

**chef@holst-porzellan.de**

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**Von:** chef@holst-porzellan.de

**Gesendet:** Montag, 4. März 2013 12:38

**An:** 'TRADE-TABLEWARE-INJURY@ec.europa.eu'; 'Sonia.HERRERO-RADA@ec.europa.eu'; 'Vanessa.PEIDRO-CID@ec.europa.eu'; 'arthur.braam@ec.europa.eu'

**Betreff:** AW: AD586 - Beschäftigungszahlen - Open Version

**Anlagen:** 2013- 01-18- IKEA-Hearing-HO.pdf

Email von: Holst Porzellan GmbH, D-33790 Halle/Westfalen

Email an: Europäische Kommission - Direktorat for Trade, Brüssel

Datum: Montag, den 04.03.2013

Betreff: AD586 - Beschäftigungszahlen - **Open Version** -

Sehr geehrter Herr Braam,  
sehr geehrte Damen und Herren,

in Ihrem General Disclosure Dokument vom 25.02.2013 in Abs. 170 bestätigen Sie die Richtigkeit Ihrer Extrapolation von 350 Beschäftigten in der betroffenen Ware auf Seiten der untersuchten Einführer.

(170) In a joint submission, several importers claimed that the five sampled importers employed more than 10 000 jobs relating to the product concerned and not 350 as mentioned in recital (200) of the provisional Regulation. The figures having been checked again, the correctness of the estimation that they employed 350 people in the importation and resale of ceramic tableware and kitchenware is confirmed. That figure was calculated on the basis on an extrapolation to the sample as a whole of the relevant job data provided by the three sampled importers without retailing activities.

In der Regulation 1072/2012 Abs. 10 beschreiben Sie die Marktbedeutung der untersuchten Einführer mit 6%. Die Anzahl der Beschäftigten bei den untersuchten Einführern innerhalb der betroffenen Ware beziffern Sie in Abs. 200 auf 350 Mitarbeiter. Als Schlussfolgerung würde dies eine Beschäftigtenzahl von nur 5.834 Mitarbeitern auf Seiten der Einführer der betroffenen Ware ergeben.

Unter vehementen Protest berichtete Ihnen die Metro AG am 22.08.2012 (Beweis: 2012-08-22 Summary des FTA Hearing in Brüssel) sowie in einem darauffolgenden Hearing, dass sie in Europa rund 240.000 Mitarbeiter beschäftigt und davon etwa 5.623 Personen der betroffenen Ware zugeordnet sind. Das entspricht einem Anteil von 2,3%. Durch Anrufung des Hearing Officer am 18.01.2013 hat IKEA (Anlage: 2013- 01-18- IKEA-Hearing-HO) ihre Zahlen über die Beschäftigten ebenfalls nochmals klar gestellt. Von 136.000 Angestellten in Europa sind 4.200 Mitarbeiter (3%) innerhalb der betroffenen Ware tätig. In ihrer Summe melden die 5 untersuchten Einführer zusammen 10.173 Beschäftigte in der betroffenen Ware. Durch "Extrapolation" verringern Sie diese Beschäftigtenzahl um 9.823 Personen, also um 96,55% und scheinen alle Ihnen vorliegenden Fakten und Proteste unberücksichtigt zu lassen.

Es drängt sich der Verdacht auf, dass auf diese Weise versucht werden könnte, die Mehrheit der Beschäftigtenzahl auf Seiten der unabhängigen Einführer denen der Unionshersteller unterzuordnen, um daraus ein höheres Unionsinteresse zum Schutz der Arbeitsplätze auf Seiten der Unionshersteller abzuleiten. Der Bitte anlässlich des Hearing der CCCLA vom 26.02.2013, diese Extrapolation verständlich aufzuschlüsseln, gedenken Sie nach eigenem Vortrag nicht zu entsprechen. Da jedoch alle untersuchten Einführer ihre Mitarbeiterzahlen in offenen Statements bekannt gegeben haben, sollte es der Kommission möglich sein, die Methodik zur Ermittlung der Beschäftigungszahlen bei den betroffenen Einführern offen zu legen.

Wir behaupten guten Glaubens und festem Wissens, dass die in Abs. 170 genannte Beschäftigtenzahl zu niedrig ist und zu einer falschen Wahrnehmung des Wirtschaftszweiges der Einführer führt.

Mit freundlichen Grüßen aus Halle (Westf.)

