

We, the interested parties mentioned overleaf, are all unrelated importers of the products under investigation within the meaning of section 5.1.3 of the Notice 2012 / C 44/ 07 (OJ C 44 / 22 dated 16.02.2012).

We already provided the information on our respective companies as per the questionnaire (Annex B) of the Notice under separate cover within the time limit provided by section 5.1.3 par of the Notice.

It is obvious that in our capacity as importers, we do have a specific interest in the outcome of these proceedings and therefore we are to be seen as interested parties within the meaning of Art 5 Basic Regulation (Council Regulation (EC) No 1225/2009).

Further to the statements we already submitted, we would like to draw the Commission's attention to the following:

**1. The EU producers - not qualifying as a relevant 'Community industry'**

According to Art 5 (4) Basic Regulation,

no investigation shall be initiated when the Community producers expressly supporting the complaint account for less than 25 % of total production of the like product produced by the Community industry.

According to Art 4 (1) (a) Basic Regulation,

when producers .... are themselves importers of the allegedly dumped product, the term 'Community industry' may be interpreted as referring to the rest of the producers.

The Complainants claim to account for (more ?) than 30 percent of EU27 production and that there are additional supporters accounting for five percent of EU27 production (Complaint, Annex B.3., p. 1).

However, there is strong evidence that a substantial number of renowned EU producers are, in fact, themselves **importers** of the allegedly dumped product, in particular

**Villeroy & Boch** purchasing (thus importing) from

Chaozhou Big Arrow Ceramics Industrial Co. Ltd

Enclosure ./..

Cameo China Co. Ltd.

Enclosure ./..

**???** Winpat Industrial Co. Ltd ('V & A' meaning 'V & B')

Enclosure ./..

<b>Rosenthal</b>	purchasing (thus importing) from	
	Chaozhou Big Arrow Ceramics Industrial Co. Ltd	Enclosure ./..
	Guangxi Sanhuan Enterprise Group Holding Co. Ltd	Enclosure ./..
	Zhejiang Nansong Ceramics Co. Ltd	Enclosure ./..
	Shandong Silver Phoenix Co. Ltd	Enclosure ./..
<b>Vista Alegre</b>	purchasing (thus importing) from	
	Guangxi Sanhuan Enterprise Group Holding Co. Ltd	Enclosure ./..
<b>Churchill</b>	purchasing (thus importing) from	
	Guangxi Sanhuan Enterprise Group Holding Co. Ltd	Enclosure ./..
	Winpat Industrial Co. Ltd	Enclosure ./..
	Ming Chao Porcelain Co. Ltd	Enclosure ./..
	Tangshan Keyhandle Ceramic Co. Ltd	Enclosure ./..
	Chaozhou Xiahe Porcelain Industry Co. Ltd	Enclosure ./..
<b>Medard de Noblat</b>	purchasing (thus importing) from	
	Guangdong Songfa Ceramics Co. Ltd	Enclosure ./..
	Guangxi Sanhuan Enterprise Group Holding Co. Ltd	t12.008525
	Hunan Hualian China Industry Co. Ltd	t12.006419
<b>Gibson</b>	purchasing (thus importing) from	
	Hunan Hualian China Industry Co. Ltd	.....
	Liling Top Collection Industrial Co. Ltd	Enclosure ./..
	Zibo Guanhua Ceramics Co. Ltd	.....
	Jiangsu Gaochun Ceramics Co. Ltd	.....
<b>Wedgwood</b>	purchasing (thus importing) from	
	Shandong Silver Phoenix Co. Ltd	Enclosure ./..
<b>Royal Doulton</b>	purchasing (thus importing) from	
	Guangxi Sanhuan Enterprise Group Holding Co. Ltd	Enclosure ./..
<b>Richard Ginori</b>	purchasing (thus importing) from	
	Guangxi Sanhuan Enterprise Group Holding Co. Ltd	Enclosure ./..

