

2012

Open Statement

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for inspection by interested parties

# AD 586 Anti-Dumping Investigation

Response Disclosure, Council Regulation 1072/2012



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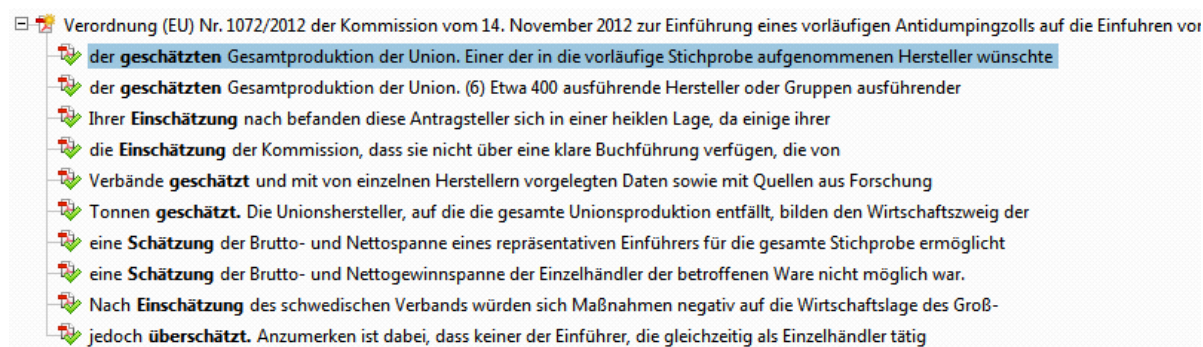
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## Introduction

With the Regulation (EU) No 1072/2012, the Commission imposes a provisional anti-dumping duty between 17,6% and 58,8% on imports of ceramic tableware and kitchenware originating from the People's Republic of China. This measure means a massive interference in the market development and a considerable damage for the market situation. In addition this measure of the Commission does not comply with the majority of the member countries. Only 9 of 27 countries (33,3%) voted for the application of the Commission to impose provisional anti-dumping duties.

The Commission presents concrete findings about the damage in the Union without collecting a sufficient amount of facts for a decision. At the time of concluding the Regulation (EU) No 1072/2012, the evaluation of the sampling of a leading importer was still missing. Moreover, important market analysis like a retailer survey have not started at that time; comparable figures of similar industry branches of third countries are limited to a single Brazilian factory, which is undoubtedly of German origin, thus of a country which brings in a considerable part of applicants in this proceeding. As even the Commission itself classified the data of the factory as questionable, the Commission tried to collect economic data in Thailand in calendar weeks 45 and 46, i.e., after the regulation became already effective.

The Commission received more than 6.000 relevant papers concerning the proceeding. Since February 2012, each of the applicants provided information, figures and facts to their best knowledge and belief which show a completely different image of the market overview compared to what is presented in the resolution. A lot of the information and figures were not considered, and parts of the market data was reported incorrectly by the Commission. Instead of keeping records in a neutral and serious way, the results are limited to a compilation of negative conclusions and assumptions. In eight cases, the Commission simply took "estimations" for figures that are highly relevant for the proceeding.



Therefore we consider it to be necessary to discuss the presented facts again and to extend the number of listeners for our statement. The Commission proved to aggressively enforce the establishment of anti-dumping procedures as its main aim with this proceeding – instead of providing a neutral compilation of data to the country board. In the following explanations we will prove that the presented damage to the Union is based on incomplete and incorrect information. The imposition of

provisional measures can therefore be considered as an unjustifiable action. The missing majority of countries which voted for the regulation is an indicator for open issues and concerns.

## 1. Proceeding

### 1.1. Missing 25%-Status of the complainants according Article 5 (4) Council Regulation

In the introduction of the regulation 1072/2012 the Commission claims that the EU producers which have requested the anti-dumping proceeding represent more than 30% of the total EU production.

**This statement is wrong.**

Below mentioned table shows the PRODCOM data/data given by the complainants concerning the production of the complainants in the year 2011 of 74.126.624 kg (or 74.126 t) as well as the total production of 355.529.000 kg (or 355.529 t). Mathematically this results in a 20,87% share of the EU complainants.

This does not match to the minimum of required 25% according to Article 5 (4) of the council regulation 1225/2009.

However, the EUROSTAT/PRODCOM customs classification concerning the product category ceramics (6912) does not correspond to the definition of the product concerned of the current investigation. The complainants adjusted this contradiction with an estimation, which they described as a “conservative adjustment” in the Annex B.3.3. in the open version of the application. They reduced the EUROSTAT/PRODCOM data of 6912 by 20% to obtain a more precise value of the product concerned. Analogue this approach if you reduce the total EU production of 6912 by 20% in the year 2011, only a comparable production amount of 313.187.000 kg (or 313.187t) is left over. The amount of production mentioned by the complainants is 74.126.624 kg (or 74.127t), this leads to a share of 23,6%. Therefore the application has to be rejected according to Article 5 (4) Council Regulation 1225/2009.

EU27TOTALS (kg)					
PRCCODE/PERIOD		Jan.-Dec. 2008	Jan.-Dec. 2009	Jan.-Dec. 2010	Jan.-Dec. 2011
23411130 Porcelain or china tableware and kitchenware (excluding electro-thermic apparatus, coffee or spice mills with metal working parts)		172.411.016	224.645.025	139.999.738	144.540.000 (CN 6911 10 00)
23411210 Ceramic tableware, other household articles : common pottery		132.633.510	60.212.296	52.713.215	47.981.881 (CN 6912 00 10)
23411230 Ceramic tableware, other household articles : stoneware		48.580.164	43.308.985	34.453.858	40.030.620 (CN 6912 00 30)
23411250 Ceramic tableware, other household articles : earthenware or fine pottery		120.944.425	89.675.383	111.362.263	107.003.084 (CN 6912 00 50)
23411290 Ceramic tableware, other household articles : others		15.425.256	21.764.707	17.504.551	15.793.065 (CN 6912 00 90)
Total for codes equivalent to 6912 (23411210 + 23411230 + 23411250 + 23411290)		317.583.355	214.961.371	216.033.887	210.808.650
<b>TOTAL equivalent to 6911+ 6912</b>		<b>489.994.371</b>	<b>439.606.396</b>	<b>356.033.625</b>	<b>355.348.650</b>
Total for codes equivalent to 6912 (23411210 + 23411230 + 23411250 + 23411290) less 20%		254.066.684	171.969.097	172.827.110	168.646.920
<b>Total (6911 + 6912 less 20%) in Tonnes</b>		<b>426.478</b>	<b>396.614</b>	<b>312.827</b>	<b>313.187</b>
<b>Total Production Complainants 6911 + 6912 (t12 007557 10-I-02 07 2012-AD586-adps)</b>		<b>76.131</b>	<b>63.061</b>	<b>71.821</b>	<b>74.127</b>
<b>PercentageRelation Total Production Complainants to Total 6912+6912 less 20%</b>		<b>17,85%</b>	<b>15,90%</b>	<b>22,96%</b>	<b>23,67%</b>

Source: EUROSTAT

## **1.2. Inequality of the products/EU Regulation 1935/2004**

In the application form, the affected merchandise is described as “Tableware and Kitchenware”. This kind of merchandise is intended to come in contact with food and is subject to the German Commodity Ordinance (Bedarfsgegenständeverordnung, in short Bedggstv) in Germany as well as subject to the Regulation (EC) No 1935/2004 in all other EU member countries. Both regulations require that the merchandise into the free trade of the European Union has to be imported by a company residing in Europa. The merchandise has to be marked with a registered label (by Bedggstv. § 10 (3)). The merchandise in China that was examined by the Commission was just Chinaware and ceramics and is not suitable to be traded for the above mentioned utilization in the free trade of the European Union, according to the Regulation (EC) No 1935/2004! This difference indicates a significant irregularity in the examination. Neither the merchandise listed in the announcement of February 16<sup>th</sup> 2012 nor the merchandise mentioned in the Regulation (EC) 1072/2012 does exist in Brazil or China as comparable goods to the ones of the Union Producers.

Up to now, the examination has compared merchandise suitable for the European free trade with non-suitable merchandise. The alignment of chinaware and ceramics into suitable merchandise for the European Economic Area implies an extensive economical and administrative effort for the importing companies. Furthermore the companies bear a high risk of liability. In addition it is known that these expenses were not considered in the compilation of the dumping-margins, neither in the accused country nor in the corresponding country.

## **1.3. Inequality of the products/European Customs tariff system**

In recital 24 of the Council Regulation 1072/2012, the Commission notices that “the composition of raw materials used determines the type of the final ceramic product produced”. Recital 52 then states that the basic characteristics of the various types of ceramic tableware and kitchenware remain identical – with the exception of ceramic knives –, though their specific characteristics may indeed have certain specific differences.

Since July 01<sup>st</sup> 1968 the European Union, under the Customs Union, defines common external tariffs. According to the current EU tariff scheme (Common Customs Tariff), the third country duty rate is 12% for chinaware (6911) and 5% for ceramic products (6912). With the specified identity of the products in the regulation 1072/2012, the Commission disregards the Regulation 2061/98 Article XIII, which detected a difference between these products, and concludes inappropriately and for the sake of simplicity the identity of the products.

In recital 24 of the regulation 1072/2012, the Commission states that the composition of raw materials determines the type of the final ceramic product.

### **The statement is wrong!**

Primarily, the following features determine the final ceramic product:

1. The composition of raw materials
2. Method and number of firings

### 3. Kind of decoration and refining

The following differences in the final products are resulting from these three distinguishing features:

- 1.1. Dictates the maximum firing temperature
- 1.2. Determines the corrosion consistency of the body
- 1.3. Determines the mechanical resistance and the elasticity of the body
- 1.4. Determines the coloring of the body (purity)
- 1.5. Determines the weight of the body
- 1.6. Causes a difference of production costs of about 30%
  
- 2.1. Determines the shrinkage during production
- 2.2. Affects the density of the body (0,1 - 10 my)
- 2.3. Determines the degree of hardness of the body
- 2.4. Determines the ways of use (hygiene/dishwasher safe)
- 2.5. Determines the accuracy of the product
- 2.6. Determines the grade of deformation
- 2.7. Determines the degree of subsequent processing (deco firing)
- 2.8. Causes a difference of production costs of about 50%
  
- 3.1. Distinguishes white ware from deco firing (additional firing is necessary)
- 3.2. Causes a difference of production costs of about 200%

On March 01<sup>st</sup> 2012, the Holst Porzellan GmbH presented a script (57 pages) to the Commission<sup>1</sup> focusing on raw materials, firing methods and methods of finishing. On April 24<sup>th</sup> 2012, similar documents were provided from Mäser Dornbirn (recital 58ff). The EU regulation 2061/98 Article XIII is in accordance with those parts of the differences that concern the customs law. The provided information should have been sufficient for the Commission to establish a detailed comparison mechanism for the different kinds of products.

To prove our argumentation please find attached a list by the applicants (Verband der Keramischen Industrie e.V., formerly Keramika Selb GmbH) about the different kinds of ceramics (Attachment 1).

Source: Friedl, Hans: "Warum? Weshalb? Wieso?", 9th edition.

The following kinds of chinaware

1. Hard paste porcelain
2. Soft paste porcelain
3. Bone China
4. Fritware

have to be added to the numerous kinds of ceramics. The Commission has received more than three written proposals from the group of importers for the classification of CN-Codes to correctly consider

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<sup>1</sup> see <http://www.antidumping.eu/Dossier-04-Holst-Porzellan/2012-03-01-Holst-Stellungnahme-an-die-EU.pdf.pdf>

the different kinds of ceramic end products. However, up to now the Commission has neglected to carry out a detailed differentiation of the products.

We hereby ask for a comparison of the affected products with respect to the material, production and finishing differences and for the possibility to compare the real costs of production.

#### 1.4. Defective Sampling China

##### 1.4.1. Non-consideration of different company sizes

To comprehend the results of the work of the Commission, we collected a number of figures. Here are the total EU-Imports (EU27) from the People's Republic of China of the last years in kg:

Codex	Unit	Year 2011	Year 2010	Year 2009	Year 2008	Year 2007
6911	kg	313.072.600	326.492.000	282.553.800	348.902.000	382.046.500
6912	kg	226.054.900	248.126.100	219.480.600	249.088.000	272.842.900
6911 + 6912	kg	539.127.500	574.618.100	502.034.400	597.990.000	654.889.400

or in currency (€):

Codex	Unit	Year 2011	Year 2010	Year 2009	Year 2008	Year 2007
6911	€	461.888.620,00 €	477.574.800,00 €	370.071.730,00 €	446.746.380,00 €	439.932.340,00 €
6912	€	356.681.550,00 €	378.307.460,00 €	291.791.790,00 €	320.592.500,00 €	315.592.500,00 €
6911 + 6912	€	818.570.170,00 €	855.882.260,00 €	661.863.520,00 €	767.338.880,00 €	755.524.840,00 €

To show a „hit list“ of the member countries according to their import weight, we analyzed 95% of the EUR27 country-related import volume:

Country	2011	2010
United Kingdom	99.926.500	96.618.200
BRD	95.846.100	99.311.200
Belgium	69.720.500	72.598.300
Italy	61.073.100	73.069.700
France	53.664.400	60.261.600
Netherlands	47.070.300	51.312.500
Spain	37.531.300	42.244.100
Poland	19.335.800	17.827.400
Romania	18.523.400	16.311.300
Cyprus	18.065.500	22.523.400
Denmark	10.316.600	9.765.400
Greece	10.227.600	13.506.200



Austria	9.959.500	10.350.900
Czech Republic	6.621.700	6.582.300
Bulgaria	5.043.100	4.221.400
Portugal	4.717.300	5.054.800
Slovakia	3.484.800	2.056.800
Hungary	1.752.600	1.740.900
Lithuania	1.682.700	2.379.600

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Sources: Imports, trading volume and exports of EU27 countries according to the official helpdesk of the European Union „Trade Statistics“ at <http://exporthelp.europa.eu/thdapp/comext/ComextServlet>

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According to recital 6 of the Regulation approx. 400 exporting manufacturers were found for the sample, which represent about 60% of the exports quantity of the Union. Therefore, the sample disposes of 323.476.500 kg for the affected goods in the investigation period.

