AD586 – Anti-dumping proceeding concerning imports of ceramic tableware and kitchenware originating in the People's Republic of China

Response by FTA to Commission Regulation 1072/2012 imposing provisional duties

Failure to satisfy conditions within Article 5(4) of the basic Regulation[1] (standing)

Under recital (2) of the Regulation, it is stated that the proceeding was initiated following a complaint lodged on behalf of EU producers representing *"more than 30% of the total Union production of ceramic tableware and kitchenware."* In the Commission's response to the FTA's submission to the initiation of the investigation, dated 15 November 2012, this figure is elaborated as being *"circa 31%"*. In the complaint, the total production of the product concerned by the complainants was given as 35.847.830 for the first half of 2011. The complainants have subsequently filed updated figures stating that their production totalled 74.126.624 kilos in the IP.

The FTA submits that this figure does not meet the "standing requirement" of Article 5(4) of the basic Regulation which states that *"...no investigation shall be initiated when Community producers expressly supporting the complaint account for less than 25% of total production of the like product produced by the Community industry."*

Under Annex B.3.3 of the complaint, the complainant correctly states that other household articles, not subject to the investigation, are included within CN Codes 6912 00 10, 6912 00 30, 6912 0050 and 6912 00 90 and (for the purpose of import and export) gives a conservative estimate that the product under investigation represents 80% of the total official figures of those CN Codes. In other words, according to the EU producers themselves, products which are not covered by this investigation account for a maximum of 20% of the products covered by those CN Codes.

If one examines import and export data[2] for the relevant CN Codes for the years 2008 to the IP, and deducts the maximum 20% provided by the complainants from the total figure for CN Codes 6912 00 10, 6912 00 30, 6912 00 50 and 6912 00 90, one arrives at the same figures as seen in Regulation 1072/2012[3]. This indicates that the Commission has confirmed the assessment of the complainants.

It is reasonable to assume that the same percentage can be applied to the EU production of the product covered by those CN Codes, particularly since it has already been confirmed that it applies to exports of the EU produced product.

PRODCOM data obtained from Eurostat for the codes 2341 11 30, 2341 12 10, 2341 12 30, 2341 12 50 and 2341 12 90 (which Eurostat confirms corresponds to CN Codes 6911 10 00, 6912 00 10, 6912 00 30, 6912 0050 and 6912 00 90 respectively) gives a figure for total EU production sold of 355.348.650 kilos[4] during the IP. Production under CN Code 6911 10 00 accounts for 144.540.000 kilos of that amount. The remaining codes account for 210.808.650 kilos. If one reduces that latter figure by the maximum 20% provided by the complainants the result would be 168.646.920. This gives a minimum total production figure of the product under consideration falling with the five CN Codes under 6911 and 6912 of 313.186.920 kilos for the IP.

[1] *Council Regulation (EC) No 1225/2011 on protection against dumped imports from countries not members of the European Community*
[2] Source: Eurostat
[3] Recitals (113) and (167)
[4] Data for EU production "total" (i.e. sold production plus any production placed into stock at the end of the year) is not available.

However, the Commission has calculated the figure to be 240.200 tonnes[5]. In order to obtain that figure, one would have to claim that only 45% of the products within CN Codes 6912 00 10, 6912 00 30, 6912 0050 and 6912 00 90 produced in the EU consists of the product concerned. That is clearly ludicrous. Therefore, one must conclude that EU production figure quoted by the Commission is incorrect.

If one compares the more accurate EU production figure (313.186.920 kilos) to the updated IP total production figure supplied by the complaints (74.126.624 kilos) the complainants standing equates to 23.67% - and is likely to be lower as explained above. Since this is below the minimum standing requirement set by Article 5(4) of the basic Regulation, the investigation should be terminated immediately.

Failure to respect conditions of Article 19(1) of the basic Regulation

In its submission to the Commission following the initiation of the investigation, the FTA argued that the reasons given by the complainants to support their request that their names be withheld from the file open for inspection to interested parties were insufficient for the "good cause" requirement under Article 19(1) of the basic Regulation to be met. In its response, dated 15 November 2012, the Commission disputes this claiming that the risk of retaliation was sufficient to keep the complainants names confidential.