<b>Aynsley</b>	purchasing (thus importing) from  Cameo China Co. Ltd.	  Enclosure ./..
<b>Portmeirion</b>	purchasing (thus importing) from  Cameo China Co. Ltd.	  Enclosure ./..
<b>Johnson Brothers</b>	purchasing (thus importing) from  Ming Chao Porcelain Co. Ltd	  Enclosure ./..
<b>Tognana</b>	purchasing (thus importing) from  Ming Chao Porcelain Co. Ltd	  Enclosure ./..
<b>Thun</b>	purchasing (thus importing) from  ChongQing Kinway Ceramics Co. Ltd	  Enclosure ./..
<b>Porvasal</b>	purchasing (thus importing) from  Guangxi Sanhuan Enterprise Group Holding Co. Ltd	  t12.006419
<b>Steelite</b>	purchasing imported goods originating in China from  Symbol s.r.l.	  Enclosure ./..

It is quite obvious why the Complainants do not wish to have their identities disclosed and prefer to remain in the dark.

Also, it is quite obvious why the Complainants, even though they are themselves importers of the products under investigation, would not have a problem with any additional duties that might be imposed as a result of these proceedings.

Their simple method is to buy imported merchandise at low prices and to sell it at high end prices, pretending high end quality originating from their own EU factories. Additional import duties would help them to eliminate a significant number of competitors (= importers) from the market, whereas their own pricing structure provides sufficient room to cover these extra costs, with a total gain in market share being their revenue.

However, as per the clear instruction of Art (1) (a) Basic Regulation, those of the EU producers who are themselves importers of the allegedly dumped product are to be disregarded when determining the scope of the relevant Community industry.

Even though we do not exactly know who the Complainants are, the producers named above are major manufacturers within the EU and we are quite certain that if these manufacturers are disregarded as Community producers (Art 4 (1) (a) Basic Regulation), the remaining producers expressly supporting the complaint account for far less than 25 % of the total production of the like product produced by the Community industry, so that the present proceedings should not have been initiated in the first place.

## **2. The EU producers - a group of minority suppliers**

But even if the Complainants still qualified as a Community industry, they do not represent more than a group of minority suppliers, the specific protection of which by artificial measures imposed by the authorities (such as anti-dumping duties) is not warranted by any of the purposes of the Treaty or by any other provision of Community law.

The Complainants themselves claim to have held a share in the EU market of 7,14 % in 2010, whereas the Chinese market share accounted for 66,4 %.

(Complaint, Annex G, page 3).

Even if the Complaint was supported by 35 % of the Community industry, any antidumping duty imposed as a result of these proceedings would mean not more than to protect a small minority of market participants, who supply not more than  $(7,14 * 0,35)$  **2,5 %** of the market need, at the expense of the overwhelming majority of **66 %** (this including EU importers, EU retailers and EU consumers).

The present market situation and the distribution of market shares between EU producers and Chinese imports, is the result of a development which commenced several decades ago, it is not the result of a recent and acute problem which required intervention by the authorities, in particular, as the Community producers seem to have achieved their best results for long in 2011.

- Villeroy & Boch, Royal Copenhagen (.....) Enclosure ./..
- Steelite International (The Sentinel, 27 April 2012) Enclosure ./..

To impose anti-dumping duties under the given circumstances would not mean to eliminate distorting effects and to restore effective competition.

On the contrary, it would mean to eliminate effective competition and to introduce distorting effects, thus being the factual opposite of what Art 21 (1) Basic Regulation defines as the Community interest, which is why some major European producers, not only expressly object to the imposition of anti-dumping duties, but consider such action a serious threat to their own business.

- Portmeirion Group plc, Letter dated 12 June 2012 Enclosure ./..
- JM Ltd, E-Mail dated 26 June 2012 Enclosure ./..