The 5 producers for the sample were chosen according to the principle of the highest export amount, which count for almost 20% of the volume in the sample, therefore about 64.695.300 kg (64.695 t / 3.318 containers à 20f). Compared to the complete volume of imports (539.127.500 kg) these 5 factories make up 12%. Compared to the annual average, this would be producers with an export volume of 653.5 containers (59.4 per month [\*1]).

The remaining 258.781.200 kg (258,781 t) are shared among 395 exporting producers, about an average of 655,1 t or 33,6 containers per factory (3 per month [\*1]).

Because of these figures the Commission knows that the main volume (88%) of the products exported to the Union are from factories that are about a twenty times smaller than those that were chosen for the sample. In other words: 88% of all exporters have an export capacity of just 5,05% of those that were chosen for the sample.

If the Commission doesn't consider or wrongly considers the effectiveness of the different producers in the investigation, the result is the incorrectly determined dumping-margin according to recital 241 as mentioned above. The dumping-margins of the “other cooperating exporting producers”, with a mainly handicraft production, have to be settled significantly lower than the margins of the investigated mass-producers. In an economically correct analysis, the margin should be 5,05% of the determined value of 26,6%, therefore 1,34%.

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[\*1 ] The monthly volume of exports was reduced by 0.98 months to consider holidays and downtimes.

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## TRADE STATISTICS

RESULTS [DOWNLOAD AS TAB OR XLS FILE](#)

Trade Statistics (Imports)  
 EUR27 / China ,People's Republic of  
 For commodity 6911 in Year 2002,2003,2004,2005,2006,2007,2008,2009,2010,2011

Code	Product Description									
69	CERAMIC PRODUCTS									
6911	Tableware, kitchenware, other household articles and toilet articles, of porcelain or china									
Indicators	Import Qty (1000 kg)	Import Qty (1000 kg)	Import Qty (1000 kg)	Import Qty (1000 kg)	Import Qty (1000 kg)	Import Qty (1000 kg)	Import Qty (1000 kg)	Import Qty (1000 kg)	Import Qty (1000 kg)	Import Qty (1000 kg)
Reporters	EUR27	EUR27	EUR27	EUR27	EUR27	EUR27	EUR27	EUR27	EUR27	EUR27
Years	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Partners										
China ,People's Republic of	75 223.000	104 177.900	131 473.500	362 956.200	340 353.700	382 046.500	348 902.000	282 553.800	326 492.000	313 072.600

Source Eurostat Comext : 23/07/2012 - Other sources

## INPUT FORM

Year	Indicators	Reporter	Partner
2011 2010 2009 2008	Imports Value Imports Quantity Imports Sup. Qty Exports Value	EUR27	China ,People's Republic of (720)
		Product code	6911
		<a href="#">Browse or Search.</a>	<a href="#">View</a>

## TRADE STATISTICS

RESULTS [DOWNLOAD AS TAB OR XLS FILE](#)

Trade Statistics (Imports)  
 EUR27 / China ,People's Republic of  
 For commodity 6912 in Year 2002,2003,2004,2005,2006,2007,2008,2009,2010,2011

Code	Product Description									
69	CERAMIC PRODUCTS									
6912	Ceramic tableware, kitchenware, other household articles and toilet articles, other than of porcelain or china									
Indicators	Import Qty (1000 kg)	Import Qty (1000 kg)	Import Qty (1000 kg)	Import Qty (1000 kg)	Import Qty (1000 kg)	Import Qty (1000 kg)	Import Qty (1000 kg)	Import Qty (1000 kg)	Import Qty (1000 kg)	Import Qty (1000 kg)
Reporters	EUR27	EUR27	EUR27	EUR27	EUR27	EUR27	EUR27	EUR27	EUR27	EUR27
Years	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Partners										
China ,People's Republic of	57 659.800	60 528.800	80 772.700	228 633.100	248 532.100	272 842.900	249 088.000	219 480.600	248 126.100	226 054.900

Source Eurostat Comext : 23/07/2012 - Other sources

## INPUT FORM

Year	Indicators	Reporter	Partner
2011 2010 2009 2008	Imports Value Imports Quantity Imports Sup. Qty Exports Value	EUR27	China ,People's Republic of (720)
		Product code	6912
		<a href="#">Browse or Search.</a>	<a href="#">View</a>

### 1.4.2. Non-consideration of different sorting

In recital 99 the Commission states that Chinese exporting producers classify their products into five different grades ranging from A to E.

**This statement is wrong!**

The majority of Chinese exporters classify their products into the following grades:

A-grade	sorted by hand, first choice
B-grade	products with small or middle defects
C-grade	damaged products with significant defects

Apart from these three grades, there is the possibility to buy a complete production "run out of the kiln", which explicitly is not a classification. These products are unsorted and the client takes the complete production. A number of Union importers obtain their products in this way and sort the products according to their own criteria, as the sorting criteria of the exporting country are not directly applicable to the conditions of the EU market.

The three grades mentioned above correspond to a global classification of quality, which is also adopted by the Union producers. With respect to recital 99, it should also be mentioned that the classifications of the Union producers are not subject to fixed standards.

From the three classifications one can build – even by pure combinatory – 3 x 3 sorting varieties, which can all be found at exporting companies as well as at Union producers. But crucial for a comparison of exporters, the corresponding countries and Union producers is the kind of sorting intended for a market.

In their investigation, the Commission seems to have missed that all kinds of quality classifications are not directly based on the production volume, but on the sorting and selection process out of the production volume.

The majority of exporters supplies products of grade a/b, a mixture of first choice products and products with small defects. It is true that the exporters add "b-grade" products in variable quantities to the batch. But this is also true for Union producers.

A premium porcelain brand has the distinction to maintain its prestige through a higher quality sorting of products. According to this, the average quality of products from German producers is to be regarded as higher than, for example, the products from South or East European producers.

The sorting of products, which is necessary for the classification, is compulsively responsible for the production of

- a) good products,
- b) poor products.

According to the statement of the Commission in recital 99, the Brazilian producer succeeds with the supply of grade A products in the Brazilian domestic market. Apart of the fact that this is an indicator for a protected and oligopoly-similar market, the Commission doesn't consider in its investigation that both qualities are always mutually supportive.

*Either:*

The price level of a “good product” is so high, that the factory can dump the “poor products”.

*Or:*

The price level of the "poor product" is so high, that it subsidizes the quality sorting of the good product.

In any case, the Commission does not come to a true result when the comparison includes just one quality segment. According to its own statement, the Commission found out that the products are sold in the Brazilian domestic market only in high-priced quality, it is strongly necessary to include the corresponding lower prices of the exports into the investigation of the Commission.

As a result of the fact, investigated in recital 99, that the Brazilian producer achieves higher prices for the products on the domestic market than on the export market, this producer is immediately pleaded guilty for price dumping.

For this reason, we require that the complete sales of the Brazilian producer in the investigation period will be included in the comparison of prices to receive a correlation to the affected export country. Theoretical projections pursuant to recital 99 are therefore needless and are the result of a derivative of conclusions based on concrete data!

#### Expense of sorting

The shifting of a significant part of sorting expenses from the exporting producer to the importer is currently not considered in the comparison of the Commission. Therefore, we request to adjust 15% of the imported products from the exporting country with the, for the industry usual, reduction of 30% in the reference price

15%	of	539.127.500 kg =	88.869.125 kg
Average price		€ 1.52/kg (70%)	
Adjusted amount			€ 2.17/kg
Adjusted sum			<u>€ 192.846.002</u>

As alternative, the price reduction of 30% for the prices of the compared country, as well as a reduction of 15% for the imported product volume of the Union producers, would be a suitable compromise as well. It is indispensable for an effective comparison, to add the expenses of sorting and the drop in prices of the importers to the costs of production of the exporting country. These costs are

also content of the production costs of the Union producers and were, in accordance to recital 100, calculated in the Regulation.

**1.4.3. Inefficient consideration of the regional structure**

According to the official journal of the European Union 386 companies are listed as not been sampled.

Including the 5 sampled factories we have a total figure of 391. Attached map shows the regional split.



Although 199 companies from Guangdong have been listed no company was involved in the sampling. This is especially due to the fact that more or less all the durable porcelain is manufactured in the Guangdong area is produced, remarkable

**Further details about the regional split please find in the attached table:**

Provinces	sampled factories	not sampled interested parties according announcement Nov. 15, 2012	Export Value to EU 2011 in USD <sup>1</sup>	% Value <sup>1</sup>	Export Volume 2011 to EU in kgs <sup>1</sup>	% Volume <sup>1</sup>	Average price per kg	Average Wages 2010 in Yuan <sup>2</sup>	Index Wages <sup>3</sup>
HEBEI		7						32.306	80
BEIJING		1						65.683	163
TIANJIN (Tangshan)		22						52.963	131
SHANDONG	Shandong Zibo Niceton-Marck Huaguang Ceramics Limited;	16	58.309.700	8,17	51.773.765	12,84	\$ 1,13	33.729	84
	Zibo Huatong Ceramics Co., Ltd;								
	Shandong Silver Phoenix Co., Ltd;								
	Niceton Ceramics (Linyi) Co., Ltd								
	Linyi Jingshi Ceramics Co., Ltd (17,6 % B352 )								
HENAN		5						30.303	75
JIANGSU		2						40.505	100
SHANGHAI		1						71.874	178
ZHEJIANG		2						41.505	103
HUNAN	Hunan Hualian China Industry Co., Ltd;	45	74.619.600	10,46	51.287.828	11,88	\$ 1,45	30.483	76
	Hunan Hualian Ebillion Industry Co., Ltd;								
	Hunan Liling Hongguanyao China Industry Co., Ltd;								
	Hunan Hualian Yuxiang China Industry Co., Ltd (26,8 % B349)								
JIANGXI		5						29.092	72
FUJIAN		57						32.647	81
GUANGXI	Guangxi Sanhuan Enterprise Group Holding Co., Ltd (31,2 % B350 )	18	57.459.900	8,06	55.434.993	12,84	\$ 1,04	31.842	79
	CHL Porcelain Industries Ltd. (30,0 % B351)								
	Guangxi Province Beiliu City Laotian Ceramics Co., Ltd (23,0 % B353 )								
GUANGDONG		199	384.866.500	53,96	205.327.543	47,55	\$ 1,87	40.358	100
HONGKONG		3							
TAIWAN		1							
N.N		2							
National Total								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: <a href="http://www.stats.gov.cn">http://www.stats.gov.cn</a>									
3: Guangdong, the region with the highest export volume to EU 2011 = 100									

In this table mainly the following facts are to be seen:

1. Almost 54% of the Chinese export volume (by price) or almost 48% of the volume by weight of the product concerned are exported from the province Guangdong to the EU
2. The average price/kg of the exports from Guangdong is significantly higher than the export prices from the other provinces, especially if you compare to the provinces where the sampled companies come from
3. The average wages in the province Guangdong are significantly higher than in the provinces of the sampled factories

These facts alone show that the sample is not representative. Therefore the conclusions about the dumping margin are wrong, as the major export region with the highest prices was totally ignored in the sample.

This is even more obvious as the product range in the different regions is totally different.

As already mentioned (in the hearings in March and August, where Mäser also showed the following tables) we do not agree that the wide product range in China (as stated in the table below with different production methods and different price ranges) is investigated and treated Anti-Dumping wise under one umbrella.

The below figures also show how important it is to include all relevant Regions/Provinces to get a full picture about the full product range. This is even more important as the Commission states itself that there must be a change of product mix to justify the price increase from China in 2008-2011 (recital 115).