The FTA is therefore somewhat concerned that it was considered necessary for the complainant to file further clarification regarding the risk of retaliation on 14 November 2012; the day immediately preceding the publication of Regulation 1072/2012. Either the information submitted at the time the complaint was sufficient, or it was not.

By withholding these names, the FTA submits that we (and other interested parties) have not been placed in a position during the current administrative procedure in which we can effectively make known our views on the correctness and relevance of the facts and circumstances taken into consideration by the Commission in this respect, nor on any evidence presented by the Commission in support of an allegation relating to the existence of dumping and to the resultant injury. This is contrary to established jurisprudence[6].

Product concerned and like product

In its submission following the initiation of the investigation, the FTA raised concerns over the wide product scope covered by the CN codes 6911 10 00, 6912 00 10, 6912 00 30, 6912 00 50 and 6912 00 90. It was evident that the variety of products, with their associated differences in quality and price within each CN code[7] would necessitate the use of PCNs. We were further concerned about the Commission's practice in previous investigations (e.g. *Footwear*[8]) of grouping different PCNs together as a "like product" resulting in an inaccurate picture of comparable products and urged it to pay due diligence in its assessment.

At a Hearing on 22 August 2012 with the FTA and a group of importers/retailers, errors in the Commission's preliminary assessment were detailed. However, since then, the FTA has learned that these errors remain. Until this situation is rectified, a legitimate conclusion to the investigation cannot be found.

[5] Table 3 under recital (122)

[6] T-274/07 *Zhejiang Harmonic Hardware Products Co. Ltd v Council* [2011]

[7] Such discrepancies in price and range within the same CN code were illustrated with examples at the Hearing of 16 March 2012 between the FTA, an importer and Commission officials.

[8] AD499 *Imports of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam* where women's hiking shoes and women's court shoes were placed within the same PCN

Injury: Union consumption

There does appear to be a drop in EU consumption of the product concerned over the period considered. This is particularly seen from 2008 to 2009; unsurprisingly, in view of the economic crisis at the time rather than imports from China (which also showed a significant drop). However, during the period considered, imports from China fell by 49.779 Tonnes whereas sales by EU producers in the EU fell by a lower amount: 38.237 Tonnes.

This shows that the EU industry has not been injured by the level of imports from China.

Injury: Profitability

The Commission claims (recital 135) that the 4.2% profit realised by the Community producer in 2008 "*cannot be considered as a normal profit*". It bases this conclusion on the suggestion that the industry was *"already in a fragile state"* in 2008 owing to an increase in imports from China which (a) increased strongly in 2002-2004 and (b) reached a significant market share after the elimination of quotas in 2005. It is also suggested that the industry underwent a major restructuring as a result.

Whilst it is true that imports from China did indeed increase by more than 50% (68.197 Tonnes) between 2002 and 2004, this was as a result of the gradual increase to the quota limits. Such increases were known in advance of the time they were implemented and therefore it is the fault of the EU industry itself if it did not react accordingly and to a sufficient degree. In addition, over the same period, the EU industry increased its production by 44.393 Tonnes[9]. As previously submitted by the FTA, the increase in EU market share as a result of the elimination of quotas was a wholly foreseeable consequence – as the restructuring by the EU industry clearly proves.

However, the FTA is in accordance with the Commission's assessment that the 4.2% profit realised by the industry in 2008 was not normal. Using information freely available[10], the profitability of Villeroy & Boch, a significant EU producer, has been calculated for the years 1999 to 2004 (during which time imports from China were under strict quota) and for the period 2005 to 2007 (immediately after the elimination of the quota and before the period considered for the investigation):

Year	Profit all products (%)	Profit tableware (%)
1999	2.9	3.0
2000	1.2	1.1
2001	1.0	1.8
2002	1.1	2.0
2003	-2.7	0.7
2004	1.7	3.1
2005	1.5	1.8
2006	1.8	1.0
2007	2.8	3.3

As can be seen from the above table, a 4.2% profit is indeed far from normal; it is an exceptionally good result. This suggests that the conclusion under recital (135) of Regulation 1072/2012 that a normal profit level should be 6% is widely optimistic. In addition, the Commission obtains such figure on the basis of the profit level it set for *"another widely used and important consumer product…leather footwear"*. Not only is the profit level for that product open to doubt (since it consists of a figure imposed by the Commission itself, rather than by independent verification) the comparison is not credible; the two products are wholly different. A more reasonable comparison would be that of ceramic

[9] Source: Eurostat
[10] Villeroy & Boch annual reports

tiles which was subject to an anti-dumping investigation in 2010/11. Here, the Commission concluded that an acceptable profit was 3.9%. This is particularly relevant when one considers that the apparent profit level achieved by the EU industry in the current investigation was 3.5% in the investigation period[11].