### 3. **EU production - imported products - different market segments**

It is important to understand that there are currently three groups of distribution channels and three price levels for ceramic tableware and kitchenware:

Distribution channels	(a)	self-service stores/supermarkets
	(b)	furniture trade
	(c)	specialist retail trade
Price levels	(a)	low
	(b)	medium
	(c)	high

These distribution channels and price levels originate from certain developments in the past, and to look back is inevitable in order to understand the current situation (many of the facts mentioned in the following chapter 'historical retrospect' are taken from the doctoral thesis of Mr Thomas Beutl "Die nordostbayrische Porzellanindustrie - Krise und Strukturwandel" (*"The north-eastern Bavarian porcelain industry - crisis and structural change"*) of 2002).

This concerns primarily the German market, but the general situation is not much different in all the European markets.

Between 1963 and 1965, a new category of retail trade entered the German market, namely the 'supermarkets'. This 'new wave' of distribution facilities had been ignored by European manufacturers for a very long time. The German factories committed themselves to continue with their former strategy to exclusively serve the existing customer structure of the classical small private retail stores and mail-order companies like Otto, Neckermann, Klingel, Quelle, etc., and only tapped into the retail category of department stores like Karstadt, Kaufhalle, Kaufhof, Hertie, etc. as a new customer group, Butthey refused to supply the newly arising category of supermarkets.

By the time, the supermarkets proved to be a success, i.e. sales had gathered momentum right from the start and continued to do so since then, many wholesalers started to do business with this new category of retail trade, and in order to be able to supply supermarkets with an attractive and competitive collection, alternative suppliers had to be found, which is why their procurement activities expanded first to Europe, and later even further to reach Asia.

Until 200, the retail trade represented the main distribution channel for both, the porcelain manufacturers and the importers, with a proportion of nearly 79 percent, and the glass, porcelain and ceramic specialist retailers particularly contributed to a high proportion of sales as regards the German porcelain manufacturers.

However, a gradual loss of importance of the specialist retailers for glass, ceramic and household products took place and consequently the specialist retailers and the brand manufacturers focusing on those retailers simultaneously underwent a similar structural and sales crisis which was, to a large extent, characterised by price depression, sales downturn and loss of market share.

Another cause for the porcelain industry's sales downturn is the result of changed consumer behaviour. Due to a change in consumers' lifestyles, porcelain plays a less important role for them. Referring to a Sinus study carried out by the social research institute Nowak und Partner GmbH and finished in 1996, for only 8 percent of the respondents porcelain products (with cutlery and glass) enjoyed high priority. The consumers' changed lifestyles and values did however not fit to the industries as the examined porcelain industry whose structures were partially still geared to lifestyles and household structures of the past and thus the production structure of the porcelain industry did no longer match consumption patterns of the population of the 21st century. Instead, there was a trend observable since the mid-1980s that assumes an increased importance of leisure-oriented lifestyles. The increased need for leisure instead of success, wealth and money pushed the importance of porcelain for domestic use more and more into the background. The findings from the study can be summarized and interpreted as follows:

- households changed towards individualism and leisure-time orientation
- the consumers' demands both for the product and for its presentation have become more complex and diverse
- type and quantity of products bought for special occasions (e.g. marriages) vary; the situational use gains importance as against event-related rituals
- there is a growth potential for target groups attaching importance on individuality, fashion and trends which means increasing challenges for the manufacturers in terms of design, marketing and production
- the target groups that have regarded porcelain as an investment have a declining or stagnating potential.

The German porcelain industry has believed for long to know the needs of its own customers. A long-term too limited target-group orientation of a major part of the porcelain sector has led to a lack of willingness to cooperate accompanied by isolationist tendencies among the manufacturers and prevented a target-group-oriented market research. An innovation deficit derived as a consequence from a distinct self-confidence of the porcelain manufacturers. Investments were made too late and - even worse - by every manufacturer on his own and with a strict isolation of the production facilities. And exactly this policy of confidentiality and diffusion resistance was a cause for the many years of innovation deficit in the European fine ceramic industry.

