

# **AD 586 – ANTI-DUMPING PROCEEDING CONCERNING CERAMIC TABLEWARE AND KITCHENWARE FROM CHINA**

THIRD INJURY HEARING ON BEHALF OF CHINA  
CHAMBER OF COMMERCE FOR IMPORT AND  
EXPORT OF LIGHT INDUSTRIAL PRODUCTS  
AND ARTS-CRAFTS (CCCLA)

## Participants

Die Teilnehmer der Chinesischen Delegation möchten nicht genannt werden.

The participants of the Chinese delegation would not be called.

- Knud Holst (Holst Porzellan GmbH); and
- Dr. Konstantinos Adamantopoulos, Joris Cornelis, Thomas Coombs and Nicolaj Kuplewatzky (HFW).

## Presentation summary

- 1. Procedural deficiencies** (Standing);
- 2. Product scope** (Fine bone china and durable porcelain should be excluded from the scope of the investigation);
- 3. Injury** (Improving injury indicators, anti-competitive practices in the tableware market);
- 4. Causation** (Global economic crisis, combined effect of other causes); and
- 5. Union interest** (Burden on consumers, importance of unrelated importers, vote of AD Committee).

# Procedural Deficiencies (Standing)

- PRODCOM DATA

- The requirement for Complainants to account for a minimum of 25% of total production of the like product is **critical** when deciding whether to commence an investigation.
- A request for an objective and transparent calculation methodology to evidence sufficient *locus standi* is **supported by various parties**, including major EU importers.
- The PRODCOM data is official, EU-sourced, independent data and **casts serious doubt over the legitimacy of the standing** of the Complainants and demands consideration by the Commission.

# PROCEDURAL DEFICIENCIES – STANDING

Table 1 – Production figures (figures last updated on 13 January 2013)

<b>PRODCOM FIGURES (LAST UPDATED ON 13 JANUARY 2013)</b>				
	<b>2011</b>	<b>2010</b>	<b>2009</b>	<b>2008</b>
<b>CN CODE</b>	<b>TOTAL</b>	<b>TOTAL</b>	<b>TOTAL</b>	<b>TOTAL</b>
<b>6911</b>	144,540,000	139,999,738	224,645,025	172,411,016
<b>6912</b>	210,808,650	216,033,887	214,961,371	317,583,355
<b>6912-20%</b>	168,646,920	172,827,110	171,969,097	254,066,684
<b>6911+6912</b>	355,348,650	356,033,625	439,606,396	489,994,371
<b>6911+(6912-20%)</b>	<b>313,186,920</b>	<b>312,826,848</b>	<b>396,614,122</b>	<b>426,477,700</b>

# PROCEDURAL DEFICIENCIES – STANDING

Table 2 – Standing (figures last updated on 13 January 2013)

	2011	2010	2009	2008
PRODUCTION	DATA	DATA	DATA	DATA
TOTAL CN 6911+(6912-20%)	313,186,920	312,826,848	396,614,122	426,477,700
COMPLAINANTS (Annex G)	35,847,830 (1 H)	67,639,283	59,404,730	71,805,782
STANDING (Annex G)	11.446%	21.622%	14.978%	16.837%
TOTAL CN 6911+(6912-20%)	313,186,920	312,826,848	396,614,122	426,477,700
COMPLAINANTS (t12.007557)	74,127,000	71,820,980	63,061,267	76,131,422
STANDING (t12.007557)	23.669%	22.959%	15.900%	17.851%

The Complainants' share of total Union production made up a mere **23.67%** in 2011, **22.96%** in 2010, **15.90%** in 2009, and **17.85%** in 2008.

- **Indeed, between 2008 and 2011, the Complainants always fell short of the 25% standing required by Article 5.4 of the basic AD Regulation, even after deducting the Complainants' "conservative" estimate that only 80% of CN Code 6912 relates to the product concerned.**
- In the absence of any detailed data provided by the Commission it is impossible for the CCCLA to check whether the standing examination has indeed been conducted thoroughly.
- We note that standing has been based on data by 50 EU producers, whereas there appear to be more than 200 EU producers.



