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APPLICATION BY HAYDN BRUSH CO. LTD FOR A REVIEW OF ANTI-DUMPING DUTY ON HOG BRISTLE PAINTBRUSHES FROM CHINA

1 This report assesses an application made by Haydn Brush Co. Ltd (Haydn) for a review of anti-dumping duties that currently apply to imports of hog bristle paintbrushes from China and recommends that you should initiate a review.

Background

2 Anti-dumping duties were originally imposed in May 1988 and have subsequently been the subject of three reviews and reassessments. The last review was completed in April 2003 and the reassessment of the duties following that review was completed in July 2003. The duties that currently apply will expire on 14 July 2008, unless a review is initiated prior to this date. Reviews that are initiated prior to an anti-dumping duty's expiry are referred to as sunset reviews. If a review is initiated before the expiry date the duties will remain in place pending the outcome of the review.

3 The hog bristle paintbrushes that would be subject to any review that is initiated are described below:

*Hog bristle paintbrushes for household or industrial use**

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

4 Hog bristle paintbrushes imported from China enter New Zealand under Tariff Item 9603.40.00 and Statistical Keys 03B, 05J, 08C and 11C, and are subject to the Less Developed Country (LDC) tariff of 5 percent.

Legislation and Associated Jurisprudence

5 Section 14 of the Dumping and Countervailing Duties Act 1988 (the Act) deals with the imposition, application and duration of anti-dumping duties and states (in part):

...

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

- (9) Anti-dumping duty...applying to any goods shall cease to be payable on those goods from the date that is the specified period after–
 - (a) The date of the final determination made under section 13 of this Act in relation to those goods; or
 - (b) The date of notice of any reassessment of duty given under subsection (6) of this section, following a review carried out under subsection (8) of this section,–
whichever is the later, unless, at that date, the goods are subject to review under subsection (8) of this section.
- (9A) In subsection (9), “specified period” means,-
 - (a) In the case of goods of Singaporean origin, 3 years; and
 - (b) In the case of goods of any other origin, 5 years.

...

6 The Act requires that any interested party that requests a review submit positive evidence justifying the need for a review and that when this is provided the Chief Executive shall initiate a review. The Act is determinative in governing how anti-dumping duties should apply in New Zealand and accordingly how reviews are carried out. However, where the Act is silent the Ministry turns to its international obligations, as set out in the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the Agreement) and the associated jurisprudence, for guidance.

7 Article 11 of the Agreement deals with the duration and review of anti-dumping duties and states in Paragraph 3 (in part):

...any definitive anti-dumping duty shall be terminated on a date not later than five years from its imposition (or from the date of the most recent review...if that review has covered both dumping and injury...), unless the authorities determine, in a review initiated before that date on their own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time prior to that date, that the expiry of the duty would be likely to lead to the continuation or recurrence of dumping and injury [footnote omitted.]

8 The test outlined in the Agreement is primarily whether the application for review constitutes a duly substantiated request that, without anti-dumping duties on imports of hog bristle paintbrushes from China, there would be a continuation or recurrence of dumping and material injury. The Ministry considers that the test outlined in the Agreement is equivalent to the test set out in the Act, with an additional factor that the Agreement states should be considered, that is, whether the application was submitted within a reasonable period of time prior to the expiry of the current duties.

9 The World Trade Organisation Dispute Settlement Panel (Panel) *United States – Sunset Review Of Anti-Dumping Duties On Corrosion-Resistant Carbon Steel Flat Products From Japan*¹ discussed the practice of the United States administration in relation to what is considered a reasonable period of time prior to the expiry of duties. It stated at paragraph 7.20 in regard to the initiation of reviews:

¹ World Trade Organisation Dispute Settlement Panel *United States – Sunset Review of Anti-Dumping Duties on Corrosion-Resistant Carbon Steel Flat Products from Japan* WT/DS244/R 14 August 2003.