Ihre

04.03.2013

Holst Porzellan GmbH



Knud Holst  
Geschäftsführer



Holst Porzellan GmbH  
Apothekerstrasse 1 | D-33790 Halle/Westfalen  
Fon +49 (0) 5201 849551 | Fax +49 (0) 5201 849552  
Registergericht Gütersloh HRB 7115 | Geschäftsführer: Knud Holst  
Steuernummer 351/5101/0440 | UST-ID DE 184691489  
ILN-Nr. 200.439.57.00000  
Konto Nr. 290.564, KSK Köln | BLZ 370.502.99  
BIC COKSDE33 | IBAN DE 60 37050299 0000290564  
M-BBN Nr. 20043957  
World trade brand No. BRD 306 58 740  
E-Mail: [office@holst-porzellan.de](mailto:office@holst-porzellan.de) | <http://www.holst-porzellan.de>



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# EUROPEAN COMMISSION

Hearing Officer for DG TRADE

Brussels, 18 January 2013  
DLA/BKH/ca.15.ho(2013)70880

## VERSION OPEN FOR INSPECTION BY INTERESTED PARTIES

<i>HO/12-116</i>	<b>Date: 11 January 2013</b>
<b>Case AD586 Ceramic Tableware and Kitchenware originating in China</b> <b>Interested Parties requesting the Hearing: IKEA</b>	
<b>Participants:</b> <b>IKEA:</b>  Martin Weiderstrand Katarina Maaskant, Katarina Olofsson Martin Hallersten Henrik Petersson Paul Saar  <b>Van Bael &amp; Bellis</b> Benoît Servais, Legal Representative	<b>Commission:</b>  Arthur Braam, Head of Section Sonia Herrero Rada, Casehandler Jean-Michel Bindner, Casehandler  <b>Hearing Office</b>  Dominique Avot, Hearing Officer Brigitte Heinrichs, Adviser to the Hearing Officer
<b>Summary of the main arguments put forward by the interested party:</b>  After publication of provisional measures, IKEA requested the intervention of the Hearing Officer in order to ensure proper exercise of its rights of defence.  In particular the following arguments were put forward: <ul style="list-style-type: none"><li>• The questionnaire is not suitable for large companies and hinders IKEA to effectively exercise its right to be heard.</li><li>• IKEA disagrees with the use and analysis of the data it willingly and cooperatively supplied</li><li>• Ceramic Spice Grinders have not been excluded from the product scope despite IKEA's request</li><li>• The €/ton price is a misleading unit that cannot be used to determine dumping, a number of further elements have to be considered.</li><li>• Insufficient explanations are given concerning the elements used to define the PCN and the data used for adjustments</li><li>• IKEA disagrees with the conclusion that the past illegal price fixing cartel is irrelevant to the case.</li><li>• Certain assumptions and findings regarding importers are unfounded and confusing, in particular as regards employment, net/gross margins and impact on AD duties</li></ul>	

For details see below and the PowerPoint presentation made during the hearing.

### **Subject 1**

#### **Inappropriate questionnaire deprives large companies like IKEA from its right to be heard**

##### **Arguments of Interested Party**

The questionnaire is not suitable for large integrated retail companies. It disqualifies IKEA from its right to be heard due to its size and business model.

IKEA has some 300 Mio customers, 348 stores in 40 countries and more than 10.000 products with 27 Billion turnover.

During discussions between IKEA and the Director of Directorate H of DG TRADE in 2010 the Commission promised questionnaires for large size companies which are not a gatekeeper. The current case shows that this is still not the case. It is of particular concern for IKEA since the provisional Regulation shows that findings are affected if large companies like IKEA are disqualified from replying.

The Commission is invited to setup a specific questionnaire for large size companies in the same way as it is done for SME's.

Even in free format it is difficult to reply since data on PCN level are never addressed in the company.

##### **Response of the Commission**

The questionnaire for importers and the one for retailers which IKEA replied to were set up specifically for the case. Indeed, the Commission was very pleased with IKEA coming forward as an interested party in this proceeding, in particular in view of the Union interest analysis, and has done its utmost to accommodate IKEA. If no reply can be given to certain questions, companies are of course free to reply in a free format.

### **Subject 2**

#### **Ceramic spice grinders are not product concerned and should be excluded**

##### **Arguments of Interested Party**

Despite repeatedly submitted arguments and evidence by IKEA that ceramic spice grinders are not product concerned, the Commission in recital 53 provisionally rejected the request for exclusion of ceramic spice mills from the product scope.