#### Alternative PCN - Proposal Josef Mäser GmbH

MATERIAL	Superwhite Porcelain	Durable Porcelain	New Bone China	Fine Bone China	Normal Porcelain	Stoneware
Main production areas	Guangdong	Guangdong	Heibei, Tianjin	Hebei	Guangxi, Shandong	Fujian, Henan, Hunan
Example with Price Index Mäser Assortment (presentation Hearing 16.03.2012)						
	Price Index 140-160	Price Index 390-430	Price Index 340-380	Price Index 520-600	Price Index 100	
						
		Price Index 400-470			Price Index 100-120	
						
					Price Index 110-140	

MATERIAL	Superwhite Porcelain	Durable Porcelain	New Bone China	Fine Bone China	Normal Porcelain	Stoneware
Main production areas	Guangdong	Guangdong	Heilbei, Tianjin	Hebei	Guangxi, Shandong	Fujian, Henan, Hunan
TECHNIQUE	low pressure less quantities	low pressure less quantities	jiggering bigger quantities	jiggering bigger quantities	jiggering bigger quantities	
FIRING TEMPERATURE	1360°C  round and square	1360°C  square	1250 - 1300°C  round and square	first time 1180 - 1200°C second time 1050 - 1100°C  round and square	1380°C  mainly round and square (depends on the square form)	
BODY Aluminium Silicate Bone Ash			Ca. 25% Ca. 3%	Ca. 42%	Ca. 35%	
GLAZE Aluminiumoxid AL <sub>2</sub> O <sub>3</sub>	Ca. 12-15%	Ca. 30 - 34%	Ca. 10%	Ca. 10%	Ca. 20-25%	
Decoration - Finishing						
Water	x	x	x	x	x	
Alcohol	x	x	x	x	x	
Inglaze (water) very rarely in China	x	x	x	x	x	

**We apply that at least one company from Guangdong province will be included in the sample to make the sample presentable.**

#### **1.4.4. 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, as well as the injury data collected during the investigation, with the required caution. They notably failed to give due account of the presence of collusive practices on the EU market (particularly in Germany), which may have rendered the injury data collected throughout the investigation unreliable. This point, while significant in itself, is conveniently brushed aside.

At recital 175, it is noted that "*Union industry is quite widespread*". While this may be so, such a statement does not accurately explain that in terms of production volume, geographically, the industry is concentrated. While there may be small producers in some Union Member States, the uncontested fact is that the leading porcelain producers in Europe are German. Coincidentally, these German producers are also subject to the currently on-going Bundeskartellamt (German Anti-Trust Authority) investigation into anti-competitive practices in the German porcelain market. Indeed, the Bundeskartellamt investigation has, among others, as its subjects the Verband der Keramischen Industrie e. V. (German Association of the Ceramic Industry), who are also supporters of the Complaint.

The Commission accepts that "*one undertaking*" in particular has already been fined for price-collusion in a different market segment, and is subject to the current investigation by the Bun-



deskartellamt. Yet, while it is true that "*the practice occurred before the period under consideration*", the Commission neglects to highlight that the fine was levied in 2010 and that the fined company mentions it in its annual report (the fine amounts to € 71,5 million). Thus, it cannot be ignored that the fine may have negatively implicated the undertaking's market share and/or reduced its profits.

The attempt to challenge the earlier fine is not unique. In fact, six companies are challenging their fine in the General Court of the European Union. Two investigations into the same company in the space of a few years, however, must raise doubts concerning the authenticity of alleged injury, yet the Commission mentions this briefly in only one recital.

At recital 175 the Commission notes that "*the outcomes of the investigation have not been made public by the German authorities yet, so no conclusions can be drawn on this point*". In light of this, we deem it necessary to remind the Commission of the business practices likely to occur. When an anti-trust authority, which would include the Bundeskartellamt, announces investigations into a certain market segment, the companies involved are very likely to immediately halt their collusive practices to avoid detection. The inevitable consequence is that profits drop on a short to medium-term basis before any restructuring can take effect. The market becomes more competitive as a result of this behavior and the involved companies' injury indicators would develop positively. Any injury analysis of companies involved in such an investigation is, as a result, gravely distorted.

Furthermore, the Commission is reminded of the judgment of the Court of First Instance in *Mukand Ltd v. Council of the European Union*<sup>2</sup> (hereafter referred to as "Mukand"), where a regulation levying anti-dumping duties on stainless steel bright bars ("SSBBs") was successfully overturned after the Court found that the Commission had failed to take due account of anti-competitive practices in the market. Like in the present investigation, the Commission, and indeed also the Council, forwarded explanations, similar to those in recital 175 of the provisional regulation.<sup>3</sup>

The Court flatly rejected these arguments:

*"Indeed, in circumstances such as those of the present case, the simple fact that it could not be proved that the final sale prices of SSBBs were fixed by Community producers acting in concert does not mean that those prices were to be regarded as reliable and consistent with normal market conditions in the determination of the injury sustained by those producers as a result of subsidized Indian imports."*<sup>4</sup> [Emphasis supplied]

This is because, the Commission "*ought to have accepted that the anti-competitive conduct of producers of flat products could have had significant repercussions on SSBB prices, most likely increasing them artificially [..]*"<sup>5</sup>. [Emphasis supplied] *Ipso facto*, by failing to take due consideration of the possibility of collusive practices on the market, "*the institutions disregarded a known factor [..] which might have been a concurrent cause of the injury sustained by the Community.*"<sup>6</sup> [Emphasis supplied]

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<sup>2</sup> T-58/99 *Mukand Ltd, Isibars Ltd, Ferro Alloys Corporation Ltd, Viraj Impoexpo Ltd v Council of the European Union*.

<sup>3</sup> See paragraph 44 of T-58/99.

<sup>4</sup> See paragraph 46 of T-58/99.

<sup>5</sup> *Ibid.*

<sup>6</sup> See paragraph 48 of T-58/99.

The Court found that "*it must be held that their assessment of the injury and of the causal link between the injury and the subsidized imports set out in the Contested Regulation is vitiated by a manifest error.*"<sup>7</sup> [Emphasis supplied]

As a result of this judgment, the definitive countervailing duties on SSBBs were overturned. On the basis of this, we call upon the Commission to reject going ahead with definitive duties, as due account needs to be taken of **known factors** like the anti-trust investigation, which will impact any injury findings (especially with respect to sales prices, sales volumes, market share and profits).

The Commission fails to see that, should definitive duties be imposed, it will have knowingly aided to protect a market in which years of artificial price-arrangements have eroded Union competitiveness. Already having proceeded with the current case to this late stage shows that the Commission's assessment of injury to Union industry is vitiated by a manifest error, which is why the investigation should be set aside to properly investigate the collusive practices by EU producers.

## **2. Wrong definition of the product concerned and the alike product**

### **2.1. Material composition of the product concerned**

In the Regulation 1072/2012, there are two contrary appraisals concerning the homogeneity of products. Recital 24 states that the composition of the used raw materials determines the type of the final ceramic product. In recital 100 the Commission makes clear that branded ceramic products can be sold at much higher prices than generic ceramic table- and kitchenware. The Commission admits that branded products have an additional value, but without being exactly quantifying that value.

The "value" of a product in the free market is expressed in money, i.e., the price of the product! The price is where supply and demand meets in the prevailing market balance. The Commission should have taken special attention in the investigation of the market price in accordance to different products and brands to get objective results. The Commission explicitly neglected such investigation in favor of considering the material homogeneity of these types of products. Therefore the Commission didn't investigate value and added value, two fundamental characteristics of economic products, and for this reason omitted an important part of required investigations.

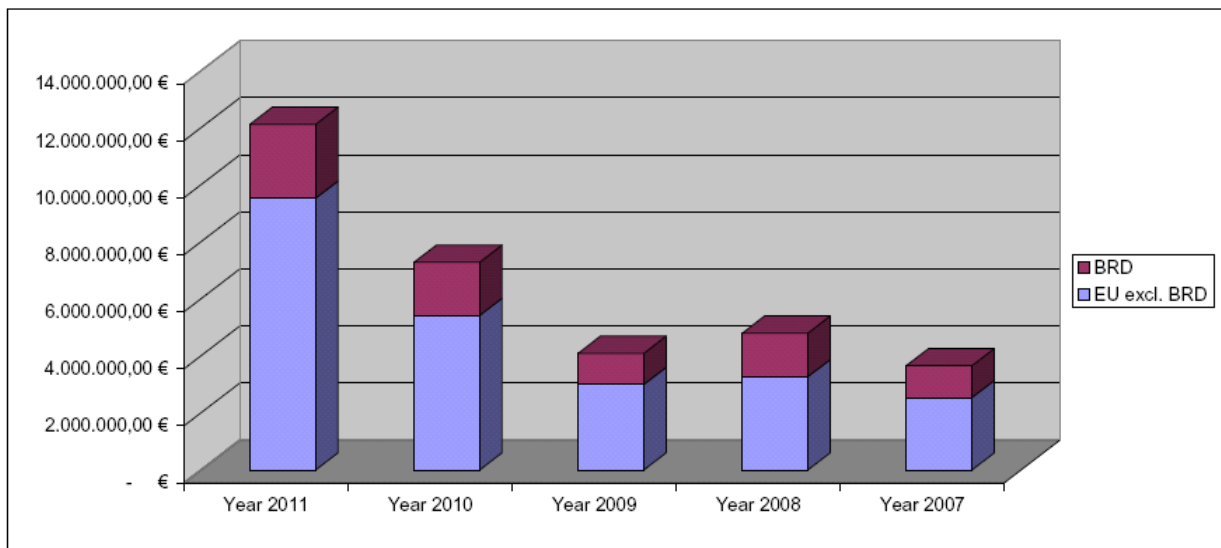
### **Therefore the Commission itself declares the results of the investigation as being incomplete!**

This value that has not investigated by the Commission is a fundamental difference between Chinese products and the products from the Union producers. If the value of products from the Union producers was similar to the value of products of the exporting country, the rich Chinese would not buy European porcelain! As this is not the case, European producers are successfully exporting their products to China! This is, by the way, a significant explanation for the privacy of the proposing Union producers according to recital 19!

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<sup>7</sup> See paragraph 45 of T-58/99.

Last year, the exports of Union producers increased about 50%<sup>8</sup>. This success in exports shows that the products of Union producers are not the same in type and quality as the products made in China. This also proves that they differ in a significant property: the value!



Source: PRODCOM (EU Exports Codex 6911 + 6912 EU to China)

### 3. Injury and cause of damage

#### 3.1. General comment to the statistics and their presentation

The statistical evaluation of the Commission as well as the calculations we made for verification purposes are based upon the official data of the European Commission “EUROSTAT”. Under the designation “PRODCOM”, this data is publicly accessible and available as a download version.

We have subsumed the relevant PRODCOM numbers for the procedure

23411130	Porcelain or china tableware and kitchenware
23411210	Ceramic tableware, other household articles : common pottery
23411230	Ceramic tableware, other household articles : stoneware
23411250	Ceramic tableware, other household articles : earthenware or fine pottery
23411290	Ceramic tableware, other household articles : others

in the following statistics to provide a transparent presentation and an appropriate comparison model to the EUROSTAT trade statistics and the classifications of the duty tariffs. Unfortunately, the three evaluations are using different number ranges. You will find the data mentioned above in our statistics aggregated as a result with the codex identification 6911 + 6912.

Before we go into the details of the statistical information of the regulation 1072/2012, we would like to mention that the PRODCOM statistics have changed significantly between October 04<sup>th</sup> 2012

<sup>8</sup> See: <http://www.antidumping.eu/Dossier-98-Beweise/EU-Export-to-China-Codex-6911-6912.pdf>

and November 07<sup>th</sup> 2012. In total, the production volume in this period is 37% lower than the volume of October 2012.

Origin	Party	Information	Codex	Unit	Year 2011
Prodcom	EU	Produktion	23411130	kg	147.000.000,00
Prodcom (new)	EU	Produktion	23411130	kg	144.540.000,00
Prodcom	EU	Produktion	23411210	kg	240.000.000,00
Prodcom (new)	EU	Produktion	23411210	kg	47.892.000,00
Prodcom	EU	Produktion	23411230	kg	40.030.620,00
Prodcom (new)	EU	Produktion	23411230	kg	40.031.000,00
Prodcom	EU	Produktion	23411250	kg	107.003.084,00
Prodcom (new)	EU	Produktion	23411250	kg	107.003.000,00
Prodcom	EU	Produktion	23411290	kg	30.000.000,00
Prodcom (new)	EU	Produktion	23411290	kg	15.793.000,00
Prodcom	EU	Produktion	6911 + 6912	kg	564.033.704,00
Prodcom (new)	EU	Produktion	6911 + 6912	kg	355.259.000,00
Prodcom (new)	EU	Produktion	6911 + 6912	kg +/- in %	37,0%

We received the draft of the pleading for the regulation 1072 already on October 17<sup>th</sup> 2012, 6 days prior to the countries vote on October 23<sup>rd</sup> 2012, which means that the Commission used PRODCOM data of the period from June to October 2012 to make the statistical evaluation.

In the following we present our point of view based on more recent PRODCOM statistics (11/2012).

