

2013

AD 586 Anti-Dumping Investigation

Statement dd. 08.03.2013 to the European Member States 1072/2012



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1818

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Introduction

With Regulation No 1072/2012 the European Commission decided to impose provisional anti-dumping duties from 17.6 to 58.8% against Table- & Kitchenware produced from porcelain or other kind of ceramic materials originating in the People's Republic of China. Affected is a commodity that was invented for more than 4,000 years in China. The correct and original name of this commodity is Chinaware. The European industry however industrialized this commodity only since 65 years and is in comparison to the Chinese porcelain tradition in its infancy. Porcelain is a finished product which costs are dominated by raw material and labor costs. With the largest kaolin deposits in the world and the longest production experience, it is only logical that the Chinese manufacturers work more efficient than the majority of European manufacturers.

The Commission reported their findings about the Union's damage in Regulation No. 1072/2012 although a correct collection of facts was not available until 15.11.2012. The commission based their price dumping comparison on figures from one German related factory in Brazil, a country which has prepared itself restrictions against imports from China in the same time. The Commission's investigation can not be regarded as objective and fair, as the world's largest production market with 3.5 billion kilo and more than 10,000 plants is measured in its effectiveness and cost structure to one single factory in Brazil. This technique is legally within the rules of the EU basic regulation, but neglect completely the complexity and variety of the market.

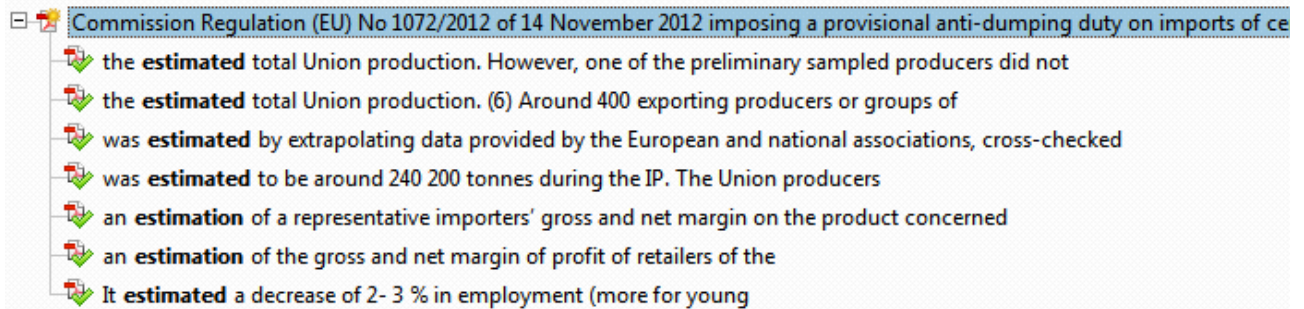
On the other hand, the Commission used for their investigations mostly the data and indicators raised by the applicants without a double check with the official EU-Statistics (PRODCOM and TRADE STATISTICS). It must be mentioned that, however all members of the industry associations have joined the application for this investigation. The Commission took only the estimated figures of the applicants for their results (1072/2012 Point 107) and omits a careful examination which is required in Article 3 (5) of the EU Basic Regulation!

Regulation 1072/2012 includes wrong figures, generating false results and as a consequence inaccurate conclusions of the investigations. Although pointed out at several occasions, the Commission maintains the incorrect figures consistently and against better knowledge. In a letter dated 17.02.2013 the Commission head officer Mr. Arthur Braam confirms, that the Commission only used the details of the applicants for their examination instead of official Prodcum and EUROSTAT data.

It is correct, that over the past decades many porcelain brands did not adapt themselves to the new consumer behavior, affecting mainly the majority of the high price range (Ginori, Rosenthal, Hutschenreuther, Royal Dulton, Wedgwood and many more) all of which do not, and never stood in any kind of competition to the products of the People's Republic of China. Despite the addition of new member states, the Union consumption of these goods halved between 2004 (1.557 million tons) and 2011 (896.1 million tons). Products such as a coffee pot, teapot, a warmer, a soup terrine or a saladier..... have been replaced through the change in consumer behavior by thermoses, espresso machines, convenience food.....

Blaming Chinese imports as the cause of this industry weakness is wrong.

The commission based 7 important conclusions of their investigation on estimated figures.



We deem it very necessary to point out the Member States the misrepresented facts and to correct a large number of figures and results of this investigation. We are able to demonstrate that the recited Union damage based on incomplete and inaccurate information and the imposition of provisional measures should be seen as unjustified action.

1. Proceeding

1.1. Missing 25% of complainants according to Article 5 (4) Council Regulation

In the introduction of the regulation 1072/2012 the Commission claims that the EU producers that have requested the anti-dumping proceeding represent more than 30% of the total EU production.

This statement is wrong.

The following table is based on the real PRODCOM Figures and compares the numbers of the complaints to the Union producer.

Party	Information	Codex	Unit	Year 2011	Year 2010
EU	Production	23411130	kg	144.540.000,00	140.000.000
EU	Production	23411210	kg	47.892.000,00	52.713.000
EU	Production	23411230	kg	40.031.000,00	34.454.000
EU	Production	23411250	kg	107.003.000,00	111.362.000
EU	Production	23411290	kg	15.793.000	17.505.000
EU	Production	6911 + 6912	kg	355.259.000	356.034.000
EU	Adjustment of 6912 (20% from 23411210, ...230, ...250, ...290)	6912	kg	-42.143.800	-43.206.800
EU	Production figure adjusted	6911 + 6912	kg	313.115.200,00	312.827.200,00
EU	Proportion of Complaints-Sales in EU Production (Prodcom 11/2012)	6911 + 6912	kg in %	22,29	21,53
EU	Proportion of Complaints-Production in EU Production (Prodcom 11/2012)	6911 + 6912	kg in %	23,67	22,96

This is not the required minimum proportion of 25% in accordance with Article 5 (4) of Regulation (EC) No 1225/2009 of the Council.

At the hearing on 14.01.2013, the Commission confirmed Prodcum as correct source of statistical data as well as the reduction of 20% for the elimination of certain products out of the classifications PRODCOM 23411210, 23411230, 23411250 und 23411290.

Evidence: [Minutes of Hearing dd. 14.01.2013](#)

Many European importers have informed the Commission during September 2012 on this issue but the commission did not react on that. Even more, the commission did not undertake action to check the received information from the applicants.

Evidence: [Statement Holst Porzellan GmbH, 26.09.2012 to the Commission](#)

The General Disclosure of 25.02.2013, which should answer the open questions from the Hearing (14.01.2013) gives the following explanations:

- (78) In a joint submission several importers questioned the calculation method of the Union production figure given in recital (108) of the provisional Regulation. In particular, they considered that the standing requirement would not have been met by the complainants as the available PRODCOM statistics would suggest a much higher level of EU production of the like product than the 240 200 tonne figure mentioned in the said recital.
- (79) In respect of this claim it is noted that the data source for the Union production figure was contained in recital (107) of the provisional Regulation, i.e. it is based on data provided by the European and national associations, cross-checked with data provided by individual producers and also with other statistical sources. The disparity between the PRODCOM statistics and the 240 200 figure derives from the fact that the product scope of this investigation does not fully match with the PRODCOM statistical data codes, i.e. it is much narrower. Therefore, there is no reason to doubt the result of the standing exercise.

If the EU-Commission conducted own researches concerning the PRODCOM data, another outcome is expected. There is also no reasonable explanation how the numbers are calculated. The suspicion is that the EU-Commission do not consider the data from the own institution (EUROSTAT) to examine the situation and instead they be guided by the data of the complainants.

1.2. Disparity in the products/EU Regulation 1935/2004

In the application form, the affected merchandise is described as "Tableware and Kitchenware". This kind of merchandise is intended to come in contact with food and is subject to the German Commodity Ordinance (*Bedarfsgegenständeverordnung*, in short *Bedggstv*), as well as to the [EU-Regulation 1935/2004](#) for all other EU member states. Both regulations require that only a European company can fit out these imports for a free trade inside the European Union! The merchandise has to be marked with a registered label (by *Bedggstv*, § 10(3)). The merchandise in China that was examined by the Commission was just porcelain and ceramics and in this structure not suitable as Table- or Kitchenware according to the Regulation (EC) No 1935/2004). This difference indicates a significant irregularity in the examination. Neither the merchandise listed in the [announcement dated](#)

[16.02.2012](#) nor the merchandise mentioned in the Regulation (EC) [1072/2012](#) exists in Brazil or China as comparable goods to those of the Union Producers.

Up to now, the examination has compared merchandise suitable to be in free circulation in the European Union with non-suitable merchandise. The positioning of chinaware and ceramics as merchandise suitable for the European Economic Area implies an extensive economical and administrative effort by the importing companies. The companies therefore carry a high risk of liability. In addition, it is known that these expenses were not considered when compiling the dumping-margins, neither in the accused country nor in the corresponding country.

1.3. Inequality of the products/European Customs tariff system

In Recital 24 of the Council Regulation 1072/2012, the Commission notes, “the composition of raw materials used determines the type of the final ceramic product produced”. Article 52 then states that the basic characteristics of the various types of ceramic tableware and kitchenware remain identical, with the exception of ceramic knives, although their specific characteristics may indeed show certain real differences.

Since 1 July 1968 the European Union, under the Customs Union, defines common external tariffs. According to the current EU tariff scheme (Common Customs Tariff), the third country duty rate is 12% for chinaware (6911) and 5% for ceramic products (6912). With the identification of the products stipulated in Regulation 1072/2012, the Commission disregards Regulation 2061/98 Article XIII, which identified a difference between these products, and determines the identity of the products inappropriately for the sake of convenience.

In Recital 24 of Regulation 1072/2012, the Commission states that the composition of raw materials determines the type of the final ceramic product.

The statement is wrong!

Primarily, the following features determine the final ceramic product:

1. The composition of raw materials
2. Method and number of firings
3. Kind of decoration and refining

The following differences in the final products result from these three distinguishing features:

- 1.1. Dictates the maximum firing temperature
- 1.2. Determines the corrosion consistency of the body
- 1.3. Determines the mechanical resistance and the elasticity of the body
- 1.4. Determines the colouring of the body (purity)
- 1.5. Determines the weight of the body
- 1.6. Causes a difference in production costs of about 30%

- 2.1. Determines shrinkage during production
- 2.2. Affects the density of the body (0.1 - 10 μ)
- 2.3. Determines the degree of hardness of the body
- 2.4. Determines the usage (hygiene/dishwasher safe)
- 2.5. Determines the accuracy of the product
- 2.6. Determines the grade of deformation
- 2.7. Determines the degree of subsequent processing (deco firing)
- 2.8. Causes a difference in production costs of about 50%

- 3.1. Distinguishes white ware from deco firing (additional firing is necessary)
- 3.2. Causes a difference in production costs of about 200%

On 1 March 2012, the Holst Porzellan GmbH presented a 57-page script to the Commission¹ focusing on raw materials, firing methods and methods of finishing. On 24 April 2012, similar documents were provided from Mäser Dornbirn (Recital 58ff). The EU regulation 2061/98 Article XIII is in accordance with those parts of the distinctions that concern the customs law. The information provided should have been sufficient for the Commission to establish a detailed comparison mechanism for the different kinds of products.

To substantiate our argument, please find a list about the different kinds of ceramics from the applicants attached (*Verband der Keramischen Industrie e.V.*, formerly Keramika Selb GmbH) (Attachment 1).

Source: Friedl, Hans: "*Warum? Weshalb? Wieso?*", 9th edition.

The following kinds of chinaware must be added to the numerous kinds of ceramics:

- 1. Hard porcelain
- 2. Soft porcelain
- 3. Bone china
- 4. Fritware

The Commission has received more than three written proposals from the group of importers for the classification of CN-Codes to correctly identify the different kinds of ceramic end products. However, the Commission has neglected to carry out a detailed differentiation of the products up to now.

We hereby ask for a comparison of the affected products with respect to the material, production and finishing differences and for the possibility to compare the real costs of production.