As a side note, the FTA was interested to learn that the UK producer *Steelite*, which is particularly relevant to the investigation, had posted record sales for the years 2010[12] and 2011[13].

Profitability: lack of injury

The above notwithstanding, the FTA reads recitals (125), (131), (138) and (167) with interest since the data presented in the tables thereunder show that the EU industry is suffering no injury at all during the IP; indeed it meets the target set by the Commission:

Table 4 under recital (125) notes total sales within the EU as 152.095 tonnes.
Table 9 under recital (131) notes the average price in the EU as €3.615 per tonne.
Therefore, total sales in the EU are €549.823.425

Table 13 under recital (167) notes total export sales as 88.105 tonnes.
Under the same table the average export price is noted as €3.125 per tonne.
Therefore, total export sales are €275.328.125

Therefore, total sales are €825.151.550

Table 11 under recital (138) notes the cost of production as €3.230 per tonne.
Therefore, the total cost of production for all sales is €775.328.125

This gives a profit of €49.305.550 or 6.36%.

Assuming the data presented in Regulation 1072/2012 is correct in this regard, it can be seen that the EU industry is in a healthy state and is not suffering injury from the imports of the product in question.

Causation (other factors): general statement

Throughout recitals (149) to (189) the Commission dismisses all arguments put forward by interested parties with respect to factors other than the alleged dumped imports that may have caused injury to the Union industry stating, for the most part, that each were not sufficient to break the causal link between the dumped imports and the injury suffered by the Union industry.

However, the veracity of that conclusion notwithstanding, it is evident that the Commission has failed to consider the cumulative effect of each of those injurious factors and has considered each in isolation. This is completely illogical; no business would agree that it has not suffered significant injury by numerous injurious factors simply because each separate factor has only caused a limited degree of injury. Similarly, the Commission does not examine the injurious effect of each individual imported product in isolation but rather cumulates the injurious effect of <u>all</u> imported products that are subject to investigation.

This is borne out by the wording of the basic Regulation, Article 3(7):

[11] Table 10 under recital (132)
[12] See: http://www.steelite.com/home/news-and-events/news/111/record-sales-for-steelite-international
[13] See: http://www.steelite.com/home/news-and-events/news/127/record-sales-for-high-flying-uk-manufacturer

*"Known **factors** other than the dumped imports which at the same time are injuring the Community industry shall also be examined to ensure that injury caused by **these other factors** is not attributed to the dumped imports under paragraph 6. **Factors** which may be considered in this respect include…"* (emphasis added)

If it were intended that "other factors" were to be taken in isolation, the wording would be different (e.g. *"Any known **factor** other than the dumped imports…**this factor** is not attributed…**A factor** which may be considered in this respect could be…"*). Therefore, the Commission should establish the combined effect of the other injury factors.

Causation (other factors): exports by Union industry

In response to the suggestion that a decrease in exports from 2008 to the IP (but most particularly between 2008 and 2009) injured the Union producers, under recital (169) the Commission states that *"…the injury analysis focuses on the situation in the Union industry on the Union market."* The FTA is at a loss to understand this reasoning. The basic Regulation does not limit the injury analysis in this respect: *"…the term 'injury' shall, unless otherwise specified, be taken to mean material injury to the Community industry…"*[14] and specifically lists *"the export performance"* of the [Union] industry as a factor to be considered as causing injury to the EU industry[15].

It continues by saying *"exports by the Union industry can be interpreted as a way to compensate decreasing sales on the Union market, i.e. where injury is being suffered."* The FTA is not clear what relevance this statement has. Most companies would like to exploit the markets in third countries as a means of augmenting their sales (indeed, many of the "high-end" producers do so very effectively) regardless of their Union sales level. However, to imply that this sales model is one that is used (only) when Union sales are decreasing and also that this is a result of injury (thereby implying that it is a reaction to dumped imports) is rather stretching the issue.

