-w.com>) defines dispositive as “directed toward or effecting disposition (as of a case) <dispositive evidence>.”. The Ministry considers that the use of dispositive in the context of the *Gazette* notice means that the wording of the goods description circumscribes, directs or gives effect to the goods that are subject to the duty, in particular without necessarily relying on the tariff classification under which a particular good is imported.

35. For example, the classification of a particular good under a tariff item that differs from the tariff item under which the goods described would normally be classified, does not necessarily mean that the good does not fall within the goods description. Conversely, the classification of a particular good under the same tariff item under which the goods described would normally be classified, does not necessarily mean the good falls within the goods description.

36. The Ministry consequently considers that the use of the word dispositive in a *Gazette* notice does not remove the need to interpret a goods description to establish whether a particular good falls within that description. In particular the use of the word dispositive does not preclude the use of interpretive tools (including, where relevant tariff classification) that may assist in determining whether a particular good is covered by the written goods description.

37. A paintbrush is described in the *Concise Oxford Dictionary* (Tenth Edition) as “a brush for applying paint”.

38. 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.

39. PAL referred to the dictionary definition of a paintbrush quoted above and has in turn quoted the dictionary definition of “head”. PAL said that “head” is defined as “. . . the striking or operational part of a weapon, tool, implement, etc”. (The New Penguin English Dictionary 2000)”. PAL notes that “The head of a paintbrush is the operational part that’s why we refer to the head as separate. But it does not mean that a head substitutes for a brush.”

40. PAL said it asked a retired professional painter if he had ever painted with a brush head and “. . . he laughed and said he had never seen that done”. PAL submits that in the same way nobody would drive a nail with just a hammer head or chop wood with an axe head. PAL said the heads do the striking but you swing a shaft or handle of an axe or hammer. PAL submits the Ministry’s analysis is therefore not pertinent or correct.

41. In response to PAL's comments above, Haydn said you cannot compare a paintbrush head with a hammer or axe, as the latter are both impact implements that definitely require a handle to use. Haydn states "Conventional use of a paintbrush would suggest it also required a handle but this is not necessarily so. We understand that brush heads have been used to apply paint substances in small confined spaces as the handle is only an encumbrance."

42. The Ministry does not dispute that a head is clearly a component of a paintbrush, albeit a major and characteristic defining one, and the dictionary definition provided by PAL confirms this. The Ministry notes, however, that the definition provided by PAL refers to it as being the operational part of a tool (a paintbrush is clearly not a striking tool so this part of the definition is not relevant). The Ministry considers this reinforces its view that it is the head that endows a paintbrush with its essential characteristics, and this is further discussed below.

## 2.3 Essential Characteristics

43. 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.

44. 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.

45. Paintbrushes commonly have handles. A paintbrush head can also be used to apply paint, albeit a handle would facilitate the process. PAL considers that this statement "is bordering on the ridiculous" because "a paintbrush head alone is not used to apply paint by the trade or consumer". The Ministry's point, however, is that the paintbrush head forms a major functional element of a completed paintbrush. The paintbrush head is the element that provides a paintbrush with its essential functional characteristics of taking up, holding and applying paint – regardless of whether it has a handle.

46. A paintbrush head also has the characteristic depth, width and length properties described above for a paintbrush. PAL accepts that the width of the ferrule is a characteristic of paintbrushes, but considers that the depth may not be, noting that "the length of the bristle out is generally different from the product manufactured in New Zealand" and "the shape of ferrule paintbrush heads is unique to PAL's specifications only and are not sold in the New Zealand market by anyone else". The Ministry considers that, in general terms, a paintbrush head has the same characteristic bristle dimensions and shape as a finished paintbrush. Regardless of exact dimensions and ferrule shape, the bristles in both paintbrush heads and paintbrushes have certain width, depth and length characteristics that are similar.

47. PAL states that “an imported paintbrush head is a raw component and cannot be measured for similarities with a finished paintbrush until the paintbrush head has been subject to further manufacturing”. PAL considers that a paintbrush head is an “input to manufacture”. The Ministry agrees that a paintbrush head is an input to manufacture. Along the manufacturing spectrum from completely raw material (for example, hog bristle) to finished paintbrush, the Ministry considers a paintbrush head to be at least an advanced intermediate good rather than a raw material. It is the advanced nature of its processing that provides a paintbrush head with the essential characteristics and appearance of a paintbrush, such that a reasonable and impartial observer of a paintbrush head would clearly be able to identify it as a major paintbrush component, rather than being unable to identify what the product is (for example, some other kind of brush).

48. PAL states that “a paintbrush head component does not constitute a complete paintbrush at the time of importation”, and the Ministry agrees. In terms of essential characteristics and appearance, however, paintbrush heads are clearly identifiable as a major paintbrush component and could not be confused with any product other than a paintbrush.

## 2.4 Method of Production

49. Paintbrush heads are produced by a process involving debundling and treatment 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.

50. Fully-finished paintbrushes result from attachment of a handle which may have been produced and painted in the same factory. PAL has provided further details of the handling process and these are reported below under “Like Goods”. PAL notes that the making of the head does not include all of the steps in making the brush and therefore “It should be concluded that they are not closely resembling each other in these circumstances.” The Ministry understands that the paintbrush handles are attached to the paintbrush heads by either hand or a special machine.

51. The major element of paintbrush manufacture and costs of production involve the production of the paintbrush head. PAL observes that, while the Ministry has noted that a head is a major element of the manufacture and cost of production of a paintbrush, “It is the total cost of production of a brush head, so this differs”.

52. Haydn has provided cost of manufacture figures for both paintbrush heads and paintbrushes. Haydn’s costs to manufacture paintbrush heads as a proportion of costs to manufacture complete paintbrushes range from [REDACTED] percent to [REDACTED] percent. PAL states that “40% - 60% of the complete cost relates to the paintbrush head”, but has not provided costings in support of these figures.

53. The percentages provided by PAL may refer to value rather than cost, because they do not reconcile with PAL’s statement that the company “adds a further 20% - 40% of the total ex-factory cost (excluding profit) to the cost of an imported raw paintbrush head in additional processing to produce a finished paintbrush. This would indicate that 60 to 80 percent of the complete cost relates to the paintbrush head. This range [REDACTED]

[REDACTED] The Ministry concludes, therefore, that most of the cost



of production of a complete paintbrush involves the production of the paintbrush head.

54. The Ministry considers that a paintbrush head is a captive part of the production of a fully-finished paintbrush, i.e., it has no use other than for incorporation into a complete paintbrush. In response to this statement (which was contained in the final review report), PAL states this is a tautology and goes on to say, “A paintbrush has its operational part, the head, to carry and spread the paint. No conclusion can be drawn from this statement.”

55. The Ministry agrees that the statement above is a tautology, in logic, because it is always true, except where used in confined spaces as described by Haydn in paragraph 41 above. In this sense it reinforces the Ministry’s view that a head is a major and indispensable part of a paintbrush which has no other purpose than to endow a paintbrush with its most significant and defining characteristics.

56. With regard to costs, PAL also notes that the major cost of both a paintbrush and a head is the bristle, which is sourced from China in both cases. The Ministry considers this observation highlights the similarity between a paintbrush and a head, as they both have bristle as a major input cost.