# Product Scope

(Exclusion of Fine Bone China  
and Durable Porcelain)

- **Important physical and technical properties have been overlooked by the Commission.**
- **FINE BONE CHINA**
  - The physical properties of fine bone china have been misinterpreted in the provisional regulation, as so: "*hardness and robustness are not specific to (fine) bone china.*"
  - On the contrary, fine bone china is by its very name thin, light and delicate. It is known for its semi-transparent surface and contains bone ash.
- **DURABLE PORCELAIN**
  - Contrary to the provisional regulation durable porcelain's features are "*uncontested*". The final clay body has an aluminium content of over 24%, it is extremely chip resistant and expensive.
  - The CCCLA urges the Commission to undertake an *objective* analysis. To state that exclusion of durable porcelain provides "*misleading results*" is result-based and irrelevant.

# Injury

- Any injury analysis of companies which are part of an industry subject to an anti-trust investigation is, as would be expected, gravely distorted.
- CCCLA notes the judgment of the Court of First Instance in *Mukand Ltd v. Council of the European Union* (T-58/99):

*"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 subsidised Indian imports."* [Emphasis supplied]

- The Commission is under an obligation to consider that anti-competitive practices could have had **significant repercussions** on the injury analysis.
- The Commission did not assess whether these practices could have been a concurrent cause of the injury sustained by the Union industry. Because this factor was so readily disregarded, the investigation is vitiated by a manifest error.

- The general disclosure notes average profits of 3.2% during the IP. This is not an indication of an injured industry – rather, this is in line with other data sources.
- 1. The AD investigation into a sister industry – ceramic tiles – used an acceptable level of profit of 3.9%.
- 2. The Commission's competitiveness study into the ceramics sector shows that the net profit levels of tableware firms are traditionally below net profits of other ceramic sectors and **have been consistently below 3.5%.**