It concludes by noting that the export sales prices of the sampled producers remained stable over the period considered. Quite why the Commission switches from a discussion of the Union industry to only the sampled producers is unclear, however, it is noted that the average export sales prices of the Union industry likewise remained stable. On this point it is interesting to compare those figures with data presented in Table 9 under recital (131) which shows the average prices on the Union market. From this comparison it can be seen that consistently throughout the period under consideration export prices were lower than Union sales prices (17% on average). In this respect, it can be reasonably argued that the fact that the average export prices were lower than the average sales prices on the Community market throughout the period considered has had a negative effect on the overall financial situation of the Community industry, even if it does not directly affect the profitability on the Community market. Therefore it cannot be ruled out that the injury suffered by the Community industry has also been indirectly caused by the negative development in profitability on export markets, since this would have an effect for example on the Community industry's ability to make new investments or hire new staff.

Causation (other factors): elimination of import quotas

Within recitals (171-173) the Commission appears to accept that the removal of the import quotas in 2005 negatively affected the Union industry before the period considered – as was indicated by the Union industry itself and the FTA. However, it then completely dismisses the suggestion that the effects are still relevant during the IP saying it is the dumped imports which have caused the injury in the IP. The FTA questions this bland ascertain; as a result of the removal of quotas, imports from China

[14] Article 3(1)
[15] Article 3(7)

almost trebled from 2004 to 2005 and remained at a relatively stable level in the following years. The fact that the Union industry attempted to persuade the Commission to open an anti-dumping investigation as early as one year following the quota elimination shows it was not able to cope with the (albeit wholly predictable) rise in import levels. The fact that that complaint was rejected by the Commission indicates that at the time the imports were not being dumped (or were not causing injury). Consequently, the restructuring and downsizing by the Union industry can only be as a result of the injury caused by the high level of legitimate imports.

Causation (other factors): Anti-competitive practices on the Union market

The Commission dismisses the claims by interested parties, included the FTA, that fines imposed on the seventeen companies involved in a price fixing cartel for bathroom fixtures and fittings caused injury to the Union industry by stating that it took place *"before the period considered and involved other products"*. It goes on to say that the only undertaking concerned which is also active in the product concerned has filed for an annulment of the fine.

Whilst it is true that the period of the cartel was 1992 to 2004, as it points out in the preceding sentence the fines were imposed in 2010 – most certainly during the period considered. The reference to the filing for annulment by Villeroy & Boch (for it is the undertaking in question) is irrelevant when one considers that the injury caused by the fine of €71.5m is unaffected by such action – indeed it is listed in the Annual Report of 2011[16] (where additional costs of €1.5m are included) – and that such filings are commonplace; five other companies involved in the cartel have done likewise.

It also dismisses the fact that Villeroy & Boch together with several of its competitors and the German Association of the Ceramics Industry are under investigation (launched in February 2011) by the Bundeskartellamt for possible collusion in the tableware sector by stating that the that the outcome has not yet been made public and that the investigation only concerns one Member State while the industry is quite widespread.

This rather glib statement ignores the fact that Germany is by far the most significant producer of porcelain and china tableware and kitchenware[17]. The identity of the individual complainant producers behind the current investigation has, rather conveniently, been kept confidential. However, the complaint clearly states that the German Association of the Ceramics Industry has requested the investigation; i.e. the same association currently under investigation by the Bundeskartellamt. It is likely that the companies involved will have reacted to the opening of the investigation by ceasing the alleged activities. Inevitably, this will have had an injurious impact on their business for the IP.

Causation (other factors): second-hand markets

The FTA is aware of the information to which the Commission refers under recital (179). This clearly shows that a significant second-hand market exists within the EU. This is a direct result of the recession within the EU and the fact that EU consumers are looking to obtain the product concerned at prices lower than those at "first sale".

We do not accept the Commission's claim that *"…it was impossible to quantify this market…"*; this seems to be a convenient excuse to arrive at the conclusion that a break in the causal link could not be established.

[16] See: http://cdn.villeroy-boch.com/fileadmin/upload/ir/documents/geschaeftsberichte/GB_VB_2010_en_gesichert.pdf
[17] Source: Eurostat PRODCOM data. Note: for PRC Code 23411130 only – data for other codes is confidential.