## 2.5 Market Considerations

57. 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.

58. PAL agrees with the Ministry that there is no market in New Zealand for paintbrush heads without handles. PAL has provided a letter from [REDACTED] stating that “under no circumstances would a paintbrush head component be sold either by us or by any other retailer”. However, in a subsequent submission PAL said that there is an industrial market for heads and said as a manufacturer it is presently buying heads from overseas. PAL consequently concludes that heads differ as they are sold to different customers at different levels on the supply chain to the retail market and that this shows that they are not like goods to paintbrushes. Haydn advises that it did have a market for heads. Haydn said it sold heads to PAL (under its previous ownership) over a period of some years.

59. The Ministry notes that paintbrushes are also sold at levels of trade other than at retail. For example, Haydn imports paintbrushes to complement its range of brushes made in New Zealand. However, the sale of paintbrushes to the final consumer would normally be at the retail level, while the sale of heads to the final “consumer” (i.e., a manufacturer/assembler) does not take place at the retail level. At the same time, the Ministry considers that 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, and in this sense the head is marketed for final sale at the end-user level.

## 2.6 Other Factors

60. 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.

61. In the trade context, the review team has considered below the approach taken by Customs in deciding what goods were considered to be paintbrushes in terms of tariff classification.

62. In the trade remedies context, the review team has considered below the approach taken to like goods and noted that the concept of like goods is used in assessing normal values in the country of origin, in defining the domestic industry in the country of import and as a consequence is important in circumscribing the financial and other information that can be taken into account in an anti-dumping investigation, review or reassessment.

### Tariff Classification

63. 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.

## 2.7 Like Goods

64. Like goods are 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:

65. The subject goods imported from China are described as:

*Hog bristle paintbrushes for household or industrial use*

66. The review team concluded that [REDACTED] and paperhanging brushes are not like goods to the subject goods and no party is disputing that conclusion. The matter which is being contested by PAL is the Ministry’s view that paintbrush heads are like goods to paintbrushes. PAL considers that, as a user of paintbrush heads “as a raw component in the local manufacture of hog bristle paintbrushes”, it is “in the best position to evaluate the Ministry’s opinion”. The remainder of this sub-section focuses on that matter.

### Like Goods History

67. 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.

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

69. 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 not considered to be like goods).

## Like Goods Consideration

70. 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.

71. 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

72. In the review report, the Ministry stated that "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. 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".

73. PAL disputes this view and notes that it imports paintbrush heads as a “raw component”, and observes that “the Ministry would appear to have based their conclusions on a different type of paintbrush head, one that doesn’t appear to have the same characteristics as the raw paintbrush head component imported by PAL.” PAL provided two sample paintbrush heads – one paintbrush head that had been further processed by PAL in New Zealand and another in its raw component form as imported by PAL.

74. In terms of appearance, PAL notes that the latter “raw component” paintbrush head is different to the processed head in the following respects:

- “The bristles are flared
- The bristles are wispy
- The bristle head is not chamfered or bevelled
- The bristles still require beating/flagging
- Trimming is required for both the side and top bristles”.

75. PAL also notes that “the beating/flagging process allows the bristles to hold their shape and that the bristles become polished i.e. the bristles gain a richer darker colour in appearance.

76. PAL further notes that the appearance of the head and the brush naturally differ widely because the essential part – the handle – is missing. PAL states that to try and sell a brush without a handle just highlights the difference and there exists no close resemblance on the grounds claimed by the Ministry.

77. In response to the submission above by PAL, Haydn states:

- Bristles are flared if they are not [REDACTED] before being made into a paintbrush head. Haydn provided extracts from technical brush making literature to support this comment.
- It can manufacture bristles that have wispy characteristics if so desired, but considers the use of the words flared and wispy to be a play on words to make the Ministry believe further processing is required.
- Chamfering and bevelling are performed when the brush is trimmed. It is incorrect to state that chamfering and bevelling are separate processes from trimming which only takes approximately five seconds to complete. A paintbrush can be used for painting without trimming.
- Beating is another word for flaring, in other words the removal of loose bristle. Natural bristle has a natural flag and flagging is therefore a non-issue.
- Beating does not allow bristle to hold its shape, it is [REDACTED] or [REDACTED] of the bristle before the head is made that achieves this. (Extracts from technical brush making literature were supplied to support this statement).
- It is not true that beating makes bristle gain a richer colour and polish. (Extracts from technical brush making literature were supplied to support this statement).

78. The Ministry considers that, while there are some differences in appearance between “raw” paintbrush heads and finished paintbrush heads, they are not so significant that they alter the basic appearance of such heads as closely resembling both finished paintbrush heads and finished paintbrushes, except for the handle. The Ministry also notes that the degree of further processing required to convert a “raw” head into a “finished” head, is minimal.

### **Size and Dimensions**

79. 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.

80. The Ministry also considers that the volume of bristles in imported and locally-produced heads would be similar depending on the quality of paintbrush that was being produced.

81. In the review report, the Ministry stated that “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.”

82. PAL agrees that “paintbrushes are sold according to the width of the ferrule”. PAL states, however, that the Ministry is quite incorrect to state that “finished paintbrushes have the same sizes and dimensions as paintbrush heads” because additional processes to complete the paintbrush head are still required, namely:

- Removal of loose bristles (flirting);
- Bevelling and chamfering;
- Trimming of bristles;
- Handle painting or varnishing;
- Brand or logo stamped to handle;
- Attaching the handle;
- Nailing the brush head to the handle (tacking);
- Packaging application;
- Final quality check; and
- Packaging in outer.

83. Haydn notes that any further processing of an imported head would be minimal and queries why heads would be imported that still require minor processing. Haydn suggests that to flirt, bevel and chamfer would take approximately 60 seconds. Haydn also said that flirting, bevelling and chamfering are the same as trimming and that “. . . it would appear other wording has been added to make the processing look or appear more complicated than it is”. Haydn adds that Customs officials would not be able to tell the difference between heads that had not been flirted etc and those that had been fully processed.

84. PAL considers that “the presumption by the Ministry on size and dimension is flawed”. PAL accepts that the width of the ferrule is a similar characteristic, but length of bristle is “generally different” and “the shape of ferrule paintbrush heads imported by PAL is unique to PAL’s specifications only and are not sold in the New Zealand market by anyone else”. PAL adds that the range of its paintbrushes manufactured from imported heads therefore do not share common characteristics with locally manufactured paintbrushes.

85. PAL provided the specifications of the heads it is importing from China showing the size, internal ferrule length, external ferrule length, internal ferrule width, external ferrule width, length of bristle outside ferrule before processing and length of bristle outside ferrule after processing. The sizes provided were those widely available in New Zealand and are all sizes manufactured by Haydn. The Ministry measured the same dimensions of two sample brushes provided by Haydn. While there are small differences in the length of bristle and width of ferrule, the differences are not considered to be significant. The Ministry also examined a sample of two heads provided by PAL. Visually these samples do not appear to differ in any significant way from paintbrushes manufactured by Haydn.

86. The Ministry also asked PAL why it considered that the specifications of the imported heads were unique and why paintbrushes manufactured from these heads do not share common characteristics with locally made paintbrushes. PAL states that “To the naked eye, the answer is very obvious – the imported paintbrush head is a raw component whilst the paintbrush is a fully assembled product ready for sale. However, PAL considers that the specific differences/physical characteristics between a paintbrush head and a paintbrush have well and truly been documented in PAL’s submissions of 29 May . . .” [PAL’s submissions of 29 May are reported extensively throughout this report].

