

AD 586 Anti-Dumping Investigation

Ceramic Tableware and Kitchenware originating in the People's Republic of China

Statement to the member
states





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EXECUTIVE SUMMARY

With Regulation No 1072/2012 the European Commission decided to impose provisional anti-dumping duties against Table- & Kitchenware produced from porcelain or other kind of ceramic materials originating in the People's Republic of China. This has been confirmed with the General Disclosure which has been sent out at 25. February 2013. We deem it very necessary to point out the Member States the misrepresented facts and to correct a large number of figures and results of this investigation. We are able to demonstrate that the recited Union damage based on incomplete and inaccurate information and the imposition of provisional measures should be seen as an unjustified action.

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- **MISSING 25 %-STATUS OF THE COMPLAINANTS ACCORDING ARTICLE 5(4) COUNCIL REGULATION**
- **FEHLER! VERWEISQUELLE KONNTE NICHT GEFUNDEN WERDEN.**
- **WRONG FIGURES IN THE COUNCIL REGULATION 1072/2012**
- **INEFFICIENT CONSIDERATION OF THE REGIONAL STRUCTURE**
- **INEFFICIENT CONSIDERATION OF THE ON-GOING ANTI-TRUST INVESTIGATION AGAINST THE GERMAN PORCELAIN INDUSTRY**
- **MISSING DAMAGE OF THE EU-INDUSTRY**
- **PRICE INCREASE FOR THE CONSUMERS**
- **NUMBER OF EMPLOYEES AT UNRELATED**
- **IMPORTER SIDE**

Commission Regulation (EU) No 1072/2012

- (2) The proceeding was initiated following a complaint lodged on 3 January 2012 on behalf of EU producers ('the complainants'), representing more than 30 % of the total Union production of ceramic tableware and kitchenware. The complaint contained *prima facie* evidence of dumping of the said product and of material injury resulting therefrom, which was considered sufficient to justify the opening of a proceeding.

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MISSING 25 %-STATUS OF THE COMPLAINANTS ACCORDING ARTICLE 5(4) COUNCIL REGULATION

At the hearing on 14 January 2013 the commission confirmed that the basis of the EU-Production Volume is PRODCOM/EUROSTAT and they followed the complainants' adjustment reducing the Eurostat data of 6912 by 20%. The complaint was lodged on 3 January 2012. At this time the PRODCOM/EUROSTAT figures of 2008 – 2010 were available:

Prodcum EU27 Totals (kg)	2008	2009	2010	2011
Porcelain or china tableware and kitchenware (equivalent to CN 9611)	172.411.016	224.645.025	139.999.738	144.540.000
Ceramic tableware (equivalent to CN 9612) less 20% (according to the adjustment of the complainants and the commission)	254.066.684	171.969.097	172.827.110	168.646.920
Total equivalent to CN 6911 + 6912	426.477.700	396.614.122	312.826.848	313.186.920
Total production complainants 6911 + 6912 (t12 007557 10-I02 07 2012-AD586-adps)	76.131.422	63.061.267	71.820.980	74.126.624
Percentage relation total production complainants to total production EU	17,85%	15,90%	22,96%	23,67%

In every year the percentage relation does not match to the minimum of required 25% according to Article 5(4) of the EU-Council-Regulation 1225/2009.

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(107) All available information concerning Union producers, including the data reported in the complaint and subsequent submissions in respect of the producers that did not come forward in this investigation was used to establish the total Union production. The total Union production of the like product was estimated by extrapolating data provided by the European and national associations, cross-checked with data provided by individual producers and also with research and statistical sources.