¹ See: <http://www.antidumping.eu/Dossier-04-Holst-Porzellan/2012-03-01-Holst-Stellungnahme-an-die-EU.pdf.pdf>

1.4. Defective Sampling China

1.4.1. Non-consideration of different company sizes

To understand the results of the Commission's work, we collected a number of figures. Here is the total of EU-Imports (EU27) from the People's Republic of China over the last few years in kilograms:

Codex	Unit	Year 2011	Year 2010	Year 2009	Year 2008	Year 2007
6911	kg	313.072.600	326.492.000	282.553.800	348.902.000	382.046.500
6912	kg	226.054.900	248.126.100	219.480.600	249.088.000	272.842.900
6911 + 6912	kg	539.127.500	574.618.100	502.034.400	597.990.000	654.889.400

And in currency (€):

Codex	Year 2011	Year 2010	Year 2009	Year 2008	Year 2007
6911	461.888.620,00 €	477.574.800,00 €	370.071.730,00 €	446.746.380,00 €	439.932.340,00 €
6912	356.681.550,00 €	378.307.460,00 €	291.791.790,00 €	320.592.500,00 €	315.592.500,00 €
6911+ 6912	818.570.170,00 €	855.882.260,00 €	661.863.520,00 €	767.338.880,00 €	755.524.840,00 €

To show a "hit list" of the member countries according to their import weight, we analysed 95% of the EUR27 country-related import volume:

Country	2011	2010
United Kingdom	99.926.500	96.618.200
BRD	95.846.100	99.311.200
Belgium	69.720.500	72.598.300
Italy	61.073.100	73.069.700
France	53.664.400	60.261.600
Netherlands	47.070.300	51.312.500
Spain	37.531.300	42.244.100
Poland	19.335.800	17.827.400
Romania	18.523.400	16.311.300
Cyprus	18.065.500	22.523.400
Denmark	10.316.600	9.765.400
Greece	10.227.600	13.506.200
Austria	9.959.500	10.350.900
Czech Republic	6.621.700	6.582.300
Bulgaria	5.043.100	4.221.400
Portugal	4.717.300	5.054.800
Slovakia	3.484.800	2.056.800

Hungary	1.752.600	1.740.900
Lithuania	1.682.700	2.379.600

Sources: Imports, trading volume and exports of EU27 countries according to the official helpdesk of the European Union “Trade Statistics” at <http://exporthelp.europa.eu/thdapp/comext/ComextServlet>

According to Recital 6 of the Regulation, approximately 400 exporting manufacturers were found for the sample, which represents about 60% of the Union exports. Therefore, the sample includes 323.476.500 kg of the affected goods in the investigation period. The five producers in the sample were chosen according to the highest export amount, which counts for almost 20% of the volume in the sample, so about 64.695.300 kg (64.695 t / 3.318 containers at 20 t). Compared to the complete volume of imports (539.127.500 kg) these five factories make up 12%. Compared to the annual average, these are producers with an annual export volume of 653.5 containers (59.4 per month [*1]).

The remaining 258.781.200 kg (258.781 t) are shared among 395 exporting producers, about an average of 655,1 t or 33,6 containers per factory (3 per month [*1]).

Because of these figures, the Commission knows that the main volume (88%) of the products exported to the Union are from factories that are about twenty times smaller than those that were chosen for the sample. In other words, 88% of all exporters have an export capacity of just 5,05% of those that were chosen for the sample. If the Commission doesn't consider, or erroneously considers the effectiveness of the different producers in the investigation, it results in an incorrectly determined dumping-margin according to Article 241 as mentioned above. The dumping-margins of the “other cooperating exporting producers”, who produce mostly by hand, have to be settled at a significantly lower rate than the margins of the mass-producers investigated. In an economically correct analysis, the margin should be 5,05% of the determined value of 26,6%, which is 1,34%.

[*1] The monthly volume of exports was reduced by 0.98 months to consider holidays and downtime.

TRADE STATISTICS

RESULTS [DOWNLOAD AS TAB OR XLS FILE](#)

Trade Statistics (Imports)
 EUR27 / China ,People's Republic of
 For commodity 6911 in Year 2002,2003,2004,2005,2006,2007,2008,2009,2010,2011

Code	Product Description									
69	CERAMIC PRODUCTS									
6911	Tableware, kitchenware, other household articles and toilet articles, of porcelain or china									
Indicators	Import Qty (1000 kg)	Import Qty (1000 kg)	Import Qty (1000 kg)	Import Qty (1000 kg)	Import Qty (1000 kg)	Import Qty (1000 kg)	Import Qty (1000 kg)	Import Qty (1000 kg)	Import Qty (1000 kg)	Import Qty (1000 kg)
Reporters	EUR27	EUR27	EUR27	EUR27	EUR27	EUR27	EUR27	EUR27	EUR27	EUR27
Years	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Partners										
China ,People's Republic of	75 223.000	104 177.900	131 473.500	362 956.200	340 353.700	382 046.500	348 902.000	282 553.800	326 492.000	313 072.600

Source Eurostat Comext : 23/07/2012 - [Other sources](#)

INPUT FORM

Year	Indicators	Reporter	Partner
2011	Imports Value	EUR27	China ,People's Republic of (720)
2010	Imports Quantity		
2009	Imports Sup. Qty		
2008	Exports Value		
		Product code	6911
		Browse or Search.	<input type="button" value="View"/>

TRADE STATISTICS

RESULTS [DOWNLOAD AS TAB OR XLS FILE](#)

Trade Statistics (Imports)
 EUR27 / China ,People's Republic of
 For commodity 6912 in Year 2002,2003,2004,2005,2006,2007,2008,2009,2010,2011

Code	Product Description									
69	CERAMIC PRODUCTS									
6912	Ceramic tableware, kitchenware, other household articles and toilet articles, other than of porcelain or china									
Indicators	Import Qty (1000 kg)	Import Qty (1000 kg)	Import Qty (1000 kg)	Import Qty (1000 kg)	Import Qty (1000 kg)	Import Qty (1000 kg)	Import Qty (1000 kg)	Import Qty (1000 kg)	Import Qty (1000 kg)	Import Qty (1000 kg)
Reporters	EUR27	EUR27	EUR27	EUR27	EUR27	EUR27	EUR27	EUR27	EUR27	EUR27
Years	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Partners										
China ,People's Republic of	57 659.800	60 528.800	80 772.700	228 633.100	248 532.100	272 842.900	249 088.000	219 480.600	248 126.100	226 054.900

Source Eurostat Comext : 23/07/2012 - [Other sources](#)

INPUT FORM

Year	Indicators	Reporter	Partner
2011	Imports Value	EUR27	China ,People's Republic of (720)
2010	Imports Quantity		
2009	Imports Sup. Qty		
2008	Exports Value		
		Product code	6912
		Browse or Search.	<input type="button" value="View"/>

1.4.2. Non-consideration of different sorting

In Recital 99 the Commission states that Chinese exporting producers classify their products with five different grades ranging from A to E.

This statement is wrong!

The majority of Chinese exporters classify their products with the following grades:

A-grade	sorted by hand, first choice
B-grade	products with small or average defects
C-grade	damaged products with significant defects

Apart from these three grades, it is possible to buy a complete production "run out of the kiln", which explicitly is not a classification. These products are unsorted and the client takes the entire production. A number of Union importers obtain their products in this way and sort the products according to their own criteria, as the sorting criteria of the exporting country are not directly applicable to the conditions of the EU market.

The three grades mentioned above correspond to a global classification of quality that is also used by the Union producers. With respect to Recital 99, it should also be mentioned that the classifications of the Union producers are not subject to fixed standards.

From the three classifications one can build – with simple mathematics – 3 x 3 sorting varieties, which can all be found at exporting companies as well as at Union producers. However, what is necessary to compare exporters, the corresponding countries and Union producers is the kind of sorting intended for a market.

In their investigation, the Commission seems to have missed that quality classifications are not directly based on the production volume, but on the sorting and selection process out of the production volume.

The majority of exporters supply products of grade a/b, a mixture of first choice products and products with small defects. It is true that the exporters add "b-grade" products in variable quantities to the batch. But this is also true for Union producers.

A premium porcelain brand distinguishes itself by maintaining a higher quality sorting of products. Accordingly, the average quality of products from German producers must be regarded as higher than, for example, the products from South or East European producers.

The sorting of products necessary for the classification is compulsively responsible for the production of

- a) Good products,
- b) Poor products.

According to the statement of the Commission in Recital 99, the Brazilian producer succeeds with the supply of grade A products in the Brazilian domestic market. Aside from the fact that this is an indicator for a protected and oligopoly-similar market, the Commission doesn't consider in its investigation that both qualities are always mutually supportive.

Either:

The price level of a "good product" is so high, that the factory can dump the "poor products".

Or:

The price level of the "poor product" is so high, that it subsidizes the quality sorting of the good product.

In any case, the Commission does not come to an accurate result when the comparison includes only one quality segment. According to its own statement, the Commission found that only the high-priced quality products are sold in the Brazilian domestic market, although it is strongly necessary to include the corresponding lower prices of the exports in the Commission's investigation.

As a result of the fact established in Recital 99, that the Brazilian producer achieves higher prices for the products on the domestic market than on the export market, this producer is immediately considered guilty of price dumping.

For this reason, we require that the complete sales of the Brazilian producer in the investigation period will be included in the comparison of prices to establish a correlation between them and the affected export country. Theoretical projections pursuant to Recital 99 are therefore needless and are the result of a derivative of conclusions based on concrete data!

Expense of sorting

The shifting of a significant part of sorting expenses from the exporting producer to the importer is currently not considered in the Commission's comparison. Consequently, we request an adjustment of 15% of the imported products from the exporting country with the industry-standard reduction of 30% in the reference price

15%	of	539.127.500 kg =	88.869.125 kg
Average price		€ 1 .52/kg (70%)	
Adjusted amount			€ 2.17/kg
<u>Adjusted sum</u>			<u>€ 192.846.002</u>

As an alternative, a price reduction of 30% for the prices of the country compared, as well as a reduction of 15% for the imported product volume of the Union producers would be a suitable compromise. It is essential to add the expenses of sorting and the price reductions of the importers to the costs of production of the exporting country for an effective comparison. These costs are also content of the production costs of the Union producers and were, in accordance to Recital 100, calculated in the Regulation.

1.4.3. Inefficient consideration of the regional structure

According to the official journal of the European Union 386 companies are listed as having not been sampled. 30 more added by corrigendum on 7th of February 2013.

Including the 5 sample factories we have a total of 421. This map shows the regional distribution.



Although 215 companies from Guangdong have been listed, no company was involved in the sampling. This is particularly remarkable because more or less all the durable porcelain is manufactured in the Guangdong area.

Further details about the regional distribution can be found in this table:

Provinces	sampled factories	not sampled interested parties	Export Value to EU 2011 in USD ¹	% Value ¹	Export Volume 2011 to EU in kgs ¹	% Volume ¹	Average price per kg	Average Wages of Employed Persons 2010 in Yuan ²	Index ³
HEBEI		7						32.306	80
BEIJING		1						65.683	163
TIANJIN (Tangshan)		21						52.963	131
SHANDONG	Shandong Zibo Niceton-Marck Huaguang Ceramics Limited; Zibo Huatong Ceramics Co., Ltd; Shandong Silver Phoenix Co., Ltd; Niceton Ceramics (Linyi) Co., Ltd Linyi Jingshi Ceramics Co., Ltd (17,6 % B352)	16	58.309.700	8,17	51.773.765	12,84	\$ 1,13	33.729	84
HENAN		5						30.303	75
JIANGSU		2						40.505	100
SHANGHAI		1						71.874	178
ZHEJIANG		3						41.505	103
HUNAN	Hunan Hualian China Industry Co., Ltd; Hunan Hualian Ebillion Industry Co., Ltd; Hunan Liling Hongguanyao China Industry Co., Ltd; Hunan Hualian Yuxiang China Industry Co., Ltd (26,8 % B349)	56	74.619.600	10,46	51.287.828	11,88	\$ 1,45	30.483	76
JIANGXI		5						29.092	72
FUJIAN		58						32.647	81
GUANGXI	Guangxi Sanhuan Enterprise Group Holding Co., Ltd (31,2 % B350) CHL Porcelain Industries Ltd. (30,0 % B351) Guangxi Province Beiliu City Laotian Ceramics Co., Ltd (23,0 % B353)	19	57.459.900	8,06	55.434.993	12,84	\$ 1,04	31.842	79
GUANGDONG		215	384.866.500	53,96	205.327.543	47,55	\$ 1,87	40.358	100
HONGKONG		4							
TAIWAN		1							
N.N		2							
National Total		416						37.147	

Quellen:

1: China chamber of Commerce for Import and Export of Light Industrial Products and Arts-Crafts, CCCLA, Rest Sales and weight = other provinces

2: <http://www.stats.gov.cn>

3: Guangdong, the region with the highest export volume to EU 2011 = 100

This table shows the following key facts:

1. Almost 54% of the Chinese export volume (by price) or almost 48% of the volume by weight of the product concerned are exported to the EU from Guangdong province
2. The average price per kg of the exports from Guangdong is significantly higher than the export prices from the other provinces, especially if you compare them to the provinces where the sample companies come from
3. The average wages in the province Guangdong are significantly higher than in the provinces of the factories in the sample

These facts alone show that the sample is not representative. Therefore, the conclusions about the dumping margin are wrong, since the major export region with the highest prices was totally ignored in the sample.