87. PAL further states that if a paintbrush is measured against the head, the appearance, size and dimensions are naturally different. PAL states that on one New Zealand-made brush the length is 220mm but the head measured from the top of the bristle to the ferrule is only 110mm. Similarly, PAL said on a 65mm brush, the dimensions are 255mm and 110mm respectively and on a 25mm brush the same measurements are 225mm and 85mm. PAL said all physical measurements in these dimensions are widely different, so it has to be concluded on the basis of appearance, size and dimensions that a paintbrush and a head differ widely.

88. Haydn said that ferrules come in all sorts of depths and it has at times used different ferrule depths depending on the availability of raw materials. Haydn said, however, this does not alter the brush head performance or appearance. Haydn notes that many types of brushes made in New Zealand use different bristle lengths which correspond to the length of bristle out from the ferrule.

89. Haydn submits it cannot understand how PAL can claim that paintbrushes manufactured from imported heads do not share common characteristics with locally made paintbrushes. Haydn said it manufactures all types of paintbrushes and heads of varying length, thickness and shape along with PAL.

90. The bevelling, chamfering and trimming of bristles will have some slight effect on the dimensions of the paintbrush head. Bristle length and ferrule size may also differ

between heads and brushes made by different manufacturers, but not to the extent that they are not considered to be reasonably similar. The Ministry considers that, while not all paintbrushes and paintbrush heads (either imported or locally-produced) have exactly the same dimensions, finished paintbrushes have sizes and dimensions that are reasonably similar to paintbrush heads whether “raw” or further processed, with the exception of the additional dimensions of the handle.

## **Components**

91. 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.

92. In the review report, the Ministry also stated that “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.” PAL disagrees that the additional processing does not add to the essential character of the product as a paintbrush. PAL states that “the imported paintbrush head is a raw component and not a complete product hence it would not be sold or usable therefore it is not a paintbrush . . . it is . . . a raw component imported as input for local manufacture by PAL”.

93. PAL further states that while the components in a head of all brushes are the same, the components of a head and a fully assembled paintbrush are not. PAL said with the addition of a handle, pins, packaging, etc, the components of a paintbrush are not the same as a head. PAL states “The additional components, in particular the handle, do happen to add the essential features of the goods. The handle enables the painter to transfer the paint from the can by loading the bristles and to apply the paint to the surface of the wood or whatever, in a film. Imagine trying to do that without the handle?”

94. Haydn states it agrees with the Ministry’s findings in the final review report that additional processing to a head does not add to the essential character of the product as a paintbrush.

95. The Ministry considers that, in terms of the essential characteristics of a paintbrush, it is the paintbrush head that provides the essential character of a paintbrush and not components such as the handle. The Ministry also considers that a “raw” paintbrush head, although requiring further minimal processing, still possesses the essential character of a paintbrush and is a major component that closely resembles a paintbrush.

## **Production Methods**

96. 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.

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

98. In response to the final report PAL provides what it describes as “a more accurate description on the production methods from start to paintbrush head and to finished paintbrush” as follows:

- “Debundling of bristles by hand
- Boiling or treatment of bristles
- Oven dried
- Insertion of bristles and wedge in ferrule by machine
- Gluing of bristles and wedge into the brush head by machine
- Removal of loose bristles (flirting) by machine
- Trimming of bristles by machine
- Handle production – hand made
- Handle painting or varnishing (optional) by hand
- Attaching the handle to the head (handling) by either hand/machine
- Nailing the brush head to the handle (tacking) by machine
- Packaging by hand.

99. PAL notes that, even after gluing, flirting or trimming, “the imported head components still require tipping and flagging to comply to New Zealand Performance and Quality Standards”.

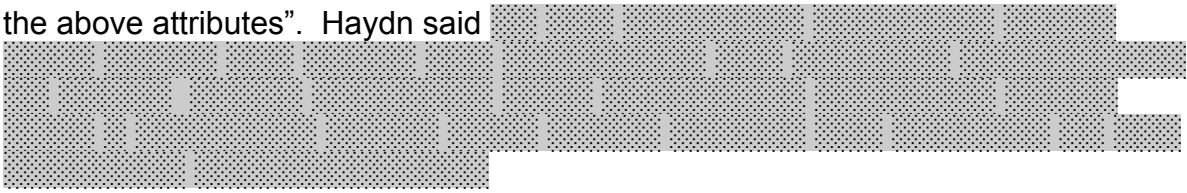
100. Haydn states “. . . in all my experience and those before me cannot believe someone from the appellant company [PAL] would state that natural hog bristle is a) Able to be tipped or indeed needs it b) Flagging natural bristle . . . in fact all natural hog bristle is grown with a natural flag (split ends)”. Haydn adds that the supposed further processes that PAL states are necessary “. . . are complete hogwash – rubbish”. Haydn also supplied some technical notes on brush making to support these comments.

101. As noted above, the Ministry considers the evidence available indicates that only very minimal processing is required to convert a “raw” head into a “finished” head.

102. Haydn advises that the heads it sold to PAL (under PAL’s previous ownership) were sent to PAL glued, flirted and trimmed which meant that all that was required to finish the brush was the attachment of a finished handle and packaging. Haydn submits “. . . it would be nonsensical to import a brush head that had any less than



the above attributes". Haydn said



103. In the review report, the Ministry stated that "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".

104. PAL states that:

Some relatively minimal additional processes needed to complete a paintbrush from a paintbrush head is an ignorant comment from somebody who doesn't know what's involved in making a paint brush. This particular stage in the manufacturing process is where the product finally becomes a finished item and not a raw component.

105. PAL notes that it "adds a further 20% - 40% of the total ex-factory cost (excluding profit) to the cost of an imported raw paintbrush head" to produce a finished paintbrush.

106. PAL further submits that the claim by the Ministry that the production methods and technology are the same is not well-founded, and only is if it is assumed from the start that a brush head is a paintbrush. PAL said the handle has to be, *inter alia*, shaped, finished on woodworking equipment (or sometimes plastic technology), be painted or sealed, advertising added to the handle, assembled with the head and packaged. PAL said none of these production methods are used to produce the head alone and the technology used is certainly different.

107. The Ministry accepts that it may be incorrect to refer to the processes required to complete a paintbrush from a paintbrush head as "relatively minimal", but does consider they are relatively less significant in the total construction process than construction of the paintbrush head, first in terms of manufacturing processes but also in terms of cost. The Ministry considers that, after the paintbrush head has been assembled, the processes required to complete the paintbrush are not as technically demanding nor as significant in relation to the completed paintbrush as is the construction of the paintbrush head itself.

## **Technology**

108. PAL refers to the availability of "fully automated paintbrush assembly and packaging systems available in the world" but notes that none are available in New Zealand. PAL does not advise whether the imported paintbrushes and paintbrush heads are made using such technology. No information is available that indicates the use of different technology for production of paintbrush heads and paintbrushes.

