



Ottawa, Monday, January 18, 1999

Review No.: RR-98-002

IN THE MATTER OF a review, under subsection 76(2) of the *Special Import Measures Act*, of the order made by the Canadian International Trade Tribunal on January 18, 1994, in Review No. RR-93-003, continuing, without amendment, its review finding made on January 19, 1989, in Review No. R-13-88, continuing, without amendment, the finding of the Anti-dumping Tribunal made on June 20, 1984, in Inquiry No. ADT-6-84, as altered by its order made on September 28, 1984, in Review No. R-7-84, concerning:

**PAINT BRUSHES USING NATURAL HOG BRISTLE AS THE
FILAMENT MATERIAL, AND THE COMPONENTS THEREOF
KNOWN AS "HEADS," ORIGINATING IN OR EXPORTED FROM
THE PEOPLE'S REPUBLIC OF CHINA**

ORDER

The Canadian International Trade Tribunal, under the provisions of subsection 76(2) of the *Special Import Measures Act*, has conducted a review of its order made on January 18, 1994, in Review No. RR-93-003, continuing, without amendment, its review finding made on January 19, 1989, in Review No. R-13-88, continuing, without amendment, the finding of the Anti-dumping Tribunal made on June 20, 1984, in Inquiry No. ADT-6-84, as altered by its order made on September 28, 1984, in Review No. R-7-84.

Pursuant to subsection 76(4) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby rescinds its order.

Richard Lafontaine
Richard Lafontaine
Presiding Member

Peter F. Thalheimer
Peter F. Thalheimer
Member

Pierre Gosselin
Pierre Gosselin
Member

Michel P. Granger
Michel P. Granger
Secretary

Ottawa, Monday, January 18, 1999

Review No.: RR-98-002

**PAINT BRUSHES USING NATURAL HOG BRISTLE AS THE
FILAMENT MATERIAL, AND THE COMPONENTS THEREOF
KNOWN AS "HEADS," ORIGINATING IN OR EXPORTED FROM
THE PEOPLE'S REPUBLIC OF CHINA**

Special Import Measures Act—Whether to rescind or continue, with or without amendment, the order made by the Canadian International Trade Tribunal on January 18, 1994, in Review No. RR-93-003, continuing, without amendment, its review finding made on January 19, 1989, in Review No. R-13-88, continuing, without amendment, the finding of the Anti-dumping Tribunal made on June 20, 1984, in Inquiry No. ADT-6-84, as altered by its order made on September 28, 1984, in Review No. R-7-84.

Place of Hearing: Ottawa, Ontario
Date of Hearing: November 23, 1998

Date of Order and Reasons: January 18, 1999

Tribunal Members: Richard Lafontaine, Presiding Member
Peter F. Thalheimer, Member
Pierre Gosselin, Member

Director of Research: Selik Shainfarber

Lead Researcher: W. Douglas Kemp

Economist: Ihn Ho Uhm

Statistical Officers: Joël J. Joyal
Julie Charlebois

Counsel for the Tribunal: Gerry Stobo
Philippe Cellard

Registration and Distribution Officer: Pierrette Hébert

Participants: Pierre Richard, Q.C.
David M. Attwater
Ken Purchase
for T.S. Simms & Co. Limited
Nour Trading House Inc.
Pintar Manufacturing, Division of
Ladcal Investments Limited

(Domestic Producers)

Witnesses:

Thomas S. Simms
Chairman and Chief Executive Officer
T.S. Simms & Co. Limited

Gary J. Lawless
Vice-President - Sales
T.S. Simms & Co. Limited

P.C. (Phil) Jones
Vice-President, Finance
T.S. Simms & Co. Limited

Heinz J. Schmidt
Vice-President, Manufacturing
T. S. Simms & Co. Limited

Mac Fleifel
President
Nour Trading House Inc.

Robert Shaw
Vice-President
Nour Trading House Inc.

Patty Austin
Vice-President
Nour Trading House Inc.

Phil Iozzo
President
Pintar Manufacturing, Division of
Ladcal Investments Limited

Fred Goodfellow
Operations Manager
Pintar Manufacturing, Division of
Ladcal Investments Limited

Thomas P. Sved
President
Britbull Industries

Henry Silberman
Vice-President
Bennett Tools

Alan King
Resale Products Manager
ICI Canada Inc.

Address all communications to:

The Secretary
Canadian International Trade Tribunal
Standard Life Centre
333 Laurier Avenue West
15th Floor
Ottawa, Ontario
K1A 0G7



Ottawa, Monday, January 18, 1999

Review No.: RR-98-002

IN THE MATTER OF a review, under subsection 76(2) of the *Special Import Measures Act*, of the order made by the Canadian International Trade Tribunal on January 18, 1994, in Review No. RR-93-003, continuing, without amendment, its review finding made on January 19, 1989, in Review No. R-13-88, continuing, without amendment, the finding of the Anti-dumping Tribunal made on June 20, 1984, in Inquiry No. ADT-6-84, as altered by its order made on September 28, 1984, in Review No. R-7-84, concerning:

**PAINT BRUSHES USING NATURAL HOG BRISTLE AS THE
FILAMENT MATERIAL, AND THE COMPONENTS THEREOF
KNOWN AS "HEADS," ORIGINATING IN OR EXPORTED FROM
THE PEOPLE'S REPUBLIC OF CHINA**

TRIBUNAL: RICHARD LAFONTAINE, Presiding Member
PETER F. THALHEIMER, Member
PIERRE GOSSELIN, Member

STATEMENT OF REASONS

BACKGROUND

This is a review, under subsection 76(2) of the *Special Import Measures Act*¹ (SIMA), of the order made by the Canadian International Trade Tribunal (the Tribunal) on January 18, 1994, in Review No. RR-93-003, continuing, without amendment, its review finding made on January 19, 1989, in Review No. R-13-88, continuing, without amendment, the finding of the Anti-dumping Tribunal (the ADT) made on June 20, 1984, in Inquiry No. ADT-6-84, as altered by its order made on September 28, 1984, in Review No. R-7-84, concerning paint brushes using natural hog bristle as the filament material, and the components thereof known as "heads," originating in or exported from the People's Republic of China (China).