This becomes more obvious when one considers that the product range in the different regions is totally different.

At the hearing on 14.01.2013 the Commission confirmed that the investigation would have led to another, quote "... more fair ..." result, if smaller factories had been investigated in Guangdong Province, which provide most of the exporters to in the European Union.

As already mentioned (in the hearings in March and August 2012, where Mäser also showed the following tables), we do not agree that the wide product range in China (as stated in the table below with different production methods and different price ranges) should be investigated and assessed with the same anti-dumping standards.

The figures below also show how important it is to include all relevant Regions/Provinces to get a complete picture of the full product range. This is even more important, as the Commission itself states that there must be a change of product mix to justify the price increase from China in 2008-2011 (Recital 115).

Alternative PCN - Proposal Josef Mäser GmbH

MATERIAL	Superwhite Porcelain	Durable Porcelain	New Bone China	Fine Bone China	Normal Porcelain	Stoneware
Main production areas	Guangdong	Guangdong	Hebei, Tianjin	Hebei	Guangxi, Shandong	Fujian, Henan, Hunan
Example with Price Index Mäser Assortment (presentation Hearing 16.03.2012)	 Price Index 140-160	 Price Index 390-430  Price Index 400-470	 Price Index 340-380	 Price Index 520-600	 Price Index 100  Price Index 100-120  Price Index 110-140	

MATERIAL	Superwhite Porcelain	Durable Porcelain	New Bone China	Fine Bone China	Normal Porcelain	Stoneware
Main production areas	Guangdong	Guangdong	Hebei, Tianjin	Hebei	Guangxi, Shandong	Fujian, Henan, Hunan
TECHNIQUE	low pressure less quantities	low pressure less quantities	jiggering bigger quantities	jiggering bigger quantities	jiggering bigger quantities	
FIRING TEMPERATURE	1360°C round and square	1360°C square	1250 - 1300°C round and square	first time 1180 - 1200°C second time 1050 - 1100°C round and square	1380°C mainly round and square (depends on the square form)	
BODY Aluminium Silicate Bone Ash			Ca. 25% Ca. 3%	Ca. 42%	Ca. 35%	
GLAZE Aluminiumoxid AL2O3	Ca. 12-15%	Ca. 30 - 34%	Ca. 10%	Ca. 10%	Ca. 20-25%	
Decoration - Finishing Water Alcohol Inglaze (water) very rarely in China	x x x	x x x	x x x	x x x	x x x	

1.4.4. Insufficient consideration of the on-going anti-trust investigation against the German porcelain industry

The Commission failed to treat the data provided by the Complainant and the injury data collected during the investigation with the required caution. They particularly failed to give due account of the presence of collusive practices on the EU market (principally in Germany), which may have rendered the injury data collected throughout the investigation unreliable. This point, while significant in itself, has been conveniently brushed aside.

In Recital 175, it is stated that, "*Union industry is quite widespread*". While this may be so, such a statement does not accurately explain that in terms of production volume, the industry is geographically concentrated. While there may be small producers in some Union Member States, the uncontested fact is that the leading porcelain producers in Europe are German. Coincidentally, these German producers are also subject to the on-going *Bundeskartellamt* (German Anti-Trust Authority) investigation into anti-competitive practices in the German porcelain market. Indeed, the *Bundeskartellamt* investigation has, among others, as its subjects the *Verband der Keramischen Industrie e.V.* (German Association of the Ceramic Industry), who are also supporters of the Complaint.

The Commission accepts that "*one company*" in particular has already been fined for price-collusion in a different market segment, and is subject to the current investigation by the *Bundeskartellamt*. Yet, while it is true that "*the practice occurred before the period under consideration*", the Commission neglects to highlight that the fine was levied in 2010 and that the company that was fined mentions it in its annual report (the fine amounts to € 71,5 million). Thus, it cannot be ignored that the fine may have negatively implicated the company's market share and/or reduced its profits.

The attempt to challenge the earlier fine is not unique. In fact, six companies are challenging their fines in the General Court of the European Union. Two investigations into the same company in the space of a few years, however, must raise doubts concerning the authenticity of alleged injury, yet the Commission mentions this briefly in only one Recital.

In Recital 175 the Commission notes, "*the outcome of the investigation has not been published by the German authorities yet, so no conclusions can be drawn on this point*". In light of this, we deem it necessary to remind the Commission of the business practices likely to occur. When an anti-trust authority, which would include the *Bundeskartellamt*, announces investigations into a certain market segment, the companies involved are very likely to immediately halt their collusive practices to avoid detection. The inevitable consequence is that profits will drop on a short to medium-term basis before any restructuring can take effect. The market will become more competitive as a result of this behaviour and the injury indicators from the companies involved would develop positively. Any injury analysis of companies included in such an investigation is, as a result, gravely distorted.

Furthermore, the Commission is reminded of the judgment of the Court of First Instance in *Mukand Ltd v. Council of the European Union*² (hereinafter referred to as "Mukand"), where a regulation levying anti-dumping duties on stainless steel bright bars ("SSBBs") was successfully overturned after the Court found that the Commission had failed to take due account of anti-competitive practices in the market. Just as in the present investigation, the Commission, and indeed also the Council, forwarded explanations, similar to those in Recital 175 of the provisional regulation.³

The Court flatly rejected these arguments:

*"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 subsidized Indian imports."*⁴
[Emphasis added]

This is because, the Commission "ought to have accepted that the anti-competitive conduct of producers of flat products could have had significant repercussions on SSBB prices, most likely increasing them artificially . . ."⁵. [Emphasis added] *Ipsa facto*, by failing to take due consideration of the possibility of collusive practices on the market, "the institutions disregarded a known factor . . . which might have been a concurrent cause of the injury sustained by the Community."⁶ [Emphasis added]

The Court found that "it must be held that their assessment of the injury and of the causal link between the injury and the subsidized imports set out in the Contested Regulation is vitiated by a manifest error."⁷ [Emphasis added]

As a result of this judgment, the definitive countervailing duties on SSBBs were overturned. Based on this decision, we call upon the Commission to reject going ahead with definitive duties, as due account needs to be taken of **known factors** like the anti-trust investigation, which will impact any injury findings (especially with respect to sales prices, sales volumes, market share and profits).

The Commission fails to see that should definitive duties be imposed, it will have knowingly aided in protecting a market in which years of artificial price-arrangements have eroded Union competitiveness. Already having proceeded with the current case to this late stage shows that the Commission's assessment of injury to Union industry is vitiated by a manifest error, which is why the investigation should be set aside to properly investigate the collusive practices by EU producers.

² T-58/99 *Mukand Ltd, Isibars Ltd, Ferro Alloys Corporation Ltd, Viraj Impoexpo Ltd v Council of the European Union*.

³ See paragraph 44 of T-58/99.

⁴ See paragraph 46 of T-58/99.

⁵ *Ibid.*

⁶ See paragraph 48 of T-58/99.

⁷ See paragraph 45 of T-58/99.

The Commission was again made aware that there is an on-going anti-trust investigation, which affects the results. In the General disclosure (25.02.2013) the commission declares:

- (143) Subsequent to the imposition of provisional measures, several parties insisted that the cartel investigation launched by the German authorities referred to in recital (175) of the provisional Regulation or the cartel fine referred to in the same recital had not duly been taken into account. Concerning these claims, the following can be said further to what is already stated in recitals (174) and (175) of the provisional Regulation.
- (144) The German cartel investigation, which investigates alleged price fixing from July 2005 to February 2008, is still on-going. However it can be confirmed that none of the sampled Union producers is subject to this on-going investigation. Therefore, the micro-economic indicators cannot be affected by the investigated practices and the macro-economic indicators only to a very limited extent, if any.

These statements are wrong!

The EU-Commission already were informed that also after the initiation of the AD586 case restrictive practices were conducted by the Union producers. The suspicion arises that the EU-Commission does not carry out investigations on its own.

- Annual report of February 20 by bhs-tabletop AG: “On 3 February 2011, in the course of nationwide inspections against manufacturers of kitchen- and tableware and other companies on suspicion of anticompetitive agreements and concerted practices and other anti-competitive behaviour in the distribution of table- and kitchenware on request of the Bundeskartellamt the offices of BHS tabletop AG in Selb were examined ...” A profit-reducing accrual of **2.200.000 EUR** was build. If this accrual is explicitly build based on this investigation is not clearly mentioned in the report.
- Annual report 2011 by Rosenthal AG: 4.100.00 EUR other accrual were build, inter alia “... for the possible occurrence of legal risks ...”. The expectance of legal risks reduced the company earnings of the Rosenthal AG by **4.100.000 EUR**.
- Annual report of January 12th by the Staatliche Porzellan-Manufaktur Meissen GmbH: **8.200.000 EUR** accruals were built in the IP inter alia for a risk provision for the current antitrust proceedings. Therefore the investigations of the Bundeskartellamt do have a negative impact on the company earnings of the Meissen GmbH.

These publications proof that the on-going anti-trust investigation of Germany do have a **direct and immediate negative impact on the company earnings of important Union producers**. Therefore the argument of the EU-Commission on February 26 2013 that “... the on-going anti-trust investigation does not affect the business situation of the Union producers” is simply wrong and the tax and business correlations were totally ignored by the Commission.

The Commission made aware of these facts, but the Commission states that Germany is not the most important producing country of the European Porcelain industry and the examinations of the Bundeskartellamt just play an inconsiderable and local role. The current PRODCOM statistics shows that Germany is with 42.928.000 tonnes by far the largest producer of Porcelain within the Union. It represents nearly 30% of the produced Union amount (concerning the turnover: ca. 42,79% of the whole Union turnover).

2. Incorrect definition of the product concerned and similar product

2.1. Material composition of the product concerned

In the Regulation 1072/2012, there are two contradictory appraisals concerning the similarity of products. Recital 24 states that the composition of the raw materials used in manufacture determines the type of the final ceramic product. In Recital 100 the Commission makes clear that branded ceramic products can be sold at much higher prices than generic ceramic table- and kitchenware. The Commission admits that branded products have an additional value, but without exactly quantifying that value.

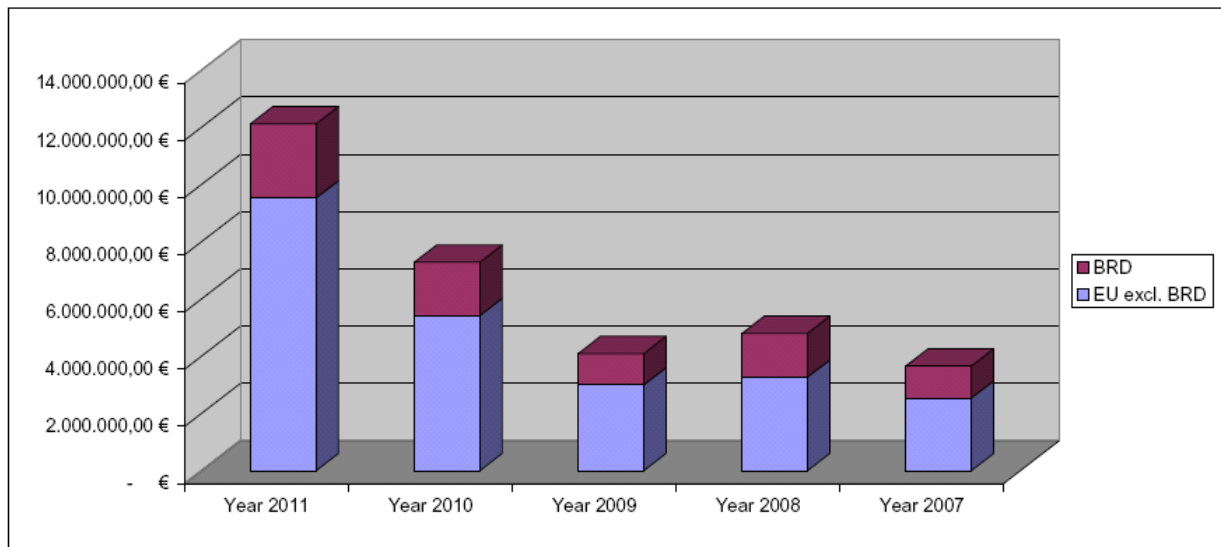
The “value” of a product in the free market is expressed in money, i.e., the price of the product. The price is where supply and demand meets in the prevailing market balance. The Commission should have paid special attention to accurately investigate the market price of the different products and brands to get objective results. The Commission explicitly neglected such an investigation in favor of considering the material homogeneity of these types of products. Therefore, the Commission didn't investigate value and added value, two fundamental characteristics of economic products, and in doing so they omitted an important component of the required investigations.