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Table 3

	2008	2009	2010	IP
Production volume (tonnes)	281 300	230 300	235 700	240 200
Index (2008 = 100)	100	82	84	85
Production capacity (tonnes)	371 540	361 253	326 573	324 072

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Table 4

Volume (tonnes)	2008	2009	2010	IP
Sales in the Union	190 332	156 798	152 609	152 095

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NON-CONSIDERATION OF OFFICIAL EUROPEAN STATISTICAL DATA

Instead of using the independent data from the statistical sources Prodcom/Eurostat, the commission took over data from the complainants into the regulation one to one:

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ANNEX

	2007	2008	2009	2010	IP (2011)
1. Total Production capacity in the EU (in kilos)	442.046.064	371.539.689	361.253.280	326.573.339	324.072.263
	100	84	82	74	73
(a) complaining producers	106.405.448	100.554.017	98.919.190	99.511.316	100.009.920
(b) non-complaining producers	335.640.617	270.985.673	262.334.089	227.062.023	224.062.343
2. Total Production in the EU (in kilos)	355.600.000	281.300.000	230.300.000	235.700.000	240.200.000
	100	79	65	66	68
(a) complaining producers	85.596.910	76.131.422	63.061.267	71.820.980	74.126.624
(b) non-complaining producers	270.003.090	205.168.578	167.238.733	163.879.020	166.073.376
3.1. Total Union Industry Sales on the EU market (in kilos)	260.674.440	190.332.000	156.798.360	152.609.260	152.094.620
	100	73	60	59	58
(a) complaining producers	60.739.998	53.975.430	47.668.876	50.625.198	53.974.134
(b) non-complaining producers	199.934.442	136.356.570	109.129.484	101.984.062	98.120.486

...

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THERMATEX SOLUTIONS

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Volume (tonnes)	2008	2009	2010	IP
Union consumption	826 896	687 609	750 830	726 614

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Table 2

Imports from the PRC	2008	2009	2010	IP
Volume of imports (tonnes)	535 593	449 346	516 618	485 814
Index (2008 = 100)	100	84	96	91
Market share	64,8 %	65,3 %	68,8 %	66,9 %

1072/2012 L318 Page 40 (Changes General Disclosure: Volume of Imports: 2009: 449 325; 2010: 516 624; IP: 486 170; Page 15)

Table 3

	2008	2009	2010	IP
Production volume (tonnes)	281 300	230 300	235 700	240 200

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Table 8

	2008	2009	2010	IP
Stocks (tonnes)	7 754	6 647	7 611	6 647

1072/2012 L318 Page 42 (General Disclosure Recital 104-105)

EXAMPLES FOR WRONG FIGURES IN THE COUNCIL REGULATION 1072/2012:

Page 39 recital 110: The union consumption identified by the EU Commission is 23,3% lower, as the addition of the relevant data of EUROSTAT.

Page 40 recital 113: The commission states in table 2 that the total volume of imports from the PR of China amounts to 485 814 tonnes. The higher EUROSTAT data in 2011 differ by 24,24 %.

Page 40 recital 114: The commission claimed that the market share of Chinese imports was 66,9 % in 2011, according to PRODCOM it was only 60,16 %.

Page 41 recital 122: According to Prodcom the production volume of the EU industry is significant higher than shown in table 3.

Page 42 recital 130: Table 8 shows the level of closing stocks of the Union industry: according to annex G of the complaint the year end volumes only of the complainants are about twice as high as the volumes in the regulation.

Regional distribution of cooperating Chinese producers



INEFFICIENT CONSIDERATION OF THE REGIONAL STRUCTURE

It is formally in accordance with the basic regulation that the commission selected the sampling on the basis of the highest export volume to the Union.

But, from around 420 exporting producers, agreed to be included in the sample, 215 companies are from Guangdong, none of them is in the sampling.