The Commission is invited to reconsider the rejection, in particular since the customs classification of the product clearly justifies its

##### **Response of the Commission**

The request is not dismissed but only provisionally rejected since similar claims were

exclusion.	<p>submitted by other parties but at such a late stage that it was not possible to come to a final decision before provisional measures.</p> <p>The issue is under consideration.</p>
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<b>Subject 3</b>	
<b>€/ton prices insufficient as comparison value</b>	
<p><b>Arguments of Interested Party</b></p> <p>IKEA believes that imports from China are not dumped and considers the comparison of sales prices in €/ton as misleading. To get a fair comparison all of the following elements needs to be taken into account:</p> <ul style="list-style-type: none"> <li>• Material (Earthenware, Stoneware, Porcelain, Bone China etc)</li> <li>• Production method (wet or dry method)</li> <li>• Number of firings (1-3)</li> <li>• Production yield (A-, B-, C-grade)</li> <li>• Glaze and decoration level</li> </ul>	<p><b>Response of the Commission</b></p>

<b>Subject 4</b>	
<b>PCN definition and adjustments insufficiently explained</b>	
<p><b>Arguments of Interested Party</b></p> <p>The product concerned is categorized according to a Product Control Number (PCN).</p> <p>The Commission is requested to clarify why certain elements are included in the definition but not others, especially since it has acknowledged that those excluded are of relevance to the investigation. In particular grading A, B, C are missing since product types are otherwise not comparable.</p> <p>The Commission is further requested to explain how it has been able to make adjustments while necessary data are allegedly not available. Based on the data collected for the PCNS, IKEA questions the correctness of the Commission's statements in recitals 99 and 116 as well as the calculations based on the adjustments.</p>	<p><b>Response of the Commission</b></p> <p>A very detailed PCN structure has been developed, including, inter alia, the material, glazing, decoration. Grading is very difficult to benchmark but, as explained in the provisional Regulation, all non-A-grade sales of the exporting producers have been adjusted to A-grade level for the dumping- and injury calculations.</p> <p>The adjustments are based on data received from sampled exporters which were verified on spot. Sampled importers prices are not used for</p>

<p>The calculations are not transparent.</p>	<p>the calculation of the dumping margins.</p> <p>Calculations are based on limited data which cannot be disclosed. The non-confidential file contains all information that are not considered limited.</p>
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**Subject 5**

**Effects of illegal price fixing cartel have to be taken into account**

<b>Arguments of Interested Party</b>	<b>Response of the Commission</b>
<p>17 producers were fined for an illegal price fixing cartel in the ceramic industry for over 12 years, with 72 Mio € fine for one of the largest EU tableware producers. The fines are booked in 2010 accounts, i.e. during the period considered for the injury assessment.</p> <p>However, in section 3.6 the Commission disregards the anti-competitive behaviour of ceramic producers as irrelevant to the case because</p> <ul style="list-style-type: none"> <li>• The practice took place before the period consider</li> <li>• Concerned other products</li> <li>• The parties filed for annulment</li> <li>• It concerned only one German company.</li> </ul> <p>IKEA believes that, even though the criminal activity took place before the period considered, the fines are booked in the period considered and do therefore affect the relevant financial results, contrary to the Commission's statements in recital 174 and 175. This is even more so since the filing for annulment has no suspensory effect. The German company concerned is a global company selling all over Europe.</p> <p>Given that this company represents some 48% of EU producers' sales (based on the numbers in the PR and yearly report of the company), a fine of 10% of the company's turnover has a strong effect on the results of the whole sector (reference is made to table 10 on slide 15 of the PowerPoint presentation).</p> <p>The Commission is invited to recalculate the effects of illegal price fixing.</p>	<p>The identity of the sampled Union producers is kept confidential (see recital 18 of the provisional Regulation). The Commission cannot therefore discuss whether or not the company IKEA refers to is in the sample. In any case, the Commission has taken the information and allegations concerning anticompetitive practices very seriously. If there would have been a sampled producer involved and if this company's figures as used for the injury analysis would have been</p>