Section 751(c)(1) of the US Statute requires that five years after the date of publication of an antidumping duty order, the administering authority and the Commission shall conduct a review to determine whether revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping and of material injury. Section 751(c)(2) provides: "Not later than 30 days before the fifth anniversary of the date described in paragraph (1), the administering authority shall publish in the Federal Register a notice of initiation of a review under this subsection...". Similarly, Section 351.218(a) of the Regulations provides that "...no later than once every five years, the Secretary must determine whether dumping ... would be likely to continue or recur...", while section 351.218(c)(1) states that "...No later than 30 days before the fifth anniversary date of an order or suspension of an investigation...the Secretary will publish a notice of initiation of a sunset review...".

10 While the United States uses a self-initiation process for instigating sunset reviews, the Ministry considers that the timeframes it has established as being a reasonable period of time prior to the expiry of the duty would also apply to an application for a review submitted to the investigating authority. The practice of the United States in this regard does not bind the Ministry, but is illustrative of other authorities interpretation of what constitutes a reasonable period of time prior to the expiry of duties, namely 30 days.

11 In the present case, the application for a review was submitted by Haydn in two substantive parts, the first on 15 May 2008 and the second on 9 June 2008, which is 35 days prior to the expiry of the anti-dumping duties that it seeks to have considered in the review. I am satisfied that Haydn's submission of a request for a sunset review was made within a reasonable period of time prior to the expiry of the duties.

Consideration of Evidence Presented

12 The Ministry interprets the requirement of subsection 14(8) of the Act for a review to be initiated when an interested party "...submits positive evidence justifying the need for a review..." as being a requirement for positive evidence of a lesser standard than that required under subsection 10(2) of the Act in respect of new investigations. This interpretation is supported by the international jurisprudence relating to the Agreement.

13 In *United States – Countervailing Duties On Certain Corrosion-Resistant Carbon Steel Flat Products From Germany*², which dealt with a sunset review of countervailing duties, the Panel stated at paragraph 8.42:

...it is clear that, in the absence of an affirmative determination by an investigating authority, [duties] may not be maintained beyond a five-year period. It is also clear that any such determination must be correctly reasoned and based on positive evidence...The initiation of a review is merely the beginning of a process leading to a determination as to whether or not subsidisation and injury are likely to continue or recur. The standards for the initiation of a review – whether on the initiative of an investigating authority or upon request by the domestic industry – in no way prejudice the standards applied by an investigating authority in reaching the substantive determination to be made in that review. In sum, it seems to us that the European Communities' argument is based upon an incorrect equation of the standards for the initiation of a review with those for the substantive determination to be made in a review.

² World Trade Organisation Dispute Settlement Panel *United States – Countervailing Duties On Certain Corrosion-Resistant Carbon Steel Flat Products From Germany* WT/DS213/R 3 July 2002.

14 The above excerpt illustrates that the standards an investigating authority, such as the Ministry, must apply in assessing whether a sunset review should be initiated are less than those which must be applied in making a substantive determination in any review undertaken. While this case related to the sunset review provisions of the WTO Agreement on Subsidies and Countervailing Measures, these provisions are very closely aligned with those of the Agreement and it is reasonable to assume that the same findings would have been made had the case related to the equivalent provisions of the Agreement.

15 The issue of the requisite standard of evidence required to initiate a sunset review was also discussed in the Panel *United States – Sunset Review Of Anti-Dumping Duties On Corrosion-Resistant Carbon Steel Flat Products From Japan*³ at paragraph 7.27:

We also note that the text of Article 11.3 does not contain any cross-reference to the evidentiary rules relating to initiation of investigations contained in Article 5.6 of the *Anti-dumping Agreement*. Therefore, Article 11.3 itself does not explicitly provide that the evidentiary standard of Article 5.6 (or any other evidentiary standard) is applicable to sunset reviews. Although paragraphs 4 and 5 of Article 11 contain several cross-references to other articles in the *Anti-dumping Agreement*, no such cross-reference has been made in the text of Article 11 to Article 5.6. These cross-references (as well as other cross-references in the *Anti-dumping Agreement*, such as, for example, in Article 12.3) indicate that, when the drafters intended to make a particular provision also applicable in a different context, they did so explicitly. Therefore, their failure to include a cross-reference in the text of Article 11.3, or, for that matter, in any other paragraph of Article 11, to Article 5.6 (or *vice versa*) demonstrates that they did not intend to make the evidentiary standards of Article 5.6 applicable to sunset reviews. The Appellate Body, in *US – Carbon Steel*, drew the same conclusion from the non-existence of a cross-reference in Article 21.3 of the *Agreement on Subsidies and Countervailing Measures* (the "*SCM Agreement*") to Article 11.6 of that Agreement, which contains the evidentiary standard for the self-initiation of countervailing duty investigations. [footnote omitted]

16 This clearly indicates that the Panel considered the evidentiary standards required for the initiation of a new investigation (as outlined in Paragraph 6 of Article 5 of the Agreement) do not apply for the initiation of sunset reviews and the applicable standard is in fact a lesser one.

17 The Ministry considers, therefore, that while an application for the initiation of a sunset review may cover the information on the factors outlined in Paragraph 2 of Article 5 of the Agreement, it is not necessary that all of these matters are addressed or addressed in full for an application to constitute "positive evidence justifying the need for a review".

New Zealand Industry Standing

18 The Agreement states that an application for a sunset review must be made by or on behalf of a domestic industry.

19 Section 3A of the Act defines "industry" as follows:

³ World Trade Organisation Dispute Settlement Panel *United States – Sunset Review of Anti-Dumping Duties on Corrosion-Resistant Carbon Steel Flat Products from Japan* WT/DS244/R 14 August 2003.

For the purposes of this Act, the term “industry”, in relation to any goods, means

- (a) The New Zealand producers of like goods; or
- (b) Such New Zealand producers of like goods whose collective output constitutes a major proportion of the New Zealand production of like goods.

20 “Like goods” are defined in section 3 of the Act as follows:

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

21 Neither the Act nor the Agreement defines what constitutes a “major proportion” of domestic production. The Ministry interprets “major proportion” to mean that the proportion of production should be significant. i.e. something that is not minor or insignificant.

22 At the last review, Paint Aids Ltd (PAL) was the only other New Zealand producer. PAL withdrew from the review at an early stage, but provided the company’s production information. Haydn’s production at that time of [redacted] like goods made up [redacted]% of the New Zealand industry. PAL’s production of [redacted] like goods made up the remaining [redacted]% of the market. The Ministry was satisfied that Haydn constituted a “major proportion” of domestic production, therefore, Haydn qualified as the “industry” in its own right.

23 Haydn has been asked to provide information on the extent to which PAL is still manufacturing in NZ. The PAL web site indicates that the company is still making paintbrushes in New Zealand.⁴ Haydn contends that PAL has virtually withdrawn from manufacturing hog bristle paintbrushes for the domestic market. Haydn listed numerous groups who regard Haydn as their [redacted] supplier. Haydn identified two companies, [redacted] and [redacted], which do not recognise Haydn as their [redacted] supplier.

[redacted]. Haydn employees have observed that the two companies sell very little, or no New Zealand made hog bristle brushes. The Ministry has assumed that Haydn [redacted]. As Haydn is the [redacted] supplier to a number of major companies, and neither Haydn nor PAL supply the 2 major customers identified above, Haydn estimates it has a market share of [redacted]%, with the remaining [redacted]% of the market being supplied by PAL.

24 Haydn’s production figures were not included in its application for review. However, Haydn provided sales volumes for 2006, 2007 and 2008. Haydn’s sales volume of like goods for the year ended 31 March 2008 was [redacted]. In the last review, the Ministry estimated that production was [redacted]% to [redacted]% higher than sales volume over the period 2000 to 2002. Production was estimated by subtracting opening inventory from sales volume, and then adding closing inventory. For the purposes of this

⁴ <http://paintaids.co.nz>

initiation, it is reasonable to assume that Haydn's sales volume accurately represent the company's production volume for 2008.