Therefore, the Commission itself declares the results of the investigation as being incomplete.

This value that has not been investigated by the Commission is the fundamental difference between Chinese products and the products from the Union producers. If the value of products from the Union producers were similar to the value of products of the exporting country, the rich Chinese would not buy European porcelain. As this is not the case, European producers are successfully exporting their products to China. This is, by the way, a significant explanation for the anonymity desired by the proposing Union producers according to Recital 19.

Last year, the exports of Union producers increased about 50%⁸. This export success shows that the products of Union producers are not the same in type and quality as the products made in China. This also proves that they differ in a significant property, namely, the value.

⁸ See: <http://www.antidumping.eu/Dossier-98-Beweise/EU-Export-to-China-Codex-6911-6912.pdf>



Source: PRODCOM (EU Exports Codex 6911 + 6912 EU to China)

The EU-Commission declares in the General Disclosure of February 25th, that branded porcelain exists and that it is sold at a higher price level than generic products. This conclusion was not considered in the regulation 1072/2012.

(72) Third, as described in recital (100) of the provisional Regulation the investigation established that the Brazilian producer only sells branded products on the Brazilian market whereas Chinese exporting producers do not export branded products but rather private label products or generic ceramic tableware and kitchenware. Branded products are normally perceived by customers to be products signifying a certain prestige, assured quality and design thus commanding a higher market price whereas generic and/or private label products, whilst having the same physical and technical characteristics, are usually sold at considerably lower price levels. While the additional value of a branded value cannot generally be exactly quantified in the abstract as it varies from brand to brand and depends on many different factors, such as customer perception, brand recognition, and other non-quantifiable factors, the Brazilian producer has, in this particular case, confirmed that its branded products can be sold at significantly higher prices on the Brazilian market than other non-branded products. Accordingly, a downward adjustment of 40% of the domestic sales price was made to the normal value pursuant to Article 2(10)(k) of the basic Regulation.

(73) With regard to the above mentioned adjustment it is recalled that two exporting producers have questioned both the basis on which the adjustment was made as well as the level of the adjustment (see paragraph (61) above). It is however uncontested that a branded product commands a higher sales price than an identical non-branded product and that the price comparability is thus affected. Moreover, in addition to the information provided by the producer in the analogue country, actual and verified

In the regulation 1072/2012 the product concerned was firstly extrapolated in order to achieve a theoretical equal level of quality and secondly another upward adjustment of 66,67% was made to equate the price level to a branded product. The finding that branded products were sold to a 40% higher price than generic products should now put in relation to the products of the Union. The following conclusions can be anticipated:

- Just a part of the Union products could be compared with the products of the importers
- Branded products is not comparable with the concerned products and should therefore be excluded form the quantity of comparison

- By adjusting the remaining union amount by the branded products, the result is that the prices are almost equal

3. Injury and cause of damage

3.1. General comment on the statistics and their presentation

The statistical evaluation of the Commission and the calculations we made for verification purposes are based upon the official data of the European Commission “EUROSTAT”. Under the designation “PRODCOM”, this data is publicly accessible and available as a download version.

We have included the relevant PRODCOM numbers for the procedure in the following statistics to provide a transparent presentation and an appropriate comparison model to the EUROSTAT trade statistics and the classifications of the duty tariffs.

23411130	Porcelain or china tableware and kitchenware
23411210	Ceramic tableware, other household articles : common pottery
23411230	Ceramic tableware, other household articles : stoneware
23411250	Ceramic tableware, other household articles : earthenware or fine pottery
23411290	Ceramic tableware, other household articles : others

Unfortunately, the three evaluations use different number ranges. You will find the data mentioned above in our statistics aggregated as a result with the codex identification 6911 + 6912.

Before we go into the details of the statistical information from regulation 1072/2012, we would like to mention that the PRODCOM statistics have changed significantly between 4 October 2012 and 7 November 2012. In total, the production volume in this period is 37% lower than the volume of October 2012.

Origin	Party	Information	Codex	Unit	Year 2011
Prodcom	EU	Produktion	23411130	kg	147.000.000,00
Prodcom (new)	EU	Produktion	23411130	kg	144.540.000,00
Prodcom	EU	Produktion	23411210	kg	240.000.000,00
Prodcom (new)	EU	Produktion	23411210	kg	47.892.000,00
Prodcom	EU	Produktion	23411230	kg	40.030.620,00
Prodcom (new)	EU	Produktion	23411230	kg	40.031.000,00
Prodcom	EU	Produktion	23411250	kg	107.003.084,00
Prodcom (new)	EU	Produktion	23411250	kg	107.003.000,00
Prodcom	EU	Produktion	23411290	kg	30.000.000,00
Prodcom (new)	EU	Produktion	23411290	kg	15.793.000,00
Prodcom	EU	Produktion	6911 + 6912	kg	564.033.704,00
Prodcom (new)	EU	Produktion	6911 + 6912	kg	355.259.000,00
Prodcom (new)	EU	Produktion	6911 + 6912	kg +/- in %	37,0%

We already received the draft of the brief for the regulation 1072 on 17 October 2012, 6 days prior to the vote by the countries on 23 October 2012, which means that the Commission used PRODCOM data from the period between June to October 2012 to make the statistical evaluation.

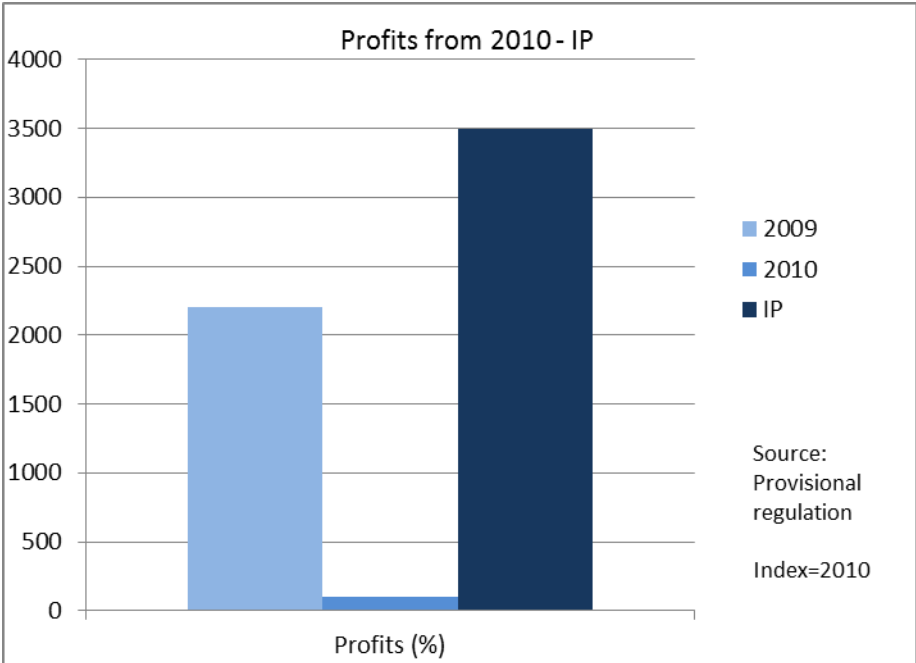
In the following section we present our point of view based on more recent PRODCOM statistics (11/2012).

We will prove that the statistical data the Commission used for the proceeding was partially calculated in the wrong way. Furthermore, our inspection result would increase by 37% if we were using the same (old) data as the Commission.

3.2. Additional arguments against an injury to EU industry

Chinese imports have decreased significantly since 2008; Chinese imports have decreased by 30% more than Union industry sales based on the Commission's data.⁹ This trend is even more apparent during the IP. From 2010 to the IP, the imports decreased by a staggering 5,892% when compared to the relatively minor decrease experienced by Union producer sales for the same period. The focus of the Commission on market shares ignores the clear difference in absolute volume between imports from China and EU sales.

The data on the injury factors indicates numerous improvements. These could not possibly demonstrate that the Union industry is suffering.

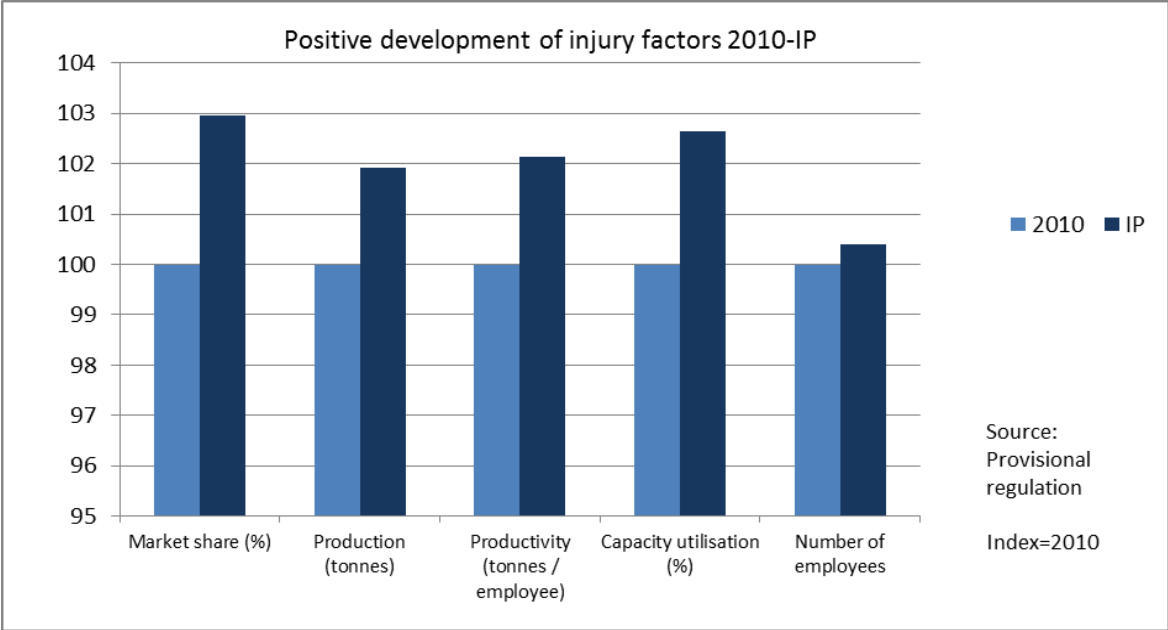


⁹ Table 2, Commission Regulation (EU) No 1072/2012 imposing a provisional duty on imports of ceramic tableware and kitchenware originating in the People's Republic of China (hereafter referred to as the "provisional regulation").

Profitability is a determining factor in any injury analysis, and the Commission data shows the Union industry profits are not only positive but are at a healthy level for the industry at 3,5% in the IP. In fact, they have increased by 60% compared to 2009 and by an even more impressive 3.500% compared to 2010.¹⁰ The suggestion that a reasonable comparison can be made with the previous anti-dumping investigation on *Leather footwear*¹¹ because it is a "widely-used and important consumer product"¹² is not convincing, as the product under consideration is a completely different product in a completely different market. A more acceptable comparison should be with ceramic tiles, which was subject to an anti-dumping investigation in 2010/11, where the acceptable level of profit was concluded to be 3,9%,¹³ which is very close to the profit margin reached by the Union industry during the investigation period.