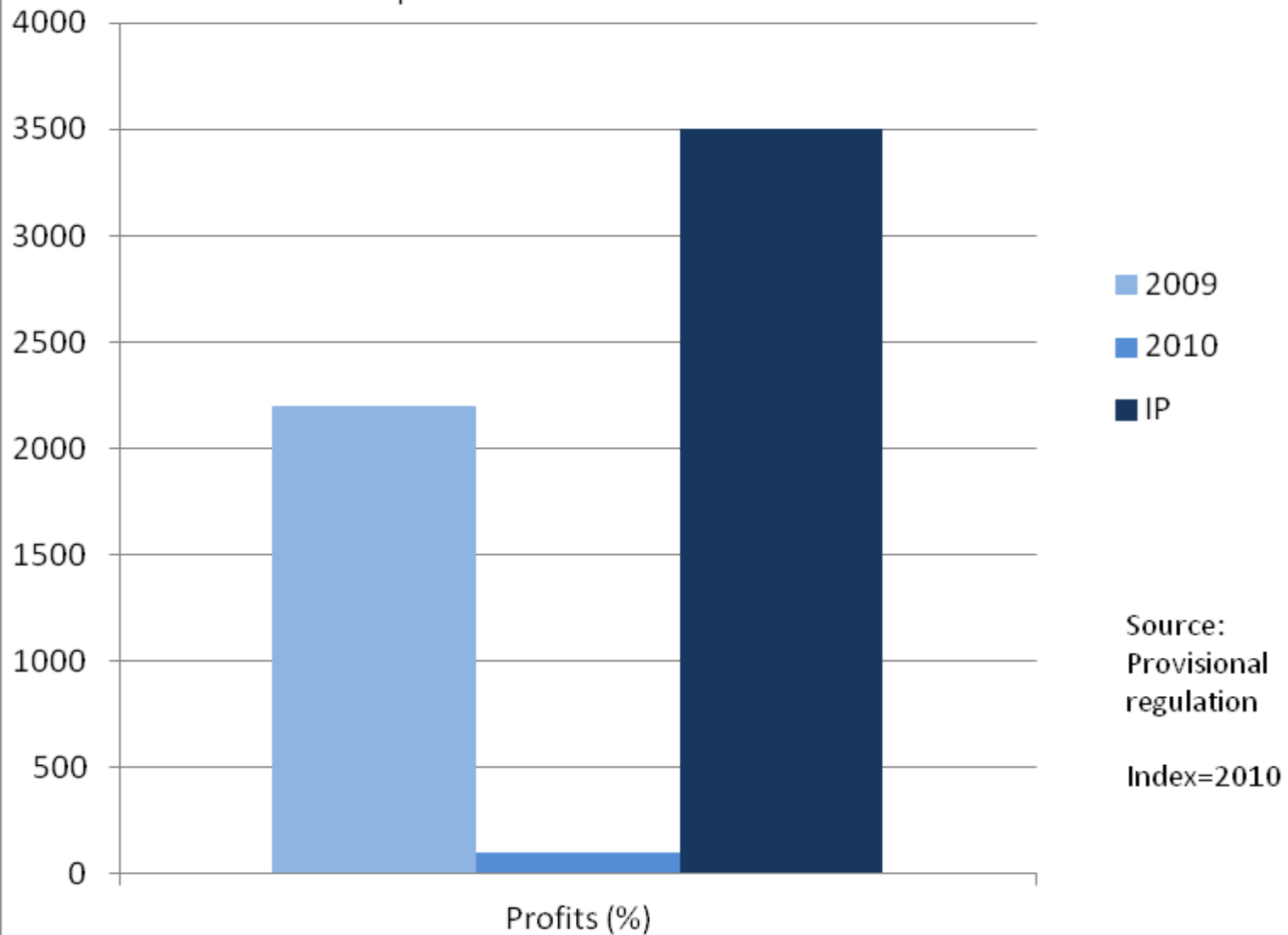
Table 2.4 Recent Trends in Profitability in the Ceramics Sector (selected)

Profit-to-turnover ratio (%)				
	2004	2005	2006	2007
Villeroy & Boch	2.5	1.8	2.4	3.5
Source(s) : CE calculations using data from company accounts.				

Source: FWC Sector Competitiveness Studies - Competitiveness of the Ceramics Sector (ENTR/06/054), page 29.