- This is remarkable especially due to the fact that more or less all the durable porcelain is manufactured in the Guangdong area.
- Almost **54%** of Chinese export volume (by price) or almost **48%** of the volume by weight of the product concerned are **exported to the EU from Guangdong** province
- The **average price per kg** of the exports from **Guangdong** is significantly **higher** than the export prices from the **other provinces** (especially the provinces of the sampled companies)
- The **average wages** in the province **Guangdong** are significantly **higher** than in the provinces of the factories in the sample
- Product range differs in the provinces
- At the hearing on 14.01.2013 the Commission confirmed that the investigation would have led to another, quote "... more fair ..." result, though smaller factories had been investigated in Guangdong Province, which provide most of the exporters to in the European Union.



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Further details about the regional distribution could be found in this table:

Provinces	sampled factories	not sampled interested parties	Export Value to EU 2011 in USD ¹	% Value ¹	Export Volume 2011 to EU in kgs ¹	% Volume ¹	Average price per kg	Average Wages of Employed Persons 2010 in Yuan ²	Index ³
HEBEI		7						32.306	80
BEIJING		1						65.683	163
TIANJIN (Tangshan)		21						52.963	131
SHANDONG	Shandong Zibo Niceton-Marck Huaguang Ceramics Limited; Zibo Huatong Ceramics Co., Ltd; Shandong Silver Phoenix Co., Ltd; Niceton Ceramics (Linyi) Co., Ltd Linyi Jingshi Ceramics Co., Ltd (17,6 % B352)	16	58.309.700	8,17	51.773.765	12,84	\$ 1,13	33.729	84
HENAN		5						30.303	75
JIANGSU		2						40.505	100
SHANGHAI		1						71.874	178
ZHEJIANG		3						41.505	103
HUNAN	Hunan Hualian China Industry Co., Ltd; Hunan Hualian Ebillion Industry Co., Ltd; Hunan Liling Hongguanyao China Industry Co., Ltd; Hunan Hualian Yuxiang China Industry Co., Ltd (26,8 % B349)	56	74.619.600	10,46	51.287.828	11,88	\$ 1,45	30.483	76
JIANGXI		5						29.092	72
FUJIAN		58						32.647	81
GUANGXI	Guangxi Sanhuan Enterprise Group Holding Co., Ltd (31,2 % B350) CHL Porcelain Industries Ltd. (30,0 % B351) Guangxi Province Bellu City Laotian Ceramics Co., Ltd (23,0 % B353)	19	57.459.900	8,06	55.434.993	12,84	\$ 1,04	31.842	79
GUANGDONG		215	384.866.500	53,96	205.327.543	47,55	\$ 1,87	40.358	100
HONGKONG		4							
TAIWAN		1							
N.N		2							
National Total		416						37.147	

Quellen:

1: China chamber of Commerce for Import and Export of Light Industrial Products and Arts-Crafts, CCCLA, Rest Sales and weight = other provinces

2: <http://www.stats.gov.cn>

3: Guangdong, the region with the highest export volume to EU 2011 = 100

These facts alone show that the sample is not representative.

Therefore, the conclusions about the dumping margin are wrong, since the major export region with the highest prices was totally ignored in the sample.

(175) On the one hand, it is noted that in 2010 the Commission fined seventeen bathroom fixtures and fittings undertakings for a price fixing cartel between 1992 and 2004 affecting six Member States: Germany, Austria, Italy, France, Kingdom of Belgium (Belgium) and the Kingdom of Netherlands (Netherlands)⁽¹⁾. The practices in question took place before the period considered and concerned other products. In addition, the only undertaking concerned which was also active in the ceramic tableware and kitchenware sector during the period considered filed an action for the annulment of that fine with the General Court of the European Union. This action remains pending. On the other hand, the German authorities launched a cartel investigation on some German tableware producers in February 2011. The outcomes of the investigation have not been made public by German authorities yet, so no conclusions can be drawn on this point. Moreover, that investigation concerns only one Member State, while the Union industry is quite widespread. The claims were therefore rejected.