When one considers the other injury factors in the provisional regulation these do not reveal a suffering industry, either. In fact, recent improvements in almost all injury factors of the Union industry demonstrate an industry that is developing positively. In particular, between 2010 and the IP, the Commission's data also indicates that market share,¹⁴ production,¹⁵ production capacity,¹⁶ productivity,¹⁷ employment,¹⁸ and exports¹⁹ increased and production costs decreased.²⁰

The development of injury factors from 2010 to the IP is shown in Table 1 below.



¹⁰ Table 10, provisional regulation.

¹¹ Council Regulation (EC) no 1472/2006, as published in OJ L275, 6.10.2006, p.36(Recital 292).

¹² Recital 135, provisional regulation.

¹³ *Ceramic tiles from China*, OJ L238/1, 15.09.2011, page 1 (Recital 164).

¹⁴ Table 5, provisional regulation.

¹⁵ Table 3, provisional regulation.

¹⁶ *Ibid.*

¹⁷ Table 7, provisional regulation.

¹⁸ Table 6, provisional regulation.

¹⁹ Table 13, provisional regulation.

²⁰ Table 11, provisional regulation.

We note that the data used in the table is based on the Commission's provisional regulation. This is why it is surprising to learn that the Commission interprets these as showing an industry suffering from Chinese imports.

Indeed, as noted above, market share of Union industry developed positively from 2010 to 2011. During that period, market share of Union industry increased by 3%.²¹ Production and productivity, both part of the many positively developing injury indicators from 2010 to 2011, increased by 2%.²² As it is shown, capacity utilization showed a positive development of 2,6%.²³ Even Union industry employment, an often-highlighted direct indicator of injury, increased.²⁴

The Commission's own data consequently does not show a suffering industry. On the contrary, the data provided by the Commission shows a healthy, in fact, growing industry with positive indicators throughout (be it production, market share, profits, or employment). Injury indicators such as productivity and capacity utilization show an industry gaining in year on year competitiveness. At the same time, industry employment has risen. Some of these developments have been especially impressive. Some developments are particularly impressive, such as the 3.500%, increase in profits, or the 3% increase in market share. These figures are not indicative of the injury that the Complainants allege to be suffering.

Consequently, we submit that no injury to Union industry exists. In this respect, we refer to the case law of the WTO Appellate Body and WTO panels.²⁵ It has been established in these cases that WTO members cannot simply carry out a mere endpoint-to-endpoint comparison but are obliged to examine intervening factors, especially when changing the baseline would give a different injury finding (as is the case in the present investigation). In our view, the fact that injury factors increased markedly since 2009, and especially between 2010 and the IP, is such an intervening factor that deserves closer scrutiny by the Commission Services.

3.3. Union consumption

In Recital 110 the EU Commission refers to the EUROSTAT import statistics as well as to unspecified inputs concerning the sales in the economic sector to state that the Union consumption in the IP is 726.614 t.

This statement is wrong!

²¹ Table 5, provisional regulation.

²² Table 3, provisional regulation

²³ Table 3, provisional regulation.

²⁴ Table 6, provisional regulation.

²⁵ For example, *United States - Measures Affecting Imports of Certain Passenger Vehicle and Light Truck Tyres from China* (WT/DS399/R), in particular, 7.101-7.110. See also *Argentina – Safeguard Measures on Imports of Footwear* (WT/DS121/AB/R), paragraph 129.

The union consumption identified by the EU Commission is 23,3% lower, as the addition of the relevant data of EUROSTAT:

Codex 6911 - 6912 Consumption of the Union							
Formula for consumption		Production - Export total + Import Total					
Origin	Party	Information	Codex	Unit	Year 2011	Year 2010	Year 2009
Trade Statistics	EU	Import China	6911 + 6912	kg	539.127.500	574.618.100	502.034.400
Addition	EU	Import non EU excl. China	6911 + 6912	kg	102.041.400	95.163.400	94.566.900
Addition	EU	EU Utilization of EU Production	6911 + 6912	kg	254.971.500	260.788.600	355.584.296
Origin	Party	Information	Codex	Unit	Year 2011	Year 2010	Year 2009
Prodcom	EU	Produktion (Prodcom 11/12)	6911 + 6912	kg	355.259.000	356.034.000	439.606.396
Trade Statistics	EU	Export non EU	6911 + 6912	kg	100.287.500	95.245.400	84.022.100
Trade Statistics	EU	Import non EU	6911 + 6912	kg	641.168.900	669.781.500	596.601.300
Addition	EU	Consumption of EU	6911 + 6912	kg	896.140.400	930.570.100	952.185.596
1072/2012	EU	Consumption	6911 + 6912	kg	726.614.000	750.830.000	687.609.000
Addition	EU	difference in kg	6911 + 6912	kg	-169.526.400	-179.740.100	-264.576.596
Addition	EU	difference in %	6911 + 6912	kg	-23,3%	-23,9%	-38,5%

The numbers, data and statistics of EUROSTAT, PRODCOM and Trade Statistics are publicly available from the European Union. The Commission does not contravene a rule if it publishes the data and statistics used (concerning the general market data not including the specific data of the complainants).

We therefore apply for the inspection of the used data for the union consumption in the AD investigation 586.

3.4. Imports

In Recital 114 the Commission states that the total imports from the PR of China decreased 9%.

This statement is wrong!

We compared the numbers of the Commission with the actual EUROSTAT data und found out that the values during the IP differ by 24,24%.

Origin	Party	Information	Codex	Unit	Year 2011	Year 2010	Year 2009	Year 2008
Trade Statistics	EU	Import China	6911	kg	313.072.600	326.492.000	282.553.800	348.902.000
Trade Statistics	EU	Import China	6912	kg	226.054.900	248.126.100	219.480.600	249.088.000
Trade Statistics	EU	Import China	6911 + 6912	kg	539.127.500	574.618.100	502.034.400	597.990.000
Trade Statistics	EU	Import China	6911 + 6912	kg +- kg VJ	-35.490.600	72.583.700	-95.955.600	-56.899.400
Trade Statistics	EU	Import China	6911 + 6912	kg +- % VJ	-6,58	12,63	-19,11	-9,52
Trade Statistics	EU	Import EXTRA-TRADE EUR27	6911	kg	362.273.300	369.672.700	324.180.700	399.658.600
Trade Statistics	EU	Import EXTRA-TRADE EUR27	6912	kg	278.985.600	300.108.800	272.420.600	318.137.600
Trade Statistics	EU	Import EXTRA-TRADE EUR27	6911 + 6912	kg	641.258.900	669.781.500	596.601.300	717.796.200
Trade Statistics	EU	Import EXTRA-TRADE EUR27	6911 + 6912	kg +- kg VJ	-28.522.600	73.180.200	-121.194.900	-58.249.300
Trade Statistics	EU	Import EXTRA-TRADE EUR27	6911 + 6912	kg +- % VJ	-4,45	10,93	-20,31	-8,12
1072/2012	EU	Import China	6911 + 6912	kg	485.814.000	516.618.000	449.346.000	535.593.000
1072/2012	EU	Import China	6911 + 6912	kg +-	-53.313.500	-58.000.100	-52.688.400	-62.397.000
1072/2012	EU	Import China	6911 + 6912	kg +- %	-10,97	-11,23	-11,73	-11,65
Addition	EU	Import China 1072 vs EXTRA TRADE EUR27	6911 + 6912	kg +-	-155.444.900	-153.163.500	-147.255.300	-182.203.200
Addition	EU	Import China 1072 vs EXTRA TRADE EUR27	6911 + 6912	kg +- %	-24,24	-22,87	-24,68	-25,38

While the sum of all EXTRA TRADE EUR27 imports only increased by 4,45% the imports of China decreased by 6,58%. Therefore, the imports of China have decreased more than the total import EXTRA TRADE EUR27.

It was also mentioned in Recital 114 that the decline of the imports is lower than the total consumption in the EU.

This statement is wrong!

We compared the data from the Commission with the actual EUROSTAT data and found out that the imports from China have substantially deteriorated compared to the development of the union consumption.

Codex 6911 - 6912 Consumption of the Union

Formula for consumption		Production						
		- Export total						
		+ Import Total						
Origin	Party	Information	Codex	Unit	Year 2011	Year 2010	Year 2009	Year 2008
Trade Statistics	EU	Import China	6911 + 6912	kg	539.127.500	574.618.100	502.034.400	597.990.000
Addition	EU	Import non EU excl. China	6911 + 6912	kg	102.041.400	95.163.400	94.566.900	119.806.200
Addition	EU	EU Utilization of EU Production	6911 + 6912	kg	254.971.500	260.788.600	355.584.296	385.482.571
Origin	Party	Information	Codex	Unit	Year 2011	Year 2010	Year 2009	Year 2008
Prodcom	EU	Produktion (Prodcom 11/12)	6911 + 6912	kg	355.259.000	356.034.000	439.606.396	489.994.371
Trade Statistics	EU	Export non EU	6911 + 6912	kg	100.287.500	95.245.400	84.022.100	104.511.800
Trade Statistics	EU	Import EXTRA-TRADE EUR27	6911 + 6912	kg	641.168.900	669.781.500	596.601.300	717.796.200
Addition	EU	Consumption of EU	6911 + 6912	kg	896.140.400	930.570.100	952.185.596	1.103.278.771
Addition	EU	Consumption of EU	6911 + 6912	kg +/- %	-3,84	-2,32	-15,87	-8,77

While the union consumption decreased by 3,84% the imports of the PR China deteriorated by 4,45%. This shows that the PR of China imports and all relevant parameters are declining faster than other market participants. The sources to proof these numbers are attached (Attachment 2, 3, 4).

3.5. Market share

In Recital 114, the Commission reports the market share of the imports of the PR of China is 66,9%.

This statement is wrong!

Origin	Party	Information	Codex	Unit	Year 2011	Year 2010	Year 2009	Year 2008
Trade Statistics	EU	Import China	6911 + 6912	kg	539.127.500	574.618.100	502.034.400	597.990.000
Prodcom	EU	Produktion (Prodcom 11/12)	6911 + 6912	kg	355.259.000	356.034.000	439.606.321	489.994.371
Addition	EU	Consumption	6911 + 6912	kg	896.140.400	930.570.100	952.185.521	1.103.278.771
Addition	EU	Chinas Market Share	6911 + 6912	kg	60,16	61,75	52,72	54,20

In addition to the above-mentioned PRODCOM and EUROSTAT data, the market share of the imports from the PR of China in the IP represents only 60,16% and fell 1,59% in comparison with the year before.

3.6. European producers Goods in stock

In Recital 130 of the regulation 1072/2012 the Commission reports a closing stock of 6.647t for the Union industry.

This statement is wrong!

Origin	Party	Information	Codex	Unit	Year 2011	Year 2010	Year 2009
Prodcom	EU	Produktion (Prodcom 11/12)	6911 + 6912	kg	355.259.000	356.034.000	439.606.321
Prodcom	EU	Produktion (Prodcom 11/12)	6911 + 6912	kg +/- kg VJ	-775.000	-83.572.321	-50.388.050
Prodcom	EU	Produktion (Prodcom 11/12)	6911 + 6912	kg +/- % VJ	-0,22	-23,47	-11,46
1072/2012	EU	Lagerbestände	6911 + 6912	kg	6.647.000	7.611.000	6.647.000
1072/2012	EU	Lagerbestände in % der EU-Produktion	6911 + 6912	kg %	1,23	1,32	1,32
t12.007557.10-I-0	Complaints	Sold Produktion	6911 + 6912	kg	69.789.259	67.362.596	62.905.885
1072/2012	EU	Lagerbestände in % der Complaints	6911 + 6912	kg %	9,52	11,30	10,57

It is possible that the Commission worked with the closing stock data from the Union producers under investigation, but the Commission didn't consider the changes in inventory for the complete industry sector when they got a result of just 1,23% for the complete stock of goods in the investigated period.

In addition, Recital 130 states that the Union producers basically work on orders.

This statement is wrong!

As a long-time market participant, we noticed that a significant amount of the Union producers guarantee delivery times between 8 and 20 days based on existing stock. In this context we would like to present some examples.

In the period investigated, Germany produced 42.928.000 kg chinaware (PRODCOM Codex 23411130). With respect to the total production of 147.000.000kg in the Codex 23411130, this was about 30%. BHS Tabletop AG calls itself the market leader in the "Hotel Chinaware" segment. Its public business report for 2010 (page 11) declares a stock of € 19,2 million with a turnover of € 89.4 million. According to that, the world market leader for hotel chinaware works with a stock of 21,48% compared to its turnover.