# INJURY – PROFITS

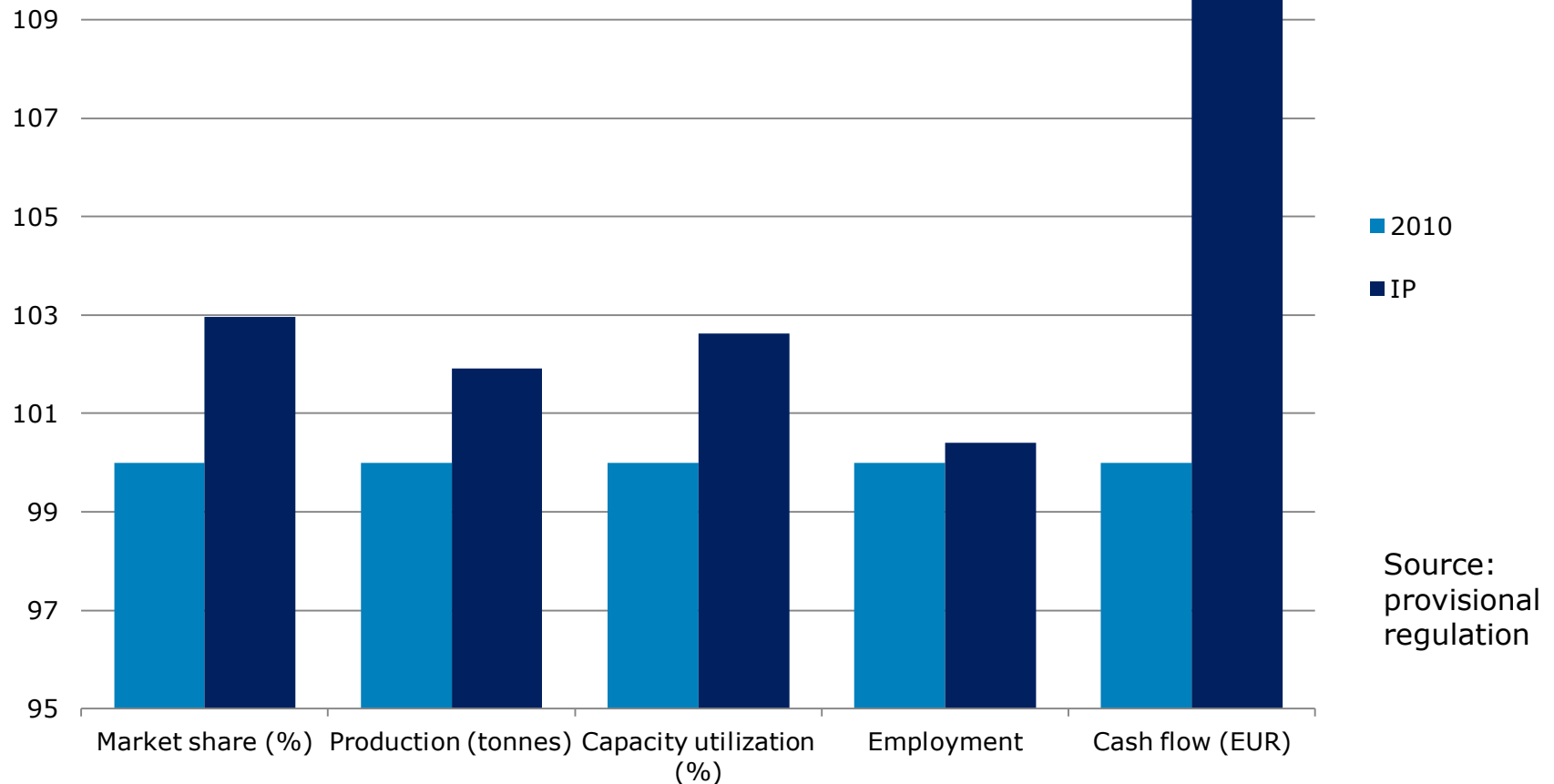
Graph 1: Profits from 2010 - IP



# INJURY – INJURY INDICATORS

Between 2010 and the IP almost all injury indicators developed positively. This data does not show a suffering industry – but a **healthy and profitable** industry throughout the injury reporting period.