Economical difficulties encountered by manufacturers in higher market positions cannot be considered as a direct result from the competition of new rivals, but rather the result from other causes, ie. change in consumer behaviour accompanied by simultaneous overcapacities on the market, incorrect estimation of market developments or the missing experience of the management regarding quickly declining markets. The EU porcelain manufacturers inflicted harm to themselves by selling their products at special offers in order to secure the market volume. The consequence of this practice was a steadily declining brand loyalty since 1989 and a diminishing sensitivity consumer of the consumers as to quality differences regarding brand products. This situation has aggravated since 1995, when a generally identifiable trend towards an increasing price sensitivity on the part of the consumers began.

When the import quota on ceramic tableware and kitchenware was abolished in 2005, every business could import as much as it liked. This resulted in increased imports of the long-term importers and additional imports from new importers. Thereupon, many businessmen in China set up new factories and/or increased the production capacity of existing factories in order to meet the increased demand. There are nowadays some thousands of Chinese factories producing tableware. As a result, there is considerable competition among these factories. In the past, they only produced a small selection of shapes and designs and thus the products presented on trade fairs looked all very similar and could only be distinguished by quality and price. In the meantime, the situation has changed in the way that considerable improvements have taken place. More and more factories are continually developing their own collections and/or are producing according to the design specifications of their customers. As a lot of the production is still not done by automatic machines, the factories are quite flexible regarding shapes and quantities. No question that the German factories could manufacture the same products at a lower price, however their fundamental disadvantage in realizing this consists in being dependent on large-scale production. Only in case of high volumes, they can ensure an economical production and finally keep costs within reasonable limits. In such a case, as e.g. undecorated press plates, the Polish and Romanian manufacturers can of course produce with no higher costs than the Chinese manufacturers.

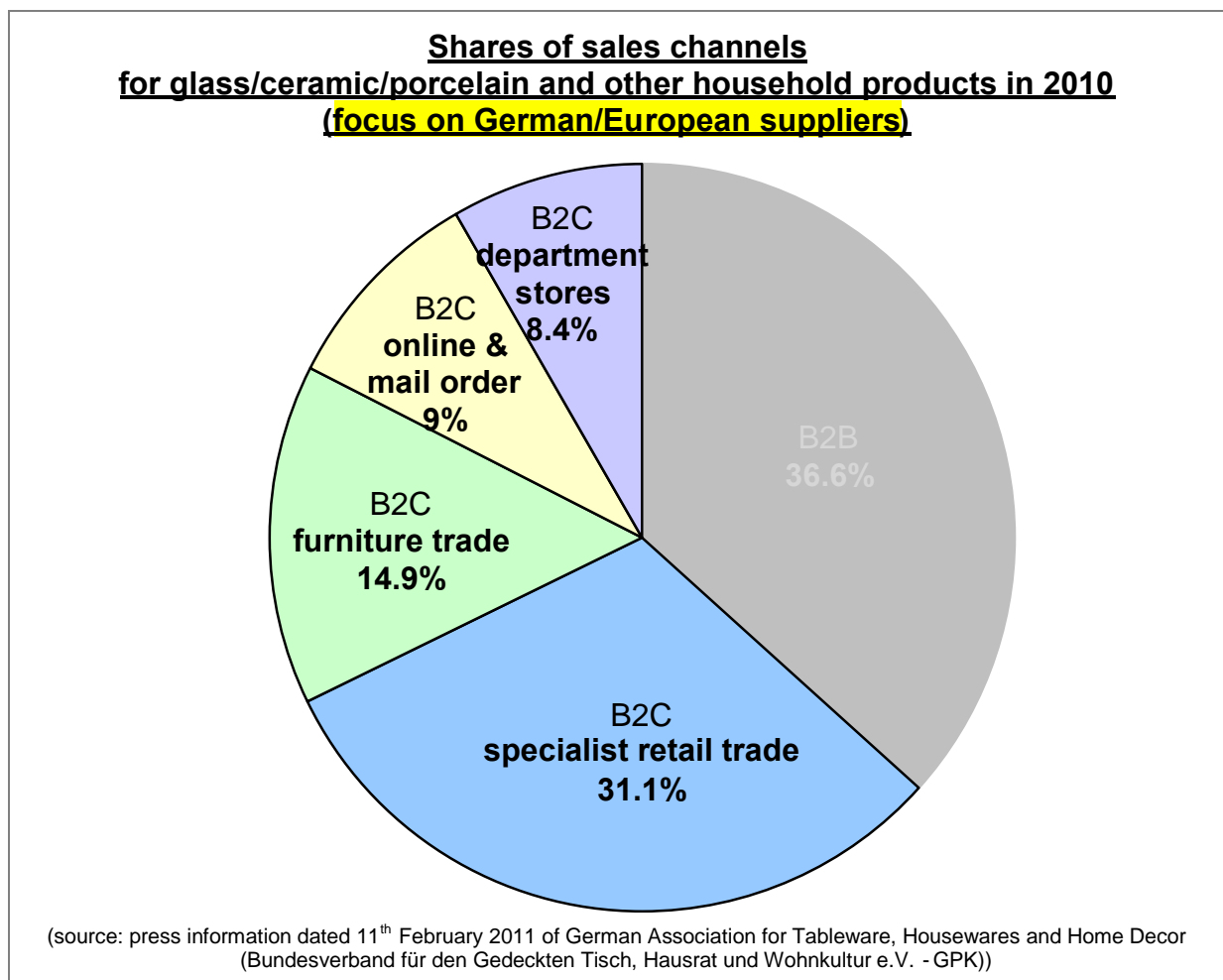
Even now, the German manufacturers still concentrate on serving the specialist retail trade, department stores and the furniture trade. One is very unlikely to find brand manufacturers in the supermarkets - except for customer loyalty reward schemes and except for some manufacturers taking part currently in test supermarket concepts. There are basically two reasons why the EU manufacturers' do not really progress in the supermarkets: they apply a price-fixing system (= recommended retail price) and their comparatively expensive products require a high level of consulting and service which supermarkets cannot provide. The fact that European manufacturers exclusively offer high prices has in turn a negative impact on the specialist retail trade: they force the specialist retail trade to offer on a high price level instead of a mix comprising low, medium and high prices. So, consumers looking for medium or low price products will not even take the specialist retail trade into account.