<p>The wording of the provisional Regulation allows a different conclusion and should be improved.</p>	<p>distorted by those practices, these figures would be adjusted The assessment is focussed on the profitability of the product concerned only, not on the overall profitability of a company.</p>
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<b>Subject 6</b>	
<b>Unfounded and confusing findings concerning EU importers</b>	
<b>Arguments of Interested Party</b>	<b>Response of the Commission</b>
<p><b><u>Employment</u></b></p> <p>According to recital 200, all sampled importers employed some 350 people. Since IKEA is one of these sampled importers, the figure is neither probable nor factually correct.</p> <p>IKEA alone has submitted information about some 4.200+ co-workers employed with ceramics tableware and kitchenware, out of the total of 136.000 employees worldwide in 2010.</p> <p>Given that IKEA is a company that sells around 10.000 products, a calculation had to be made to estimate the approximate number of staff.</p> <p>The calculation was based on the proportion of products in our range versus the number of products in the segment of the product concerned. This was clarified and explained to the Commission in writing as well as during the verification visit and a hearing (reference is made to table F.1 Employment).</p> <p>The wording in the provisional Regulation</p>	<p><b>Response of the Commission</b></p> <p>The figure of 350 people relates to import/resale functions only, not the overall employment relating to the product concerned of the 5 sampled importers.</p> <p>The calculation of the figure of 350 employees can be explained as follows: The starting point was employment data received from 3 sampled importers that are pure importers (Metro and IKEA are also retailers and distributors) where it was easily possible to calculate the full time equivalent of employees involved in the importation and resale of the product concerned based on the quantity imported from China. The result was extrapolated to all five sampled importers.</p> <p>The Commission is confident that the figure is reasonably correct and is evidenced by the figure provided for the import sector in the whole EU, which is 7.000. An extrapolation of 350 employees, based on the volumes imported by the five sampled importers as compared to total import volumes, to the whole EU would result in a number of employees close to those</p>

<p>does not contain sufficient information about the employment. It should also refer to the total employment at stake, otherwise it is misleading.</p> <p>Why were figures provided by IKEA not taken into account?</p> <p>Instead of disregarding the data the Commission should have asked for clarification.</p> <p>The worksheet for employment has been provided according to the specifications given in the questionnaire.</p> <p>The employment number produced by the Commission does not have any relevance to the case at hand. It does not reflect the information asked for or the data the commission has received.</p> <p><b><u>Net/gross margin</u></b></p> <p>There seems to be a confusion on net and gross margin. Recital 202 gives the impression that retailers have a 200% margin.</p> <p>Consider outliers vs median vs average values.</p> <p>In recital 200 and 201 the Commission states that IKEA did not supply information regarding</p> <ul style="list-style-type: none"> <li>• Profitability data</li> <li>• Margin between purchase and resale price to unrelated customers</li> <li>• and did not provide meaningful information for estimation of an importers gross or net margin on the product concerned.</li> </ul> <p>The data have been provided and clarified – P/L for the product concerned (reference is made to Table G1 on slide 19 of the PowerPoint presentation). Based on follow-up questions received from the investigation team, IKEA tried its best to provide more precise data in form of estimations, like the Commission based its conclusions on estimations and assumptions.</p> <p>As already mentioned earlier, the current case is another example that large scale companies</p>	<p>7.000 employees.</p> <p>The data IKEA provided about employment could not be used since no breakdown for employment specifically related to import and resale of the product concerned was given.</p> <p>The issue will be clarified further.</p> <p>Recital 200 and 201 do not mention Ikea specifically but Ikea has rightly understood that the issues referred to mostly concern Ikea.</p> <p>An [LIMITED) sold to IKEA shops in the EU which eventually sell to unrelated customers. The Commission had no access to the financial report / accounts [LIMITED]. Moreover, the Commission has not received, as requested in the questionnaire, the data concerning the ten largest purchase transactions, from purchase price and volume from unrelated supplier to resale price and volume to unrelated customer of the company (the submitted list only provided a part of that flow). This is some of the key information which is missing, although the Commission has repeatedly requested it and already pointed at it during a hearing of 11 September.</p> <p>The Commission has not received the profitability achieved on the product concerned (let alone on the pure importers activity) but only a profitability calculation on a broader range of products for the group as a whole.</p> <p>The Commission appreciate IKEA's willingness to cooperate. However, the information available did not allow to come to a different conclusion at provisional stage. Comments and clarifications are of course welcome.</p>
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like IKEA are excluded from the investigation due to their size and business model. Even if the Commission would have had access to the subsidiaries of our subsidiaries, it would still give only consolidated figures, not detailed figures as requested since this is not part of the operational reporting of a major company. Audited reports at product level for a specific country or as a specific part of the certain import functions in the group's operations is not found at any company of IKEAs size. It clearly denies IKEA its right to be heard and treated fairly.

It has been discussed at length that it would mean data for some 700 articles and some 90.000 lines of data. IKEA has put lots of effort in but there are limits to what is feasible. If the calculations submitted were not to the commissions liking or understanding, they had full access to our financial controllers for further information and explanation of how financial reporting in a major corporation functions. IKEA strongly disagrees with the conclusions made in recital 210.

**Comments of the Hearing Officer**

The Hearing Officer took note of the comments made concerning the inappropriateness of the questionnaire for large sized companies and the outstanding feedback from Directorate H. The matter will be discussed with the relevant persons in charge.

The investigation team is invited to take into account and to address the arguments put forward by IKEA.