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EUROPEAN COMMISSION

Directorate-General for Trade

Directorate H - Trade Defence
Investigations IV. Bilateral Relations.

Brussels, 15 November 2012

Sherlock **t12.012739**

Holst Porzellan GmbH
Apothekerstrasse 1
33790 Halle / Westfalen
Germany

By registered mail

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

Dear Sir /Madam,

In accordance with Article 20 of Council Regulation (EC) No 1225/2009³ (hereinafter referred to as 'the basic Regulation') on protection against dumped imports from countries not members of the European Community, this letter, together with its enclosures, constitutes disclosure of the essential facts and considerations on the basis of which the Commission has imposed provisional anti-dumping measures on imports of ceramic tableware and kitchenware originating in the People's Republic of China.

This disclosure, including its Annexes, does not prejudice any subsequent decision which may be taken by the Commission or the Council, but where such decision is based on any different facts and considerations, these will be disclosed to your company as soon as possible.

Your comments concerning this disclosure, if any, should reach the Commission's services by **17 December 2012** and may be disregarded if received after this deadline. Within the same time limits you can also apply to be heard by the Commission services.

In addition, you can as well apply for a hearing with the Hearing Officer of DG Trade by submitting a request within 10 calendar days following receipt of the provisional disclosure documentation. Any request submitted beyond these deadlines must be justified.

If you wish to reply to this disclosure, please note that in accordance with Article 19 of the basic Regulation you are requested to provide a non-limited version of your reply, that will be added to the file for inspection by interested parties. Please be aware that if

³ Council Regulation (EC) No 1225/2009, Official Journal of the European Union L 343, 22.12.2009

you fail to provide such a non-limited version for interested parties, the Commission services may disregard the information provided in confidence in application of Article 19(3) of the basic Regulation. If you submit only one version that is not marked "limited", it is assumed that it can be added to the file for inspection by interested parties.

In addition, as regards the next steps of the investigation, the Commission will, *inter alia*, further investigate the Union interest aspects of the case. **The position of retailers in the Union is part of this wider Union interest.** Should your company have retailing activities, you are invited to actively cooperate with the investigation via requesting a questionnaire intended for retailers not later than 23 November 2012. Your company should then return the questionnaire duly filled-in by **7 December 2012** at the latest.

Please note that the questionnaire should be submitted twice, once as **a limited version** and once as **a version for inspection by interested parties**. In the version for inspection by interested parties precise quantitative information can be rounded or transformed into indices. Please refer to the guidelines attached to the questionnaire.

In addition, please note that co-operation entails not only replying to the questionnaire but also accepting an on-the-spot verification of that reply. Failure to provide a complete response to the questionnaire or to accept any on-the-spot verification will be considered as non-co-operation entailing the consequences set out at Article 18 of the basic Regulation.

Written submissions regarding the various aspects of the proceeding, requests for inspection of the file for interested parties, or questions concerning the attached documents should be sent to trade-tableware-injury@ec.europa.eu or by fax (fax No +32 2 29 83016). For dumping specific issues, please contact only trade-tableware-dumping@ec.europa.eu

Should you need any further clarification or information please do not hesitate to contact the officials in charge via the functional mailbox trade-tableware-injury@ec.europa.eu

Yours sincerely,



Arthur BRAAM
Head of Section

Encl.: - Commission Regulation
 - Reply to arguments not addressed in detail in the Regulation

Points raised by Holst Porzellan concerning initiation.

1. General

The Commission Services carried out an examination of the complaint in accordance with Article 5 of the EU's Basic AD Regulation¹ (hereinafter: 'Basic Regulation'), coming to the conclusion that the requirements for initiation of an investigation were met, i.e., that the adequacy and accuracy of the evidence presented by the complainant was sufficient. It is recalled that, according to Article 5(2) of the Basic Regulation, a complaint shall contain such information as is reasonably available to the complainant.

In this respect, it must be recalled that the legal standard of evidence required for a complaint ('sufficient *prima facie*' evidence) makes it clear that the quantity and quality of information in the complaint is not the same as the one available at the end of an investigation. At the stage of the complaint, it is not necessary that the investigating authority (in this case, the Commission) has before it the same compelling evidence of dumping and injury (within the meaning of Articles 2 and 3) that would be necessary to support the imposition of provisional or definitive anti-dumping (hereinafter: 'AD') duties. An AD investigation is a process where certainty on the existence of the elements necessary to adopt a measure or to terminate a proceeding is reached gradually as the investigation moves forward. It is not excluded that changes will occur between the stage of the complaint and the conclusion of the investigation. However, it is not considered that such changes have an impact on the overall conclusion that the file merits investigation since there is sufficient evidence of injurious dumping.