Pursuant to subsection 76(2) of SIMA, the Tribunal initiated a review of its order and issued a notice of review² on July 2, 1998. This notice was forwarded to all known interested parties. As part of this review, the Tribunal sent questionnaires to Canadian producers, importers and purchasers of paint brushes using natural hog bristle as the filament material, and the components thereof known as "heads." As well, the Tribunal sent a questionnaire to the Embassy of the People's Republic of China requesting certain information pertaining to the hog bristle paint brush industry in China. From the replies to these questionnaires and other sources, the Tribunal's research staff prepared public and protected pre-hearing staff reports.

The record of this review consists of all relevant documents, including the order, the notice of review and public and confidential replies to the questionnaires. All public exhibits were made available to interested

1. R.S.C. 1985, c. S-15, as amended by S.C. 1994, c. 47.
2. *Canada Gazette* Part I, Vol. 132, No. 28 at 1679.

parties, while protected exhibits were provided only to independent counsel who had filed a declaration and undertaking with the Tribunal.

Public and *in camera* hearings were held in Ottawa, Ontario, on November 23, 1998.

Three domestic producers, T.S. Simms & Co. Limited (Simms), Nour Trading House Inc. (Nour) and Pintar Manufacturing, Division of Ladcal Investments Limited (Pintar), were represented by counsel at the hearing. No importers were represented at the hearing. Evidence was presented and arguments were made in support of continuing the order.

PRODUCT

The goods under review are paint brushes using natural hog bristles as the filament material, and the components thereof known as "heads," originating in or exported from China.

Paint brushes are produced using either hog bristles or synthetic bristles as the filament material. Over 90 percent of the world's hog bristle paint brushes are reportedly made using hog bristles from China. The head (i.e., paint brush without a handle) consists of the ferrule (i.e., metal band) and the bristles. Heads are not specifically produced or imported for sale in Canada. They were included in the original definition of the subject goods to prevent circumvention.

Hog bristle paint brushes are manufactured in a variety of sizes and qualities and may be sold under a producer's brand name or a seller's private label. The size of a paint brush is determined by its width. Sizes may be designated using the imperial measure or the metric system and generally range from 1/2 to 4 in. or 15 to 100 mm. There are also specialty hog bristle paint brushes, such as sash brushes and angled brushes, which are used for special applications.

The quality of a paint brush is determined by the thickness, length and finish of the bristles used to make it. The types of materials used in the ferrule and the handle and in the painting of the handle are also factors that determine the quality of the finished paint brush.

Hog bristle paint brushes may be divided into three broad market segments, namely, low, middle and high. The low end, also referred to by the industry as the economy segment, includes the very inexpensive chip and throwaway brushes. The middle portion of the market, also known as the consumer segment, includes three qualities of brushes: good, better and best. The high end includes professional and professional angular quality brushes. There are no precise demarcation lines among these segments. In addition, there are brushes and promotional brush packages that may straddle segments or that may not easily fit into the above categories. However, these segments provide a convenient and useful way of describing the general structure of the market.

The subject paint brushes compete with and may be substituted for synthetic filament paint brushes. However, the industry generally recommends that hog bristle paint brushes be used primarily with alkyd or oil-based paints, although the bristles can be treated so that they do not absorb water and can then be used with latex or water-based paints. Synthetic filament paint brushes, on the other hand, absorb very little water in comparison with hog bristle paint brushes and are generally recommended for use with water-based paints, although some synthetic filaments may be split at the ends (flagged) in order to have paint-retention characteristics similar to those of hog bristles.

Production Process

At the outset, boiled bristles of various lengths and types, which are imported from China, are grouped according to the design specifications of the brush. This group of bristles is then mixed on a bristle mixing machine. This mixture is then inserted into a metal band that surrounds the bristle, called the ferrule, using a semi-automated head set-up machine. This machine also inserts cardboard fillers or centre plugs to ensure that the bristles are held tightly in the ferrule. Next, epoxy resin is put in the open end of the ferrule to anchor the bristle mixture to the ferrule. When the epoxy cures, the brush head is cleaned, and loose bristles are removed. The finished heads are then joined to the handles, which may be of either wood or plastic construction, on automated machines and logos are automatically imprinted on each handle. The brushes are then boxed and palletized for shipping.

DOMESTIC PRODUCERS

Simms, Nour and Pintar are members of the Canadian Brush Manufacturers' Association (the Association) and participated in the review. Crown Meakins Inc., the other domestic paint brush manufacturer, is not a member of the Association, did not participate in the review and did not respond to the Tribunal's questionnaire.

Simms is a wholly owned subsidiary of Stevcyn Holdings Ltd. of Saint John, New Brunswick. It commenced operations in 1866 in Portland, Maine, as a manufacturer of brooms. In 1872, the firm moved to Saint John and merged its broom production with a bristle paint brush operation. In 1895, it was incorporated as T.S. Simms & Co. Limited. In recent years, the firm has been producing synthetic paint rollers and automated paint brush equipment in the Saint John plant.

Simms has produced bristle paint brushes from start to finish for over 126 years. During that time, hog bristle paint brushes of all qualities, except chip brushes, have remained a part of the firm's major product lines.³ Simms has always produced its own brush heads, as well as most of the brush components.

