



Holst Porzellan GmbH
Apothekerstrasse 1
D-33790 Halle (Westf.)
Telefon 0049 (0)5201 849551
Telefax 0049 (0)5201 849552

Holst Porzellan GmbH
Apothekerstrasse 1 D-33790 Halle/Westfalen

To the Representatives Members
of the European Anti-dumping Advisory Committee

Halle/Westfalen, den 22.10.2012

Commentary on proposed Anti-Dumping Regulation on AD586 for Porcelain Table- & Kitchenware originating in Peoples Republic of China

Dear Madame's and Sirs,

last week we sent you the "Position Paper" as a community of five well-known Porcelain Brands from Germany. In it we repeated the most important facts of the investigation as our selection of more than 2,800 pages of the file No. AD586.

As we got knowledge of the proposal of the Commission on provisional measures, we have to underline an additional statement according to the misrepresentation of certain facts. We are appalled that hundreds of important information's have no found any account and the disclosure of fact's of many European companies has been completely ignored. The present proposal for the 23rd of October is a targeted selection of information's which should only declare anti-dumping measurements - any contrary facts were simply omitted. In our view, the rule of law of our market economy shall inflected and the free forces of our markets are influenced by political instruments. It seems that a handful of officers can change an entire industry by their own kind of view, without the regard for any consequences – that's unbelievable!

Please find first herewith our summary of facts

1. Procedural deficiencies:

- The failure to disclose the Complainants' identities or Union country of origin seriously affects the right of defence.
- Impossible to comment on the standing of the Complainants, the representativeness of the sample, and whether the Complainants are indeed materially injured.
- The alternative of disclosing the identity of the EU producers has not been entertained.

2. Allegations of injury to the EU industry:

- The German Anti-Trust-Authority is investigating collusive practices in the ceramics and porcelain market. One of the Complainants was in 2010 fined for its price-collusion in a different market segment; this was completely disregarded in the analysis.

Internet:
Email:

Geschäftsführer:
Handelsregister:

Steuernummer
Bankverbindung:

<http://www.holst-porzellan.de>
office@holst-porzellan.de

Knud Holst
Gütersloh HRB 7115

351/5744/0919
Kreissparkasse Köln
BLZ 370.502.99
Konto 290.564



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- The Commission's own data shows a profitable EU industry throughout the POI and indeed a 3.4% profitability rise between 2010-2011. The Commission itself notes that EU production, employment, market share and other injury factors (all but one – production capacity) developed positively between 2010-2011.
- EU sales remained constant despite a drop in consumption during the same period.

3. **Causation:**

- There is no correlation between import volumes and injury factors. The Commission's own data shows that when Chinese imports increase, the injury factors develop positively and when imports decrease, the injury factors develop negatively. Similarly, the Commission data shows that despite a substantial increase in Chinese prices, the market share of EU producers fell since 2008.
- Injury was caused by a combination of factors: economic crisis, drop in consumption, 20% increase of Turkish products.

4. **Union interest:**

- It is simply not true that importers would incur extra duties or that they would absorb the costs into their sales prices. The duty will directly be handed down to the consumer. Consumers in the EU will have their ability to choose distinct products severely restricted.
- Gross profit margins claimed by the Commission are not reliable, as they fail to include other costs incurred after importation. In addition, the Commission's source for this data, the CBI Report, concerns multiple products, not just tableware and kitchenware, and relates to data from well before the POI.

Detail Commentary

on proposed Anti-Dumping Regulation on AD586 for

Porcelain Table- & Kitchenware originating in Peoples Republic of China

1. **Procedural deficiencies:**

- The failure to disclose the Complainants' identities or Union country of origin seriously affects the right of defence.
- Impossible to comment on the standing of the Complainants, the representativeness of the sample, and whether the Complainants are indeed materially injured.
- The alternative of disclosing the identity of the EU producers has not been entertained.

1.1 The selection of a pre-sample of EU producers on the basis of data in the Complaint is tantamount to allowing the Complainants to select a sample which suits their own objectives best. This is particularly so in light of the extremely short deadline imposed on non-complaining EU producers to come forward.

1.2 The lack of disclosure of the Complainants' identities prevents interested parties from examining claims that these companies are indeed materially injured and, perhaps even more importantly, whether the Complainants have imported from China or are related to producers/importers from China.

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Email:*

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1.3 Similarly, confidentiality of the Complainants' identities makes it impossible for interested parties to comment on the representativeness of the sample. An alternative to keeping all this data confidential has not even been entertained.

2. Allegations of injury to the EU industry:

- The German Anti-Trust-Authority is investigating collusive practices in the ceramics and porcelain market. One of the Complainants was in 2010 fined for its price-collusion in a different market segment; this was completely disregarded in the analysis.

- The Commission's own data shows a profitable EU industry throughout the POI and indeed a 3.4% profitability rise between 2010-2011. The Commission itself notes that EU production, employment, market share and other injury factors (all but one – production capacity) developed positively between 2010-2011.

- EU sales remained constant despite a drop in consumption during the same period.

2.1 The Commission failed to treat the injury data collected during the investigation with caution. They notably failed to give due account of the presence of collusive practices on the EU market (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 Section 3.6. Union industry may indeed be "*quite widespread*" between countries, as noted in paragraph 174; however, the uncontested fact is that the leading porcelain producers in Europe are German.