Furthermore, it is not excluded that certain errors or inaccuracies may exist in the complaint. However, it is not considered that this has an impact on the overall conclusion that injurious dumping appears to be taking place, and that the file merits investigation.

We do not agree with your statement that the proceeding is based on a large number of **presumptions and unilaterally presented tables and lists**. You state e.g. that annex E2 lists only 20 (unrelated) importers, whereas it is estimated that there would be at least 200. However please note that annex E2 contains the list of "known" importers, as required by Article 5 (2)(b) of the Basic Regulation.

The contribution made by all interested parties is integrated into the body of evidence that the Commission considers for the findings of the investigation.

Finally, the fact that certain items of evidence are confidential does not imply that they are not present in the file or that they have not been examined in accordance with the law.

On this basis, the more specific issues you raised with regard to the complaint and also the determination made at initiation stage are addressed below.

2. Missing legal basis

You allege that the investigation was opened although the legal basis of Article 9 of the Basic Regulation was missing.

Please note however, firstly, that the legal basis for the initiation of new anti-dumping investigations is Article 5 of the Basic Regulation and not Article 9.

¹ Council Regulation (EC) No 1225/2009, OJ L 343, 22.12.2009, p. 51.

Moreover, the Notice of Initiation of an anti-dumping proceeding concerning imports of ceramic tableware and kitchenware originating in the People's Republic of China (Notice 2012/C 44/07) is in conformity with the WTO Dispute Settlement Body Reports. Point 10 of this notice of initiation explains how the WTO Dispute Settlement Body Reports are implemented until the Basic Regulation has been amended.

3. Incomplete non-confidential version of the complaint

It is considered that the non-confidential version of the complaint contained all the essential evidence and non-confidential summaries of data provided under confidential cover in order for interested parties to exercise their right of defence throughout the proceeding.

It is recalled that Article 19 of the Basic Regulation and Article 6.5 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade² allow for the safeguarding of confidential information in circumstances where disclosure would be of significant competitive advantage to a competitor or would have a significantly adverse effect upon a person supplying the information or upon a person from whom that person has acquired the information.

We do not agree that the fear of retaliation is a vague allegation depriving you of the right to be informed and to verify and contend the factual statements made. The complainants have explicitly requested and justified that their identity would not be disclosed. The Commission took the view that there was indeed a significant possibility of retaliation in the form of lost sales for these producers and considered their request not to disclose their identity justified. A summary of the reasons raised by the complainants to request that their identity would remain confidential has been included in the file for inspection by interested parties. Please note that it is sufficient for good cause to be shown that the party requesting confidential treatment demonstrates the risk of potential adverse consequence, the purpose being to make sure that the feared adverse effect remains hypothetical and does not materialise.

You allege that the way normal value has been computed is not explained in the open version of the complaint and that the tables regarding average normal value for 2010-2011 in annex F1 are empty and do not show any figures. Please note however that the way normal value has been computed is explained in annex F.1.2 and F.2. Regarding the figures in table F.1, please note that the provider of these figures has requested confidential treatment of this information (on sales, invoices and related costs).

Notwithstanding the fact that the information provided in the version open for inspection by interested parties of the complaint was sufficient in order for interested parties to exercise their rights of defence, throughout the proceeding, the complainant has agreed to provide further information regarding the way normal value has been computed. This information which was sent to the Commission services on 14 November 2012 has been included in the file for inspection by interested parties.

² "Any information which is by nature confidential (for example, because its disclosure would be of significant competitive advantage to a competitor or because its disclosure would have a significantly adverse effect upon a person supplying the information or upon a person from whom that person acquired the information), or which is provided on a confidential basis by parties to an investigation shall, upon good cause shown, be treated as such by the authorities. Such information shall not be disclosed without specific permission of the party submitting it."

You further state that the way the export prices have been computed have not been explained in the complaint. Please note however that this is explained in paragraph F2 of the body of the complaint and annex F2.

Regarding invoices and offers provided as evidence of export prices in the limited version of the complaint, you will understand that they contain confidential information which cannot be disclosed. However, the export prices from the evidence used for the calculation of the dumping margins have been mentioned in the tables containing the calculation of the dumping margins (Annex F2, p. 2 and 3), which explain how these figures were computed.

Regarding the representativeness of the complainants, please refer to the Note for the file on standing of 15 February 2012 which explains how the standing examination was performed and mentions the result of this examination in terms of the representativeness of the complainants and supporters.