## Function and Usage

109. PAL states that “in true commercial reality and common sense a locally-made paintbrush is not substitutable for an imported paintbrush head component that still requires a significant degree of processing to a finished paintbrush”. PAL points out that “paintbrush heads are not used for painting whereas paintbrushes are – in other words there is no functional similarity [between the two] in terms of use”.

110. PAL further states that “A paintbrush head has only one function or use only and that is to be inserted into a handle and so be made into a paintbrush. This paintbrush can then be sold and used to apply paint. There is no resemblance in function between the two. The Ministry’s conclusion that a head without a handle can and is used to apply paint enters the world of make-believe.”

111. Haydn notes that “. . . you cannot paint with a handle alone but you can paint with a brush head by itself”.

112. The Ministry considers that 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. A paintbrush head could not easily be used to paint due to lack of a handle but its function would be clearly to apply paint, rather than any other purpose. While a paintbrush head is not alike in all respects to a paintbrush in terms of ability to be used, the Ministry considers that a paintbrush head’s function and intended usage is reasonably similar to that of a paintbrush and is certainly quite distinguishable from other goods, including other types of brushes. The latter aspect is due to the fact that 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

113. No prices are available for imported and domestically-produced paintbrush heads. PAL notes that “paintbrush heads are not produced for sale in New Zealand as separate articles”.

114. The Ministry reported that it understood that a paintbrush head would constitute the major part of the value of a finished paintbrush. PAL states that this is incorrect and that “40% - 60% of the complete cost relates to the paintbrush head”, but provided no evidence of these costs. In a subsequent submission, PAL said the Ministry gave no information on values to support its statement (in the review final report) that a head is the major part of the value of a finished paintbrush. PAL said it understands that the value of the head is around 20 percent of the total value [which differs from the percentages given in its earlier submission referred to above]. So PAL said the head is a significant, but not the major part of the value. PAL submits “This becomes very important because the establishing of dumping and injury depends upon this being fair and correct.”

115. In the final review report the Ministry stated:

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.

116. In response to the comment above PAL states that “This is correct, and it should be concluded that in respect of this characteristic the brushes do not resemble the head.”

117. Haydn submits that the head is a major element in the manufacture and cost of production of paintbrushes. Haydn provided its current average costs of production of a head and a complete paintbrush, for each size of paintbrush it produces in each of the three categories on which the current duty is based. These costs show that the average cost of the head represents 71 percent of the average cost of a complete paintbrush, the cost of the head ranging between 65 and 77 percent of the cost of a complete paintbrush.

118. The evidence available indicates that the major part of the value of a completed paintbrush consists of the paintbrush head and, if sold, paintbrush heads would be somewhat cheaper than, but probably not less than half as cheap as, finished paintbrushes.

## **Marketing Issues**

119. 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.

120. PAL observes, in respect of paintbrush heads, that there is no trade or consumer market in New Zealand, they do not compete with paintbrushes, they do not seek the same consumers, they do not compete directly with paintbrushes, they do not fulfil the same need and they cannot be “substituted one for the other”. However, as noted under “Market Considerations” above, in a subsequent submission PAL said there is an industrial market for paintbrush heads.

121. PAL also said the Ministry did not in its review report point out that paintbrushes are commonly sold with slip packaging. PAL did not elaborate on this statement, but the Ministry assumes that it is asserting that paintbrush heads are not sold (to paintbrush manufacturers) in such packaging and can therefore be differentiated on this basis.

122. 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**

### **Tariff Classification**

123. 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.

124. PAL submits that the same classification for paintbrushes and heads does not add to the determination of whether a head is a like good to a paintbrush. PAL said tariff classification does not add clarity to the issue because parts are classified with the finished goods. PAL adds “To rely on this as a deciding factor when it will automatically be included, despite the facts, is not safe.”

125. The Ministry notes that it is not relying on tariff classification as a sole deciding factor. The tariff classification is one of many factors examined which when taken together are used to form an opinion on the issue at hand. At the very least, the tariff classification does not indicate that heads are not a like good to a paintbrush.

### **Precedents**

126. PAL submits previous cases provide useful guidelines on like goods that the Ministry should refer to. These cases and PAL’s submissions in relation to each case, are recorded below.

### ***Transformers***

127. PAL referred to the GATT panel on transformers. PAL said this panel considered the question of whether large and small transformers were like goods. PAL states the panel found that differences in capacity, manufacturing and use were significant and hence that these two types of transformers were not like goods. PAL said the differences were small but found to be significant. PAL notes that at that time the GATT panel decision was not necessarily binding but became so when the New Zealand Government accepted and acted upon it.

### ***Other Types of Paintbrushes***

128. PAL referred to the recent final paintbrush review report where radiator brushes, some confidential specialist brushes and wallpaper brushes were found not be like goods. PAL said the grounds on which these brushes were excluded, where clear, would exclude paintbrush heads.

### ***Disposable Lighters***

129. PAL referred to the investigation carried out by the Ministry into disposable lighters from China and the Philippines. PAL said in this case disposable flint operated lighters were found to have characteristics that did not closely resemble those of electronic ignition lighters. PAL states “The essential character test now used, and the tariff test would mean that the Ministry would now revise and widen the coverage set out in the Ministry’s Report.”

### ***Canned Peaches***

130. PAL referred to an investigation carried out by the Ministry into canned peaches from South Africa. PAL said in that case, the Ministry had to consider whether the investigation should be extended to include cans with a weight greater than 3kgs. PAL said the final report concluded that the large can descriptions should be changed from 3kg to A10. PAL observes that this was a more exact description of the can size under consideration not a change in the reality, as the weight changed depending on the filling, but not the volume. PAL notes that the original description was a general trade term used in New Zealand.

131. PAL also states “It can be noted that the description did not change any party’s ability to participate in the process, the change involved was very small (albeit based on understanding not reality) – the NZ can was generally 3.05kg plus or minus 0.05kg. The actual possible difference ranged from nil to 0.01kg. This test used by the Ministry shows how close the differences must be. The paintbrush case does not do this.”

### ***Plasterboard***

132. PAL referred to a 1996 review of plasterboard from Thailand carried out by the Ministry. PAL said in this review the Ministry had to assess a request to expand the scope of the review to cover board lengths of less than 2400mm and greater than 3600mm. PAL notes that in the report the Ministry stated that “although the fact that shorter and longer lengths of plasterboard are, apart from length, like the goods under review legal advice has been received that the review cannot include such goods within its scope since the notice imposing anti-dumping duty refers only to lengths of 2400mm to 3600mm. In these circumstances, a separate investigation is necessary to deal with the other lengths”.

133. PAL said “This sound policy advice was followed in the letter of the Ministry of 18 October 2002 but not followed in the review report. It should be noted again, on like goods, how close the characteristics are in fact”.

### **Ministry’s Consideration of Precedents**

#### ***Transformers***

134. The Ministry has examined the GATT panel decision on transformers referred to by PAL. This panel related to the imposition by New Zealand of anti-dumping duties on transformers and is dated 19 June 1985. The Ministry is unable to discern anything in the panel report that supports the contention by PAL that the panel examined whether large and small transformers were like goods.

135. The Ministry notes that the panel did examine an argument put forward by New Zealand that the New Zealand industry was structured in such a way that there were four distinguishable ranges of transformers, which for the purposes of injury determination had to be considered separately. There was never any question, however, that all of the sizes of transformers in each of the four ranges, were like goods. The panel found that injury had to be assessed in relation to all of the New

Zealand industry's production of like goods and therefore could not be assessed separately in relation to each of four ranges.