Nour is a privately owned firm, incorporated in Ontario in 1979. It has produced a wide range of hog bristle paint brushes since incorporation. Nour produces its own line of bristle paint brushes for distribution, as well as a wide range of private label brushes for large retailers. All of Nour's professional quality products are hand made,⁴ and its small-width consumer brushes are partially machine made. Nour also has a hog bristle paint brush manufacturing facility in Vietnam, from which it imports hog bristle brush products.

Pintar commenced producing paint applicators, including hog bristle brushes, in 1992 and began marketing them under the "Pintar" trade name. Pintar manufactures a complete range of hog bristle and synthetic filament paint brushes, from throwaway brushes to high-end professional quality brushes. It does not manufacture chip brushes.

Public information on Crown Meakins Inc. indicates that it commenced operations in Montréal, Quebec, in 1956, producing a range of brooms and brushes. It produces and imports a number of articles for painting, including brushes and rollers.

3. Tribunal Exhibit RR-98-002-12.1 (protected), Administrative Record, Vol. 4 at 40.

4. Simms also produces hand-made professional quality brushes.

On the basis of the manufacturers' estimates, hog bristle paint brushes accounted for, on average, about 53 percent⁵ of their production from 1995 to 1998, with synthetic filament brushes accounting for the balance of production.

IMPORTERS

Although two importers were parties in the original inquiry, no importers were parties in any of the subsequent reviews, including the present review. In this instance, the Tribunal invited to the hearing, as Tribunal witnesses, Mr. Thomas P. Sved, President of Britbull Industries, and Mr. Henry Silberman, Vice-President of Bennett Tools. These firms have, in the past, imported hog bristle paint brushes from China. They are currently importing hog bristle paint brushes from other sources, including Asia and Jamaica.

During the hearing, these witnesses responded to a number of questions pertaining to the nature of the hog bristle paint brush market in China and sources of hog bristle paint brushes outside China. As well, these witnesses provided their views concerning trends in the capacity to make hog bristle brushes in China, the impact that privatization is having on both the hog bristle and hog bristle paint brush industries in China, the prices of imported hog bristle brushes and the ability of Chinese paint brush manufacturers to compete with other foreign manufacturers of paint brushes.

SUMMARY OF THE 1984 FINDING AND THE SUBSEQUENT REVIEW FINDING AND ORDERS

On June 20, 1984, in Inquiry No. ADT-6-84, the ADT found that the dumping in Canada of hog bristle paint brushes and hog bristle heads from China had caused, was causing and was likely to cause material injury to the production in Canada of like goods. On September 28, 1984, in Review No. R-7-84, the ADT altered its original finding with respect to the dumping of the components known as "heads." Upon review, the ADT found that the dumping of hog bristle paint brush heads had not caused, was not causing, but was likely to cause material injury to the production in Canada of like goods.

Data obtained during the original inquiry indicated that, while domestic producers supplied 95 percent of the market in 1980, their market share had dropped to 56 percent by 1983, with most of the decline occurring in 1983. At the same time, imports from China had developed a very strong position in the marketplace, growing from negligible levels in 1980 to 42 percent of the market in 1983, all at the expense of the domestic producers.

From 1980 to 1984, the domestic industry was denied participation in market growth and suffered decreased profits, loss of business volume, loss of market share and a reduction of sales at specific accounts. The cumulative impact of these factors led the ADT to conclude that the dumped imports from China had caused material injury to the production in Canada of like goods. The ADT was satisfied that, if anti-dumping duties were not imposed, hog bristle paint brushes from China would continue to make inroads in the market at the direct expense of the Canadian hog bristle paint brush producers and would continue to cause material injury.

On January 19, 1989, in Review No. R-13-88, the Tribunal continued the 1984 finding without amendment. In reviewing the evidence before it, the Tribunal noted that, although the Canadian producers

5. *Public Pre-hearing Staff Report*, October 1, 1998, Tribunal Exhibit RR-98-002-5, Administrative Record, Vol. 1A at 22.

had initially regained market share, paint brushes from China continued to account for the lion's share of total imports until 1987, when paint brushes from Jamaica, evidently assembled from components sourced largely in China, captured about one half of the market share that imports from China had previously enjoyed.

By 1988, Jamaican hog bristle paint brushes had virtually replaced the share previously held by Chinese paint brushes. Although Brazilian paint brushes had appeared on the market at about that time, the industry expressed no serious concerns with them, as they were considered to have been sold at competitive prices.

In addressing the likelihood of a resumption of dumping by exporters of paint brushes in China, the Tribunal noted that, in the previous five years, the United States, Australia and the European Community (EC) had each been involved in anti-dumping actions with respect to dumped hog bristle paint brushes from China. In the Tribunal's view, the geographic scope, the scale and the persistence of the dumping of hog bristle paint brushes from China demonstrated a propensity to dump at high margins.

In addressing the question of the likelihood that such dumping would cause material injury to Canadian production, the Tribunal noted that, since the early 1980s, hog bristle paint brushes from China had become known and accepted in Canada and could rapidly re-enter the market, absent anti-dumping duties. Moreover, the production costs of the Canadian industry remained at a level that rendered it unable to compete profitably with probable dumped price levels. In the absence of anti-dumping protection, the renewed dumping of paint brushes from China in large quantities would likely bring about a replay of the injury scenario of the early 1980s.

On January 18, 1994, in Review No. RR-93-003, the Tribunal continued its review finding without amendment. The Tribunal noted that the United States had a finding in place concerning imports of the subject goods and that anti-dumping protection was being sought in the EC and Australia concerning hog bristle paint brushes. The Tribunal felt that, if anti-dumping protection were provided in either the EC or Australia, paint brush exporters in China would have to find new markets for their brushes, particularly because there was no evidence of a domestic market for hog bristle paint brushes in China. With the US market already closed to Chinese paint brushes, Canada would be one of the few remaining developed countries which would provide an alternate market for China's considerable surplus capacity, if the review finding were rescinded.