2.2 Coincidentally, these German producers are also subject to the Bundeskartellamt (German Anti-Trust Authority) investigation. The Commission accepts that "*one undertaking*", which is also part of the Complainants, has already been fined for price-collusion in a different market segment and is also subject to the current investigation by the Bundeskartellamt. Yet, while it is true that "*the practice occurred before the period under consideration*",¹ the Commission neglects to highlight that the fine came in 2010 and that the fined company mentions it in its annual report. The attempt to challenge the earlier fine is not unique, in fact, six companies are challenging their fine in the General Court. Two investigations into the same company in the space of a few years should raise grave doubts concerning the authenticity of alleged injury in the Complaint, yet the Commission provides only a paragraph on it.

2.3 The data in the proposed regulation does not show an industry suffering from injury. Conveniently, this evident data pattern is not addressed, because in fact the Commission's own data shows that Union industry remained profitable throughout the POI and, in fact, increased their profitability by 3.4% between 2010 and 2011.² The Commission's data also evidences that production, production capacity, productivity and exports all increased substantially between 2009 and 2011.³ Exports,⁴ market share⁵ and employment⁶

¹ See paragraph 174.

² See table 10 at paragraph 131.

³ See tables 3.

⁴ See table 13.

⁵ See table 5.

⁶ See table 6.

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in the EU have also increased substantially between 2009 and 2011, and stock levels⁷ decreased. EU sales have remained constant between 2010-2011, despite a drop in consumption during the same period.

3. Causation:

- There is no correlation between import volumes and injury factors. The Commission's own data shows that when Chinese imports increase, the injury factors develop positively and when imports decrease, the injury factors develop negatively. Similarly, the Commission data shows that despite a substantial increase in Chinese prices, the market share of EU producers fell since 2008.

- Injury was caused by a combination of factors: economic crisis, drop in consumption, 20% increase of Turkish products.

3.1 The Commission fails to consider the data as a whole, instead choosing to address each area in isolation. For example, import volumes from China went up between 2009-2010,⁸ however the following injury factors: production, capacity utilisation, sales on the EU market, employment, and profit developed positively.⁹ Clearly, the change in import levels and the injury factors are not linked: another example being that, as Chinese imports fell by 9% during the IP, the same injury factors did not improve and indeed themselves fell; this was not mentioned.¹⁰

3.2 The Commission states that Chinese prices significantly undercut Union prices and supposedly put continuous pressure on Union producers even after the economic recovery.¹¹ The data shows lack of any correlation between Chinese prices and injury factors. EU market share did not pick up even after Chinese prices had been increasing dramatically (by the Commission's calculation by 18%), and EU prices had been decreasing by 12%.¹² This is clear evidence that Chinese prices and imports are not linked to the Union industry's supposed injury.

3.3 The CBI Report, which the Commission frequently used to reply on, explained threats to the market in the short-term by reference to the economic crisis and a decrease in consumer expenditure.¹³ This is too simplistic. Injury, if any, would have been caused by a combination of factors. The worst years of this crisis showed a significant drop in EU consumption (decreased by 12%¹⁴). When consumption picked up again, Turkish imports flooded into the market with a 20% volume increase between 2009-2011¹⁵ at the same time as Union exports decreased.¹⁶

4. Union interest:

- It is simply not true that importers would incur extra duties or that they would absorb the costs into their sales prices. The duty will directly be handed down to the consumer. Consumers in the EU will have their ability to choose distinct products severely restricted.

⁷ See table 8.

⁸ See table 2.

⁹ Compare tables 3, 4, 6, and 10.

¹⁰ See paragraph 144.

¹¹ See paragraph 146.

¹² Compare tables 5, 9 and 5.

¹³ CBI Market Study, November 2009; at point 1.4.

¹⁴ See table 1.

¹⁵ See table 12.

¹⁶ See tables 12 and 13.

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- Gross profit margins claimed by the Commission are not reliable, as they fail to include other costs incurred after importation. In addition, the Commission's source for this data, the CBI Report, concerns multiple products, not just tableware and kitchenware, and relates to data from well before the POI.

- 4.1 It is unreasonable that the Commission suggests that importers should support the extra duties and they will have to incur and/or increase their sale price. This makes no economic sense. The only effect that adding duties on these products will have is an increase in the burden suffered by importers and consumers in the European Union. It will decrease retailers' and consumers' disposable incomes and, given the limited measures countries have in a tough economic climate, limit the main source of economic growth *e.g.* consumer spending. Putting aside the economic impact, restricting consumers and retailers in the European Union from accessing these products will limit their choice.
- 4.2 Finally, the Commission seems to base its conclusions regarding importers and retailer margins on a "recent" CBI report.¹⁷ The gross profit margins claimed for importers are not reliable. The table fails to take into account that importers/retailers incur a lot of costs after importation, such as design, quality control, marketing, etc. All these additional costs are usually included in the prices charged by Union producers.¹⁸ Also, the report covers a variety of goods (not just tableware and kitchenware, but also other household items) and its data cannot be more recent than 2008, since it was published in 2009, thus including only data predating the POI. The relevance of the data used by the Commission is therefore highly questionable.

In sum, the legality of imposing duties must be seriously questioned in light of the above deficiencies! It is hoped that the Advisory Committee will make the decisions truly objective!

Holst Porzellan GmbH

Knud Holst
CEO / Geschäftsführer

¹⁷ See paragraphs 111 and 201 for example.

¹⁸ CBI Market Study, November 2009; at table 3.1.

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