136. The Ministry therefore considers that the findings of this panel are not relevant to the matters at issue in this reassessment.

### **Other Types of Paintbrushes**

137. The 1997 review examined whether radiator brushes produced by the New Zealand industry were a like good to the subject goods. Radiator brushes are industrial type brushes which have the ferrule bent at an angle and a handle that is much longer than normal, enabling the brush to be used in situations where space is limited or access to surfaces is obstructed.

138. That review found that while radiator brushes contain some of the same components as a normal industrial paintbrush and are marketed and distributed in the same way, a radiator brush could be distinguished from normal industrial brushes in the following areas:

- The physical characteristics of a radiator brush are clearly different to a normal paintbrush in that it has a much longer handle, the ferrule is longer and it is bent at the ferrule.
- The method of manufacture is different in that a radiator brush is largely hand made and includes an additional manufacturing process to bend the ferrule, whereas a normal industrial paintbrush is largely made on a brush making machine.
- The function and usage is different, a radiator brush having a specialised use in confined spaces.
- There is a large difference in the price, a radiator brush being significantly more expensive.

139. The recently completed review examined whether specialist brushes described as [redacted] brushes, [redacted] brushes and paperhanging brushes were like goods to the subject goods. [redacted]

140. In the recently completed review, the Ministry found that [redacted] and paperhanging brushes were not like goods to the subject goods because of the following differences:

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

141. The Ministry notes that findings on like goods, while assessed in relation to standard criteria, are to a degree subjective and depend on the circumstances of each case. Bearing this in mind the Ministry considers that its decisions on radiator brushes, [REDACTED] and paperhanging brushes can be distinguished from the paintbrush/heads issue taking account of the totality of the differences outlined above. The Ministry notes that the several differences found between these types of brushes and the subject goods is in contrast with the very limited differences found between a paintbrush and a head and their considerable similarities.

### **Disposable Lighters**

142. The investigation referred to by PAL was, as PAL records, an investigation into disposable lighters from China and the Philippines. The Ministry terminated the investigation in July 1995. In this case the New Zealand industry manufactured only flint operated disposable lighters. The New Zealand industry also imported lighters with a piezoelectric ignition system. The goods under investigation as originally described referred in part to “disposable non-refillable lighters” and therefore covered both types of lighters. The Ministry found on the basis of the different ignition systems and the different price range, that flint operated lighters were not like goods to electronic ignition lighters. The Ministry consequently narrowed the description of the goods under investigation so that it covered flint operated lighters only.

143. In this case the concept of like goods was used to determine the scope of the goods to be covered by the investigation. That case is therefore somewhat analogous to the present reassessment where the like good concept or test has been used as one of the tools to establish whether a particular good falls within the description of goods already subject to duty.

144. The Ministry understands PAL’s submission to be that the essential character test and Tariff test used by the Ministry in the paintbrush review final report would have meant in the lighters case that the description of the goods would have been left as originally described and not narrowed to cover only flint operated lighters.

145. The Ministry notes that in the final review report (and in this report) the essential character test and the Tariff test are only two of the factors considered to determine whether heads fall within the description of the goods subject to duty. In the final review report (and in this report) a range of other factors was considered including whether heads were like goods to paintbrushes. In the lighters case it was found that flint operated lighters were not like goods to electronic lighters and electronic ignition

lighters were accordingly excluded from the goods under investigation. In the final review report it was found that heads were a like good to paintbrushes, and when taken together with the other factors examined, it was concluded that heads fell within the description of the goods subject to the duty.

146. Flint and electronic ignition lighters have the same tariff classification. If it could be concluded that these two types of lighter had the same essential characteristics, it is unlikely that these two factors (tariff classification and essential characteristics) would be sufficient to override a finding that they are not like goods, when deciding whether to narrow the description of the goods. If the tests additional to the like goods test that were applied in the final review report (and in this reassessment) had been applied in the lighters case, the Ministry therefore does not agree that it would necessarily have come to a different conclusion.

147. As noted above, a like goods determination is to a degree subjective and depends on the circumstances of the case. The differences found in a particular case (such as disposable lighters) which were considered to be sufficient to make them not like goods, cannot necessarily be applied as a guide (or measurement rod) to another case where the circumstances are different. In each like goods examination, a decision is made on a case-by-case basis on the totality of the evidence after considering a number of criteria.

### ***Canned Peaches***

148. The investigation referred to by PAL was a dumping investigation completed by the Ministry in 1996. In that case the canned peaches were originally described in part as “can sizes ranging from 100 grams to 3 kilograms”. The investigation established that cans labeled as 3 kilograms normally had an actual net weight slightly higher than this weight. The investigation further established that cans with a nominal weight of 3 kilograms were packed in cans with a capacity generally referred to (according to an American standard) as A10. In that case the Ministry concluded that the goods under investigation included canned peaches with a nominal size of 3 kilograms. Part of the description of the goods was therefore amended to read “can sizes ranging from 110 grams to 3 kilograms (A10)”.

149. In the canned peaches case therefore the slight difference in the actual weight of the cans from the original 3 kilogram description was not sufficient to put cans with a weight slightly above this weight outside of the scope of the investigation. Contrary to the interpretation submitted by PAL, the Ministry considers that this case shows that a small and inconsequential difference was not sufficient to place goods outside of the scope of the investigation. The Ministry notes that in the peaches case, the goods description was amended before the completion of the investigation and duties were therefore imposed on goods according to the amended description. If the duty had been imposed on canned peaches with an upper size described just as “3 kilograms”, it is unlikely that cans with an actual weight slightly above 3 kilograms would have been subject to the duty. The applicability of duty where the goods description is circumscribed by quantified physical measurements is further discussed below.



### **Plasterboard**

150. The Ministry completed the review referred to by PAL in February 1996. The submission by PAL accurately outlines the facts of the case.

151. The description of the goods under review in this case was in part “plasterboard having nominal dimensions of 9mm or 9.5mm thickness by 1200mm width by 2400mm to 3600mm length”. The description of the goods was therefore quantitatively circumscribed. The use of the word “nominal” in the goods description would have allowed for slight variations in the actual dimensions from the stated size of any given piece of plasterboard to still be subject to the duty, provided the stated size fell within the goods description.

152. However, where plasterboard was of clearly different dimensions outside of those in the goods description, then there is no doubt that plasterboard of such dimensions falls outside the goods description and is therefore not subject to the duty. This is so because the physical measurements provide clear quantifiable boundaries of the goods that fall within the description. This contrasts with the current reassessment where the goods description is not circumscribed by quantified physical measurements. Because the paintbrushes subject to the anti-dumping duty are described in more general terms, the boundaries of the definition are not as clear-cut.

153. The Ministry therefore does not consider that this case provides useful guidance for the issue at hand in the present reassessment.

### **Conclusion on Precedents**

154. The Ministry concludes that its findings in the recent final review report are not inconsistent with the precedents cited by PAL and therefore do not provide a sufficient basis for the Ministry to change its findings in this reassessment.

### **Conclusion on Like Goods**

155. 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 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
- Tariff classification.

156. 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.