With respect to the question of a likelihood of material injury should there be a resumption of dumping, the Tribunal noted that the domestic industry had benefited from the review finding. It had made significant investments in production machinery and other equipment and had made efforts to improve its cost position. However, the Tribunal believed that, if the review finding were rescinded, the industry would continue to be vulnerable to dumped imports from China.

POSITION OF PARTIES

Parties Supporting a Continuation of the Order

Counsel for the Association and its three members, Simms, Nour and Pintar, argued in support of a continuation of the Tribunal's order, submitting that, in the absence of anti-dumping duties, Chinese exporters are likely to resume dumping hog bristle paint brushes in Canada and that this dumping is likely to cause material injury to the Canadian industry.

On the question of a likelihood of a resumption of dumping, counsel argued that, should the order be rescinded, a number of different factors will lead Chinese exporters to dump hog bristle paint brushes in Canada. Counsel pointed out that, in the Canadian market, China is the second-largest source of all types of imported paint brushes, next to the United States, accounting for imports of over 367,000 dozen non-subject paint brushes in 1997. As such, Chinese exporters are already dealing with the major Canadian buyers of paint brushes and are aware of the price levels which would allow hog bristle paint brushes to penetrate the Canadian market most effectively. Moreover, since markets for hog bristle paint brushes in the United States and New Zealand are currently closed to Chinese hog bristle brushes, because of dumping findings, and since the hog bristle paint brush market in Europe may also soon be closed to imports of these brushes from China, because of a possible anti-dumping action, Canada is a natural destination for exports of these goods.

With reference to one of a number of the industry's exhibits dealing with the Chinese economy, counsel noted that the Chinese government is committed to making state-owned companies financially viable and to privatizing as much of the economy as possible. Counsel submitted that the impact of this trend towards privatization has intensified the pressure on firms to be profitable and that firms that have been unable to do so have been unable to compete and have disappeared.

This pressure to become profitable means that Chinese firms either have to raise their prices or have to increase their volume of exports. However, they could not raise prices because brush prices have been flat, as evidenced by the stability of synthetic filament brush prices, which currently account for the overwhelming majority of China's brush exports to Canada. Thus, Chinese brush manufacturers have had to, and would continue to, increase substantially the volume of their brush exports. Moreover, according to counsel, the additional effect of the Asian crisis has intensified the need for Chinese paint brush manufacturers to increase their export performance, particularly in Europe and North America.

It was the position of counsel that, because of these factors, if the order were rescinded, exports of hog bristle paint brushes to Canada would resume in considerable volumes. Moreover, counsel submitted that the fact that imports of synthetic filament brushes are substantial, while imports of hog bristle brushes have fallen to near zero, signifies that Chinese imports are unable to compete in the Canadian market for hog bristle paint brushes without being dumped. In addition, drawing from responses to the Tribunal's purchaser's questionnaire, counsel noted that most respondents indicated that it would take a 20 to 50 percent price differential to induce them to switch to Chinese product from domestic product. This fact showed that Chinese product could only compete in the Canadian market at dumped prices.

Counsel argued that the Chinese have a propensity to dump. They pointed out that, in addition to the order concerning hog bristle paint brushes, Canada assesses anti-dumping duties on a number of other products from China. As well, they argued that both the United States and New Zealand currently assess anti-dumping duties on imports of hog bristle paint brushes from China and that the European Brush Federation is filing a complaint in Europe.

Moreover, counsel pointed out that dumping margins in the United States rose from about 126 percent of the export price in 1993 to the current level of about 352 percent. They argued that the increase in the US dumping margin in particular is indicative of the fact that Chinese exports need to be priced very low to get into the US market. Similarly, they indicated that the weighted average margin of dumping for imports of Chinese hog bristle paint brushes into New Zealand ranged from a low of 269 percent of the export price to a high of 606 percent.

It was the position of counsel that China is continuing to find ways around the anti-dumping duties. As examples of such behaviour, they cited the increase in imports of blended bristle brushes and a new product on the market that accepts interchangeable bristle packs. Insofar as blended bristle brushes are concerned, counsel argued that such brushes do not perform well and that there is neither a natural market nor a technical advantage for this type of brush. Despite these facts, imports of blended bristle brushes have increased dramatically since 1996, an increase which suggests that Chinese manufacturers are using blended bristle brushes to circumvent the anti-dumping order.

Turning to the question of whether there is a likelihood that the industry would be materially injured if the order were rescinded and dumping resumed, counsel argued that Chinese synthetic filament paint brush manufacturers already have a very good knowledge of the Canadian market. It was counsel's position that, with sufficient capacity in China to flood the Canadian market and with some major markets already closed to Chinese hog bristle brushes, this knowledge of the Canadian market would quickly lead to a surge of exports of hog bristle paint brushes.

Counsel argued that, in addition to having a good knowledge of the market, Chinese manufacturers are continuing to improve upon the quality of the hog bristle brushes that they produce. Although counsel recognized that there had been some testimony to the effect that China cannot yet produce a good quality synthetic filament brush, it was their position that Chinese paint brush manufacturers now provide good quality hog bristle brushes across the entire spectrum of categories, up to and including professional quality brushes.

Counsel further contended that competition in the Canadian hog bristle paint brush market is fierce. Because paint brushes are a commodity product, price rather than quality is the determining factor in the purchasing decision, particularly in the lower and middle consumer segments of the market, where imports of hog bristle paint brushes have traditionally been the most prevalent. Counsel argued that, if the order were rescinded, the degree of competition would intensify, particularly in these segments of the market.