Further disclosure of company-specific, detailed sales and profit information contained in the limited annexes would not have been appropriate in view of Article 19 of the Basic Regulation and Article 6.5 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, as mentioned above.

4. Product definition

In analysing the complaint at initiation stage, the Commission services have paid specific attention to the issue of the product definition, coming to the conclusion that the different types included therein share the same basic characteristics and end uses, which means they belong to the same product category. At the same time, the basic characteristics of the product concerned separate it from other products to the extent that it can be considered to be different from other products.

Therefore, at initiation stage, the product definition proposed by the complainant appeared to meet all the statutory requirements.

Given that the product produced by the complainants and imports share the aforementioned physical characteristics and uses, it was concluded that the products from the People's Republic of China are a like product to the products produced in the Union according to Article 1(4) of the Basic Regulation.

We do not agree with your allegation that imports from the People's Republic of China and EU production do not serve the same market segments and therefore do not compete with each other. To the contrary, the Commission services have considered that there was sufficient *prima facie* evidence of like products serving the same market segments.

However, the product concerned as well as the like product may of course encompass different types and qualities. For the purpose of a dumping and undercutting calculation only like with like was compared (same product types).

5. Definition of the Union industry and standing analysis

In the framework of the statutory analysis of an anti-dumping complaint and in accordance with Article 5(4) of the Basic Regulation the Commission services have carried out a standing examination before initiation.

For this purpose, all EU producers mentioned in the complaint and otherwise known to the Commission before initiation have been contacted and taken into consideration in the

calculation of representativeness of the complainants. This calculation was based on the quantities of the product concerned produced as outlined by individual declarations by such producers and associations and also on information contained in the complaint which includes information on the total EU production. This examination yielded the result that the complaint was lodged on behalf of companies representing *ca.* 31% of the total Union production and that companies representing *ca.* 21% of the total EU production supported the complaint. In total, the complaint was therefore supported by more than 52% of total Union production.

Therefore, at initiation stage, it was concluded that the conditions of article 5(4) of the Basic Regulation were met.

In line with Article 4(1) and 4(2) of the Basic Regulation producers who are related to Chinese exporters or importers and/or are themselves importers of the allegedly dumped product may be excluded from the Union industry if their relationship with the exporters or importers of the dumped product and/or their imports is such as to cause them to behave differently from non-related producers. In the pre-initiation analysis no reason to exclude any of the complainant producers from the definition of the Union industry was found.

We do not agree with your arguments on standing, nor with the standing calculations you performed, which allegedly would show that the 25% standing requirement was not fulfilled. As mentioned above, the Commission services have concluded, based on all information at their disposal, that the standing requirements were met.

You allege that there would be an inaccuracy in annex G page 5. Please note however that this does not relate to the calculation of production but to exports and that, as mentioned by the complainants themselves, the correction made was conservative. The Commission services have considered that there was sufficient *prima facie* evidence on EU production figures in the complaint.

We fail to understand how the complainants mixed figures of capacity and production, which were provided separately in annex G6. Please note that the calculation of standing performed by the Commission services as usual relied exclusively on production figures.

It is recalled that, as always, a note for the file on standing was included in the file for inspection by interested parties.

6. Choice of the analogue country

Based on the information provided by the complainant and analysed by the Commission, it appeared that the proposed choice of Russia as analogue country for the People's Republic of China fulfils the relevant criteria such as representativeness of sales, sufficient competition, similarity of production technology and comparability of products.

Therefore, the Commission services considered Russia to be an appropriate choice as analogue country at initiation stage.

We do not agree that there were not many producers in Russia, since, as you mention yourself, the complaint lists 30 producers.

However, as always, all interested parties were invited in the Notice of initiation to submit their comments and make their views known on this or any other issues, which would then be taken into further consideration in the framework of the investigation.

7. No evidence of dumping

The analysis of the evidence provided by the complainants, in accordance with the principles of Article 2 of the Basic Regulation, has yielded the result that the complaint contained sufficient *prima facie* evidence of dumping of ceramic tableware and kitchenware in the EU market.

Please note that the adjustments you mention (packaging and product presentation), which allegedly are different in the calculation of dumping and injury margins, were not considered necessary for a proper price comparison in the complaint.

The Commission services considered the offers and invoices provided in the complaint as sufficient *prima facie* evidence. They were sufficiently recent, since they related to the dumping calculation period.

The dumping calculation in annex F2 was performed on a type by type basis, and not, as you allege, by comparing different products. It was also performed on the basis of export prices from different invoices and offers which were compared to normal value.