## 2.8 Conclusion on Subject Goods

157. 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.

158. 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.

159. The Ministry therefore concludes that hog bristle paintbrush heads fall within the description of the goods subject to anti-dumping duty and are therefore subject to the anti-dumping duty.

160. To ensure that paintbrush heads are formally identified as being subject to the same anti-dumping duty as complete paintbrushes from China, the *Gazette* notice required for this reassessment and for any future reviews or reassessments will read as follows:

### *Description of Goods*

Hog bristle paintbrushes for household or industrial use.\*

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

### 3. Circumvention

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161. In the final review report the Ministry stated:

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.

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.

162. In response to the above PAL said there is no legal concept in the Act or in the WTO Agreements relating to circumvention. PAL notes that the "Marrakesh Round" left circumvention for consideration by the Committee on Anti-Dumping, which it understands has to date not resolved this matter.

163. PAL states that it ". . . considers there is no need to have any administrative procedure to cover the situation in this case". PAL submits that "All the Ministry needs to do, and it has already done this, is to inform the applicant industry that a new application is required. The issue of circumvention, if it exists, can easily be addressed in a manner in which all parties get the opportunity for a fair hearing."

164. PAL said the basis in the report for stating that there is circumvention would appear to an assertion by an interested company and the Ministry's concern about the duties being circumvented. PAL notes that there are many reasons why heads alone may be imported, e.g., a fire in the plant, unavailability of suitable labour, the lack of good quality bristle for import etc. PAL states "This has to be investigated but is not reported in the Ministry's [final review] Report." In response to these comments Haydn said that the inference that fire, lack of labour or good quality bristle should be reasons enough to allow imports of heads without duty, is not valid.

165. PAL said all the paintbrush manufacturers are assembly operations to varying degrees and none produce in-house the hog bristle, ferrule, pins or nails, glue, paint and packaging used, and can easily contract out the production of handles. PAL said to differentiate between producers on the basis of the amount of assembly undertaken would be fraught with difficulty. PAL states "The inclusion of the remarks on circumvention are not pertinent to the investigation, do not appear to be based upon investigation and in any event are beside the point. If the Ministry is concerned, to invite an application covers the situation and is within the terms of the Dumping Act."

*Ministry's Consideration of the Issues*

166. The Ministry agrees there are no anti-circumvention provisions in the Act or in the WTO Agreements. The Final Act Embodying the Results of the Uruguay Round included a Ministerial Decision to refer the matter to the Committee on Anti-Dumping Practices for resolution. This committee has not yet resolved the matter.

167. The Ministry notes that the purpose of its comments in the final review report were intended to highlight the possibility that the separate importation of heads could amount to circumvention of the anti-dumping duty and could therefore frustrate the purpose of the Act. The comments were also intended to make it clear that action against circumvention could only be taken when there is a sound legal basis for doing so.

168. The Ministry observes, however, that it was not relying on what may be an attempt to circumvent the anti-dumping duty as the basis for its conclusion that heads fell within the description of the goods subject to the duty. That conclusion was based on considerations relating to like goods and a number of other factors.

169. The Ministry agrees it could not arbitrarily extend the coverage of the goods subject to the duty without undertaking a new investigation. The Ministry does not consider that it has done so in this case. Rather, the Ministry has determined that the existing description of the goods encompasses heads and has therefore not extended the coverage of the goods subject to the duty. As a consequence the issue of whether there should be a new investigation is not considered relevant.

## 4. Access to Procedures

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170. PAL submits that “Because the Ministry has decided to try and use a Procrustean test to include paintbrush heads it has had the effect of precluding PAL from access to the procedures set out in the Dumping Act. The result of this is that there is no application, acceptance of a fully documented application, initiation procedures, questionnaire, investigation, reports on investigation, an essential facts and conclusions report or a final report, etc that a proper investigation would require.”

171. PAL considers that the Ministry has given no reason why this has not been done apart from asserting that a fully assembled paintbrush closely resembles the head. PAL said the reasons for the Ministry doing this are unique and do not bear examination or accord with previous decisions. PAL submits that to consider injury, the effect of dumped imports has to be considered in relation to the domestic production of like goods, which the review did not do, despite noting that the value of the head and complete brush differ greatly.

172. PAL states the Ministry has been given legal advice that the procedure followed in the review is not correct. PAL submits that to change the definition of the goods subject to anti-dumping duty and increase the scope of the determination requires a new and separate application (as per the legal advice given to the Ministry in the plasterboard case referred to above). Without this opportunity PAL considers that parties are being denied access to the procedures set out in the Act by Parliament.

173. In a subsequent submission, PAL referred to the description of the goods subject to the duty and said it considers the description to be quite specific, i.e., it covers paintbrushes not paintbrush heads. PAL said the Ministry appears to be intent on including paintbrush heads in the review despite:

- The description of the goods that are subject to the duty.
- The Ministry receiving legal advice in July 2002 from its legal section that stated in part “the components of the brushes could not be said to be paintbrushes”.
- The Ministry’s letter of 18 October 2002 wherein the Ministry advised the industry that paintbrush handles and bristles when imported as separate components would not be subject to anti-dumping duty, and subsequently recommended, *inter alia*, that the industry should apply for a new dumping investigation in relation to paintbrush heads.

174. PAL said it wishes to make clear that it is very concerned about the methodology and approach applied by the Ministry and will have no hesitation in seeking a judicial review of the Ministry’s findings should this become necessary.

175. PAL reiterated the points recorded in the two paragraphs immediately above, in two subsequent letters.

### *Ministry’s Consideration of the Issues Raised by PAL*

176. As noted variously above, the Ministry considers, based on its analysis set out in sections 2.1 to 2.3 above, that the existing description of the goods subject to anti-

dumping duty encompasses paintbrush heads. Having reached that conclusion it is then not necessary to carry out a new investigation into paintbrush heads because paintbrush heads are subject to the existing duty.

177. The Ministry notes that its legal section examined the final review report and concurred with its findings. The Ministry further notes that the advice it gave last year to a customs agent that paintbrush heads and handles when imported separately were not subject to the anti-dumping duty, was based on information and analysis available at that time. The same situation applied in respect of the advice the Ministry gave to the New Zealand industry in its letter of 18 October 2002, which is referred to by PAL above. The Ministry also observes that its letter to the New Zealand industry of 18 October 2002 did not refer to the separate importation of handles and bristles, but rather to the separate importation of handles and “bristles contained within a ferrule (a paintbrush “head”)”.

178. The Ministry decided during the review that the question of whether heads were covered by the description of the subject goods was a relevant consideration in the review and any reassessment that may follow. Based on the additional analysis carried out during the review, which built on and developed the analysis carried out last year, the Ministry concluded that heads were covered by the duty.

179. The Ministry’s conclusion that heads were covered by the duty was not included in the interim report on the review, the analysis not being complete in time for its inclusion in this report. Consequently, when the final review report was released to interested parties, the Ministry’s findings on heads was brought to the attention of interested parties. Parties were given the opportunity to make submissions on this issue in the reassessment, which was initiated simultaneously with the completion of the review. Interested parties were also advised that, should the review findings be confirmed through the reassessment process, importations of hog bristle heads from China would not be subject to the anti-dumping duty until the day after the date the Minister makes a determination on the reassessment.