The European manufacturers tried to help themselves out of the crisis through outlet centres that however only suggest competitive prices for the consumers, but in fact partly offer even more expensive prices than the furniture trade!

A close look shows that the Chinese ceramic tableware and kitchenware covers the low entry price levels, the Polish products the middle price levels and the German products the high price levels with only very few interfaces.

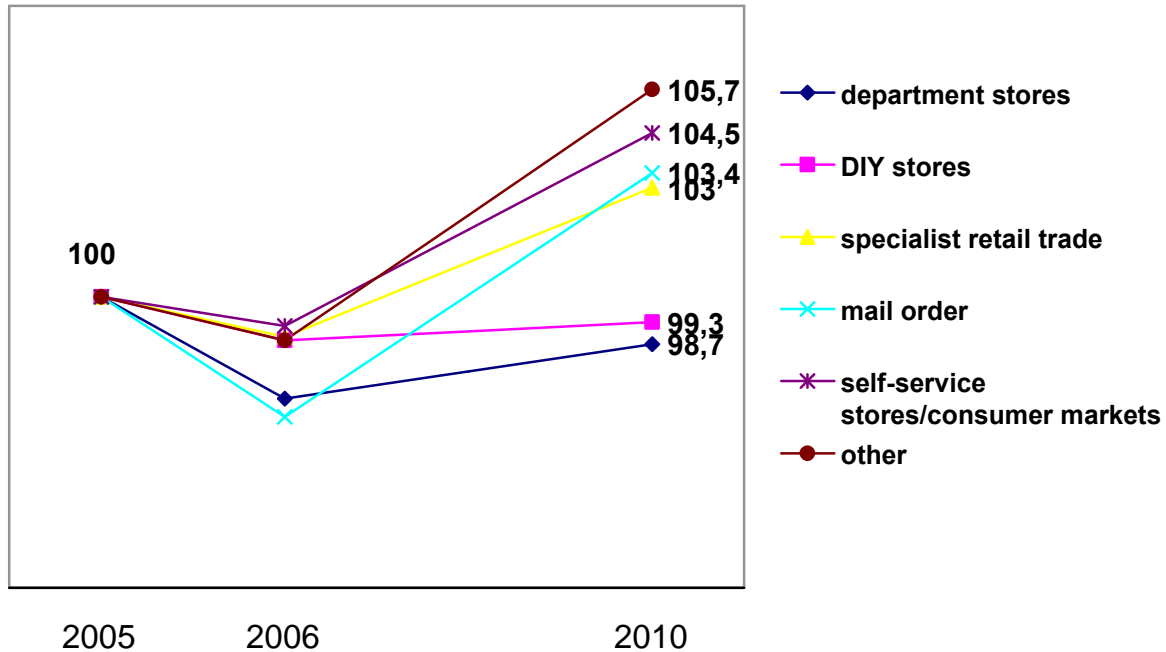
As the European manufacturers strictly refrain from the supermarkets and the importers have no entry to the specialist retail trade, it is only the furniture trade where EU producers and Chinese imports meet, to some extent, as competitors.