Counsel also submitted that import penetration has been facilitated due to the growing concentration in the retail sector. Counsel argued that, if the order is rescinded, such concentration will facilitate import penetration and that the volume of imports into Canada will grow to levels as bad as or worse than those experienced before the original inquiry.

In closing, counsel noted that, although the industry's net profit margins have increased over the last few years, growing from one percent to seven percent, the domestic producers do not consider this to be sufficient. The increases that the industry has seen in its net profit margins are due, in part, to increases in productivity, but mostly, to increased sales. Thus, if the order were rescinded, a flood of hog bristle brushes would enter the country, significantly affecting the domestic producers' sales and profitability.

ANALYSIS

Section 76 of SIMA provides that, on completion of a review, the Tribunal shall rescind or continue, with or without amendment, the order or finding. In making its decision, the Tribunal considers two fundamental issues. It first determines whether there is a likelihood of resumed dumping. If the Tribunal finds that there is a likelihood of resumed dumping, it then determines whether such dumping is likely to cause material injury to the domestic industry.

Likelihood of Resumed Dumping

The Tribunal notes that, since the original finding was put in place some 15 years ago, imports of hog bristle brushes from China have steadily decreased in volume to the point where they have now totally disappeared from the Canadian market. Indeed, over the period of this review, they have been effectively absent from the market, other than a negligible volume of imports in 1994 and 1995.⁶

Of course, before there is any possibility of dumping, there must first be a resumption of imports of hog bristle brushes from China. In this regard, the Tribunal notes the apparent large capacity in China to produce paint brushes, including hog bristle paint brushes. The Tribunal further notes the significant presence that Chinese painting tools have in the Canadian market and the marketing efforts that Chinese suppliers are making in relation to Canadian buyers. Specifically, the evidence shows that Chinese suppliers have been active at recent trade shows in North America, offering a wide range of painting and sundry products, including hog bristle brushes, to Canadian and US buyers.⁷ The evidence also shows that China currently has a substantial presence in the Canadian market for synthetic filament brushes.⁸

The evidence shows that Chinese manufacturers are selling or offering synthetic filament brushes and other sundry painting products directly to major Canadian retailers' purchasing agents located in the Far East.⁹ This should provide a ready springboard for sales of hog bristle brushes, should the order be rescinded. Accordingly, the Tribunal is of the view that Chinese imports of hog bristle brushes will re-appear in the Canadian market, should the order be rescinded.

In considering whether Chinese imports are likely to be dumped, the Tribunal notes that, during the course of its review, some evidence was submitted suggesting that both the hog bristle market and the hog bristle paint brush market, like other sectors within the Chinese economy, are in a state of transition. In particular, some state-run enterprises are being privatized and are expected to operate on a profit-oriented basis, and regulatory controls, such as export licensing requirements, are being relaxed or eliminated. Industry witnesses suggested that these changes have increased the likelihood of dumping of hog bristle brushes from China. In contrast, Tribunal witnesses, who were importers of paint brushes, submitted that such developments in China rendered it less likely that dumping would resume if the Tribunal were to rescind its order.

The Tribunal does not consider it necessary to resolve the foregoing issue in coming to a conclusion on the question of likelihood of resumed dumping. Rather, the Tribunal has focussed on other factors relevant to this question. One significant factor, in the Tribunal's opinion, is the decline and disappearance of Chinese hog bristle brushes over the period of review, as noted earlier. The reason for this disappearance is obvious to the Tribunal. At their current normal values,¹⁰ Chinese hog bristle brushes are simply not competitive in the Canadian market against either domestic suppliers or other foreign sources of bristle

6. *Protected Pre-hearing Staff Report*, October 1, 1998, Tribunal Exhibit RR-98-002-6 (protected), Administrative Record, Vol. 2 at 23 and 31.

7. Manufacturer's Exhibit A-5 at 3-4, Administrative Record, Vol. 11.

8. *Public Pre-hearing Staff Report*, October 1, 1998, Tribunal Exhibit RR-98-002-5, Administrative Record, Vol. 1A at 27 and 28.

9. Manufacturer's Exhibit A-5 at 3, Administrative Record, Vol. 11.

10. It is the Tribunal's understanding that the normal values for Chinese hog bristle paint brushes are established by using prices for hog bristle paint brushes in the United Kingdom.

brushes. The Tribunal heard testimony to this effect from two witnesses who had imported Chinese bristle brushes into Canada in the past and who had switched to other sources because Chinese bristle brushes had become uncompetitive under the anti-dumping regime.¹¹

The Tribunal observes that the industry referred to a number of other factors which, it contended, indicated a likelihood of resumed dumping if the order were rescinded. These include the existence of dumping findings, at high dumping margins, on hog bristle brushes from China in the United States and New Zealand, as well as certain actions on the part of importers and exporters, which the industry saw as constituting attempts to circumvent the order.

Insofar as the US and New Zealand findings are concerned, the Tribunal notes that these were originally put in place in the mid-1980s, at about the same time as the Canadian finding. The Tribunal further notes that these findings have been reviewed from time to time, as has the Canadian finding, and that the average rates of anti-dumping duties have increased. This indicates a tendency to dump on the part of the Chinese hog bristle paint brush exporters.

On the other hand, the Tribunal has given little weight to possible actions in other jurisdictions, such as the European Union, the results of which are, at this point, a matter of conjecture.