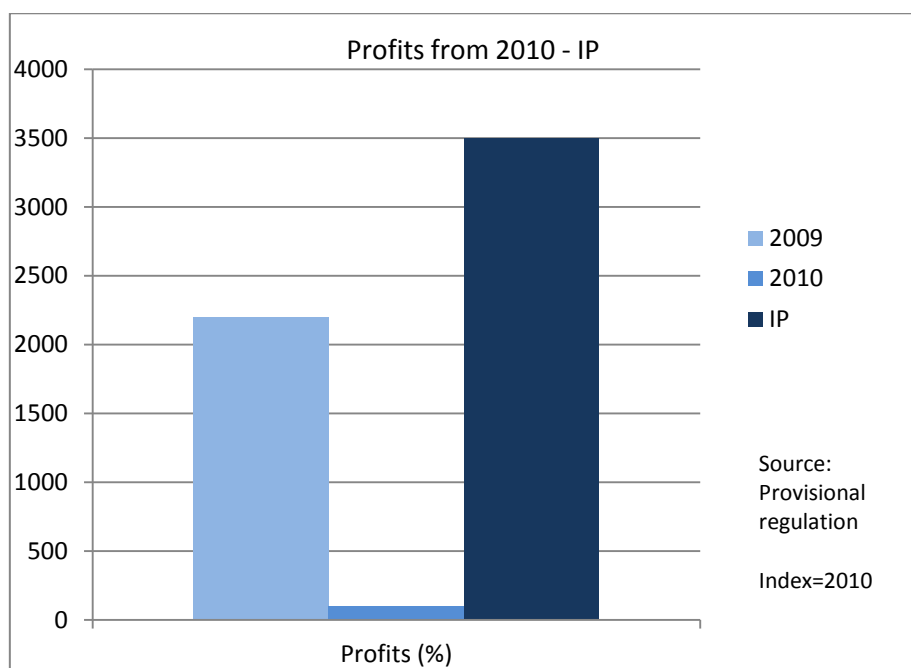
We will prove that the statistical data the Commission used for the proceeding was partly calculated in a wrong way. Furthermore, our inspection result would increase by 37% if we were using the same (old) data as the Commission.

### 3.2. Additional arguments against an injury of the EU industry

Chinese imports have decreased significantly since 2008, Chinese imports have decreased by 30% more than Union industry sales based on the Commission's data.<sup>9</sup> This trend is even more apparent during the IP. From 2010 to the IP the imports have decreased by a staggering 5,892% when compared to the relatively minor decrease experienced by Union producer sales for the same period. The focus of the Commission on market shares ignores the clear difference, in absolute volume, between imports from China and EU sales.

The data on the injury factors evidences numerous improvements. These could not possibly demonstrate that the Union industry is suffering.

<sup>9</sup> Table 2, Commission Regulation (EU) No 1072/2012 imposing a provisional duty on imports of ceramic tableware and kitchenware originating in the People's Republic of China (hereafter referred to as the "provisional regulation").



Profitability is a determining factor in any injury analysis and the Commission data shows the Union industry profits are not just positive but are at a healthy level for the industry at 3,5% in the IP, and in fact have increased by 60% compared to 2009 and by an even more impressive 3.500% compared to 2010.<sup>10</sup> Suggestions that a reasonable comparison can be made with the prior anti-dumping investigation on *Leather footwear*<sup>11</sup> because it is a "widely-used and important consumer product"<sup>12</sup> is not convincing, as the product under consideration is a completely different product in a completely different market. A more acceptable comparison should be with ceramic tiles, which was subject to an anti-dumping investigation in 2010/11 where the acceptable level of profit was concluded to be 3,9%,<sup>13</sup> very close to the profit margin reached by the Union industry during the investigation period.

When considering the other injury factors in the provisional regulation these also do not demonstrate a suffering industry. In fact, recent improvements in almost all injury factors of the Union industry demonstrate an industry developing positively. In particular, between 2010 and the IP, the Commission's data also evidences that market share,<sup>14</sup> production,<sup>15</sup> production capacity,<sup>16</sup> productivity,<sup>17</sup> employment,<sup>18</sup> and exports<sup>19</sup> increased and production costs decreased.<sup>20</sup>

The development of injury factors from 2010 to the IP is shown in Table 1 below.

<sup>10</sup> Table 10, provisional regulation.

<sup>11</sup> Council Regulation (EC) no 1472/2006, as published in OJ L275, 6.10.2006, p.36(recital 292).

<sup>12</sup> Recital 135, provisional regulation.

<sup>13</sup> *Ceramic tiles from China*, OJ L238/1, 15.09.2011, page 1 (recital 164).

<sup>14</sup> Table 5, provisional regulation.

<sup>15</sup> Table 3, provisional regulation.

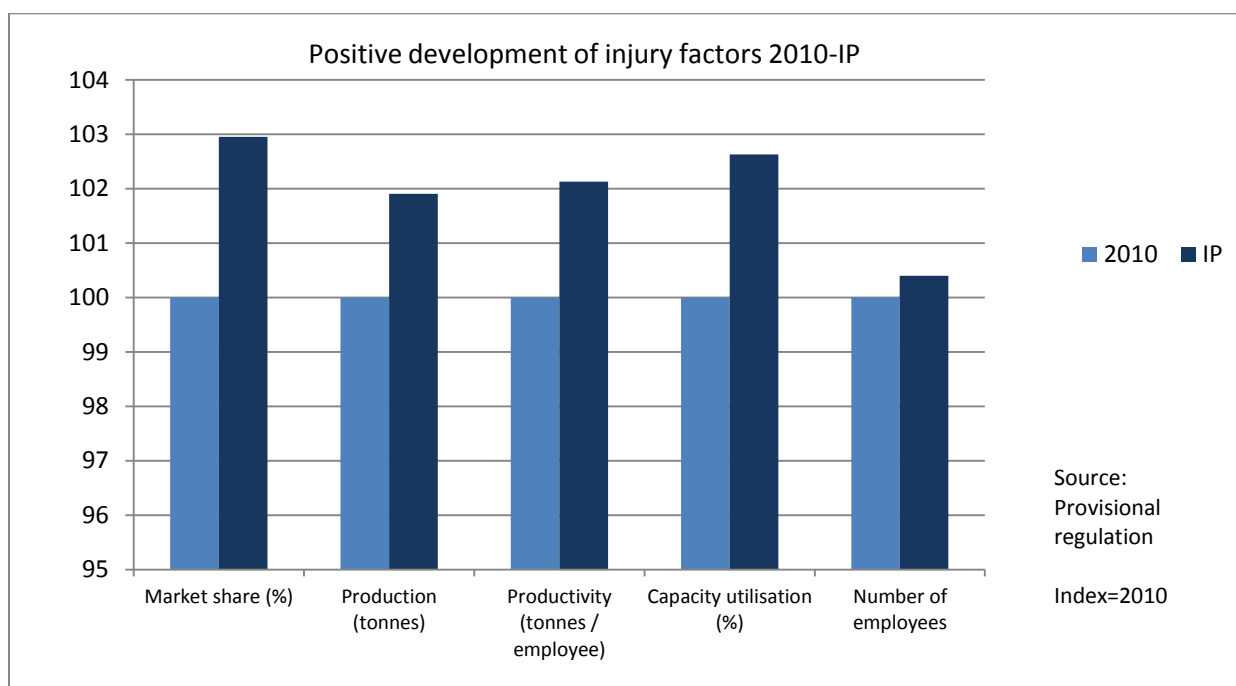
<sup>16</sup> *Ibid.*

<sup>17</sup> Table 7, provisional regulation.

<sup>18</sup> Table 6, provisional regulation.

<sup>19</sup> Table 13, provisional regulation.

<sup>20</sup> Table 11, provisional regulation.



We note that the data used in the table is based on the Commission's provisional regulation. For this reason, it is surprising to learn that the Commission interprets these as showing an industry suffering from Chinese imports.

Indeed, as noted above, market share of Union industry developed positively from 2010 to 2011. During that period, market share of Union industry increased by 3%.<sup>21</sup> Production and productivity, both part of the many positively developing injury indicators from 2010 to 2011, increased by 2%.<sup>22</sup> As can be seen, capacity utilization showed a positive development of 2,6%.<sup>23</sup> Even Union industry employment, an often-highlighted direct indicator of injury, increased.<sup>24</sup>

The Commission's own data thus does not show a suffering industry. On the contrary, the data provided by the Commission shows a healthy, in fact, growing industry with positive indicators throughout (be it production, market share, profits, or employment). Injury indicators such as productivity and capacity utilization show an industry gaining in year on year competitiveness. At the same time, industry employment has risen. Some of these developments have been especially impressive. We thus recall the 3500% increase in profits or the 3% increase in market share. These figures are not indicative of the injury that the Complainants allege to be suffering.

Consequently, we submit that no injury to Union industry exists. In this respect, we refer to case law of the WTO Appellate Body and WTO panels.<sup>25</sup> It has been established in these cases that WTO members cannot simply carry out a mere endpoint-to-endpoint comparison but have the obligation

<sup>21</sup> Table 5, provisional regulation.

<sup>22</sup> Table 3, provisional regulation.

<sup>23</sup> Table 3, provisional regulation.

<sup>24</sup> Table 6, provisional regulation.

<sup>25</sup> For example, *United States - Measures Affecting Imports of Certain Passenger Vehicle and Light Truck Tyres from China* (WT/DS399/R), in particular, 7.101-7.110. See also *Argentina - Safeguard Measures on Imports of Footwear* (WT/DS121/AB/R), paragraph 129.

to examine intervening factors, especially when changing the baseline would give a different injury finding (as is the case in the present investigation). In our view, the fact that injury factors increased markedly since 2009, and especially between 2010 and the IP, is such an intervening factor that deserves closer scrutiny by the Commission Services.

### 3.3. Union consumption

In recital 110 the EU Commission refers to the EUROSTAT import statistics as well as to not further specified inputs concerning the sales in the economic sector to state the union consumption in the IP with 726.614 t.

**This statement is wrong!**

The stated union consume from the EU Commission is 23,3% lower, as the addition of the relevant data of EUROSTAT:

Codex 6911 - 6912 Consumption of the Union							
Formula for consumption		Production - Export total + Import Total					
Origin	Party	Information	Codex	Unit	Year 2011	Year 2010	Year 2009
Trade Statistics	EU	Import China	6911 + 6912	kg	539.127.500	574.618.100	502.034.400
Addition	EU	Import non EU excl. China	6911 + 6912	kg	102.041.400	95.163.400	94.566.900
Addition	EU	EU Utilization of EU Production	6911 + 6912	kg	254.971.500	260.788.600	355.584.296
Origin	Party	Information	Codex	Unit	Year 2011	Year 2010	Year 2009
Prodcom	EU	Produktion (Prodcom 11/12)	6911 + 6912	kg	355.259.000	356.034.000	439.606.396
Trade Statistics	EU	Export non EU	6911 + 6912	kg	100.287.500	95.245.400	84.022.100
Trade Statistics	EU	Import non EU	6911 + 6912	kg	641.168.900	669.781.500	596.601.300
Addition	EU	Consumption of EU	6911 + 6912	kg	896.140.400	930.570.100	952.185.596
1072/2012	EU	Consumption	6911 + 6912	kg	726.614.000	750.830.000	687.609.000
Addition	EU	difference in kg	6911 + 6912	kg	-169.526.400	-179.740.100	-264.576.596
Addition	EU	difference in %	6911 + 6912	kg	-23,3%	-23,9%	-38,5%

The numbers, data and statistics of EUROSTAT, PRODCOM and Trade Statistics are free and open data given from the European Union. The Commission does not contravene a rule if it publishes the used data and statistics (concerning the general market data not including the specified data of the complainants).

We therefore apply for the inspection of the used data for the union consumption in the AD investigation 586.

### 3.4. Imports

In recital 114 the Commission states that the total of the imports of the PR of China decreased 9%.

**This statement is wrong!**

We compared the numbers of the Commission with the actual EUROSTAT data und found out that the values during the IP differ by 24,24%.

Origin	Party	Information	Codex	Unit	Year 2011	Year 2010	Year 2009	Year 2008
Trade Statistics	EU	Import China	6911	kg	313.072.600	326.482.000	262.553.600	349.302.000
Trade Statistics	EU	Import China	6912	kg	226.054.900	248.126.100	219.480.600	249.888.000
Trade Statistics	EU	Import China	6911 + 6912	kg	539.127.500	574.618.100	502.034.400	597.990.000
Trade Statistics	EU	Import China	6911 + 6912	kg +/- kg VJ	-35.490.600	72.583.700	-95.955.600	-56.899.400
Trade Statistics	EU	Import China	6911 + 6912	kg +/- % VJ	-6,58	12,53	-19,11	-9,52
Trade Statistics	EU	Import EXTRA-TRADE EUR27	6911	kg	362.273.300	369.672.700	324.180.700	399.658.600
Trade Statistics	EU	Import EXTRA-TRADE EUR27	6912	kg	278.985.600	309.108.800	272.420.600	318.137.600
Trade Statistics	EU	Import EXTRA-TRADE EUR27	6911 + 6912	kg	641.258.900	669.781.500	596.601.300	717.796.200
Trade Statistics	EU	Import EXTRA-TRADE EUR27	6911 + 6912	kg +/- kg VJ	-28.522.600	73.180.200	-121.184.900	-58.246.300
Trade Statistics	EU	Import EXTRA-TRADE EUR27	6911 + 6912	kg +/- % VJ	-4,45	10,93	-20,31	-8,12
1872/2012	EU	Import China	6911 + 6912	kg	485.914.000	518.618.000	449.346.000	535.593.000
1872/2012	EU	Import China	6911 + 6912	kg +/-	-63.313.500	-68.000.100	-62.888.400	-62.397.000
1872/2012	EU	Import China	6911 + 6912	kg +/- %	-18,87	-11,23	-11,73	-11,65
Addition	EU	Import China 1872 vs EXTRA TRADE EUR27	6911 + 6912	kg +/-	-156.444.900	-183.763.500	-147.258.300	-182.293.200
Addition	EU	Import China 1872 vs EXTRA TRADE EUR27	6911 + 6912	kg +/- %	-24,24	-22,67	-24,68	-25,38

While the sum of all EXTRA TRADE EUR27 imports only diminishing by 4,45% the imports of China decreased by 6,58%. Therefore the imports of China have stronger decreased more strongly than the total import EXTRA TRADE EUR27.