Evidence: [Business report BHS Tabletop AG 2010](#)

Villeroy & Boch, the biggest European producer of chinaware, posted a turnover of € 267.595.000 for the entire year in the "Table culture" sector. The stock is valued at € 58.585.000. This is about 22% of the complete turnover.

Evidence: [Business report Villeroy & Boch 2010](#)

The Rosenthal GmbH reports a stock of € 20.200.000 with a turnover of € 84.760.789,16, this is about 23.83% of the complete turnover.

Evidence: [Business report Rosenthal GmbH 2010](#)

The three companies already mentioned had a cumulative stock of € 306.995.000 (€ 307 million) in the year 2010. This is about 20% of the turnover of all the Union producers in the calendar year 2010. We can provide further examples to the Commission, but we would like to leave it with the three examples at this stage.

With the statement "*the Union producers basically work on orders*" corroborated with a stock of 6.647t, the Commission admits to excluding a representative majority of Union producers. Therefore, the determined dumping margin is much too high. The figures provided are incorrect and the results derived from these figures can therefore be considered as completely inapplicable.

In Recital 130 the Commission reports declining stocks of the Union Producer.

(130) The level of closing stocks of the Union industry decreased in absolute terms by 14 % over the period considered. The investigation revealed that this is not a crucial indicator for this type of industry, which basically works on orders.

Table 8

	2008	2009	2010	IP
Stocks (tonnes)	7 754	6 647	7 611	6 647
Index (2008 = 100)	100	86	98	86

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 (General Disclosure Recital 104-105)

This statement is wrong!

Inside their application the applicants quantify it's stock value (according to ANNEX G ARES797765 - page 3) by 13,262,954 kg, (13,263 tons) for the year of 2010.

Evidence: [ANNEX G of the application](#)

It is absolutely not understandable, that the stock value of the small range of applicants are 5.652 tons lower, than the stock value of all Union Producer.

Recital 122 shows reported an increasing production volume of the Union Producers during the investigation period.

(122) Over the period considered, the production, production capacity and capacity utilisation of the Union industry developed as set out below.

Table 3

	2008	2009	2010	IP
Production volume (tonnes)	281 300	230 300	235 700	240 200
Index (2008 = 100)	100	82	84	85
Production capacity (tonnes)	371 540	361 253	326 573	324 072
Index (2008 = 100)	100	97	88	87
Capacity utilisation	75,7 %	63,8 %	72,2 %	74,1 %
Index (2008 = 100)	100	84	95	98

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Recital 125 (Table 4) reported declining sales of the Union producers during the investigation period.

Table 4

Volume (tonnes)	2008	2009	2010	IP
Sales in the Union	190 332	156 798	152 609	152 095
Index (2008 = 100)	100	82	80	80

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A higher production volume at lower sales numbers must inevitably increase the stocks!

The proportionality of the information presented in the regulation Union statistics “production” “sales” and “stock” compelling more and further evidences that the data material used from the Commission is wrong! Knowledge gained and conclusions made by the Commission have to be seen as flawed and inaccurate.

In the General Disclosure of February 25th additional deviations become apparent. In the regulation 1072/2012 the Commission states the “closing stocks of the Union industry” whereas in the General Disclosure they talk about “closing stocks of the sampled producers”. It remains questionable how far the EU-Commission considered the stocks of the sampled union producers to calculate and conclude the profitability of the whole Union industry. The suspicion that the whole calculations and results in the regulation 1072/2012 are solely considered the sampled Union producers arises. But in fact this does not reflect the whole community industry.

The Commission was informed about the fact that a considerable amount of the union producers are working with stocks amounting up to 25% of the generated sales turnover. But not all Union producers keep such a high stock therefore this quota does not match for the whole Union. The complainants mention the following economic figures for the year 2010:

- Produced amount 67.639.283 kg
- Amount sold in the EU 48.438.721 kg
- Amount sold in the Non-EU 14.969.065 kg
- Amount sold total 63.407.786 kg
- Sales revenues 268.150.215 EUR
- Average price revenues in the EU EUR 3,96/kg
- Closing stocks 2010 13.262.954 kg

The complainants themselves proofed that they are working with considerable stocks (value of stock = 19,60% of the produced amount alternatively 20,92% of the sold amount).

The findings of the EU-Commission are wrong and all defences in this topic were ignored. In the summary of a higher productivity, decreased stocks as well as higher turnover in the IP are clear indicators, which show that the community industry is much healthier, than the results of the EU-Commission declares.

3.7. Development of the employment in the European ceramic/porcelain industry versus general European employment development in industrial production

In Recital 127 the Commission explains that the employment in the European industry decreased between 2008-2011 by 21%. The Commission draws the conclusion that this is a result of the alleged dumping from China.

This statement is wrong!

The following table shows (source: EUROSTAT) the evolution of the employment in the EU-27 countries with an overall decrease of almost 20 % in the industrial production and decreases of 23,6 % for some specific areas.

More and more production jobs in the EU are being replaced by jobs in other areas.

TIME	GEO/NACE_R2	Manufacture of textiles	Manufacture of wearing apparel	Manufacture of leather and related products	Manufacture of wood and of products of wood an cork, except furniture; manufacture of articles of straw and plaiting materials	Manufacture of paper and paper products	Printing and reproduction of recorded media	Manufacture of furniture	Gesamt
Average 2008	European Union 27 countries	935,3	1.726,0	554,7	1.369,9	739,5	1.179,9	1.529,5	8.034,8
Average 2009	European Union 27 countries	781,9	1.522,4	468,7	1.238,8	693,3	1.063,4	1.374,5	7.142,9
Average 2010	European Union 27 countries	741,7	1.370,9	441,8	1.147,5	677,7	1.024,3	1.249,1	6.652,9
Average 2011	European Union 27 countries	740,2	1.318,7	459,4	1.145,3	664,3	949,4	1.194,0	6.471,2
		79,14%	76,40%	82,81%	83,60%	89,83%	80,47%	78,06%	80,54%

Source: EUROSTAT (*Employment by sex, age and detailed economic activity (from 2008, NACE Rev.2 two digit level) (1000)*)

Therefore, the statement that the decrease of the employment in the European ceramic/porcelain industry is a result of alleged dumping from China is not correct and not proven.

3.8. Production of the economic sector versus changes in the consumption

In Recital 123, the Commission states that the production of the branch didn't recover to the same degree as the consumption.

This statement is wrong!

The manufacturing sector in the Union was the one least affected by the economic crisis.

Codex 6911 - 6912 Consumption of the Union

Origin	Party	Information	Codex	Unit	Year 2011
Formula for consumption					
Production					
- Export total					
+ Import Total					
Trade Statistics	EU	Import China	6911 + 6912	kg	539.127.500
Trade Statistics	EU	Import China	6911 + 6912	kg +/- %	-6,58
Addition	EU	Import non EU excl. China	6911 + 6912	kg	102.041.400
Addition	EU	Consumption of EU	6911 + 6912	kg +/- %	6,74
Addition	EU	EU Utilization of EU Production	6911 + 6912	kg	254.971.500
Addition	EU	EU Utilization of EU Production	6911 + 6912	kg +/- %	-2,28
Prodcom	EU	Produktion (Prodcom 11/12)	6911 + 6912	kg	355.259.000
Prodcom	EU	Produktion (Prodcom 11/12)	6911 + 6912	kg +/- %	-0,22
Trade Statistics	EU	Export non EU	6911 + 6912	kg	100.287.500
Trade Statistics	EU	Import EXTRA-TRADE EUR27	6911 + 6912	kg	641.168.900
Addition	EU	Consumption of EU	6911 + 6912	kg	896.140.400
Addition	EU	Consumption of EU	6911 + 6912	kg +/- %	-3,84

In the investigation period, the import of products from the People's Republic of China decreased by 6,58%, while the consumption decreased just by 3,84% and the utilization of the EU production decreased only by 2,28 %

The Commission's conclusion that the production of the branch didn't recover to the same degree as the consumption, is wrong

3.9. Sales volume of the branch versus Consumption

According to Recital 125, the Commission states that the sales volume of the Union industry decreases more than the consumption.

This statement is wrong!

The Union producers were least affected by the economic crisis.

Codex 6911 - 6912 Consumption of the Union

Formula for consumption = Production
- Export total
+ Import Total

Origin	Party	Information	Codex	Unit	Year 2011
Trade Statistics	EU	Import China	6911 + 6912	kg	539.127.500
Trade Statistics	EU	Import China	6911 + 6912	kg +- %	-6,58
Addition	EU	Import non EU excl. China	6911 + 6912	kg	102.041.400
Addition	EU	Consumption of EU	6911 + 6912	kg +- %	6,74
Addition	EU	EU Utilization of EU Production	6911 + 6912	kg	254.971.500
Addition	EU	EU Utilization of EU Production	6911 + 6912	kg +- %	-2,28
Origin	Party	Information	Codex	Unit	Year 2011
Prodcom	EU	Produktion (Prodcom 11/12)	6911 + 6912	kg	355.259.000
Prodcom	EU	Produktion (Prodcom 11/12)	6911 + 6912	kg +- %	-0,22
Trade Statistics	EU	Export non EU	6911 + 6912	kg	100.287.500
Trade Statistics	EU	Import EXTRA-TRADE EUR27	6911 + 6912	kg	641.168.900
Addition	EU	Consumption of EU	6911 + 6912	kg	896.140.400
Addition	EU	Consumption of EU	6911 + 6912	kg +- %	-3,84

During the examination period, the production volume of the Union producers decreased by 0,22% whereas the consumption rate fell by 3,84%.

The conclusion of the Commission, that the sales volume of the Union industry decreases more than the consumption seems to be incorrect unless they increased their stock levels which is not the case.

3.10. Production costs of the Union producers versus Sales costs

3.10.1. Production costs versus Sales Prices

In Recital 138 the Commission explains that the production costs of the Union producers decreased by 10% in the investigation period. During the investigation period the production costs would be € 3.230/t.

In Recital 131, the Commission estimates the sales price of this Union industry branch with € 3.615/t during the investigation period.

According to PRODCOM, the sales of the Union producers was estimated to 355.259 t. Based on the calculated average sales price the Union manufacturers have reported a turnover of € 1.3 billion (exactly € 1.286.037.580).

According to PRODCOM 11/2012 the Union producers have reported a turnover of € 1,5 (exactly € 1.516.007.98). The remaining amount of € 229,97 million of the Union turnover is missing in the Commission figures.

In reference to our explanation to the subject "Price Dumping", we presume to ask a question. Is it really practicable for the Union producers to establish their sales prices 2/3 below their average production costs?

The Commission published indecisive statistics with the Regulation 1072/2012. There is no sufficient transparency to draw conclusions and derive causal correlations from the current data.

3.10.2. Factors influencing Production costs in EU industry

The advisory Commission stated in regulation 1072/2012 that the cost of production decreased by 10% over the period considered, but gave no explanation why this was happening nor noted that this was mainly happening in the IP. Although the productivity of the Union industry increased over the period considered, profitability never reached a satisfactory level. (141-142)

We will focus on 3 major building blocks to analyse the impact on the margin of EU industry.

Labour cost > 65% of total cost of production

No explanation is given for the drop in annual labour cost per employee by 2% (137) between IP and 2008 and the decline in annual labour cost by 3.65% between the IP and 2010 is left completely ignored. This is remarkable, as the development of labour costs between 2007-2009 is in alignment with the development of the labour cost per hour as published by EUROSTAT. (See below)

By analysing the official hourly labour cost development for the EUR27, we can conclude that in each country year after year the labour costs are increasing, reflecting the fact that every EU-manufacturer is announcing a yearly price increase to compensate for the labour cost increase they have to absorb. Furthermore, by applying the different European hourly rates, it is clear that the drop in the average rate can only be explained by the fact that countries with a lower labour cost took a bigger part.

http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Labour_cost_index_-_recent_trends

The hourly labour cost in the business economy ([NACE](#) Rev.2 sections B to N) for the EU-27 was € 23,1 in 2011 compared with EUR 22,5 in 2010. For the euro area ([EA-17](#)) it was € 27,6 in 2011 compared with € 26,9 in 2010.