1072/2012 L318 Page 41 (General Disclosure Recital 143-147)

INEFFICIENT CONSIDERATION OF THE ON-GOING ANTI-TRUST INVESTIGATION AGAINST THE GERMAN PORCELAIN INDUSTRY

The Commission failed to treat the **data provided by the Complainant** and the injury data collected during the investigation with the required caution. They particularly failed to give due account of the **presence of collusive practices** on the EU market (principally in Germany), which may have rendered the injury data collected throughout the investigation unreliable.

The German Anti-Trust-Authority (Bundeskartellamt) is investigating collusive practices in the ceramics and porcelain market. In 2010, one of the **major EU producers** was fined by the Commission for its **price-collusion in a sister market segment** (ceramic bathroom fittings); this was disregarded in the analysis.

As per the judgment in Mukand Ltd v. Council of the European Union, the Commission **cannot consider data used in an injury analysis as reliable and consistent** with normal market conditions, where the use of it disregards a known factor which might have been a cause of the injury sustained by the Community. Thus, the Commission's assessment of injury and causation are vitiated by a manifest error.

IN different business annual reports from German Porcelain Producers is stated that accruals for either the legal risks of the on-going anti-trust investigation or “for the possible occurrence of legal risks” were build (BHS Tabletop **2,2 Mio**; Rosenthal AG **4,1 Mio**, Staatliche Porzellan Manufaktur Meissen GmbH: **8,2 Mio**). These accruals do have an **immediate and direct negative impact** on the **business earnings** of the companies. The EU-Commission not only ignores these facts, they claim the contrary.



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MISSING DAMAGE

- **Chinese imports** have **decreased** by **30%** more than Union industry sales
- **Import prices** from China have **increased by 18%**
- From 2010 to the IP the **imports decreased by a staggering 5,9%** when compared to the relatively minor decrease experienced by Union producer sales in the same period.
- Since **2008 the Union Industry has been profitable**, and significantly so in the IP, increasing profit levels to **3,5%**. Sales have remained stable since 2009 and allowed a higher EU sales price (compared to Chinese prices) to be set, which has contributed towards the Union industry's profits.
- The data on consumption provided by the Commission (in contrast to that concerning Chinese imports) demonstrates a clear correlation with important injury factors.
- **The level of consumption decreased by 16%** during 2008 and 2009 following the economic crisis. This was mirrored in almost an identical drop in sales (decreased by 17%), employment (decreased by 17%) and production (decreased by 18%). Recital 100, provisional regulation.

(202) However, firstly, as concerns importers, the vast majority of the importers which replied to the importers' sampling questions reported a gross margin between purchase and resale price ranging between 50 % and 200 %. The verified figures of the pure importers in the sample confirm that such gross margins are representative. Secondly, publicly available documentation would suggest that the supply chain in the Union (i.e. importers and subsequent channels) would be perfectly capable of taking in an anti-dumping duty at the proposed rate, without jeopardizing the viability of the economic operators concerned. According to a recent

1072/2012 L318 Page 49 (General Disclosure Page 26 Recital 171)

PRICE INCREASE FOR THE CONSUMERS

According to a basic understanding of business administration, **margin and net profit are 2 different things.**

It might be true that for **individual articles** the gross margins are in that claimed range, but after deduction of all importation and post importation costs (i.e. lab test, sea freight, customs, sourcing costs, land freight, storage,...) the net profit is in the similar range then the net profit of the industry.

This profit is not sufficient to absorb antidumping duties.

The result: **Price increase for the consumers**, as already happens after imposing provisional measures.

Since china tableware is a product for the daily use the price increase will be affected particularly to the low-income consumer.

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(200) Overall, during the IP the sampled importers sourced their supplies mainly from the country concerned and employed some 350 people in the importation and resale of ceramic tableware and kitchenware. They were active in different kinds of products, ranging from gift porcelain items through branded earthenware to simple tableware for households. Their level of cooperation varied. For instance, the two largest importers in the sample, which also have major retail activities, did not provide full profitability data and the margin between purchase and resale prices to unrelated customers and one of them even denied access to its accounts. These parties only provided transfer purchase prices and/or transfer sales prices. Therefore, although repeatedly requested, no meaningful information was received which enabled an estimation of a representative importers' gross and net margin on the product concerned for the sample as a whole.