It was further mentioned in recital 114 that the decline of the imports is lower than the total consumption in the EU.

**This statement is wrong!**

We compared the data mentioned by the Commission with the actual EUROSTAT data and found out that the imports from China have substantially deteriorated compared to the development of the union consumption.

### Codex 6911 - 6912 Consumption of the Union

Formula for consumption		Production - Export total + Import Total						
Origin	Party	Information	Codex	Unit	Year 2011	Year 2010	Year 2009	Year 2008
Trade Statistics	EU	Import China	6911 + 6912	kg	539.127.500	574.618.100	502.034.400	597.990.000
Addition	EU	Import non EU excl. China	6911 + 6912	kg	102.041.400	95.163.400	94.566.900	119.806.200
Addition	EU	EU Utilization of EU Production	6911 + 6912	kg	254.971.500	260.788.600	355.584.296	385.482.571
Origin	Party	Information	Codex	Unit	Year 2011	Year 2010	Year 2009	Year 2008
Prodcom	EU	Produktion (Prodcom 11/12)	6911 + 6912	kg	355.259.000	356.034.000	439.606.396	489.994.371
Trade Statistics	EU	Export non EU	6911 + 6912	kg	100.287.500	95.245.400	84.022.100	104.511.800
Trade Statistics	EU	Import EXTRA-TRADE EUR27	6911 + 6912	kg	641.168.900	669.781.500	596.601.300	717.796.200
Addition	EU	Consumption of EU	6911 + 6912	kg	896.140.400	930.570.100	952.185.596	1.103.278.771
Addition	EU	Consumption of EU	6911 + 6912	kg +/- %	-3,84	-2,32	-15,87	-8,77

While the union consumption decreased by 3,84% the imports of the PR China deteriorated by 4,45%. This shows that the imports of the PR of China and all relevant parameters are stronger declining than other market participants. The sources to proof these numbers are attached (Attachment 2, 3, 4)

### 3.5. Market share

In recital 114, the Commission states the market share of the imports of the PR of China with 66,9%.

**This statement is wrong!**



Origin	Party	Information	Codex	Unit	Year 2011	Year 2010	Year 2009	Year 2008
Trade Statistics	EU	Import China	6911 + 6912	kg	538.127.598	578.618.100	502.034.400	597.996.000
Prodcom	EU	Production (Prodcom 11/12)	6911 + 6912	kg	355.259.000	356.034.000	439.606.321	489.994.371
Addition	EU	Consumption	6911 + 6912	kg	896.140.400	930.578.100	952.185.521	1.103.278.771
Addition	EU	Chinese Market Share	6911 + 6912	kg	60,16	61,75	52,72	54,20

Additionally to the above mentioned PRODCOM and EUROSTAT data the market share of the imports from the PR of China in the IP represents only 60,16% and fell 1,59% in comparison with the year before.

### 3.6. Goods in stock of the European producers

In recital 130 of the regulation 1072/2012 the Commission compiles a closing stock of 6.647t for the Union industry.

**This statement is wrong!**

Origin	Party	Information	Codex	Unit	Year 2011	Year 2010	Year 2009
Prodcom	EU	Produktion (Prodcom 11/12)	6911 + 6912	kg	355.259.000	356.034.000	439.606.321
Prodcom	EU	Produktion (Prodcom 11/12)	6911 + 6912	kg +/- kg VJ	-775.000	-83.572.321	-50.388.050
Prodcom	EU	Produktion (Prodcom 11/12)	6911 + 6912	kg +/- % VJ	-0,22	-23,47	-11,46
1072/2012	EU	Lagerbestände	6911 + 6912	kg	6.647.000	7.611.000	6.647.000
1072/2012	EU	Lagerbestände in % der EU-Produktion	6911 + 6912	kg %	1,23	1,32	1,32
t12.007557.10-01	Complaints	Sold Produktion	6911 + 6912	kg	69.789.259	67.362.596	62.905.885
1072/2012	EU	Lagerbestände in % der Complaints	6911 + 6912	kg %	9,52	11,30	10,57

It is possible that the Commission worked with the closing stock data of the investigated Union producers, but the Commission didn't consider the inventory modification of the complete branch when they got a result of just 1,23% for the complete stock of goods in the investigated period.

In addition, recital 130 states that the Union producers basically work on orders.

**This statement is wrong!**

As a long-time market participant, we noticed that the significant part of the Union producers secures delivery times between 8 and 20 days based on existing stock. In this context we would like to present some examples:

In the investigated period, Germany produced 42.928.000kg chinaware (PRODCOM Codex 23411130). With respect to the total production of 147.000.000kg in the Codex 23411130, this is a part of 30%. The BHS Tabletop AG calls itself market leader in segment "Hotel Chinaware". Its public business report for 2010 (page 11) declares a stock of € 19,2 million while having a turnover of € 89.4 million. According to that the world market leader for hotel chinaware works with a stock of 21,48% in relation to its turnover.

#### Attachment 5: Business report BHS Tabletop AG 2010

Villeroy & Boch, the biggest European producer of chinaware, obtained in the complete year a turnover of € 267.595.000 in the sector "Table culture". The stock is indicated with € 58.585.000. This is about 22% of the complete turnover.

## Attachment 6: Business report Villeroy & Boch 2010

The Rosenthal GmbH reports a stock of € 20.200.000 by obtaining a turnover of € 84.760.789,16, this is about 23.83% of the complete turnover.

## Attachment 7: Business report Rosenthal GmbH 2010

Already the three companies mentioned cumulate a stock of € 306.995.000 (€ 307 million) in the year 2010. This is about 20% of the turnover of all the Union producers in the calendar year 2010. We can provide further examples to the Commission, but we would like to leave it with the three examples at this stage.

With the statement "*the Union producers basically work on orders*" and the underpinning with a stock of 6.647t, the Commission admits the exclusion of a representative majority of Union producers. Therefore, the determined dumping margin is much too big. The provided figures are incorrect and the results based on these figures can therefore be considered as completely inapplicable.

### 3.7. Development of the employment in the European ceramic/porcelain industry versus general European employment development in the industrial production

In recital 127 the Commission explains that the employment in the European industry decreased between 2008-2011 by 21%. The Commission draws the conclusion that this is a result of the asserted dumping from China.

**This statement is wrong!**

As the following table shows (source: EUROSTAT) this is a normal development in the consumer goods industry, where in chosen representative areas the employment also decreased by almost 20%.

More and more productive working places in the EU are replaced by other areas.

TIME	GEO/NACE_R2	Manufacture of textiles	Manufacture of wearing apparel	Manufacture of leather and related products	Manufacture of wood and of products of wood in cork, except furniture; manufacture of articles of straw and plaiting materials	Manufacture of paper and paper products	Printing and reproduction of recorded media	Manufacture of furniture	Gesamt
Average 2008	European Union 27 countries	935,3	1.726,0	554,7	1.369,9	739,5	1.179,9	1.529,5	8.094,8
Average 2009	European Union 27 countries	781,9	1.522,4	468,7	1.238,8	693,3	1.063,4	1.374,5	7.142,9
Average 2010	European Union 27 countries	741,7	1.370,9	441,8	1.147,5	677,7	1.024,3	1.249,1	6.652,9
Average 2011	European Union 27 countries	740,2	1.318,7	459,4	1.145,3	664,3	949,4	1.194,0	6.471,2
		79,14%	76,40%	82,81%	83,60%	89,83%	80,47%	78,06%	80,54%

Source: EUROSTAT (*Employment by sex, age and detailed economic activity (from 2008, NACE Rev.2 two digit level) (1000)*)

Therefore there is no injury in the European porcelain industry as the Chinese imports are not the reason for this decrease.

### 3.8. Production of the economic sector versus changes in the consumption

In recital 123, the Commission states that the production of the branch didn't recover in the same degree as the consumption.

**This statement is wrong!**

The branch of manufacturers in the Union was least affected by the economic crisis.

<b>Codex 6911 - 6912 Consumption of the Union</b>					
<b>Formula for consumption</b> <b>Production</b> <b>- Export total</b> <b>+ Import Total</b>					
Origin	Party	Information	Codex	Unit	Year 2011
Trade Statistics	EU	Import China	6911 + 6912	kg	539.127.500
<b>Trade Statistics</b>	<b>EU</b>	<b>Import China</b>	<b>6911 + 6912</b>	<b>kg +- %</b>	<b>-6,58</b>
Addition	EU	Import non EU excl. China	6911 + 6912	kg	102.041.400
<b>Addition</b>	<b>EU</b>	<b>Consumption of EU</b>	<b>6911 + 6912</b>	<b>kg +- %</b>	<b>6,74</b>
Addition	EU	EU Utilization of EU Production	6911 + 6912	kg	254.971.500
Addition	EU	EU Utilization of EU Production	6911 + 6912	kg +- %	-2,28
Origin	Party	Information	Codex	Unit	Year 2011
Prodcom	EU	Produktion (Prodcom 11/12)	6911 + 6912	kg	355.259.000
Prodcom	EU	Produktion (Prodcom 11/12)	6911 + 6912	kg +- %	-0,22
Trade Statistics	EU	Export non EU	6911 + 6912	kg	100.287.500
Trade Statistics	EU	Import EXTRA-TRADE EUR27	6911 + 6912	kg	641.168.900
<b>Addition</b>	<b>EU</b>	<b>Consumption of EU</b>	<b>6911 + 6912</b>	<b>kg</b>	<b>896.140.400</b>
<b>Addition</b>	<b>EU</b>	<b>Consumption of EU</b>	<b>6911 + 6912</b>	<b>kg +- %</b>	<b>-3,84</b>

In the investigation period, the import of products from the People's Republic of China decreased by 6,58%, while the consumption decreased just by 3,84%.

The determination of the Commission is wrong.

### 3.9. Sales volume of the branch versus Consumption

According to recital 125, the Commission states that the sales volume of the Union industry decreases at a higher level than the consumption.

**This statement is wrong!**

The Union producers were least affected by economic crisis.

## Codex 6911 - 6912 Consumption of the Union

Formula for consumption	Production - Export total + Import Total
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Origin	Party	Information	Codex	Unit	Year 2011
Trade Statistics	EU	Import China	6911 + 6912	kg	539.127.500
<b>Trade Statistics</b>	<b>EU</b>	<b>Import China</b>	<b>6911 + 6912</b>	<b>kg +- %</b>	<b>-6,58</b>
Addition	EU	Import non EU excl. China	6911 + 6912	kg	102.041.400
<b>Addition</b>	<b>EU</b>	<b>Consumption of EU</b>	<b>6911 + 6912</b>	<b>kg +- %</b>	<b>6,74</b>
Addition	EU	EU Utilization of EU Production	6911 + 6912	kg	254.971.500
Addition	EU	EU Utilization of EU Production	6911 + 6912	kg +- %	-2,28
Origin	Party	Information	Codex	Unit	Year 2011
Prodcom	EU	Produktion (Prodcom 11/12)	6911 + 6912	kg	355.259.000
Prodcom	EU	Produktion (Prodcom 11/12)	6911 + 6912	kg +- %	-0,22
Trade Statistics	EU	Export non EU	6911 + 6912	kg	100.287.500
Trade Statistics	EU	Import EXTRA-TRADE EUR27	6911 + 6912	kg	641.168.900
<b>Addition</b>	<b>EU</b>	<b>Consumption of EU</b>	<b>6911 + 6912</b>	<b>kg</b>	<b>896.140.400</b>
<b>Addition</b>	<b>EU</b>	<b>Consumption of EU</b>	<b>6911 + 6912</b>	<b>kg +- %</b>	<b>-3,84</b>

During the examination period, the production volume of the Union producers decreased by just 0,22%. The consumption rate fell by just 3,84%.

The conclusion of the Commission is therefore incorrect.

### 3.10. Production costs of the Union producers versus Sales costs

#### 3.10.1. Production costs versus Sales Prices

In recital 138 the Commission explains, that the production costs of the Union producers decreased by 10% in the investigation period. During the investigation period the production costs would be € 3.230/t.

In recital 131, the Commission estimates the sales price of this Union industry branch with € 3.615/t in investigation period.