180. The Ministry therefore considers that interested parties have been given reasonable opportunity to defend their interests and make submissions on this issue through the reassessment process.

181. The Ministry notes that the review did examine the likelihood of a continuation of dumping and injury should the duties be removed. The examination of injury was conducted in relation to the New Zealand industry’s production of like goods. The like goods produced by the New Zealand industry includes the production of paintbrush heads, which are a major input into the production of finished paintbrushes.

182. There were no imports of paintbrush heads over the POD(R), although the review found that hog bristle paintbrushes from China were dumped by large margins and that dumping was likely to continue if the duties were to be removed. As outlined in section 5 below, if PAL considers the heads it imports are not dumped then it can seek a review or reassessment.

183. The Ministry observes that it did not say in the final review report that the value of a head and a complete paintbrush differ greatly. The Ministry did say in the final

review report that it “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”. Information since provided by Haydn has confirmed the Ministry’s understanding at the time the final review report was prepared.

184. The difference between the value of a paintbrush and a head is sufficient to warrant the setting of a separate and lower rate of duty for heads, and the basis on which this has been done is explained in section 6 below.





## 5. Dumping of Paintbrush Heads

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185. PAL claims that raw paintbrush heads exported by its Chinese supplier are not dumped. In support of this claim, PAL has provided a statement from its supplier, [REDACTED] which states that “the export price for the imported raw paint brush heads is at least 60% higher than the price in the local Chinese market. It is our considered opinion that the export price can in no way be interpreted as dumping. As the pricing difference between the local and export pricing is too great.” No evidence has been provided in support of this statement.

186. The period of review covered imports into New Zealand for the period 1 October 2001 to 30 September 2002. No evidence was found that any paintbrush heads had been imported during that period.

187. PAL has asked that the Ministry commence an investigation into goods supplied by its Chinese supplier before making a decision on whether or not a separate rate of anti-dumping duty should apply to paintbrush heads imported from China. Any interested party may request the Chief Executive, in terms of section 14(6) or (8) of the Act respectively, to carry out a reassessment or review of any anti-dumping duty, providing positive evidence justifying the need for a reassessment or review has been submitted.

188. The Ministry considers that, since a review of the anti-dumping duties on hog bristle paintbrushes has just been completed, a further limited review in respect of paintbrush heads should not be carried out for at least another six months. Obviously sufficient positive evidence would be required before the Ministry could decide whether or not to initiate a review in respect of hog bristle paintbrush heads. A review would only be appropriate if circumstances relevant to dumping or injury had changed significantly such that a review is likely to result in a different outcome than the previous review.

189. Article 9.5 of the WTO Anti-dumping Agreement states that:

If a product is subject to anti-dumping duties in an importing Member, the authorities shall promptly carry out a review for the purpose of determining individual margins of dumping for any exporters or producers in the exporting country in question who have not exported the product to the importing Member during the period of investigation, provided that these exporters or producers can show that they are not related to any of the exporters or producers in the exporting country who are subject to the anti-dumping duties on the product. Such a review shall be initiated and carried out on an accelerated basis, compared to normal duty assessment and review proceedings in the importing Member. No anti-dumping duties shall be levied on imports from such exporters or producers while the review is being carried out. The authorities may, however, withhold appraisement and/or request guarantees to ensure that, should such a review result in a determination of dumping in respect of such producers or exporters, anti-dumping duties can be levied retroactively to the date of the initiation of the review.

190. The wording of Article 9.5 indicates that a new shipper of goods subject to anti-dumping duty may request an accelerated review, limited to determining individual

margins of dumping for the new shipper. Such a request would need to be accompanied by evidence in support of the normal values and export prices of the subject goods. The Ministry would also require the co-operation of the exporter to allow verification of the information provided, unless the Ministry could be satisfied of the accuracy of the evidence provided through other means or secondary sources.

## 6. Proposed Anti-dumping Duties

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### 6.1 Method of Imposing Duty

191. 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

192. 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.

193. 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.

194. 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

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

export prices for reasons other than exchange rate movements or movements in normal values.

195. 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.

196. 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.

197. 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.

198. 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**

199. 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.

200. 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 1: Range of Cubic Volume of Bristle**

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

201. NIFOBs 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

202. 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).

203. 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

204. 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.

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

Customs duty has been calculated at the rate currently applying to imports from China (5.5 percent). The NZ dollar NIFOB amounts have been converted to US dollars at the average exchange rate over the POD(R) for comparison with the US dollar NV(VFDE) amounts.

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

**Table 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 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 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

207. 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.

208. In the proposed duties section of the final review report only one exporter's margin was applied in calculating NV(VFDE) amounts. In that report it was noted that two exporter's margins were applied in calculating export prices for SPL Group and that the reassessment would need to consider whether two exporter's margins should be applied to reference price calculations for SPL Group and other suppliers. The two exporter margins for exports by SPL Group arose because exports were made via exporters in Hong Kong and Australia. In considering whether a separate rate should be calculated for SPL Group the Ministry has considered whether the benefits from applying what might be a more accurate reference price outweighs the administrative simplicity of having a single rate of duty.

209. The Ministry notes that the exporter's margins applied to exports by SPL Group (and other exporters) in the review were based, in the absence of any other information, on an exporter's margin used in the original investigation and is therefore only an estimate of the actual margins taken. The Ministry also notes that the extent to which there are intermediate exporters involved in any importation of paintbrushes of Chinese origin will not necessarily be clear from documentation presented to Customs. It is also likely that in a significant number of importations paintbrushes will be made directly from the factory in China to New Zealand and will therefore not involve any intermediate exporter.

210. In view of the variety of ways in which paintbrushes can be imported into New Zealand, and the administrative difficulty of determining at the border how importations have been made, the Ministry considers that an allowance for only one exporter's margin should be made. This means there will be only one rate of duty for all exporters.

211. In the recent review, the costs incurred between the ex-factory level and FOB were not provided by Chinese exporters. The Ministry has therefore used, as outlined above, one exporter's margin of 8.5 percent (of the VFD), which is the margin 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.

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

**Table 5: NV(VFDE) Amounts 2002 US Dollars**

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

213. The NIFOB values are greater than the NV(VFDE) amounts in US dollars in all cases, except for 63mm and 100mm industrial paintbrushes. For industrial paintbrushes, except for these 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.

### 6.3 Anti-dumping Duties

214. In the 1997 reassessment, the Ministry 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.

215. The Ministry 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.

216. 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.

217. If a NIFOB was to be established in Chinese renminbi, the level of the NIFOB when converted to NZ dollars would vary every time there was a movement in the New Zealand dollar to renminbi exchange rate. The effect of a variable NIFOB, when converted into NZ dollars, would be to change the consequent ex-store price (assuming the same profit margin is taken). For example, if the NZ dollar depreciated against the renminbi, then the NIFOB in NZ dollars would increase and result in an ex-store price higher than the NIP. The reverse would result if the NZ dollar appreciated against the renminbi.

218. If a NIFOB is set in NZ dollars and the transaction price is below the NIFOB amount, then the anti-dumping duty collected will be such that the ex-store price (assuming the allowable profit margin is taken) will always equate to the NIP, provided there are no significant changes in the costs between FOB and ex-store from those used to establish the NIFOB amount. With the exception of sea freight, all significant costs between FOB and ex-store are incurred in NZ dollars and are not directly affected by exchange rate movements. However, if these costs do change significantly, this can be addressed by way of reassessment.