The charts below aim to visualize the current situation:





**Indices of sales channels  
for glass/ceramic/porcelain and other household products**



(source: Analysis of BBE Retail Experts, Cologne - published in the Möbelmarkt trade magazine, edition 05/2009)

**Development of demand  
for glass/ceramic/porcelain and other household products**

The number of small household (singles and two persons) will increase which leads on the one hand to an increased demand for glass/ceramic/porcelain and other household products and on the other hand to an increased demand for separate individual items and small ranges. The specialist retailers for products of the glass/ceramic/porcelain and other household market will lose more and more ground. For example, currently only about one tenth of the market is sold via the glass/ceramic/porcelain specialist retail trade. The number of specialized shops with a focus on glass/ceramic/porcelain has nearly dropped by 50 percent. Also the household products and ironware specialist trade can only attract a few more customers into their shops. Without the gains of the furniture trade and the other specialist trade, the situation of the specialist retailers would look even worse.

(source: Analysis of BBE Retail Experts, Cologne - published in the Möbelmarkt trade magazine, edition 05/2009)

- Comparison of a standard plate setting

Enclosure ./..

**4. The EU importers and related retailers- a large Community industry at risk**

The above description of the market situation clearly shows that anti-dumping duties would not help the Complainants to overcome the structural problems they inflicted upon themselves over the past decades. The only consequence anti-dumping duties would have is that the majority of market suppliers, the EU importers of Chinese tableware representing some 66 % of the total supply of the market, would have to pay the price for the Complainants' lack of ability and/or willingness to adapt to changing market circumstances.

A significant number of EU importers will be forced to step out of the market, simply because any price increase, which is not the result of the mere operation of market forces, but which is the result of artificial interferences by the authorities (eg. introduction of anti-dumping duties), would unavoidably lead to severe decreases of their sales, possibly dropping down to nil in some of the product areas, and put a corresponding number of jobs at risk.

Roughly calculated, the average number of staff required on the EU importers side to import and distribute 1000 tons of goods from China is 12 (sourcing, logistics & import: 5,96; sales to trade: 4,81; administration: 1,11).

According to the Eurostat database, a total of 574.618 tons (326.492 tons falling within CN 6911 and 248.126 tons falling within CN 6912) of products concerned were imported from China in 2010, which means that there are nearly **7.000 jobs** (12 \* 575) at risk in case anti-dumping duties were imposed. In addition, there are several hundreds, if not thousands of jobs at risk on the retailers side, as the representative of Metro clearly pointed out in the course of the hearing held on 22 August 2012.

- Eurostat, EU27 Imports/Exports 2010, CN 6911 Enclosure ./..
- Eurostat, EU27 Imports/Exports 2010, CN 6912 Enclosure ./..