According to PRODCOM, the sales of the Union producers was estimated to 355.259 t. Based on the calculated average sales price the Union manufacturers have placed a turnover of € 1.3 billion (exactly € 1.286.037.580).

According to PRODCOM 11/2012 the Union producers have placed a turnover of € 1,5 (exactly € 1.516.007.98). We miss the remaining amount of € 229,97 million of the Union turnover in the figures of the Commission.

In accordance to our explanation to the subject "Price Dumping", we presume to ask a question. Is it really manageable for the Union producers to establish their sales prices 2/3 below the average production costs?

The Commission published indecisive statistics with the Regulation 1072/2012. There is no sufficient transparency to recognize a conclusion.

### 3.10.2. Influence Factors Production costs EU industry

The advisory Commission stated in the regulation 1072/2012 that the cost of production decreased with 10% over the period considered but gave no explanation why this was happening nor a remark that this was mainly happening in the IP. Although the productivity of the Union industry increased over the period considered, the profitability never reached a satisfactory profit level. (141-142)

We focus on 3 major building blocks to analyze why the margin of the EU industry has been impacted.

#### Labor cost > 65% of total cost of production

No explanation is given for the drop in annual labor cost per employee by 2% (137) between IP and 2008 even no reflection is made but forgot the drop of the annual labor cost by 3,65% between IP and 2010. This is remarkable as the labor cost evolution between 2007-2009 is in alignment with the evolution of the labor cost per hour as published by EUROSTAT. (See below)

By analyzing the official hourly labor cost evolution for the EUR27, we can conclude that in each country year after year the labor costs are increasing reflecting the fact that each EU-manufacturing is announcing every year a price increase to compensate the increase of labor cost they have to absorb. Furthermore, by applying the different European hourly rates, it is clear that the drop in the average rate can only be explained by the fact that countries with a lower labor cost took a bigger part.

[http://epp.eurostat.ec.europa.eu/statistics\\_explained/index.php/Labour\\_cost\\_index\\_-\\_recent\\_trends](http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Labour_cost_index_-_recent_trends)

The hourly labor cost in the business economy ([NACE](#) Rev.2 sections B to N) for the EU-27 was € 23,1 in 2011 compared with EUR 22,5 in 2010. For the euro area ([EA-17](#)) it was € 27,6 in 2011 compared with € 26,9 in 2010.

Among the Member States for which estimates are available the highest labor costs per hour in the business economy were obtained for Belgium (€ 39,3), Sweden (€ 39,1), Denmark (€ 38,6), France (€ 34,2), Luxembourg (€ 33,7), the Netherlands (€ 31,1) and **Germany (€ 30,1)**.

The lowest labor cost per hour was estimated for Bulgaria (€ 3,5), followed by **Romania (€ 4,2 in 2010)**, Lithuania (€ 5,5), Latvia (€ 5,9). While comparing labor cost estimates in euro over time, it should be noted that data for those Member States outside the euro area are influenced by exchange rates movements.

	2008	2009	2010	2011
<b>EU-27</b>	21.6	22.1	22.5	23.1
<b>EA-17</b>	25.8	26.5	26.9	27.6
<b>Belgium</b>	35.6	37	38.2	39.3
<b>Bulgaria</b>	2.5	2.9	3.1	3.5
<b>Czech Republic</b>	9.3	9.3	9.9	10.5
<b>Denmark</b>	35.4	36.5	37.6	38.6
<b>Germany</b>	28.4	29	29.1	30.1
<b>Estonia</b>	8	7.9	7.7	8.1
<b>Ireland</b>	27.2	28	27.9	27.4
<b>Greece</b>	16.5	17.6	17.5	:
<b>Spain</b>	18.9	20.0*	20.2*	20.6
<b>France</b>	31.8	32.1	33.1	34.2
<b>Italy</b>	24.5	25.6	26.1	26.8
<b>Cyprus</b>	15.3	15.9	16.2	16.5
<b>Latvia</b>	5.9	5.9	5.7	5.9
<b>Lithuania</b>	6	5.6	5.3	5.5
<b>Luxembourg</b>	30.8	32	32.7	33.7
<b>Hungary</b>	7.9	7.3	7.3	7.6
<b>Malta</b>	11.2	11.3	11.5	11.9
<b>Netherlands</b>	29.2	29.8	30.5	31.1
<b>Austria</b>	26.5	27.7	28	29.2
<b>Poland</b>	7.5	6.4	7	7.1
<b>Portugal</b>	11.5	11.9	12	12.1
<b>Romania</b>	4.1	4.0*	4.2*	:
<b>Slovenia</b>	13.4	13.8	14.1	14.4
<b>Slovakia</b>	7.6	7.9	8	8.4
<b>Finland</b>	27.6	28.7	28.9	29.7
<b>Sweden</b>	33.8	31.7	36	39.1
<b>United Kingdom</b>	21.1	18.9	20	20.1
<b>Norway</b>	37.8	36.9	41.4	44.2

If we analyze the evolution of the labor cost per t, we notice that the labor cost percentage is increasing year after year which is not confirming the statement of the Commission (142) that the productivity increased.

	2008	2009	2010	IP
Cost of production (t)	3.578	3.583	3.514	3.230
Labor cost per t	2.293	2.330	2.292	2.176
Relation labor cost/cost of production	64,1%	65,0%	65,2%	67,4%

### **Energy costs**

The evolution of the cost of energy in the EU has not supported a decrease in cost of production as the increase in electricity prices have been compensated by a decrease in gas prices.



	Electricity prices						Gas prices					
	Households (1)			Industry (2)			Households (3)			Industry (4)		
	2009	2010	2011	2009	2010	2011	2009	2010	2011	2009	2010	2011
EU-27	0.163	0.167	0.178	0.107	0.105	0.110	0.059	0.053	0.056	0.036	0.031	0.034
Euro area (5)	0.171	0.176	0.187	0.111	0.109	0.116	0.066	0.058	0.062	0.038	0.032	0.036
Belgium	0.192	0.196	0.214	0.111	0.106	0.110	0.061	0.053	0.057	0.033	0.029	0.032
Bulgaria	0.082	0.081	0.083	0.065	0.065	0.065	0.047	0.037	0.043	0.031	0.024	0.029
Czech Republic	0.132	0.135	0.150	0.107	0.103	0.111	0.049	0.047	0.054	0.033	0.031	0.031
Denmark	0.270	0.267	0.291	0.086	0.094	0.099	0.092	0.107	0.116	0.056	0.057	0.067
Germany	0.228	0.238	0.253	0.113	0.112	0.125	0.065	0.057	0.059	0.043	0.036	0.046
Estonia	0.092	0.097	0.097	0.064	0.069	0.072	0.039	0.036	0.042	0.027	0.029	0.028
Ireland	0.203	0.180	0.190	0.121	0.112	0.116	0.064	0.050	0.051	0.033	0.028	0.038
Greece	0.115	0.118	0.125	0.095	0.095	0.101	.	.	.	.	.	.
Spain	0.158	0.173	0.195	0.115	0.117	0.114	0.061	0.053	0.054	0.031	0.028	0.029
France	0.121	0.128	0.138	0.073	0.085	0.085	0.055	0.052	0.058	0.036	0.033	0.037
Italy	0.210	0.197	0.201	0.153	0.139	0.153	0.076	0.062	0.069	0.040	0.030	0.031
Cyprus	0.156	0.186	0.205	0.119	0.151	0.167	.	.	.	.	.	.
Latvia	0.105	0.105	0.117	0.090	0.089	0.098	0.052	0.031	0.039	0.039	0.026	0.029
Lithuania	0.095	0.116	0.121	0.092	0.100	0.105	0.042	0.038	0.043	0.031	0.032	0.035
Luxembourg	0.188	0.173	0.168	0.116	0.102	0.100	0.049	0.043	0.051	0.040	0.037	0.042
Hungary	0.148	0.170	0.168	0.124	0.106	0.095	0.048	0.054	0.056	0.037	0.030	0.033
Malta	0.171	0.170	0.170	0.151	0.180	0.180	.	.	.	.	.	.
Netherlands	0.190	0.170	0.174	0.113	0.104	0.103	0.083	0.070	0.072	0.038	0.032	0.033
Austria	0.191	0.197	0.199	.	.	.	0.065	0.062	0.069	.	.	.
Poland	0.113	0.134	0.147	0.090	0.098	0.101	0.039	0.043	0.046	0.028	0.030	0.033
Portugal	0.151	0.158	0.165	0.094	0.094	0.099	0.060	0.059	0.061	0.035	0.027	0.034
Romania	0.098	0.103	0.108	0.081	0.085	0.080	0.029	0.027	0.028	0.023	0.022	0.023
Slovenia	0.135	0.140	0.144	0.103	0.099	0.099	0.066	0.058	0.067	0.044	0.042	0.045
Slovakia	0.154	0.152	0.168	0.142	0.117	0.128	0.046	0.044	0.047	0.041	0.033	0.035
Finland	0.130	0.133	0.154	0.069	0.069	0.076	.	.	.	0.031	0.030	0.042
Sweden	0.160	0.184	0.209	0.067	0.081	0.089	0.089	0.103	0.122	0.039	0.044	0.052
United Kingdom	0.147	0.139	0.143	0.112	0.099	0.098	0.043	0.041	0.042	0.029	0.023	0.025
Norway	0.157	0.203	0.213	0.079	0.103	0.111	.	.	.	.	.	.
Croatia	0.115	0.115	0.114	0.087	0.094	0.091	0.032	0.038	0.038	0.026	0.034	0.040
FYR of Macedonia	.	.	.	.	.	.	.	.	.	.	.	0.038
Turkey	0.114	0.134	0.122	0.078	0.089	0.079	0.039	0.032	0.029	0.029	0.024	0.022
Bosnia and Herzegovina	.	0.074	0.075	.	0.062	0.061	.	0.038	0.045	.	0.042	0.048

(1) Annual consumption: 2 500 kWh < consumption < 5 000 kWh.

(2) Annual consumption: 500 MWh < consumption < 2 000 MWh; excluding VAT

(3) Annual consumption: 5 600 kWh < consumption < 56 000 kWh (20-200 GJ).

(4) Annual consumption: 2 778 MWh < consumption < 27 778 MWh (10 000-100 000 GJ); excluding VAT.

(5) 2009 and 2010, EA-16.

Source: Eurostat (online data codes: nrg\_pc\_204, nrg\_pc\_205, nrg\_pc\_202 and nrg\_pc\_203)

### **Relation cost of production – product portfolio – average sales prices**

The Commission stated that the average sales prices for the industry has decreased by 12% from 2008-2011. This is remarkable as only the European industry is showing a reduction of sales prices whereas all other players in this market have been able to increase their prices. Even Turkey has been able to increase their export prices although they have put more volume into the market. This confirms the fact that the market was willing to accept sales price increases.

	2008	2009	2010	IP	2008	2009	2010	IP
Average import price VCA (€/t)	1.274	1.307	1.473	1.499	100,0%	102,6%	115,6%	117,7%
Average sales price EU industry (€/t)	4.103	3.818	3.811	3.615	100,0%	93,1%	92,9%	88,1%
Average import price Turkey (€/t)	2027	2014	2171	2058	100,0%	99,4%	107,1%	101,5%
Average import price other countries (excl. Turkey) (€/t)	2.579	2.588	2.869	2.904	100,0%	100,4%	111,3%	112,6%

The fact that apparently only the EU industry is not capable of adjusting their sales prices is also not matching with the yearly announcement of all EU producers towards their customers of a general price increase.

Next to this, we notice that the EU industry was able to maintain their average export prices confirming again the fact that the market in this investigation period was open for a price increase and that an average sales price reduction in the EU market has nothing to do with the competition but has certainly to do that the EU industry has changed their product portfolio to meet the market demands.

	2008	2009	2010	IP
Average sales price EU industry at EU market (€/t)	4.103	3.818	3.811	3.615
Average export sales price EU industry (€/t)	3.136	2.983	3.462	3.125
Export % in total production volume	32%	32%	35%	37%
Relation between export sales price and average sales price in EU	76%	78%	91%	86%

### **Conclusion**

The margin % of the EU industry is improving in the IP in comparison with the period 2008-2010. This is mainly a result of the fact that the cost of production decreased and the fact that the export sales prices remained at almost the same level and took a higher percentage of the overall sales. These good results have also been announced by different members for 2011 as Villeroy & Boch, Steelite International, BHS Tabletop AG.

	2008	2009	2010	IP
Sales	1.066.207.844	817.911.230	869.253.941	825.151.550
Cost of production	1.006.491.400	825.164.900	828.249.800	775.846.000
Margin	59.716.444	-7.253.670	41.004.141	49.305.550
Margin %	5,6%	-0,9%	4,7%	6,0%

(Remarkable to notice is the drop in 2009 which is mainly caused by a drop in volume, sales price and stable cost of production)

If we assume the situation where the EU industry had kept their prices at the 2008 level, the margin would improve from 6% towards 13,8% which would have been a reflection of the productivity improvement.