Causation (other factors): EU health and safety requirements

In its submission following the initiation of the investigation, the FTA noted that the EU has health and safety requirements which are far more stringent than those in China. We suggested that EU producers are faced with increased production costs as a consequence of implementing the necessary improvements in safety and environmental procedures that will not be encountered by producers in China. We provided the (non-exhaustive) list of examples: Directive 2003/10/EC (which concerns the exposure of workers to the risks arising from physical agents), requirements to remove lead from waste water, standards for materials that come into contact with food and the REACH Regulation.

In recital (186), the Commission says *"As to Union safety and health requirements, it is noted that they are applicable to Union-made and imported products, thus impact prices of all operators."* This is simply not true; for example, Directive 2003/10/EC does not apply to Chinese workers. In addition, it is fair to say that changes to production methods in the EU are more expensive than changes to production methods in China. Therefore, our initial argument remains valid and should be addressed.

Causation (other factors): counterfeiting

Under recital (186) the Commission claims that *"Given that no information to substantiate the counterfeiting claim [submitted by the FTA] was submitted, the effects of that claim could not be analysed."*

The FTA freely admits that no supporting documentation was submitted to support its claim that counterfeiting of EU produced products could cause an injurious effect to the EU industry. However, we are surprised that the Commission is unable to assess the effects and that such substantiation was necessary. In this regard we direct the Commission to the website of Cerame-Unie (the EU association with overall responsibility for the EU ceramics trade) where it is stated:

> *"EU ceramic manufacturers are increasingly faced with counterfeiting of their products. This causes serious damage to the EU industry."*

also:

> *"Often it is extremely important to register IPR not only in the EU, but also in other jurisdictions, particularly in China, in order to be able to fight counterfeiting at the source."*

The same website also mentions:

> *"...Cerame-Unie has established a long-term cooperation with the China IPR SME Helpdesk of the European Commission."*[18]

and goes on to talk about European-wide workshops that were conducted in 2009 and a ceramic specific guide on IPR[19] that was prepared by the Helpdesk. So it would seem that the Commission is not only is fully aware of the counterfeiting situation in this area but also has ample information at its disposal. Admittedly, it is DG Enterprise that is responsible in this regard, but the FTA fails to see how DG Trade is unable to adequately analyse the effects.

Whilst the FTA in no way condones counterfeiting activities such as those described by the EU producers, it is clear that it exists and is having an injurious effect. In addition, since the Commission is clearly aware that counterfeiting exists (not least because the FTA raised the issue) it is, evidently, a "known" factor that is causing injury to the EU industry and one that the Commission is obliged to

[18] http://www.cerameunie.eu/en/policy-issues/trade/ipr-patent-legislation
[19] http://www.china-iprhelpdesk.eu/docs/publications/China_IPR_Guide_for_the_Ceramics_Industry.pdf

analyse – as confirmed by the WTO: *"We consider that other "known" factors would include those causal factors that are clearly raised before the investigating authorities by interested parties in the course of an AD investigation."* and *"Article 3.5 therefore mandates the investigating authorities to examine other known factors…"*[20]

Causation (other factors): trade barriers

Within the same recital the Commission accepts the claim by the FTA that *"…trade barriers could prevent Union producers from exploiting their export potential…"*

Cerame-Unie also stresses this point:

> *"…it is often difficult for ceramic products to access third country markets due to a large number of trade barriers…many relevant markets for EU exports have been applying disproportionately high import duties and are increasingly putting into place technical barriers to trade, thereby making it increasingly difficult for EU manufacturers to export their products. Such practices are particularly harmful to the exports in ceramic tiles, tableware and refractory products."*[21]

However, the Commission then makes the confusing conclusion *"…however it has no impact on decreasing sales on the Union market, i.e. where injury is being suffered."*

Whilst this statement is technically accurate, it would appear that the Commission is limiting "injury" to sales on the Union market. The basic Regulation in no way contains such a limitation: *"…the term 'injury' shall, unless otherwise specified, be taken to mean material injury to the Community industry…"*[22] In addition, Article 3(7) of the basic Regulation, specifically mentions "export performance" in the non-exhaustive list of "other factors" that may be causing injury to the EU industry. Therefore we fail to see why the Commission has dismissed the claim in such a manner.

The Commission has admitted, in effect, that trade barriers in third countries could affect the export performance of the EU industry. The EU industry makes special mention of the injury caused in this regard. Therefore, the Commission should assess the injurious effect of trade barriers on the EU industry.