Similarly, the Tribunal has given little weight to the alleged circumvention behaviour. The actions cited by the industry included the importation of brushes comprised of a blend of synthetic and natural filaments and other new products from China. According to the industry, the sole or primary purpose of these products was to avoid the application of anti-dumping duties. In this connection, the Tribunal notes that the paint brush market has evolved over the past few years, especially with the advent of synthetic filaments. In this context, the Tribunal sees the introduction of new products, such as blended filament brushes, as part of this market evolution rather than a ploy to avoid paying anti-dumping duties. This view is supported by the fact that blended filament brushes have enjoyed good sales and appear to have found a certain market niche in Canada over the past few years.¹²

Keeping the foregoing in mind, the Tribunal notes that Chinese hog bristle brushes, when they were present in Canada, were concentrated in the lower end of the market, which includes throwaway and chip brushes.¹³ With the decline and disappearance of Chinese hog bristle brushes from the Canadian market over the past 15 years, this segment of the market has become increasingly supplied by low-priced imports from a variety of foreign sources, including Taiwan, Indonesia, Jamaica and Vietnam. Like China, several of these countries have low labour costs,¹⁴ a fact which provides them with a manufacturing advantage, especially in relation to low-end bristle brushes, for which labour represents a high proportion of the costs of production.

It follows that, if China were to re-enter the Canadian market in the event that the order were rescinded, it would have to do so at prices competitive with these other low-cost sources. It is evident to the Tribunal that, at such price levels, these imports would be found to be dumped, at least at their current normal values.

11. *Transcript of Public Hearing*, November 23, 1998, at 162-163 and 206.

12. *Transcript of In Camera Hearing*, November 23, 1998, at 32; and *Public Pre-hearing Staff Report*, October 1, 1998, Tribunal Exhibit RR-98-002-5, Administrative Record, Vol. 1A at 23.

13. Manufacturer's Exhibit A-5 at 7, Administrative Record, Vol. 11.

14. *Transcript of Public Hearing*, November 23, 1998, at 166 and 178.

In conclusion, for the reasons stated earlier concerning China's likely re-appearance in the market and the likelihood that Chinese prices would be below normal values, the Tribunal has concluded that dumping from China is likely to resume if the order is rescinded.

Likelihood of Material Injury

In considering whether a resumption of dumping of hog bristle brushes from China is likely to cause material injury to the domestic industry, the Tribunal examined a number of factors.

First, the Tribunal notes that, over the past 20 years, the Canadian market for hog bristle brushes has undergone a substantial transformation. In 1980, the domestic industry was the sole significant supplier to the Canadian market, as it enjoyed a market share in excess of 95 percent. After Chinese imports captured substantial market share in the early 1980s, China became a second source of supply to the Canadian market. However, following the original finding, the Canadian industry initially regained its former market dominance, capturing a market share of 96 percent in 1984.¹⁵

This market share rebound proved to be temporary. In the 15 years since 1984, the industry has seen its market share decline steadily to where, today, sales from domestic production account for 38 percent¹⁶ of the domestic market. Moreover, of these sales from domestic production, a significant and growing proportion is made from imported components.¹⁷ The domestic industry supplements its sales from domestic production with sales of hog bristle brushes which it imports from a variety of foreign sources. Such imports by the domestic producers account for another 13 percent of the market.¹⁸ The remainder of the market is comprised of imports from the United States and a number of other sources, including Jamaica, Indonesia, Taiwan, Vietnam and Brazil. In short, in the 15 years since the original finding, the Canadian market has gone from one that was dominated by domestic producers to a market where imports from a variety of sources account for the majority of the hog bristle brushes sold. A number of factors appear to have driven this shift.

One of these factors is that the principal importer of Chinese product in the early 1980s was obliged to seek out other low-cost sources of supply following the 1984 finding, since Chinese hog bristle brushes became uncompetitive, and that importer was unable to reach any supply agreements with the domestic industry.¹⁹ Today, this importer is one of the largest importers of hog bristle brushes into Canada. Over the past 15 years, he has developed an extensive network of hog bristle brush sources around the world, including Jamaica.²⁰ Moreover, some of his sources are countries where costs of production, particularly labour costs, are comparable to those in China.²¹ In the event that the order were rescinded, given existing

15. *Public Pre-hearing Staff Report*, October 1, 1998, Tribunal Exhibit RR-98-002-5, Administrative Record, Vol. 1A at 86.

16. *Public Pre-hearing Staff Report*, October 1, 1998, Tribunal Exhibit RR-98-002-5, Administrative Record, Vol. 1A at 36.

17. *Protected Pre-hearing Staff Report*, October 1, 1998, Tribunal Exhibit RR-98-002-6 (protected), Administrative Record, Vol. 2 at 34-35.

18. *Public Pre-hearing Staff Report*, October 1, 1998, Tribunal Exhibit RR-98-002-5, Administrative Record, Vol. 1A at 36.

19. *Transcript of Public Hearing*, November 23, 1998, at 182-83.

20. *Transcript of In Camera Hearing*, November 23, 1998, at 46.

21. For example, *Transcript of Public Hearing*, November 23, 1998, at 165-66.

competitive sources of supply, the Tribunal has no reason to believe that this importer (or others like him) would be compelled to quickly set aside the arrangements and relationships developed over the past 15 years, in favour of Chinese sources.

Another factor is the importation by domestic producers themselves of hog bristle brushes to supplement their sales from domestic production. In the case of Nour, this has involved substantial production in its Vietnam facility for the purpose of supplying the Canadian market.²² The hog bristle brushes from this Vietnamese facility²³ are so competitive that they can be and are being imported by the producer and sold in Canada to distributors-importers that might otherwise purchase their requirements directly from foreign sources.²⁴ In the Tribunal's opinion, such new sources of supply for domestic producers and arrangements with distributors-importers should also serve to constrain a rapid re-entry of Chinese hog bristle brushes to the Canadian market in the future.