	2008	2009	2010	IP
Sales	1.066.207.844	873.844.466	886.728.103	900.343.065
Cost of production	1.006.491.400	825.164.900	828.249.800	775.846.000
Margin	59.716.444	48.679.566	58.478.303	124.497.065
Margin %	5,6%	5,6%	6,6%	13,8%

The drop in margin is only a result of the reduction of the sales price. This reduction is difficult to explain as all other market players have been increasing their sales prices and even all European producers are announcing every year a sales price increase. Another reason for the drop of the margin is the fact that the European producers are increasing the percentage of their export where they apparently are offering products at a much lower price level. Are they dumping some of their products outside Europe? It can also be possible that the market outside Europe is not willing to pay the same premium for "European products" as the European market was willing to accept.

This is reflecting the fact that the European producers have adapted their production towards the EU market needs which is looking for a different type of product which has a different market price. The market is looking for more volume "basic" products and less limited "durable products".



The conclusion that the lack of profitability of the sector which deteriorated over the period, is a result of the dumped Chinese importers is therefore not proven as information on “average sales prices”, “annual labor cost per employee” and “cost of production” is not matching with the published information of EUROSTAT and general market information of other players in the market.

### **3.11. Price Issues**

#### **3.11.1. Different development of the European industry prices and the import prices**

In recital 131 the Commission states, that the sales volume decreased by 12% in the period of investigation.

The Commission did not mention any reason for the price reduction, so we assume that this fact was not precisely examined.

The price increase of Chinese products was appreciated in the period of support by the assumption of a changing range of products. In recital 152 the Commission states in addition, that the prices of import goods from other third countries also increased significantly and figured the statement by 6%.

All of this may not be evident enough for the Commission to analyze the submitted data of the Union manufacturers precisely and in more detail. All third countries, like Turkey, China and others can implement the price increase in the European Market - why not the Union manufacturers?

As explained in recital 154, the import prices of goods from Turkey were up to 60% higher than the prices of goods from China. According to recital 117, the price undercutting of the accused exporters is between 23,6 to 47,6% to the Union manufacturers. As a consequence we got the following explanation:

Price China	=	100,00
Minimal price of the Union manufacturers (23,6%)	=	130,15
Maximum price of the Union manufacturers (47,6%)	=	190,84
Price Turkey (60%)	=	250,00

In other words: How is it possible, that the Turkish exporters could increase their exports up to 10%, although the prices of the Turkish exporters have exceeded the prices of the Union manufacturers by minimum 60,84 points to maximum 120 points during the investigation period?

We allow us to explain, that the summary of statistical contents used for the Regulation no 1072/2012 does not meet the requirements for a correct investigation.

#### **3.11.2. Price development import prices China**

In recital 114 the Commission calculated a price increase of the import prices of the PR of China of 17,7% of € 1,247 and 1,499 € per kg.

**This statement is wrong!**

Origin	Party	Information	Codes	Unit	Year 2011	Year 2012	Year 2008	Year 2009
Trade Statistics	EU	Import China	6911 + 6912	kg	539.127.500	574.618.100	502.834.000	597.990.000
Trade Statistics	EU	Import China	6911 + 6912	€	818.570.178,00 €	855.882.258,00 €	661.863.526,00 €	767.338.888,00 €
Addition	EU	Import China	6911 + 6912	€/kg	1,52 €	1,49 €	1,32 €	1,28 €
Addition	EU	Import China	6911 + 6912	€ +/- %	1,34	12,98	2,74	11,23

The average price of the imports from the PR of China based on the above mentioned PRODCOM statistics 11/2012 amounts € 1,52 per kg. In relation to the Index 100 in the year 2008 the price increase is € 0,24 and accordingly 18,32%.

The Commission stated in their statistical analysis that the price increase of the imports of the PR of China exceeds the export prices of the union producers by far. The prices of the union producers have decreased by € 0,03 from 2008-2011 and declined by 0,78%.

Origin	Party	Information	Codes	Unit	Year 2011	Year 2012	Year 2008	Year 2009
Trade Statistics	EU	Export total	6911	Euro	948.440.375,00 €	923.990.900,00 €	853.515.200,00 €	1.061.892.820,00 €
Trade Statistics	EU	Export total	6911	kg	196.935.600	189.121.600	172.106.300	196.587.000
Trade Statistics	EU	Export total	6911	Euro/kg	4,84 €	4,89 €	4,96 €	5,40 €
Trade Statistics	EU	Export total	6912	Euro	557.142.138,00 €	535.072.380,00 €	474.420.860,00 €	540.538.840,00 €
Trade Statistics	EU	Export total	6912	kg	226.820.800	261.353.600	234.580.000	249.861.500
Trade Statistics	EU	Export total	6912	Euro/kg	2,46 €	2,05 €	2,02 €	2,16 €
Trade Statistics	EU	Export total	6911 + 6912	Euro	1.505.582.500,00 €	1.459.063.280,00 €	1.327.936.060,00 €	1.602.431.660,00 €
Trade Statistics	EU	Export total	6911 + 6912	kg	422.758.400	450.475.200	406.687.100	446.449.000
Trade Statistics	EU	Export total	6911 + 6912	Euro/kg	3,56 €	3,24 €	3,27 €	3,59 €
Trade Statistics	EU	Export total	6911 + 6912	Euro/kg +/- %	0,32 €	0,03 €	0,32 €	0,17 €
Trade Statistics	EU	Export total	6911 + 6912	Euro/kg +/- %	9,95	-8,81	-5,03	-4,47

This explains also the assumption in recital 115 of the disclosure that this trend could be influenced by a change in the product assortment.

Obviously the Commission did not consider the current assortments and the price increase rates, which the products from the PR of China have to suffer.

This may be the hint to the conclusion of the Commission in recital 202 that the supply chain could absorb the proposed antidumping duty without endangering the affected market participants.

### 3.11.3. Price undercutting

In recital 116, the Commission determined a price cutting range by 26,3 to 47,6% between the imports of the People's Republic of China and the products of Union producers.

The following figures are based on the incorrectly estimated prices of the Commission, so that we do not distort the conclusion of the Commission.

The weighted average price of Chinese imports is € 1,499/kg. This price undercuts the price of the Union producers by 47,6%. Therefore the average price of the Union producers is € 2,84/kg.

We compared these results with the EUROSTAT statistics:

Origin	Party	Information	Codex	Unit	Year 2011
Trade Statistics	Romania	EXPORT EXTRA EUR27	6912	€/kg	1,02 €
Trade Statistics	Romania	EXPORT INTRA EUR27	6912	€/kg	1,08 €
Trade Statistics	Spain	EXPORT INTRA EUR27	6912	€/kg	1,16 €
Trade Statistics	Italy	EXPORT INTRA EUR27	6912	€/kg	1,19 €
Trade Statistics	Portugal	EXPORT INTRA EUR27	6912	€/kg	1,61 €
Trade Statistics	Romania	EXPORT EXTRA EUR27	6911	€/kg	1,86 €
Trade Statistics	Romania	EXPORT INTRA EUR27	6911	€/kg	2,04 €
Trade Statistics	Spain	EXPORT INTRA EUR27	6911	€/kg	2,04 €
Trade Statistics	Germany	EXPORT INTRA EUR27	6912	€/kg	2,09 €
Trade Statistics	Portugal	EXPORT EXTRA EUR27	6912	€/kg	2,52 €

With no claim for completeness we compiled the figures above from the current EUROSTAT statistics of the European Union. In accordance the figures there are Union producers which undercutting the export price from € 1,499/kg estimated by the Commission.

The relative average price of imports from the People's Republic of China was € 1,52. As a consequence the weighted Union price would have to be € 2,90.

This information proofs 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 obtain different prices on their own. The market attributes the product significant characteristics and the Commission does not consider this fact.

1 Mercedes 500 S	à € 150.000
5 Dacia Logan	à € 9.500

have an average price of € 32.917, this is not a representative market price, although each of the cars has 4 tires made of rubber and made of sheet metal.

#### **3.11.4. Price development of the economic sector within and outside the Union**

In recital 167 the Commission states that the export prices of the economic sector substantially decreased, during the period from 33.462 €/t to 3.125€/t. This corresponds to a decline of 337 €/t, therefore 9,73%.

Closer examination of the total development in EUROSTAT reveals that,

Origin	Party	Information	Codex	Unit	Year 2011	Year 2010
Trade Statistics	EU	Export Intra-EUR27	6911	Euro	555.482.060,00 €	529.249.620,00 €
Trade Statistics	EU	Export Intra-EUR27	6911	kg	146.514.700	141.338.000
Trade Statistics	EU	Export Intra-EUR27	6911	Euro/kg	3,79 €	3,74 €
Trade Statistics	EU	Export Intra-EUR27	6912	Euro	354.483.030,00 €	356.592.800,00 €
Trade Statistics	EU	Export Intra-EUR27	6912	kg	175.954.200	213.891.800
Trade Statistics	EU	Export Intra-EUR27	6912	Euro/kg	2,01 €	1,67 €
Trade Statistics	EU	Export Intra-EUR27	6911 + 6912	Euro	909.965.090,00 €	885.842.420,00 €
Trade Statistics	EU	Export Intra-EUR27	6911 + 6912	kg	322.468.900	355.229.800
Trade Statistics	EU	Export Intra-EUR27	6911 + 6912	Euro/kg	2,82 €	2,49 €
Trade Statistics	EU	Export EXTRA EUR27	6911	Euro	392.958.310,00 €	394.741.280,00 €
Trade Statistics	EU	Export EXTRA EUR27	6911	kg	49.420.900	47.783.600
Trade Statistics	EU	Export EXTRA EUR27	6911	Euro/kg	7,95 €	8,26 €
Trade Statistics	EU	Export EXTRA EUR27	6912	Euro	202.659.100,00 €	178.479.500,00 €
Trade Statistics	EU	Export EXTRA EUR27	6912	kg	50.866.600	47.461.800
Trade Statistics	EU	Export EXTRA EUR27	6912	Euro/kg	3,98 €	3,76 €
Trade Statistics	EU	Export EXTRA EUR27	6911 + 6912	Euro	595.617.410,00 €	573.220.780,00 €
Trade Statistics	EU	Export EXTRA EUR27	6911 + 6912	kg	100.287.500	95.245.400
Trade Statistics	EU	Export EXTRA EUR27	6911 + 6912	Euro/kg	5,94 €	6,02 €
Trade Statistics	EU	Export INTRA- & EXTRA TRADE EUR27	6911	Euro	948.440.370,00 €	923.990.900,00 €
Trade Statistics	EU	Export INTRA- & EXTRA TRADE EUR27	6911	kg	195.935.600	189.121.600
Trade Statistics	EU	Export INTRA- & EXTRA TRADE EUR27	6911	Euro/kg	4,84 €	4,89 €
Trade Statistics	EU	Export INTRA- & EXTRA TRADE EUR27	6912	Euro	557.142.130,00 €	535.072.300,00 €
Trade Statistics	EU	Export INTRA- & EXTRA TRADE EUR27	6912	kg	226.820.800	261.353.600
Trade Statistics	EU	Export INTRA- & EXTRA TRADE EUR27	6912	Euro/kg	2,46 €	2,05 €
Trade Statistics	EU	Export INTRA- & EXTRA TRADE EUR27	6911 + 6912	Euro	1.505.582.500,00 €	1.459.063.200,00 €
Trade Statistics	EU	Export INTRA- & EXTRA TRADE EUR27	6911 + 6912	kg	422.756.400	450.475.200
Trade Statistics	EU	Export INTRA- & EXTRA TRADE EUR27	6911 + 6912	Euro/kg	3,56 €	3,24 €
Trade Statistics	EU	Export INTRA- & EXTRA TRADE EUR27	6911 + 6912	Euro/kg +- €	0,32 €	0,03 €
Trade Statistics	EU	Export INTRA- & EXTRA TRADE EUR27	6911 + 6912	Euro/kg +- %	9,88	-0,92

the export prices of the union producers in the INTRATRADE increased (€ 2,82 to € 2,49), whereas in the EXTRATRADE a loss of 6,02 to 5,94 can be remarked.

Therefore it should be sufficiently proved that possible price increases of the union producers not arise from the INTRATRADE and therefore the whole topic of a possible anti-dumping on the union market is excluded.

The union producers were able to realize price increases on the union market! The Commission should review its conclusions and consider the improvement of the production efficiency!

### 3.12. Turkey and non-discrimination principle

The argumentation of the Commission about the development and the interpretation of the Turkish Exports to the EU is a breach against the “non-discrimination principle” and the “de minimis principle”.

It is confirmed by the Commission that the Turkish imports to the EU increased by 10 from 2008-2011. Their market share increased during that period from 4,5% to 5,6%, which is above the de minimis limit. In the same period the imports to the EU from other countries decreased by 12%. The average price for the imports from Turkey was lower than the import price of the rest of the world which increased in that period by 6% while the Turkish prices remained more or less stable.

All these topics are first prima facie evidences for dumping from Turkey, even stronger than the prima facie evidences against china in the same period, which lead to the opening of this investigation.

The counter-argument of Commission that the average Turkish prices are 37-60% above the Chinese import prices has nothing to do with these facts and does not confute the above mentioned facts.

According to the non-discrimination principle is obliged to compare the Turkish domestic prices with the export prices to investigate if there is a dumping from Turkey.