Causation (other factors): long term reduction in demand for EU produced product

The Commission dismisses arguments provided following the initiation of the investigation that the decline in consumer demand for porcelain started several years prior to the period under investigation. However, this is contrary to the conclusion of the EU producers themselves. Annual analyses of the tableware division of Villeroy & Boch state the following:

> *"Taking the **shrinking domestic market** into consideration, the Tableware Division was able to maintain its position well in the financial year 2000. A **lack of consumption stimuli** led to a further reduction in the sales volume figures recorded for Germany in 1999."*[23] (emphasis added)

> *"Despite the **difficult market environment in Germany, Europe** and North America and the **sales decline involved**, the year 2001 was marked by a further increase in result. **Products for the laid table suffered the consequences arising from the restraint in consumer spending, which was already apparent at the start of the year**. Particularly in mainland Europe, dealers in many places*

[20] WT/DS122/R: *Thailand – H-Beams from Poland*
[21] http://www.cerameunie.eu/en/policy-issues/trade/market-access-trade-barriers
[22] Article 3(1)
[23] Villeroy & Boch annual report 2000

reported sales declines in double figures, which had a negative influence on sales within the industry. As a result, the German porcelain industry once again had to accept a sales decline of roughly 6% in the year 2001. ***The segment for medium and high quality tableware was particularly affected, suffering losses*** *of roughly 9%...When compared with its German competitors, Villeroy & Boch was able to assert itself well in* ***this unfavourable economic situation. Reporting a sales decline of 3.3%, both on the domestic*** *and export markets, the Tableware Division came off clearly better."*[24] (emphasis added)

"The Tableware Division was able to successfully assert itself in the ***extremely difficult market environment*** *in 2002...Despite* ***the insecure general economic situation****, our primary goal is therefore to once again increase the Division's earning power."*[25] (emphasis added)

"An extremely difficult market environment confronted the Tableware Division in the year 2003*...A further considerably adverse effect was exerted on capacity utilisation in the pattern sector, owing to the* ***unexpectedly strong decline in sales of decorated products, in connection with the trend towards less expensive, frequently undecorated ceramic products...****Again in 2003 the Tableware Division responded to the* ***retail trade's increasingly difficult situation*** *in the branch by systematically opening its own new points of sale."*[26] (emphasis added)

"The [Tableware] Division was even able to achieve a 1.3% sales increase on the ***German market, which continues to suffer from a dampened demand for high-quality consumer durables."***[27] (emphasis added)

It is clear that the tableware market for EU producers was undergoing difficult times even during the period when imports from China were at levels many times lower than during the period of investigation (i.e. 95.584 tonnes in 2000 rising to 190.574 tonnes in 2004, compared with 535.593 tonnes in 2008). Whilst this occurred before the period under investigation it is a relevant to this investigation; it points to the fact that the EU industry was already suffering from injury other than the alleged dumped imports before the investigation was initiated.

It is also relevant to consider that the EU industry also requested investigations into the same (and even wider) product ranges on at least two other occasions; in 2006 and in 2010. For the FTA, this shows that the industry is attempting to use the TDI system as a means achieving the protection it was afforded under the China quotas.

Union interest (unrelated importers): employment

Under recital (200) the Commission states *"...during the IP the sampled importers... employed some 350 people in the importation and resale of ceramic tableware and kitchenware."*

It is important to read this alongside the statement in recital (193) that *"The Union industry consists of more than 200 producers...directly employing more than 25000 people in the IP in the production and sale of the like product."*

This is a gross distortion of the importance for employment of importers since it is comparing the employment level of more than 200 producers with just five importers. Seen side-by-side it appears that the EU industry is a far more important employer.

[24] Villeroy & Boch annual report 2001
[25] Villeroy & Boch annual report 2002
[26] Villeroy & Boch annual report 2003
[27] Villeroy & Boch annual report 2004

In addition, the figure of 350 for the five sampled importers is a gross understatement. Figures obtained by the FTA from those importers show that the true figure is 10286; thirty times higher. Since those importers have provided the same employment figures to the Commission before the Regulation in question was drafted, the FTA fails to see why the true figure is not listed. Of course, the full employment figure for all EU importers/retailers is significantly higher[28].