As you know, the dumping margin calculated in the complaint does not necessarily reflect the exact degree of dumping which will be calculated in the investigation on a transaction by transaction basis. Indeed, the nature of the analysis is different since it is not performed on a company per company basis, nor per transaction. However, the complainant has provided sufficient evidence on export price and normal value showing that the dumping margins are significant. Therefore, it was more than the mere fact that Chinese prices were cheaper that lead to the conclusion that injurious dumping was taking place.

In its statutory analysis, the Commission took into account only those elements for which evidence was sufficiently adequate and accurate.

8. No evidence of injury

As a preliminary comment, it is recalled that a *prima facie* finding of material injury requires an examination, *inter alia*, of the relevant factors as described in Article 5.2 (d) of the Basic Regulation.

It is not specifically required in Article 5 of the Basic Regulation that all injury factors mentioned in Article 3(5) show deterioration in order for material injury to be established. Indeed, the wording of Article 5(2) of the Basic Regulation states that the complaint shall contain the information on changes in the volume of the allegedly dumped imports, the effect of those imports on prices of the like product on the Union market and the consequent impact of the imports on the Union industry, as demonstrated by *relevant* (not necessarily all) factors and indices having a bearing on the state of the Union industry, *such as* those listed in Articles 3(3) and 3(5).

Therefore, not all factors must show deterioration in order for material injury to be established. Furthermore, the existence of other factors which may have an impact on the situation of the Union industry does not necessarily imply that the effect of dumped imports on this industry is not material.

Contrary to your view, the specific injury analysis of the complaint has shown that there is sufficient evidence pointing to increased penetration of the EU market in terms of market share by Chinese imports made at prices which substantially undercut the Union industry's own prices. This appears to have had a materially injurious impact upon the state of the Union industry, shown for example by decreases in production and sales volume, employment or by a deterioration of financial results.

Furthermore, the fact that quota have been lifted in the past (in 2005), does not mean that there would be no ground to initiate an anti-dumping investigation.

You allege that the list of Romanian producers is incomplete since 3 major producers are missing. However please note that the list of producers is the list of "known European producers".

The statutory analysis (on the basis i.a. of the information provided by the complainant and the other information available to the Commission services) showed that there would be nothing to detract from the assessment at initiation stage that there is injurious dumping.

9. No threat of injury

As can be seen in the notice of initiation, the conclusion of the statutory analysis of the complaint was that sufficient evidence had been provided to show that *prima facie* material injury to the Union industry had indeed taken place, and was as such mentioned as a ground for initiation.

10. No causal link

As a preliminary comment, the points made under point 8 first paragraph above are recalled.

In addition, in the Commission services' view, none of the other points you mention disprove the conclusion that there was sufficient evidence for the initiation of an AD proceeding with regard to the point that dumped imports had a materially injurious impact on the state of the Union industry.

Firstly, as described under point 8, the simultaneity of the deterioration of the situation of the Union industry and of the increased penetration of dumped imports sold at prices which significantly undercut those of the Union industry, strongly indicates the existence of a causal link.

Concerning other factors, neither the alleged general structural problem, nor the alleged lack of competitiveness and "sickness" of the EU producers, nor their alleged failure to adapt to consumers' needs, the alleged lack of flexibility of some EU producers, nor their alleged preference to produce for the high end premium market, nor the alleged strict segmentation of the market, (factors which the Commission services do not necessarily agree with in any event), were sufficient to explain the drop in production and sales volume, employment and profitability (which turned into losses) by the Union industry (or, for that matter, the other factors which underline its deterioration), during a period of time where imports from the People's Republic of China have increased in terms of market share. Similarly, the existence of other imports does not in any way imply that imports from the People's Republic of China are not having a material impact on the state of the Union industry.

11. Abusive nature of the complaint and alleged anti-competitive behaviour of some of the complainants

The Commission services cannot accept your unsubstantiated allegation that, by lodging the present anti-dumping complaint, some of the complainant producers try to obstruct their rivals by seeking to have import duties imposed on the products of their competitors. You will understand that mere speculation about the underlying motivation for the lodging of an anti-dumping complaint cannot be used to reject a complaint. Rather, it is our analysis of the

existence of sufficient *prima facie* evidence of dumping causing injury to the Union industry that will guide such a decision. The pre-initiation analysis of the complaint by the Commission services has confirmed the reliability of the data presented in the current complaint in this respect.

12. Conclusion

In conclusion, it is the Commission services' view that the evidence presented in the complaint pointed to a situation of injury emanating from dumping, which merited the initiation of an investigation, according to the law.