Conclusion

25 Without information regarding PAL's current level of production, the Ministry is not able to calculate the actual size of the domestic industry. Haydn has noted that synthetic brushes have improved in quality over recent years [REDACTED]. The Ministry notes [REDACTED]

[REDACTED]. The Ministry is satisfied that Haydn's production represents a major proportion of domestic production, therefore, Haydn can be considered to be the New Zealand industry for the purposes of initiating a review.

Continuation or Recurrence of Dumping

Export Price

26 Haydn has not been able to obtain actual Chinese producer export price lists but has obtained quotes for free-on-board (FOB) export prices. The FOB prices were provided in an email from [REDACTED], a [REDACTED] merchant in China, for do it yourself (DIY) quality paintbrushes, under the brand name [REDACTED]. Prices were in United States dollars (USD) for brush sizes 25mm, 38mm, 50mm, 63mm 75mm and 100mm. According to the email correspondence, the factory producing the brushes is believed to be in [REDACTED], which is located in Hebei province.

27 To calculate the ex-factory price, a deduction has been made from the FOB prices for the cost of internal cartage from the factory to the port. Haydn's application included an email received by [REDACTED], which suggests that the nearest port to the Hebei province is Xingang. The email correspondence estimated the cartage cost from Hebei to Xingang to be [REDACTED] USD for a 20 foot container.

28 Haydn converted the USD FOB price into New Zealand dollars (NZD). Haydn then made a deduction of [REDACTED]% from the FOB price to calculate the ex-factory price, based on the email correspondence of [REDACTED]. However, the Ministry can not find any evidence within the correspondence that supports a [REDACTED]% deduction for cartage.

29 In the 2003 review, Haydn estimated that 43,500 mixed brushes could be held in a 20 foot container. The Ministry has divided the [REDACTED] USD by the 43,500 brushes to estimate the cost of cartage per brush, which has been deducted from the FOB price. The resulting ex-factory price in USD was converted to Chinese Yuan Renminbi (CYN) for comparison with the normal value. The USD/CYN exchange rate at 8 March 2008 was 1:7.12.⁵

⁵ www.oanda.com

30 No evidence of other costs between FOB and ex-factory were provided in the application. The estimated ex-factory export prices are shown in paragraph 34.

Normal Value

31 Normal value price information for the DIY [redacted] brushes was also provided in an email from [redacted]. The email provided estimated local Free-into-store (FIS) prices for DIY brushes of the sizes identified in the export price section.

32 Based on Haydn’s interpretation of correspondence with [redacted], Haydn increased the estimated ex-factory export prices by [redacted]% to calculate the ex-factory normal value. However, the Ministry interprets [redacted] comments to mean that a [redacted]% increase of the FIS price would indicate the retail selling price of the paintbrushes in China. [redacted] explained in a later email that the cost of cartage for a full truckload from ex-factory to customers’ central distribution store would be [redacted]% of the value of the goods. However, delivery to individual retail outlets would be [redacted]% because the value of goods is much lower.

33 As the inland freight adjustment for the export price is based on a 20 foot container, the Ministry considers the most comparable inland freight cost adjustment for the normal value is that for delivery to central distribution stores (which would take larger volumes of paintbrushes), rather than delivery to individual stores. Therefore, the Ministry has made a deduction of [redacted]% from the FIS price. The estimated ex-factory normal values are shown in paragraph 34.

Comparison of Export Price and Normal Value

34 The following table compares the normal value and export price and the resulting estimated dumping margins.

DUMPING MARGIN				
(CYN)				
Brush	Ex-Factory	Ex-Factory	Dumping Margin	Dumping Margin
Size	Normal Value	Export Price		(% Export Price)
25	[redacted]	[redacted]	[redacted]	19%
38	[redacted]	[redacted]	[redacted]	17%
50	[redacted]	[redacted]	[redacted]	16%
63	[redacted]	[redacted]	[redacted]	16%
75	[redacted]	[redacted]	[redacted]	16%
100	[redacted]	[redacted]	[redacted]	15%

Conclusion

35 The comparison of export prices and normal values results in dumping margins from 15% to 19% of the export price. Although the information provided only covers DIY brushes, Haydn considers that other categories of brushes would be dumped by similar dumping margins. Haydn has provided sufficient positive evidence for the

purposes of initiating a review that hog bristle paintbrushes from China are dumped by significant margins.