1072/2012 L318 Page 49 (General Disclosure Page 26 Recital 170)

(10) More than sixty unrelated importers replied by the deadline to the sampling questions and offered cooperation in the proceeding. From those companies, five were selected to form the sample. These five unrelated importers were selected on the basis of the volumes and value of imports and resales in the Union, their geographical location, their business model and their product segment. The sampled companies corresponded to the largest representative volumes and value of imports and resales in the Union which could reasonably be investigated within the time available. According to the figures reported at the sampling stage, they accounted for ca. 6 % of the imports of the product concerned during the IP.

1072/2012 L318 Page 28 (General Disclosure Page 26 Recital 173)

NUMBER OF EMPLOYEES AT UNRELATED IMPORTER SIDE

- In Recital 200 the Commission states that within the 5 sampled independent importers employ **350 people** for sales and purchasing of the products concerned.
- In reality, there are **10.173 people** working with the product concerned at the 5 sampled unrelated importers.
- At a hearing with the hearing officer DG Trade the commission explained how they calculate the employees of the sampled importers:

The calculation of the figure of 350 employees can be explained as follows: The starting point was employment data received from 3 sampled importers that are pure importers (Metro and IKEA are also retailers and distributors) where it was easily possible to calculate the full time equivalent of employees involved in the importation and resale of the product concerned based on the quantity imported from China. The result was extrapolated to all five sampled importers.

- Even if we follow this extrapolation of the Commission we can make an easy calculation:
 - The independent importers sampled represent 6% of the import volume to the EU
 - 10.173 people are working with the product concerned at the 5 sampled unrelated importers the calculation results 169.550 employees on the importer side

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Table 9

	2008	2009	2010	IP
Average sale price in EU to unrelated customers (EUR/tonne)	4 103	3 818	3 811	3 615
Index (2008 = 100)	100	93	93	88

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Table 2

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Volume of imports (tonnes)	535 593	449 346	516 618	485 814
Index (2008 = 100)	100	84	96	91
Market share	64,8 %	65,3 %	68,8 %	66,9 %
Average import price (EUR/tonne)	1 274	1 307	1 473	1 499
Index (2008 = 100)	100	103	116	118

1072/2012 L318 Page 40 (Changes General Disclosure: Volume of Imports 2008: 535 593; 2009: 449 325; 2010: 416 624; IP: 486 170, Page 14)

PRICE UNDERCUTTING

The commission calculated an average sales price of the Union industry of 3,61 €/kg in 2011. According to EUROSTAT statistics, there are Union producers which undercut the Union price by 47,9 % to 77,6 %.

Party	Information	Codex	Unit	Year 2011
Romania	EXPORT EXTRA EUR27	6911	€/kg	1,86 €
Romania	EXPORT EXTRA EUR27	6912	€/kg	1,02 €
Italy	EXPORT INTRA EUR27	6912	€/kg	1,19 €
Portugal	EXPORT INTRA EUR27	6912	€/kg	1,61 €
Lithuania	EXPORT EXTRA EUR27	6912	€/kg	1,88 €
Bulgaria	EXPORT EXTRA EUR27	6911	€/kg	0,81 €
Bulgaria	EXPORT INTRA EUR27	6912	€/kg	1,77 €

The average price of these Union producers is 1,448 €/kg and the Commission determined a higher average import price from China of 1,499 €/kg in 2011.

This information proves that the external **similarity** of goods does not mean that the physical composition of the goods is similar as well.

The Commission cannot ignore that goods from Union producers with the customs tariff number 6911 and 6912 achieve different prices on their own. The market attributes the product significant characteristics and the Commission does not consider this fact.