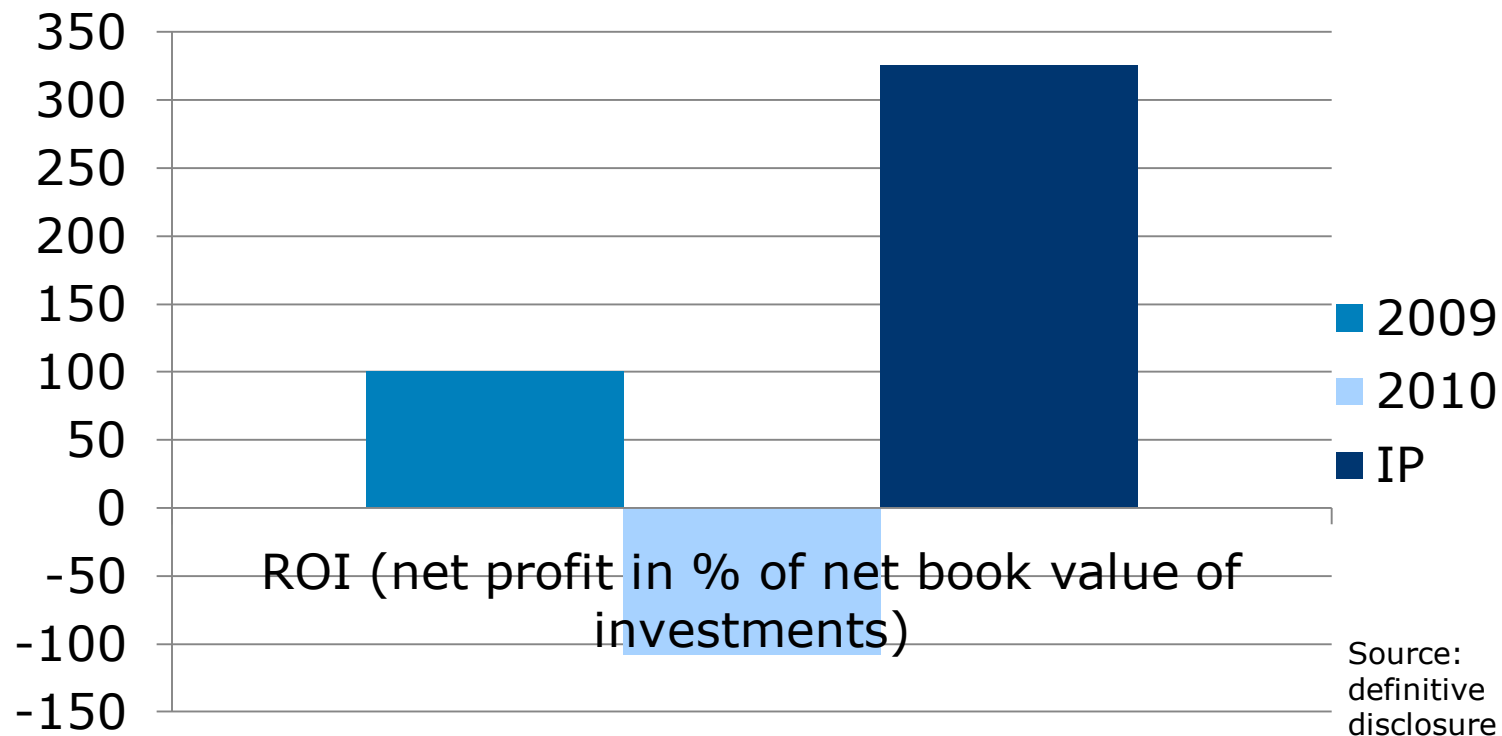
Graph 2: Positive development of injury factors from 2010-IP



# INJURY – RETURN ON INVESTMENT

- The ROI in the IP was 20.5%. This is the highest return achieved over the period concerned and more than 300% higher than in 2009.