Evidence of Material Injury

Undercutting

36 A price undercutting analysis compares the domestic product with the imported product at the level of trade where the goods first compete in the New Zealand market. In the last review, the level of trade was ex-factory for Haydn and ex-store for the imported product. The Ministry has conducted an undercutting analysis on this basis.

37 Overseas freight and insurance costs for handyman paintbrushes were provided to Haydn by [REDACTED]. These prices were in USD and covered the sizes identified in paragraph 26. These costs were converted to NZD and added to the NZ FOB price.

38 A number of costs were added to the CIF price to arrive at the ex-store price. These adjustments were import duty of 5.5%, which was the import duty rate at the time of the quoted prices, local costs of [REDACTED]% of the FOB value, and an importers margin of [REDACTED]% of the FOB value. The latter two adjustments were taken from costs calculated by the Ministry in the 2003 review, based on information supplied by an importer.

39 Haydn considers the Chinese DIY [REDACTED] brushes to be similar to the Hilite brand, which is part of Haydn's DIY category. Haydn provided the Ministry with average net selling prices for the DIY category of brushes for the year ending March 31 2008. These prices were compared to the ex-store prices of the imported DIY [REDACTED] brushes.

40 Haydn's selling prices are on [REDACTED] basis, therefore [REDACTED] - [REDACTED] to calculate the ex-factory price. Haydn has provided some information on and examples of [REDACTED]. Haydn provided examples of [REDACTED] for an order of DIY brushes and an order of Tradesman brushes. [REDACTED] were [REDACTED] % for the DIY order and [REDACTED] % for the Tradesman brushes. The Ministry has made a deduction of [REDACTED] % for [REDACTED] because the Hilite brand is part of the DIY category. The results of the comparison are shown in the table below.

Undercutting			
(DIY [REDACTED] vs DIY Hilite)			
Brush Size	Ex-Store	Haydn's Average	Undercutting
(mm)	Price	Selling Price	%
25	[REDACTED]	[REDACTED]	[REDACTED] %
38	[REDACTED]	[REDACTED]	[REDACTED] %
50	[REDACTED]	[REDACTED]	[REDACTED] %
63	[REDACTED]	[REDACTED]	[REDACTED] %
75	[REDACTED]	[REDACTED]	[REDACTED] %
100	[REDACTED]	[REDACTED]	[REDACTED] %

41 The analysis indicates undercutting of █ % to █ %. The significant level of undercutting would likely cause material injury to Haydn.

42 Hadyn also obtained FOB export prices for “█” brand paintbrushes, which are considered to be of DIY quality. These prices were contained in email correspondence between █ of Haydn and a Chinese contact involved with █ paintbrushes. These prices were FOB prices from █ and were in USD. Overseas freight and insurance costs were not disclosed in the correspondence. The Ministry calculated the cost of overseas freight and insurance as a percentage of the FOB value for the █ brushes, and applied that percentage to the █ brushes. The results of the undercutting analysis for the █ brushes is shown in the table below.

Undercutting			
(DIY █ vs DIY Hilite)			
Brush Size	Ex-Store	Haydn's Average	Undercutting
(mm)	Price	Selling Price	%
25	█	█	█ %
38	█	█	█ %
50	█	█	█ %
63	█	█	█ %
75	█	█	█ %
100	█	█	█ %

43 The analysis indicates undercutting of █ % to █ %. The significant level of undercutting would likely cause material injury to Haydn. In its application, Haydn identified, but did not explain in detail, other factors which would be adversely affected if duties were removed. The Ministry concludes that it is reasonable to assume that the significant price undercutting would likely result in significant price depression and suppression and would likely have significant adverse effects on output, sales, market share, profits, productivity, return on investments, cash flow, employment, ability to raise capital, growth and investments and utilization of production capacity.