In the end, it will be the consumers who would suffer because they will be deprived of the opportunity they presently have to purchase ceramic tableware for daily use at prices they can afford at local supply facilities in their neighbourhood, in particular as the EU producers will not be able and/or not willing to fill in the gap.

We do not believe that in a modern world the vague allegation of a very few that they have suffered (unsubstantiated) injury justifies the imposition of protectionist measures (such as the imposition of anti-dumping duties) which would put the vast majority of market participants at the serious risk to be erased from the market, and it is not only the EU importers, it is also a significant number of EU retailers which oppose the imposition of anti-dumping measures.

- Retailers' Letters of objection Enclosure ./..

**5. Absence of Community interest**

Under circumstances which were very similar to the ones prevailing in the present case, the Commission held that

*the prospect of Community industry to become a strong player in the short or medium term market would appear quite remote in particular in terms of market share, production capacity or technology, if measures are imposed.*

*Otherwise, the imposition of measures would concern nearly 90 % of the EU consumption of the product concerned and would be detrimental to importers, distributors, retailers and consumers. In such circumstances, the imposition of anti-dumping measures would be disproportionate.*

*On the basis of the above, it can be concluded that the imposition of measures would have substantial negative effects on importers, distributors, retailers and consumers of the product concerned and that the Community industry is unlikely to obtain significant benefits. It is therefore considered that the imposition of measures would be disproportionate and against the Community interest.*

(OJ L 293/7 of 24 October 2006, Commission Decision of 20 October 2006 terminating the anti-dumping proceedings concerning imports of recordable digital versatile discs (DVD+/-R) originating in the People's Republic of China, Hong Kong and Taiwan (2006/713/EC))

We suggest that the same standards be applied in the present case.

**6. Summary of arguments against the imposition of anti-dumping measures**

In view of the arguments submitted herewith and the arguments we submitted on previous occasions, the imposition of anti-dumping measures is not justified because

- the EU producers do not qualify as a relevant Community industry, because the number of producers which expressly support the Complaint, but do not themselves import the allegedly dumped product, account for less than 25 % of total production of the like product produced by the Community industry,
- the Complainants represent not more than a market share of 2,5 % of the total of the Community market, whereas the product concerned is equivalent to 66 % of supply of the market, and the protection of a very few at the expense of the vast majority of actors on the market would result in the opposite of what Art 21 (1) Basic Regulation defines as the Community interest,
- there is, in fact, no dumping, because Chinese producers sell on their domestic market at equivalent or even higher prices than they do when exporting their products,

- there is no direct threat emanating from Chinese imports, because there is a substantial number of European producers who are able to produce comparable products in significant volumes at comparable, if not even lower, prices,
- there is no injury the European producers have suffered from Chinese imports, because European producers serve a different premium market segment, which is not in direct competition to the segment the Chinese imports seek to satisfy,
- the introduction of new additional duties on Chinese imports would cause the European importers, and all the other businesses involved in the distribution of Chinese products, to suffer substantial damage, and European importers and European retailers are, as a group, by far the larger 'Community industry' than the European producers are,
- the imposition of anti-dumping measures would put ca. 7.000 jobs or more at risk, because a significant number of EU importers will be forced to step out of the market, simply because any price increase, which is not the result of the mere operation of market forces, but which is the result of artificial interferences by the authorities (eg. introduction of anti-dumping duties), would unavoidably lead to severe decreases of their sales, possibly dropping down to nil in some of the product areas,
- the introduction of additional duties on Chinese imports would not help the European producers to overcome the structural problems some of them have, but will lead to the European consumers losing the opportunity to buy ceramic tableware and kitchenware at affordable prices at local supply facilities in their neighbourhood,
- the introduction of anti-dumping duties therefore would be disproportionate and against the Community interest.

We strongly recommend that the present proceedings are terminated without measures.

Arte Viva GmbH

(2. Interested Party)

(3. Interested Party)

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