**Graph 3: Return on Investment 2009-IP**



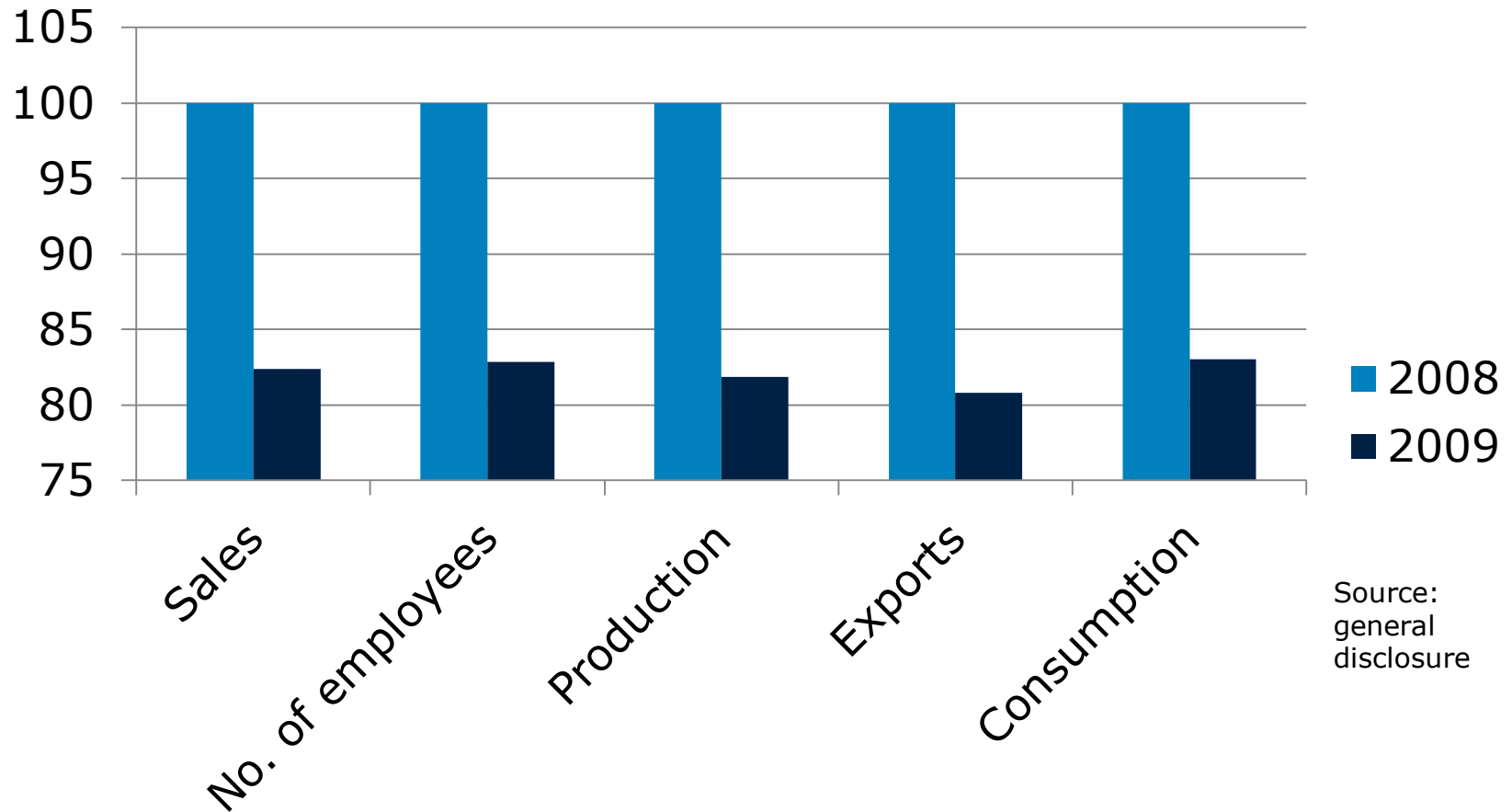


# Causation

- As already shown, injury factors developed positively as Chinese import volumes increased and vice versa. Similarly, injury factors developed negatively when Chinese import prices increased.
- The provisional regulation / general disclosure overlooks this and instead focuses on market share and "*price depression*" from lower Chinese export prices to prove causation.
- However, this ignores the following:
  - **Absence of a year-on-year negative impact in injury factors required to explain year-on-year impact of lower Chinese prices ("*price depression*"):**
    - Union profit levels remain high, at 3.2% during the IP;
    - Chinese market share decreased by 2% between 2010 and the IP; and
    - The very high return on investment of 20.5% during the IP (an increase by 300% compared to 2009) can not be explained by production / employment efficiencies.

- The impact of the global economic crisis from 2008 to 2009 was unprecedented and recession continues in the Eurozone.
- CCCLA submits that the following combined with the crisis resulted in any alleged injury to the Union industry:
  1. Poor returns on Union producers' investments and over-capacity prior to the crisis (evidenced in later results in 2010); and
  2. Lower export levels of Union producers by volume during 2009.
- The resulting drop in EU consumption has been a pivotal cause of the reduction in production levels:
  - Identical drops were evidenced between 2008 and 2009 for the following Union industry injury factors (see graph):
    - Sales;
    - Employment levels;
    - Production; and
    - Exports.