Union interest (unrelated importers): provision of data

Within recitals (200) and (201) the Commission comments on a varied degree of cooperation from the five sampled importers listed under recital (20). It gives the example:

> *"…[Metro and Ikea][29]* ***did not*** *provide full profitability data and the margin between purchase and resale prices to unrelated customers and one of them even denied access to its accounts. These parties only provided transfer purchase prices and/or transfer sales prices. Therefore,* ***although repeatedly requested, no meaningful information was received*** *which enabled an estimation of a representative importers' gross and net margin on the product concerned for the sample as a whole…the data provided by [Metro and Ikea][30],* ***as it was deficient in many aspects****, did not enable an estimation of the gross and net margin of profit of retailers of the product concerned."* (emphasis added)

Whilst the first emboldened text may be (semantically) accurate, it implies a deliberate withholding of the information. This implication is strengthened by the second emboldened text. Whilst the FTA cannot speak for Ikea, we are aware that Metro (a member of the association) explained to the Commission on a number of occasions that it was unable to provide data and gave detailed explanations why this was so. In particular, when purchasing from a broker it is commonly impossible to establish the origin of the goods in question. This also renders the third emboldened text as somewhat disingenuous.

In addition, it is interesting to note that the Commission did not visit Metro to verify the information it had this far provided until 17/18 October 2012 whereas the Working Document (on which Member States took a decision regarding the imposition of provisional duties at the Anti-Dumping Committee of 23 October) was drafted prior to 11 October and contained the same text.

Union interest (unrelated importers): profit

In recital (202) the Commission gives a gross profit margin for EU importers of 50% to 200%. This is not only inaccurate but also misleading.

In the first instance, each of the importers within the sample with whom the FTA has spoken have confirmed they have presented the Commission with information that shows the maximum gross margin achieved is 70%.

In the second, this completely ignores the fact that significant costs must be subsequently borne by any importer before a net margin can be realized. In this regard, those importers with whom we have spoken have indicated that this is circa 3%. The Commission goes on to compound this error by referring to a CBI Report[31]; specifically Table 3.1 showing CIF/consumer price ratios of 2.6 to 5.3[32] and

[28] It has not been possible to obtain this figure within the limited time required to submit this paper.
[29] Although not named, it is evident from the description in the text.
[30] *ut supra*
[31] CBI Market Survey: The Tableware, Kitchenware and other Household Articles Market in the EU
[32] The FTA is aware that Member States were presented with this table (without the accompanying text) at the Anti-Dumping Committee of 10 October 2012.

from this concludes that the importers would be *"perfectly capable of taking in an anti-dumping duty at the proposed rate".* There are three important points to be made on this regard.
Firstly, again, the ratio listed is a gross figure that neglects to consider any subsequent costs thereby giving a misleading indication of the actual margin achieved by importers. Secondly, the data within the table is at best only partially relevant and could be completely worthless. As the section within which the table is presented states:

> *"…the table and kitchenware market consists of a wide variety of products. It includes cutleries, metalware, plasticware, woodware, glassware, ceramicware and china and porcelain. Therefore, it is not feasible to define or to give advice on prices for individual products in this survey…"*

It goes on to state that data for *"three different products"* is shown in the table. However, the three products are not specified. Therefore, the data therein can be at maximum only one third relevant and may be completely irrelevant. Finally, it is apparent that the data within the report does not go beyond 2008 – the first year of the period considered for the investigation.

The FTA should also like to point out that it creates a distorted picture when it compares gross profits for importers alongside net profits for EU producers (c.f. recital 135)).

As a final point, the FTA does not consider an article from *China Daily* newspaper to be a suitable source upon which the Commission should assess the costs incurred by importers of a ceramic mug due to the anti-dumping duties.

Union interest (interest of consumers (households)): supply problems
The Commission dismisses such claims under recital (224) by arguing that the Union industry is capable of supplying one third of the total Union consumption – although this figure is at odds with the data presented in recital (110) which shows Union consumption for the IP to be 726.614 Tonnes and the data in recital (122) that claims Union industry production capacity to be 324.072 Tonnes. The discrepancy of these notwithstanding, it neglects to consider that the average prices at which the Union produced product is sold are too high to permit such a market share. Finally, the closing statement that *"China is not the only source of imports into the Union"* ignores the fact that China is by far the most important source – an omission which is surprising when one considers that this is the cause, in practical terms, for the current investigation.