44 The United States International Trade Commission website states that its second sunset review of the anti-dumping duty on natural bristle paint brushes was completed in November 2004.⁶ The actual size of the Chinese industry was not known to the authorities, but some information was produced that gives an indication of how big the industry is in China. The report states that this information suggests that Chinese producers have increased from about 48 in 1999, to around 63 in 2004. In 1999, it was estimated that the 7 largest producers of the 48 had a capacity of 130 million paint brushes and could easily supply the entire US market.

45 In 2003, Haydn provided the Ministry with evidence that a manufacturer in China was producing 150,000 hog bristle brushes per day. This would equate to 54.6 million brushes annually if the plant operated 7 days a week. The New Zealand production is a

⁶ www.usitc.gov

small fraction of the estimated production in China, therefore, Chinese exporters would have little trouble supplying the total New Zealand market.

Price Suppression

46 Haydn stated that it would be able to justify an [REDACTED]

Inventories

47 Haydn stated that should the duties be removed, the company would [REDACTED]. Haydn said [REDACTED] is purchased [REDACTED] months in advance and the [REDACTED] would be most unlikely to accept return of stock.

48 Haydn contends that it would need to [REDACTED]. Haydn's inventory as at 31 March 2008 is currently valued at \$[REDACTED]. However, the inventory figure includes products which are not like goods, and will not be part of the injury analysis. Based on current sales, Haydn estimates that it would take [REDACTED].

Cost Comparison

49 Haydn obtained quotes for FOB prices of "[REDACTED]" brand brushes from China as noted in paragraph 42 above. The quotes were in USD, which Haydn converted to NZD using the customs exchange rate on 21/4/08. Haydn compared its NZD [REDACTED] to the USD FOB price of the "[REDACTED]" brushes. Haydn noted that nearly all of the USD FOB prices of the brushes were only a few percentage points above Haydn's [REDACTED], and in one case the FOB price was lower than Haydn's [REDACTED]. The USD FOB prices of the brushes ranged from [REDACTED] % to [REDACTED] % higher than Haydn's [REDACTED]. The Ministry notes that the NZD FOB prices of the [REDACTED] brushes were [REDACTED] % to [REDACTED] % higher than the NZD [REDACTED].

50 Haydn also compared the "[REDACTED]" FOB price with Haydn's manufactured cost of Hilite brushes. The manufactured cost is where the product is on the shelf ready for sale, including the wages content in the manufacturing process. The NZD FOB prices of the [REDACTED] brushes were lower than the manufactured cost of the brush by [REDACTED] % to [REDACTED] %.

51 Haydn has noted that the United States of America currently has anti-dumping duties on hog bristle paintbrushes from China of 357%. Natural bristle brushes can be made with other types of animal hair, although hog hair is the most preferred. The weighted average dumping margin calculated was 351.92% for specified exporters and on a China wide basis.

52 Any review will need to obtain more detailed historical and forecast financial data as a basis for determining whether the removal of the anti-dumping duties would be likely to lead to a recurrence of material injury. Any review will also need to consider the consistency of the forecasts on the impact of the removal of the anti-dumping duties between different economic factors.

Conclusion

53 In order for a review to be initiated the Act requires only a request by an interested party that submits positive evidence justifying the need for a review. The Agreement requires that a duly substantiated request must be made by or on behalf of the domestic industry within a reasonable period of time prior to the expiry of the anti-dumping duties that the expiry would be likely to lead to a continuation or recurrence of dumping and injury.

54 I am satisfied that an application containing positive evidence sufficient to justify the initiation of a review has been made by the domestic industry within a reasonable period prior to the expiry of the duties.

Recommendation

55 It is recommended, in accordance with section 14(8) of the Act and acting under delegated authority that you:

- (a) formally initiate a review of the imposition of anti-dumping duty on hog bristle paintbrushes from China; and
- (b) sign the attached notice of the initiation of the review for publication in the *Gazette*.

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Agreed / Not Agreed

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