Graph 4: Development of injury factors during the Global Economic Crisis from 2008-2009



Source:  
general  
disclosure

- Other factors in addition to the Global Economic Crisis include:
  1. The rise in popularity of second-hand markets;
  2. Increase in exports from other countries e.g. Turkey; and
  3. Increased costs associated with EU regulations e.g. health and safety.
- Many of the causation factors, in particular those linked to the Global Economic Crisis, which have been considered by the Commission to date are accepted to have some effect.
- It is the combined effect of all of these that has resulted in any alleged injury of the Union producers not Chinese exports.

# Union Interest

- The **Commission has failed to provide accurate and clear information on importer profits** for the following reasons:
  1. THE GROSS MARGIN IS OBTAINED FROM AN UNDISCLOSED SOURCE
    - The "*gross margin*" used to calculate a range for importer profits of 50-200% is obtained from an undisclosed number of unidentified importers. This is wildly inaccurate and unrepresentative of the importer industry.
  2. THE MARK-UP VALUE IS OBTAINED FROM UNRELIABLE SOURCES
    - A single news report from a reporter at China Daily and an outdated CBI Market Study have been used as the authority for the assumption 150% is the mark-up value for importers.

## 3. USE OF A GROSS MARGIN TO CALCULATE PROFITS IS MISLEADING

- A gross margin does not include these important costs:
  1. Post-importation costs e.g. lab tests, sea freight, customs, sourcing cost;
  2. Importation costs e.g. land freight, storage, freight to consumer;
  3. Sales costs and bonuses;
  4. Overhead costs e.g. IT, management; and
  5. Other costs e.g. marketing, research & development.
- The gross margin provided assumes Chinese exports have and will remain at a static price.
- However, the price of Chinese imports has risen over the past 4 years and continues to rise due to rising Chinese labour and shipping costs.



- The **importance of the industry of importers has been misrepresented:**

## 1. THE SAMPLE USED IS NOT REPRESENTATIVE

- Only large or very large importers e.g. IKEA, Metro etc. have been sampled. Contrary to the sample selection for EU producers, small importers have not been included.

## 2. THE WORKFORCE FIGURES FOR IMPORTERS ARE INACCURATE AND THE COMPARISON WITH EU PRODUCERS IS MISLEADING

- 350 employees is a major underestimate. Metro and IKEA each employ approximately 5,000 workers in the ceramic industry – these are just two importers.
- A comparison of the employees of 200 producers to only 5 importers is misleading.

## 3. DATA PROVIDED BY IMPORTERS HAS NOT BEEN ACCEPTED

- The Commission has ignored data provided by leading EU importers, e.g. IKEA and Metro.
- The CCCLA urges the Commission to consider the interests of the EU importers.

## 4. AD COMMITTEE VOTE

- The Commission has ignored the vote of the AD Committee: this evidenced that Member States clearly believe that the investigation should not continue. This defeating vote emphasizes that the investigation is not in the Union's interest.

## 4. IMPORTERS CANNOT ABSORB A 36.1% DUTY

- Imposing an additional duty of 36.1% on Chinese imports will be passed onto the end-consumer.
- An argument that the prices cannot be passed onto consumers for one year (due agreed price lists) is flawed as:
  1. It assumes that importers are bound to terms without options to prevent their business being risked; and
  2. Even if the costs cannot be passed on in a year, they will eventually.
- In fact it will result in one or more of the following:
  1. Downscaling of importers e.g. reduction in workforce, closing branches or discontinuing the product; or
  2. Increase the price of the product and, for importers reliant on the product, risk of bankruptcy.

# THANK YOU

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