An additional important factor which has contributed to reshaping the Canadian market is the cessation of production in Canada, in the early 1990s, by certain producers and the transfer of their production to their facilities in the United States.²⁵ In conjunction with this transfer, the accounts which continued to be supplied by these producers began sourcing their hog bristle paint brushes from the parent company, in the United States. Today, these accounts include some of the most important retail chains in Canada.²⁶ Accordingly, this development led to a substantial increase in hog bristle brush imports from the United States. Indeed, throughout the period of this review, the United States was generally by far the single largest foreign source of hog bristle brush imports into the Canadian market.²⁷ There is no reason to believe that, over the short to medium term, these accounts will significantly alter their existing long-standing supplier relationships simply because Chinese product has become available.

Thus, despite 15 years of protection from dumped hog bristle brushes, the industry has not regained its former dominance of the Canadian hog bristle brush market. Imports, other than from China, have grown in importance and have come to dominate certain lower-cost market segments. In the Tribunal's estimation, these imports, for the most part, reduce the likelihood that the industry will be injured, not only because they present certain obstacles to China's re-entry but also because they represent a substantial market share. This share, if captured in the future by Chinese imports, would be gained at the expense of other imports and not at the expense of domestic production. In effect, these imports constitute a buffer zone which could insulate domestic production from injury. This situation fundamentally differs from the one which prevailed prior to the finding in 1984, when virtually every point of market share gained by China represented a point lost by the domestic industry. Hence, even if China were to re-enter the market, room exists for it to do so in today's market landscape without causing material injury to domestic production.

Furthermore, as the Tribunal has already noted, a high proportion of imports which entered the Canadian market over the period of review supplied the very low end of the market in the form of products

22. *Transcript of In Camera Hearing*, November 23, 1998, at 18-20.

23. For a description of the products made at this facility, see *Protected Pre-hearing Staff Report*, October 1, 1998, Tribunal Exhibit RR-98-002-6 (protected), Administrative Record, Vol. 2, at 20 and 29.

24. *Transcript of Public Hearing*, November 23, 1998, at 205 and 214.

25. Tribunal Exhibit RR-98-002-1, Administrative Record, Vol. 1 at 16.

26. *Transcript of Public Hearing*, November 23, 1998, at 133-34.

27. *Public Pre-hearing Staff Report*, October 1, 1998, Tribunal Exhibit RR-98-002-5, Administrative Record, Vol. 1A at 34 and 36.

such as chip and throwaway hog bristle brushes, which are sold essentially on the basis of price, not quality.²⁸ According to the industry's own evidence, these products cannot be produced competitively in Canada, given their high labour content relative to the low value of the paint brushes.²⁹

As a consequence of this inability to economically produce low-end hog bristle paint brushes, the domestic industry has increasingly withdrawn from producing these products and has turned to imports to fulfil many of its requirements in this area.³⁰ In these circumstances, if Chinese hog bristle brush imports were to re-enter the market in this low-end segment, their likely effect would be to displace other imports without necessarily harming domestic production. Indeed, in the period leading up to the 1984 finding, it was the low-end segment of the Canadian hog bristle brush market that took the brunt of Chinese imports.³¹ This is where low labour costs make Chinese products the most competitive and, hence, where they are likely to re-appear first, if the order is rescinded.

Moving up from the low-end segment of the hog bristle brush market, there is a middle range to which witnesses referred as the consumer segment. As previously noted, this segment includes three qualities of brushes, described by the industry as good, better and best. According to the information provided by respondents to the Tribunal's questionnaires, imports in this middle range tend to be concentrated in the good and better quality brushes.³² There are also promotional deals, which are frequently offered in the consumer segment by importers and domestic suppliers, which combine a number of different quality brushes in one value-oriented package.

The evidence indicates that, within the consumer segment, the competition is intense among domestic producers themselves, as well as between domestic producers and importers, especially with respect to good and better quality brushes and promotional packages.³³ Given the existing presence of imports in this segment, it is not unreasonable to expect that, over time, Chinese products would also reappear in this segment. However, it is not apparent to the Tribunal that they are likely to take more market share from the industry than from imports or that they are likely to substantially alter the intensely competitive conditions which are already present.

In addition, the evidence suggests that the ability of Chinese hog bristle brushes to make significant inroads in this middle range segment of the market may be constrained by the issue of the quality and reputation of Chinese products, as well as existing supply arrangements. In this connection, the Tribunal notes, in particular, the replies of retailers and wholesalers to the Tribunal's questionnaire on market characteristics. Not one of these respondents showed a clear interest in carrying Chinese product, giving

28. *Transcript of In Camera Hearing*, November 23, 1998, at 11.

29. Manufacturer's Exhibit C-4 (protected) at 7, Administrative Record, Vol. 12B; and *Transcript of Public Hearing*, November 23, 1998, at 61-63.

30. *Transcript of In Camera Hearing*, November 23, 1998, at 10-11.

31. *Transcript of In Camera Hearing*, November 23, 1998, at 35-36; *Transcript of Public Hearing*, November 23, 1998, at 163-64; and *supra* footnote 13.

32. *Public Pre-hearing Staff Report*, October 1, 1998 Tribunal Exhibit RR-98-002-5, Administrative Record Vol. 1A at 23.

33. *Transcript of Public Hearing*, November 23, 1998, at 142.

reasons such as poor and inconsistent quality, reliability of supply and packaging.³⁴ In fact, one of the Tribunal witnesses testified that the Chinese do not know how to merchandise or package to Canadian needs and suggested that it might take it four years to merchandise and package properly.³⁵

Such non-price considerations are even more important in the high-end segment of the Canadian hog bristle brush market. According to the evidence, this segment serves users, including professional painters, for whom quality and reliability are of the utmost importance. These users display brand loyalty and are prepared to pay a premium for the hog bristle brushes of their choice.³⁶ These users generally purchase premium products sold by domestic producers. This fact helps to explain why neither Chinese imports nor imports from other low-cost sources, have ever been a significant factor in this segment in the past and why, in the Tribunal's view, they are not likely to be in the future, contrary to the industry's assertions.