*Effect of Exchange Rate Movements on Anti-Dumping Duties*

219. As outlined above, the Ministry considers a NIFOB amount in NZ dollars should be used for two sizes of industrial paintbrushes. Whilst NIFOB amounts for these two brush types were less than NV(VFDE) amounts during the review period, a NIFOB amount will not be a lesser duty if the renminbi depreciates sufficiently against the NZ dollar.

220. The Ministry therefore considers that the NIFOB amounts for the 63mm and 100mm industrial paintbrushes should be applied except where the NV(VFDE) amount in NZ dollars (calculated at the exchange rate at the date of importation) is lower than the NIFOB.

221. The following table shows the NV(VFDE) amounts in renminbi and two NIFOB amounts in NZ dollars.

**Table 6: Reference Prices in Renminbi & NZ Dollars**

Size (mm)	Industrial	Handyman	Tradesman
25	4.40**	4.40**	4.49**
38	6.19**	6.28**	6.37**
50	9.25**	9.52**	9.52**
63	2.89*	11.85**	11.94**
75	13.65**	13.91**	14.18**
100	4.88*	18.76**	19.39**
Alternative Duty***			
63	11.49**		
100	18.58**		

\* NIFOB amounts in NZ dollars

\*\* NV(VFDE) amounts in Chinese renminbi

\*\*\* Note: An alternative duty rate has been set at the NV(VFDE) rate which should be applied instead of the NIFOB rate where the NIFOB duty amount calculated exceeds the NV(VFDE) amount due to exchange rate fluctuations.

222. In calculating anti-dumping duty on the basis of these reference amounts, the value for duty of paintbrushes at the FOB level will be converted to renminbi using the New Zealand Customs exchange rate at the date of importation. If the value for duty is 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.

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

224. If paintbrushes of sizes larger than 25mm other than those shown above are imported, duty should be based on a reference price proportionate to the rate established for the nearest paintbrush size. If paintbrushes of a size less than 25mm are imported, duty should be based on a reference price proportionate to the rate set for 25mm industrial brushes.

### **Anti-dumping Duties on Paintbrush Heads**

225. As discussed above, the Ministry considers that hog bristle paintbrush heads fall within the description of goods subject to anti-dumping duty.

226. As outlined above, Haydn provided its current average costs of production of a head and a complete paintbrush, for each size of paintbrush it produces in each of the three categories on which the current duty is based. (The same information was requested from PAL but was not supplied). This information indicates that while a head is the major part of the cost of a paintbrush, the difference between the cost of head relative to the cost of a complete paintbrush is significant enough to warrant separate rates of duty being established for heads.

227. The Ministry considers the best information it has available on which to calculate separate rates of duty for heads is the cost of production information provided by Haydn. The Ministry has therefore calculated reference price amounts for heads by applying the overall percentage (71 percent) across all types and sizes of brush manufactured by Haydn that the head represented of the total cost production to the reference prices in Table 6 above.

228. The reference prices calculated on the basis set out above are shown in the table below.

**Table 7: Reference Prices Renminbi & NZ Dollars**

Size (mm)	Industrial	Handyman	Tradesman
25	3.12**	3.12**	3.19**
38	4.39**	4.46**	4.52**
50	6.57**	6.76**	6.76**
63	2.05*	8.41**	8.48**
75	9.69**	9.88**	10.07**
100	3.46*	13.32**	13.77**
Alternative Duty***			
63	8.16**		
100	13.19**		

\* NIFOB amounts in NZ Dollars

\*\* NV(VFDE) amounts in Chinese renminbi

\*\*\* Note: An alternative duty rate has been set at the NV(VFDE) rate which should be applied instead of the NIFOB rate where the NIFOB duty amount calculated exceeds the NV(VFDE) amount due to exchange rate fluctuations.

## Effective Date of Application of the Duties

229. The Act does not specifically provide for a date from when the new reassessed duties take effect, but the Ministry's practice has been that the new duty is payable on demand "on and from" the day after the date on which the notice is published in the *Gazette* (section 14(2) of the Act), but is payable from the day after the date the Minister determines the new rate under section 14(6) of the Act.

## Refunds of Anti-dumping Duties

230. The Act allows for refund of duties under certain conditions. Section 14(10) of the Act states as follows:

14 (10) Without limiting the ability of the Minister to require refunds in other circumstances, where a reassessment under subsection (6) of this section results in a lower duty being imposed on any goods, the Minister may require the [Customs] to refund, with effect from the date of initiation of the reassessment (or, in the case of a reassessment carried out under paragraph (c) of that subsection, from the date of initiation of the review referred to in that paragraph), the difference between the duty paid and the lower duty.

231. As noted above the recommended levels of duties are lower than the existing duties. This reassessment was initiated following the completion of a review. Any

anti-dumping duties paid since the review was initiated on 25 October 2002, which exceed the proposed amount, may be refunded.

## 6.4 Developing Country Considerations

232. 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.

233. Co-operating Chinese exporters and the Government of the People's Republic of China were invited to make submissions on this reassessment. No submissions were received about possible constructive remedies or any effect of remedies on China's essential interests as a developing country.

234. 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>

235. In this reassessment, the Ministry has considered whether any lesser duties are appropriate and has concluded that such duties should apply for two sizes of industrial paintbrush.

236. 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.

237. 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.

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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.

## **6.5 Impact of Anti-dumping Duties**

238. Any anti-dumping duties imposed will impact only on hog bristle paintbrushes and paintbrush heads originating from China that are being dumped. Anti-dumping duties are set at a level that is no greater than is necessary to remedy the injury that may be suffered by the New Zealand industry.

239. The recommended levels of duty are approximately 20 percent below the existing rates of duty. Even at the existing rates of duty significant volumes of the subject goods are being imported. The continuation of the duties at a lower rate should not therefore result in any lessening of the availability of Chinese paintbrushes in the New Zealand market, and may result in greater import volumes.

240. Imports of hog bristle paintbrushes from countries other than China will not be affected. Imports from countries other than China are also present in the New Zealand market in significant quantities and will also continue to provide competition for paintbrushes manufactured in New Zealand.

## 7. Conclusions

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

- (a) Hog bristle paintbrush heads from China fall within the description of goods subject to the anti-dumping duty.
- (b) The rate of anti-dumping duty on exports of hog bristle paintbrushes (including heads) from all Chinese suppliers should be reassessed to the levels shown in Tables 6 and 7 above, being a combination of duties at less than the margin of dumping and at the full margin of dumping.





# 8. Recommendations

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242. It is recommended that the Minister should:

- (a) agree that anti-dumping duties should apply to hog bristle paintbrush heads;
- (b) reassess, the anti-dumping duties on hog bristle paintbrushes from China on the basis outlined in this report;
- (c) agree, that any anti-dumping duties paid since the initiation on 25 October 2002 of the review which preceded this reassessment that are in excess of the duties which would have been applicable if the proposed duties were in place, should be refunded to the extent of such excess; and
- (d) sign the attached *Gazette* notice, and give notice of the reassessment to interested parties in accordance with sections 9 and 14 of the Act.

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Reassessment Team  
Trade Remedies Group