Among the Member States for which estimates are available the highest labor costs per hour in the business economy were obtained for Belgium (€ 39,3), Sweden (€ 39,1), Denmark (€ 38,6), France (€ 34,2), Luxembourg (€ 33,7), the Netherlands (€ 31,1) and **Germany (€ 30,1)**.

The lowest labour cost per hour was estimated for Bulgaria (€ 3,5), followed by **Romania (€ 4,2 in 2010)**, Lithuania (€ 5,5), Latvia (€ 5,9). While comparing labour cost estimates in euro over time, it should be noted that data for those Member States outside the euro area are influenced by exchange rates movements.

	2008	2009	2010	2011
EU-27	21.6	22.1	22.5	23.1
EA-17	25.8	26.5	26.9	27.6
Belgium	35.6	37	38.2	39.3
Bulgaria	2.5	2.9	3.1	3.5
Czech Republic	9.3	9.3	9.9	10.5
Denmark	35.4	36.5	37.6	38.6
Germany	28.4	29	29.1	30.1
Estonia	8	7.9	7.7	8.1
Ireland	27.2	28	27.9	27.4
Greece	16.5	17.6	17.5	:
Spain	18.9	20.0*	20.2*	20.6
France	31.8	32.1	33.1	34.2
Italy	24.5	25.6	26.1	26.8
Cyprus	15.3	15.9	16.2	16.5
Latvia	5.9	5.9	5.7	5.9
Lithuania	6	5.6	5.3	5.5
Luxembourg	30.8	32	32.7	33.7
Hungary	7.9	7.3	7.3	7.6
Malta	11.2	11.3	11.5	11.9
Netherlands	29.2	29.8	30.5	31.1
Austria	26.5	27.7	28	29.2
Poland	7.5	6.4	7	7.1
Portugal	11.5	11.9	12	12.1
Romania	4.1	4.0*	4.2*	:
Slovenia	13.4	13.8	14.1	14.4
Slovakia	7.6	7.9	8	8.4
Finland	27.6	28.7	28.9	29.7
Sweden	33.8	31.7	36	39.1
United Kingdom	21.1	18.9	20	20.1
Norway	37.8	36.9	41.4	44.2

If we analyse the evolution of the labour cost per t, we notice that the labour cost percentage is increasing year after year, which does not confirm the statement of the Commission (142) that productivity increased.

	2008	2009	2010	IP
Cost of production (t)	3.578	3.583	3.514	3.230
Labour cost per t	2.293	2.330	2.292	2.176
Relation labour cost/cost of production	64,1%	65,0%	65,2%	67,4%

Energy costs

The development of energy costs in the EU has not contributed to a decrease in cost of production because the increase in electricity prices has been compensated by a decrease in gas prices.

	Electricity prices						Gas prices					
	Households (1)			Industry (2)			Households (3)			Industry (4)		
	2009	2010	2011	2009	2010	2011	2009	2010	2011	2009	2010	2011
EU-27	0.163	0.167	0.178	0.107	0.105	0.110	0.059	0.053	0.056	0.036	0.031	0.034
Euro area (5)	0.171	0.176	0.187	0.111	0.109	0.116	0.066	0.058	0.062	0.038	0.032	0.036
Belgium	0.192	0.196	0.214	0.111	0.106	0.110	0.061	0.053	0.057	0.033	0.029	0.032
Bulgaria	0.082	0.081	0.083	0.065	0.065	0.065	0.047	0.037	0.043	0.031	0.024	0.029
Czech Republic	0.132	0.135	0.150	0.107	0.103	0.111	0.049	0.047	0.054	0.033	0.031	0.031
Denmark	0.270	0.267	0.291	0.086	0.094	0.099	0.092	0.107	0.116	0.056	0.057	0.067
Germany	0.228	0.238	0.253	0.113	0.112	0.125	0.065	0.057	0.059	0.043	0.036	0.046
Estonia	0.092	0.097	0.097	0.064	0.069	0.072	0.039	0.036	0.042	0.027	0.029	0.028
Ireland	0.203	0.180	0.190	0.121	0.112	0.116	0.064	0.050	0.051	0.033	0.028	0.038
Greece	0.115	0.118	0.125	0.095	0.095	0.101	-	-	-	-	-	-
Spain	0.158	0.173	0.195	0.115	0.117	0.114	0.061	0.053	0.054	0.031	0.028	0.029
France	0.121	0.128	0.138	0.073	0.085	0.085	0.055	0.052	0.058	0.036	0.033	0.037
Italy	0.210	0.197	0.201	0.153	0.139	0.153	0.076	0.062	0.069	0.040	0.030	0.031
Cyprus	0.156	0.186	0.205	0.119	0.151	0.167	-	-	-	-	-	-
Latvia	0.105	0.105	0.117	0.090	0.089	0.098	0.052	0.031	0.039	0.039	0.026	0.029
Lithuania	0.095	0.116	0.121	0.092	0.100	0.105	0.042	0.038	0.043	0.031	0.032	0.035
Luxembourg	0.188	0.173	0.168	0.116	0.102	0.100	0.049	0.043	0.051	0.040	0.037	0.042
Hungary	0.148	0.170	0.168	0.124	0.106	0.095	0.048	0.054	0.056	0.037	0.030	0.033
Malta	0.171	0.170	0.170	0.151	0.180	0.180	-	-	-	-	-	-
Netherlands	0.190	0.170	0.174	0.113	0.104	0.103	0.083	0.070	0.072	0.038	0.032	0.033
Austria	0.191	0.197	0.199	-	-	-	0.065	0.062	0.069	-	-	-
Poland	0.113	0.134	0.147	0.090	0.098	0.101	0.039	0.043	0.046	0.028	0.030	0.033
Portugal	0.151	0.158	0.165	0.094	0.094	0.099	0.060	0.059	0.061	0.035	0.027	0.034
Romania	0.098	0.103	0.108	0.081	0.085	0.080	0.029	0.027	0.028	0.023	0.022	0.023
Slovenia	0.135	0.140	0.144	0.103	0.099	0.099	0.066	0.058	0.067	0.044	0.042	0.045
Slovakia	0.154	0.152	0.168	0.142	0.117	0.128	0.046	0.044	0.047	0.041	0.033	0.035
Finland	0.130	0.133	0.154	0.069	0.069	0.076	-	-	-	0.031	0.030	0.042
Sweden	0.160	0.184	0.209	0.067	0.081	0.089	0.089	0.103	0.122	0.039	0.044	0.052
United Kingdom	0.147	0.139	0.143	0.112	0.099	0.098	0.043	0.041	0.042	0.029	0.023	0.025
Norway	0.157	0.203	0.213	0.079	0.103	0.111	-	-	-	-	-	-
Croatia	0.115	0.115	0.114	0.087	0.094	0.091	0.032	0.038	0.038	0.026	0.034	0.040
FYR of Macedonia	-	-	-	-	-	-	-	-	-	-	-	0.038
Turkey	0.114	0.134	0.122	0.078	0.089	0.079	0.039	0.032	0.029	0.029	0.024	0.022
Bosnia and Herzegovina	-	0.074	0.075	-	0.062	0.061	-	0.038	0.045	-	0.042	0.048

(1) Annual consumption: 2 500 kWh < consumption < 5 000 kWh.

(2) Annual consumption: 500 MWh < consumption < 2 000 MWh; excluding VAT

(3) Annual consumption: 5 600 kWh < consumption < 56 000 kWh (20-200 GJ).

(4) Annual consumption: 2 778 MWh < consumption < 27 778 MWh (10 000-100 000 GJ); excluding VAT.

(5) 2009 and 2010, EA-16.

Source: Eurostat (online data codes: nrg_pc_204, nrg_pc_205, nrg_pc_202 and nrg_pc_203)

Relation cost of production – product portfolio – average sales prices

The Commission stated that average sales prices for the industry have decreased by 12% since 2008-2011. This is remarkable, as only the European industry is showing a reduction of sales prices whereas all other players in this market have been able to increase their prices. Even Turkey has been able to increase their export prices, although they have put more volume into the market. This confirms the fact that the market was willing to accept sales price increases.

	2008	2009	2010	UZ	2008	2009	2010	IP
Average import price VCA (€/t)	1.274	1.307	1.473	1.499	100,0%	102,6%	115,6%	117,7%
Average sales price EU industry (€/t)	4.103	3.818	3.811	3.615	100,0%	93,1%	92,9%	88,1%
Average import price Turkey (€/t)	2.027	2.014	2.171	2.058	100,0%	99,4%	107,1%	101,5%
Average import price other countries (excl. Turkey) (€/t)	-	-	-	-	-	-	-	-
Länder (außer Türkei) (€/t)	2.579	2.588	2.869	2.904	100,0%	100,4%	111,3%	112,6%

The fact that only the EU industry is apparently not capable of adjusting their sales prices does not correspond with the yearly announcement from all EU producers of a general price increase for their customers.

Along with this, we notice that the EU industry was able to maintain their average export prices, which again confirms the fact that the market in this investigation period was open for a price increase and that an average sales price reduction in the EU market has nothing to do with competition, but rather with the fact that the EU industry has changed their product portfolio to meet market demands.

	2008	2009	2010	IP
Average sales price EU industry at EU market (€/t)	4.103	3.818	3.811	3.615
Average export sales price EU industry (€/t)	3.136	2.983	3.462	3.125
Export % in total production volume	32%	32%	35%	37%
Relation between export sales price and average sales price in EU	76%	78%	91%	86%

Conclusion

The margin % of the EU industry is improving in the IP in comparison with the period 2008-2010. This is mainly because the costs of production decreased and export sale prices remained at almost the same level, taking a higher percentage of the overall sales. Various members have also announced these good results for 2011, such as Villeroy & Boch, Steelite International, BHS Tabletop AG.

	2008	2009	2010	UZ
Sales	1.066.207.844	817.911.230	869.253.941	825.151.550
Cost of production	1.006.491.400	825.164.900	828.249.800	775.846.000
Margin	59.716.444	-7.253.670	41.004.141	49.305.550
Margin %	5,6%	-0,9%	4,7%	6,0%

(Remarkable to notice is the drop in 2009 which is mainly caused by a drop in volume, sales price and stable cost of production)

If we assume a situation where the EU industry had kept their prices at the 2008 level, the margin would improve from 6% to 13,8%, which would have reflected the improvement in productivity.

	2008	2009	2010	UZ
Sales	1.066.207.844	873.844.466	886.728.103	900.343.065
Cost of production	1.006.491.400	825.164.900	828.249.800	775.846.000
Margin	59.716.444	48.679.566	58.478.303	124.497.065
Margin %	5,6%	5,6%	6,6%	13,8%

The drop in margin is only a result of the reduction of the sales price. This reduction is difficult to explain, as all other market players have been increasing their sales prices and every European producer announces a sales price increase every year. Another reason for the decrease in margin is the fact that the European producers are increasing their export percentage, where they apparently are offering products at a much lower price level. Are they dumping some of their products outside Europe? It might also be possible that the market outside Europe is not willing to pay the same premium for "European products" as the European market was willing to accept.

This reflects the fact that the European producers have adapted their production towards the requirements of the EU market, which looks for a different type of product with a different market price. The market is looking for more volume "basic" products and less limited "durable products".

The conclusion that the lack of profitability in the sector, which deteriorated over the period, is a result of dumping by Chinese importers is therefore not proven, since information on "average sales prices", "annual labour cost per employee" and "cost of production" is doesn't agree with the information published by EUROSTAT and general market information from other players in the market.

3.11. Price Issues

3.11.1. Different development of the European industry prices in import and export business

In Recital 131 the Commission states that the sales volume decreased by 12% in the period of investigation.

The Commission did not mention any reason for the price reduction, so we assume that this fact was not examined precisely.

In paragraph 115, the presumption is raised that the increase in prices of Chinese goods in the IP "could . . . be influenced due to changes in product mix". In Recital 152 the Commission states that in addition, the prices of imports from other third countries also increased significantly and estimated the increase at 6%.

All of this may not obvious enough for the Commission to precisely analyse the data submitted by the Union manufactures in further detail. All third countries, like Turkey, China and others can implement a price increase in the European Market - why not the Union manufacturers?