The foregoing conclusion is reinforced by the fact that the labour cost advantage enjoyed by imports, especially from certain Asian sources, in the production of lower-end brushes tends to diminish or disappear with respect to the production of higher-end brushes. This occurs because, for higher-end brushes, labour costs fall in relation to the cost of materials, overhead and other items and, thus, become a relatively small component of total costs. Therefore, even if quality were not an issue, Chinese brushes would not be as cost competitive in the upper end of the market as they are in the lower end. Hence, in the Tribunal's estimation, it is not likely that Chinese hog bristle brushes will penetrate the higher end of the Canadian hog bristle market if the order is rescinded.

Another significant development in the market which bears on the likelihood of injury is the growth of the synthetic filament brush market in Canada. According to the evidence, this growth is being driven by a marked shift in demand away from oil-based paints, a type of paint for which hog bristle brushes are more suitable, to water-based paints, a type of paint for which synthetic filament brushes are more appropriate.³⁷ Moreover, there was evidence that indicated that synthetic filaments are being developed that may be used effectively with oil-based paints. Several witnesses, as well as respondents to the Tribunal's purchaser's questionnaire, alluded to and confirmed these trends and developments in both paint and brush usage.³⁸

These trends were mirrored in the composition of imports sold in the market. More particularly, imports of synthetic filament and blended filament brushes rose strongly,³⁹ while sales of imported hog bristle brushes declined over the period reviewed.⁴⁰ Indeed, the decline in the hog bristle brush market from

34. Tribunal Exhibits RR-98-002-23.1, RR-98-002-23.3 and RR-98-002-23.6, Administrative Record, Vol. 5.2 at 46, 71 and 105 respectively; and Tribunal Exhibits RR-98-002-24.3 (protected), RR-98-002-24.4 (protected) and RR-98-002-24.8 (protected), Administrative Record, Vol. 6.2 at 14, 20 and 43 respectively.

35. *Transcript of Public Hearing*, November 23, 1998, at 214.

36. *Transcript of Public Hearing*, November 23, 1998, at 49.

37. Tribunal Exhibits RR-98-002-26 (protected) and RR-98-002-36A (protected), Administrative Record, Vol. 2 at 106-112.

38. *Transcript of Public Hearing*, November 23, 1998, at 94, 102 and 173.

39. *Public Pre-hearing Staff Report*, October 1, 1998, Tribunal Exhibit RR-98-002-5, Administrative Record, Vol. 1A at 27-28. The difference between Table 5 and Table 6 provides an estimate of the imports of synthetic and blended brushes.

40. *Public Pre-hearing Staff Report*, October 1, 1998, Tribunal Exhibit RR-98-002-5, Administrative Record, Vol. 1A at 34 and 36.

1995 to 1998 was almost entirely at the expense of imported hog bristle paint brushes, while sales of these brushes from domestic production remained relatively constant.⁴¹

The relative stability of sales from domestic production may well be reflected in the fact that, as the hog bristle brush market declines in the face of advances by synthetic filament brushes, the last area to fall will be the upper end, in which, as already noted, the domestic industry has always had a strong presence, particularly because of the preferences and characteristics of the consumers in this part of the market. Indeed, witnesses testified that the loyalty of most professional painters to hog bristle brushes is so strong that, instead of switching to synthetic filament brushes, such painters would rather treat the bristles in their brushes to maintain their effectiveness when used with water-based paints.⁴²

Thus, over the period of review, the trend towards water-based paints and synthetic filament brushes has been accompanied by a pattern of weakness in sales of hog bristle brush imports and firmness in sales of domestically produced hog bristle brushes, within an overall declining hog bristle brush market. In the Tribunal's estimation, this suggests that, in the future, imports are likely to be more affected than domestically produced hog bristle brushes by the ongoing changes in paint consumption, at least over the short to medium term.

Finally, the Tribunal notes the evidence that shows that, despite 15 years of protection from dumped Chinese imports, domestic production has not grown. As noted previously, in the early 1990s, there was a significant loss of domestic production to the United States. Also, as mentioned before, Nour has substantial production capacity in Vietnam, where it makes hog bristle brushes that could be produced in Canada.⁴³ Moreover, at the low end of the Canadian hog bristle brush market, certain product categories have been largely abandoned by domestic producers, as they have increasingly turned to imports to complement their product lines.

In terms of its bottom line, although the domestic industry's combined profitability generally increased over the period of review, profitability was thin at times and not all producers were profitable throughout the period.⁴⁴ The Tribunal is of the opinion that there are a number of important factors affecting and, perhaps, constraining the growth and profitability of domestic production. These other factors include the role of imports from low-cost sources, the shift to synthetic filament brushes and the overall efficiency and competitiveness of domestic bristle brush production. In the Tribunal's view, the existence of these other factors weakens the potential causal nexus between resumed dumping and likelihood of injury.

41. *Public Pre-hearing Staff Report*, October 1, 1998, Tribunal Exhibit RR-98-002-5, Administrative Record, Vol. 1A at 34.

42. *Transcript of Public Hearing*, November 23, 1998, at 27-29.

43. *Transcript of In Camera Hearing*, November 23, 1998, at 19-23.

44. *Protected Pre-hearing Staff Report*, October 1, 1998, Tribunal Exhibit RR-98-002-6 (protected), Administrative Record, Vol. 2 at 53, 55 and 58.

CONCLUSION

For the foregoing reasons, the Tribunal concludes that there is a likelihood of resumed dumping, but that such dumping is not likely to cause material injury to the domestic industry, and hereby rescinds its order.

Richard Lafontaine
Richard Lafontaine
Presiding Member

Peter F. Thalheimer
Peter F. Thalheimer
Member

Pierre Gosselin
Pierre Gosselin
Member