**We request the Commission to follow that obligation and to further investigate if there is dumping from Turkey or to close the investigation against China, as the non-discrimination principle leaves no other opportunity to the Commission.**

Disclosure No. 149

	2008	2009	2010	2011 / IP
Volume of imports from all other third countries (tonnes)	100.971	81.464	81.602	88.706
Index (2008 =100)	100	81	81	88
Market Share	12,20%	11,80%	10,90%	12,20%
Average Import price (EUR/tonne)	2.378	2.354	2.591	2.522
Index (2008 =100)	100	99	109	106
Volume of imports from Turkey (tonnes)	36.952	33275	32.887	40.553
Index (2008 =100)	100	90	89	110
Market Share	4,50%	4,80%	4,40%	5,60%
Average Import price (EUR/tonne)	2.027	2.014	2.171	2.058
Index (2008 =100)	100	99	107	102

Disclosure No. 113

	2008	2009	2010	2011 / IP
Volume of imports from PRC (tonnes)	535.593	449.346	516.618	485.814
Index (2008 = 100)	100	84	96	91
Market share	64,80%	65,30%	68,80%	66,90%
Average import price (EUR/tonne)	1.274	1.307	1.473	1.499
Index (2008 = 100)	100	103	116	118

Source: Council Regulation 1072/2012 recital 149 and 113

### 3.13. Causation

As already pointed out previously by us – and as now acknowledged by the Commission – Chinese imports have decreased substantially since 2008 and import prices from China have increased by 18%. Moreover injury indicators showed a positive development when Chinese imports increased and Chinese import prices decreased whereas they showed a negative development when Chinese imports decreased and Chinese import prices increased. This is exactly the opposite of what one would expect of Chinese imports were truly causing injury to the Union industry.

The EU now seeks to rebut these claims by pointing out that (1) the market share of Chinese imports increased (although it actually decreased between 2010 and the IP) and (2) that Chinese import prices consistently undercut EU prices.

First, with respect to the market share of Chinese imports, we submit that since 2008, Chinese imports have decreased by 30% more than Union industry sales based on the Commission's data.<sup>26</sup> This trend is even more apparent during the IP. From 2010 to the IP the imports have decreased by a staggering 5,892% when compared to the relatively minor decrease experienced by Union producer sales for the same period. The focus of the Commission on market shares ignores the clear difference, in absolute volume, between imports from China and EU sales.

Second, despite the Commission's claim that despite increases in the Chinese import price it has consistently remained lower than the EU sale price, there has not been any indication that there is a continuous year-on-year negative impact on the injury factors. Since 2008 the Union Industry has been profitable, and significantly so in the IP (the period of price depression specifically referenced in the provisional regulation), increasing profit levels to 3,5%.<sup>27</sup> Sales have remained stable since 2009<sup>28</sup> and allowed a higher EU sales price (compared to Chinese prices) to be set which has contributed towards the Union industry's profits. Any effort made to reduce costs of production and employment costs are not large enough to support such a turnaround in profits.<sup>29</sup> On the facts provided by the Commission there is no sufficient explanation or evidence to prove that any "*price depression*" has existed at all.

However, the consumption levels in the EU do display a clear link to the poor performance of the injury factors prior to the IP. The economic crisis from 2008 to 2009 shrank consumer budgets and prompted consumers to become more careful with their household income. As the provisional regulation demonstrates, the Commission could not avoid acknowledging that lower consumption levels in the EU may have contributed to the Union industry's poor performance.<sup>30</sup> 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<sup>31</sup> following the economic crisis. This was mirrored in almost an identical drop in sales at (decreased by 17%),<sup>32</sup> employment (decreased by 17%)<sup>33</sup> and production (decreased by 18%).<sup>34</sup>

Another omission from the provisional regulation concerns the over-capacity produced by large investments made by EU producers shortly before the economic crisis. At Table 10 of the provisional regulation the return on investment was -51,3% in 2010, this clearly shows that the significant investments in 2008 and 2009 failed to materialize and led to dramatically decreased returns.<sup>35</sup> In addition, we wonder how, from a logical point of view, the return on investment for 2010 can be negative if the Union industry actually succeeded in being profitable.

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<sup>26</sup> Table 2, provisional regulation.

<sup>27</sup> Table 10, provisional regulation.

<sup>28</sup> Table 4, provisional regulation.

<sup>29</sup> Table 10, provisional regulation.

<sup>30</sup> Recital 165, provisional regulation.

<sup>31</sup> Recital 100, provisional regulation.

<sup>32</sup> Table 4, provisional regulation.

<sup>33</sup> Table 6, provisional regulation.

<sup>34</sup> Table 3, provisional regulation.

<sup>35</sup> Table 10, provisional regulation.

An increase in non-operating expenses was another pertinent effect of the economic crisis and would have impacted the profitability of the Union industry producers. Costs of borrowing, increased employee benefits and pension contributions will all have had an impact. These other reasons and anti-competitive can all, combined, be attributed to any deterioration of injury factors up to and including the IP, not Chinese imports.

Imports from other countries have played a role in any alleged impact on material injury to Union industry. Up to and including the IP, based on the Commission's data, Turkish imports increased by over 20%. The Commission disregards this impact as immaterial because Turkey's market share "only" accounts for 5,6% of the Union industry, yet the *de minimis* standard under the basic Regulation is much lower, *i.e.* 1% market share. Moreover, it should be noted that both the increase of China's market share and the decrease of the EU producer's market share are well below this figure.

The effect of second-hand markets on the sales of ceramic tableware in the EU has also been ignored by the Commission. The provisional regulation states: "*no reasonable basis could be found for extrapolating the volumes and prices from a German speaking platform on the very specific collections of three German companies to other Union countries*".<sup>36</sup> It appears to suggest the Commission has not considered this. What the economic recession has done is motivate consumers to purchase second-hand goods and prompt the development of new business models including "*up-cycling*", where older ceramic products are improved to increase their value and sell for a higher profit. Both second hand and new markets have increased competition with the traditional porcelain sold by EU producers and affected the Union industry's performance.

It is apparent that the Commission disagrees that poor performance of exports from the Union in 2009 have impacted the injury factors of the Union industry.<sup>37</sup> However, the analysis does not take into account some important points. Firstly, although it is acknowledged that exports might not directly impact sales volume, market share, and prices within the Union, they would undoubtedly *indirectly* affect balance sheets and profitability. Secondly, although you could surmise an increase in exports as a conscious effort to expand into already saturated foreign markets, numerous other factors could influence the rise in exports including the noted drop in costs of production.<sup>38</sup> Thirdly, it is not clear how the statement that "*overall exports...decreased by 3%*" relates to causation, if it pertains to low exports showing injury it ignores the predominant positive trend and high sales by value. In 2009, exports clearly had an impact on the profitability of the Union industry.

The Commission refers to and confirms the practice of Union producers importing Chinese imports when they commented on: "*the number of business models that spread*"<sup>39</sup> and note "*some manufacturers in the Union...became traders of China-origin products*".<sup>40</sup> This was not a response to a decrease in sales but an initiative which has had the inevitable effect of encouraging more products to be imported from China. Brand protection in the EU supported higher prices and importing products

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<sup>36</sup> Recital 180, provisional regulation.

<sup>37</sup> Recital 169, provisional regulation.

<sup>38</sup> Table 11, provisional regulation.

<sup>39</sup> Recital 187, provisional regulation.

<sup>40</sup> Recital 176, provisional regulation.

reduced production costs as evidenced.<sup>41</sup> Indeed, this was acknowledged by an EU producer in support of the anti-dumping investigation: *“a lot of EU producers of the products concerned import them from China and then resell them as EU products to lower prices winning the market and determining the crisis of companies which, like us, produce everything inside their own country”*.

In light of the above reasons, it is clear that the real causes of any material injury that may exist are not the Chinese imports but a combination of the economic crisis, new markets, imports from other countries, as well as some other factors listed above. Yet, throughout its causation analysis, the Commission scrutinized injury and other contributing factors in isolation and *“separated the effects”* of these one by one.<sup>42</sup> Such a black-and-white and rather simple analysis misses the bigger picture that there rarely exists one single external factor as the cause of injury. Analyzing each contributing factor in isolation will obviously rule out other external contributing factors, as well as contributing internal factors, to the effect that Chinese imports must be to blame. Unless and until the Commission adopts an analysis of all other factors combined, any analysis like the one carried out by the Commission is not objective. For this reason, we request the Commission to provide a combined analysis of the other factors to establish a causal link.

#### **4. Union interest**

##### **4.1. Price increase for the consumers**

The Commission states that the unrelated importers have margins between 50-200% and therefore will be able to cover the duties without price increases for the consumer.

It might be true that for individual articles the margins are in that range but for the majority of the articles the margin is much lower.

During the audits at unrelated importer side it was proven by the audited unrelated importers that they have high importation and post importation costs between 50-70%

This fact is not mentioned at all and again draws a wrong picture.

According to the basic understanding of business administration margin and net profit are 2 different things. The Commission ignores that mentioning only the margin at unrelated importer side and only net profit at industry side.

If the Commission has a look on the net profit of the sampled unrelated importers it will be easy to find out that after deduction of all that importation and post importation costs the net profit is in a similar range then the net profit of the industry (see below table).

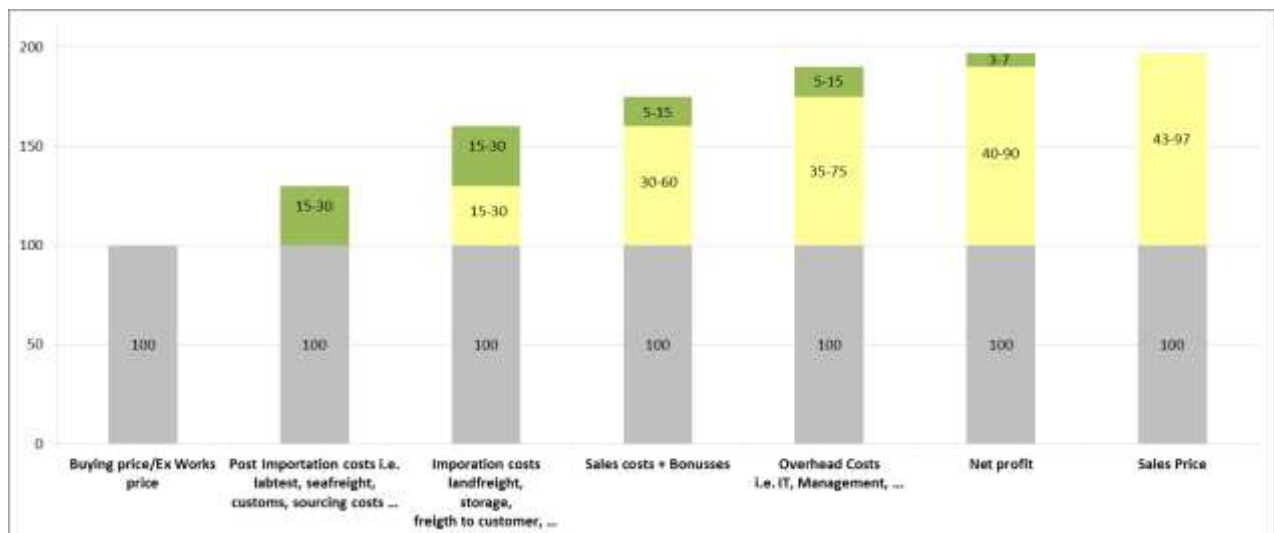
Therefore – of course – the unrelated importers will not be able to cover the anti-dumping duty, price increase will be the consequence for the consumer.

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<sup>41</sup> Table 11, provisional regulation.

<sup>42</sup> Recital 191, provisional regulation.





Principle visualization based on experience of unrelated importers

#### 4.2. Number of employees at unrelated importer side

In recital 200 the Commission states that within the 5 sampled unrelated importers work 350 people in the buying and selling area of the product concerned.

In reality more than 10.000 people in relation to the product concerned only at the 5 sampled unrelated importers. In a hearing dated August 22<sup>nd</sup> 2012 it was already told to the Commission that for one unrelated sampled importer which is also a retailer more than 5.000 people work with the product concerned. Obviously the Commission has ignored that fact. The Commission wants to draw a picture that on unrelated importer side only a very few working places are jeopardized but on industry side more than 25.000.

**This is wrong.**

Even if we follow the numbers (350) of the Commission we can make an easy calculation:

- The sampled unrelated importers represent 6% of the import volume to the EU
- If the 350 people are correct and we calculate with the same ration the staff for 100% of the imports it means almost 6.000 people

Therefore we have a clear union interest and we request the Commission to open that information to the member states, as 6.000 to more than 10.000 working places are jeopardized due to the anti-dumping duties.



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## List of Annexes

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- Attachment 2 - EUROSTAT Trade Statistics China to EU 6911
- Attachment 3 - EUROSTAT Trade Statistics EXTRA TRADE EUR27 6911
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- Attachment 5 - BHS Geschäftsbericht 2010
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- Attachment 7 - Rosenthal 2010-12-31 ebilnaz