As explained in Recital 154, the import prices of goods from Turkey were up to 60% higher than the prices of goods from China. According to Recital 117, the price undercutting of the accused exporters is between 23,6 to 47,6% compared to the Union manufacturers. As a consequence we got the following explanation:

Price of Chinas Exports	= 100,00
Lowest price of Union Producer (23,6%)	= 123,60
Highest Lowest price of Union Producer (47,6%)	= 147,60
Lowest price of Turkish Imports (37%)	= 137,00
Highest price of Turkish Imports (60%)	= 160,00

In other words: How is it possible that the Turkish exporters could increase their exports to the Union up to 10%, even though the prices of the Turkish exporters are 36,4 Percent more expensive than the

investigated prices of the Union Producer. This fact is a further evidence, that the calculated price index of the Regulation 1072/2012 did not meet the real market level.

3.11.2. Price development import prices China

In Recital 115 the Commission commit a price increasing by 17,7% from 1,247 € to 1,499 € per kilo.

(115) The import price increased by 17,7 % during the period considered, from 1 274 EUR/tonne to 1 499 EUR/tonne.

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This statement is wrong!

The average price of imports from the PR of China based on the above-mentioned PRODCOM statistics 11/2012 amounts to € 1,52 per kg. In relation to the Index 100 in 2008 the price increase is € 0,24 and 18,32%, accordingly.

The Commission stated in their statistical analysis that the price increase of the imports of the PR of China far exceeds the export prices of the Union producers. The prices of the union producers have decreased by € 0,03 from 2008-2011 and declined by 0,78%.

Origin	Party	Information	Codex	Unit	Year 2011	Year 2010	Year 2009	Year 2008
Trade Statistics	EU	Export total	6911	Euro	948.440.370,00 €	923.990.900,00 €	853.515.200,00 €	1.061.892.820,00 €
Trade Statistics	EU	Export total	6911	kg	195.935.600	189.121.600	172.106.300	196.587.500
Trade Statistics	EU	Export total	6911	Euro/kg	4,84 €	4,89 €	4,96 €	5,40 €
Trade Statistics	EU	Export total	6912	Euro	557.142.130,00 €	535.072.300,00 €	474.420.860,00 €	540.538.840,00 €
Trade Statistics	EU	Export total	6912	kg	226.820.800	261.353.600	234.580.800	249.861.500
Trade Statistics	EU	Export total	6912	Euro/kg	2,46 €	2,05 €	2,02 €	2,16 €
Trade Statistics	EU	Export total	6911 + 6912	Euro	1.505.582.500,00 €	1.459.063.200,00 €	1.327.936.060,00 €	1.602.431.660,00 €
Trade Statistics	EU	Export total	6911 + 6912	kg	422.756.400	450.475.200	406.687.100	446.449.000
Trade Statistics	EU	Export total	6911 + 6912	Euro/kg	3,56 €	3,24 €	3,27 €	3,59 €
Trade Statistics	EU	Export total	6911 + 6912	Euro/kg +- €	0,32 € -	0,03 € -	0,32 € -	0,17 €
Trade Statistics	EU	Export total	6911 + 6912	Euro/kg +- %	9,95	-0,81	-9,03	-4,47

This explains also the assumption in Recital 115 of the disclosure that this trend could be influenced by a change in the product assortment.

Obviously the Commission did not consider the current assortments and the price increase rates, which the products from the PR of China have to bear.

This may be a clue to the conclusion of the Commission in Recital 202 that the supply chain could absorb the proposed antidumping duty without endangering the affected market participants.

3.11.3. Price undercutting

In Recital 117 the Commission determined a price cutting range from 26,3 to 47,6% between the imports of the People's Republic of China and the products of Union producers.

This statement is wrong!

(117) The comparison showed that during the IP the dumped products concerned originating in the PRC sold in the Union undercut the Union industry's sales prices, when expressed as a percentage of the latter, by 26,3 % to 47,6 %.

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(113) Based on Eurostat data, the volume, market share and average prices of imports of the product concerned developed as set out below:

Table 2

Imports from the PRC	2008	2009	2010	IP
Volume of imports (tonnes)	535 593	449 346	516 618	485 814
Index (2008 = 100)	100	84	96	91
Market share	64,8 %	65,3 %	68,8 %	66,9 %
Average import price (EUR/tonne)	1 274	1 307	1 473	1 499
Index (2008 = 100)	100	103	116	118

1072/2012 L318 Page 40 (Changes General Disclosure: Volume of Imports: 2009: 449 325; 2010: 516 624; IP: 486 170; Page 15)

The weighted average price of imports from China is according to the Commission's € 1.499 per kg. This award is intended to undercut the Union producers between 26.3% and 47.6%. Accordingly, the prices of the Union producers must be

- lowest value € 2,033 / kg
- highest value € 2,860 / kg
- Average value € 2,440 / kg

In announcing its results, the Commission expressly refers to the price structure of the complete European industry and not focused to the sampled producer. In conclusion, damage of the Union interest starts at a price of € 2.032 kilos down.

An analysis of the Official European TRADE STATISTICS (see table below) confirmed, however, that a number of Member States, apply trade prices, both within Europe as for export, which undercut significantly the expected lowest value of the Union producers.

Party	Information	Codex	Unit	Year 2011
Romania	EXPORT EXTRA EUR27	6911	€/kg	1,86 €
Romania	EXPORT EXTRA EUR27	6912	€/kg	1,02 €
Italy	EXPORT INTRA EUR27	6912	€/kg	1,19 €
Portugal	EXPORT INTRA EUR27	6912	€/kg	1,61 €
Lithuania	EXPORT EXTRA EUR27	6912	€/kg	1,88 €
Bulgaria	EXPORT EXTRA EUR27	6911	€/kg	0,81 €
Bulgaria	EXPORT INTRA EUR27	6912	€/kg	1,77 €

(117) The comparison showed that during the IP the dumped products concerned originating in the PRC sold in the Union undercut the Union industry's sales prices, when expressed as a percentage of the latter, by 26,3 % to 47,6 %.

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These figures indicate that the calculated dumping margin inside regulation 1072/2012 is much too high.

6911 10 00, ex 6912 00 10, ex 6912 00 30, ex 6912 00 50 and ex 6912 00 90 and originating in the People's Republic of China (the product concerned). It can be of porcelain or china, of common pottery, stoneware, earthenware or fine pottery or other materials. The main raw materials include minerals such as kaolin, feldspar and quartz and the composition of raw materials used determines the type of the final ceramic product produced.

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The illustrated differences in TRADE STATISTICS price levels, shows that a superficial similarity of the goods does not automatically mean a corresponding similarity of the material composition. The Commission cannot deny that the goods of tariff headings 6911 and 6912 are traded at different prices, reflecting the fact that each product has a significant specific property. The latter is not considered by the Commission in their price comparison. Unfairly the commission performs a statistical extrapolation, which gives something like:

1 Mercedes 500 S at € 150.000
5 Dacia Logan at € 9.500

These cars have an average price of € 32.917 but we cannot consider this a representative market price although all 6 cars have 4 tiers and a body out of steel.

3.11.4. Price development within and outside the Union

In Recital 167 the Commission states that the export prices of the economic sector substantially decreased during the period in question, from 33.462 €/t to 3.125€/t. This corresponds to a decline of 337 €/t, therefore 9,73%.

A closer examination of the total development in EUROSTAT reveals something different.

Origin	Party	Information	Codex	Unit	Year 2011	Year 2010
Trade Statistics	EU	Export Intra-EUR27	6911	Euro	555.482.060,00 €	529.249.620,00 €
Trade Statistics	EU	Export Intra-EUR27	6911	kg	146.514.700	141.338.000
Trade Statistics	EU	Export Intra-EUR27	6911	Euro/kg	3,79 €	3,74 €
Trade Statistics	EU	Export Intra-EUR27	6912	Euro	354.483.030,00 €	356.592.800,00 €
Trade Statistics	EU	Export Intra-EUR27	6912	kg	175.954.200	213.891.800
Trade Statistics	EU	Export Intra-EUR27	6912	Euro/kg	2,01 €	1,67 €
Trade Statistics	EU	Export Intra-EUR27	6911 + 6912	Euro	909.965.090,00 €	885.842.420,00 €
Trade Statistics	EU	Export Intra-EUR27	6911 + 6912	kg	322.468.900	355.229.800
Trade Statistics	EU	Export Intra-EUR27	6911 + 6912	Euro/kg	2,82 €	2,49 €
Trade Statistics	EU	Export EXTRA EUR27	6911	Euro	392.958.310,00 €	394.741.280,00 €
Trade Statistics	EU	Export EXTRA EUR27	6911	kg	49.420.900	47.783.600
Trade Statistics	EU	Export EXTRA EUR27	6911	Euro/kg	7,95 €	8,26 €
Trade Statistics	EU	Export EXTRA EUR27	6912	Euro	202.659.100,00 €	178.479.500,00 €
Trade Statistics	EU	Export EXTRA EUR27	6912	kg	50.866.600	47.461.800
Trade Statistics	EU	Export EXTRA EUR27	6912	Euro/kg	3,98 €	3,76 €
Trade Statistics	EU	Export EXTRA EUR27	6911 + 6912	Euro	595.617.410,00 €	573.220.780,00 €
Trade Statistics	EU	Export EXTRA EUR27	6911 + 6912	kg	100.287.500	95.245.400
Trade Statistics	EU	Export EXTRA EUR27	6911 + 6912	Euro/kg	5,94 €	6,02 €
Trade Statistics	EU	Export INTRA- & EXTRA TRADE EUR27	6911	Euro	948.440.370,00 €	923.990.900,00 €
Trade Statistics	EU	Export INTRA- & EXTRA TRADE EUR27	6911	kg	195.935.600	189.121.600
Trade Statistics	EU	Export INTRA- & EXTRA TRADE EUR27	6911	Euro/kg	4,84 €	4,89 €
Trade Statistics	EU	Export INTRA- & EXTRA TRADE EUR27	6912	Euro	557.142.130,00 €	535.072.300,00 €
Trade Statistics	EU	Export INTRA- & EXTRA TRADE EUR27	6912	kg	226.820.800	261.353.600
Trade Statistics	EU	Export INTRA- & EXTRA TRADE EUR27	6912	Euro/kg	2,46 €	2,05 €
Trade Statistics	EU	Export INTRA- & EXTRA TRADE EUR27	6911 + 6912	Euro	1.505.582.500,00 €	1.459.063.200,00 €
Trade Statistics	EU	Export INTRA- & EXTRA TRADE EUR27	6911 + 6912	kg	422.756.400	450.475.200
Trade Statistics	EU	Export INTRA- & EXTRA TRADE EUR27	6911 + 6912	Euro/kg	3,56 €	3,24 €
Trade Statistics	EU	Export INTRA- & EXTRA TRADE EUR27	6911 + 6912	Euro/kg +- €	0,32 €	- 0,03 €
Trade Statistics	EU	Export INTRA- & EXTRA TRADE EUR27	6911 + 6912	Euro/kg +- %	9,88	-0,92

The export prices of the union producers in the INTRATRADER increased (€ 2,82 to € 2,49), whereas in the EXTRATRADER a loss of 6,02 to 5,94 can be seen.

This should be sufficient proof that possible price increases of the union producers do not arise from the INTRATRADER; therefore, the whole topic of a possible anti-dumping on the union market is eliminated.

The union producers were able to achieve price increases in the Union market. The Commission should review its conclusions and consider the improvement in production efficiency!

3.12. Turkey and non-discrimination principle

The argumentation of the Commission about the development and the interpretation of the Turkish Exports to the EU is a breach against the “non-discrimination principle” and the “*de minimis* principle”.

The Commission confirms that Turkish imports to the EU increased by 10% from 2008-2011. Their market share increased during that period from 4,5% to 5,6%, which is over the *de minimis* limit. In the same period the imports to the EU from other countries decreased by 12%. The average price for the imports from Turkey was lower than the import price from the rest of the world, which increased in that period by 6%, while the Turkish prices remained more or less stable.

All these topics are initial *prima facie* evidence of dumping from Turkey, even stronger than the evidence against China in the same period, which led to the opening of this investigation.

The counter-argument of the Commission, that the average Turkish prices are 37-60% above the Chinese import prices, has nothing to do with these facts and does not disprove the above-mentioned facts.

According to the non-discrimination principle, the Commission is obliged to compare the Turkish domestic prices with the export prices to investigate if there is a dumping from Turkey.

We request to fulfil that obligation and to investigate if there is dumping from Turkey, or to close the investigation against China, as the non-discrimination principle leaves the Commission no other choice.

Disclosure No. 149

	2008	2009	2010	2011 / IP
Volume of imports from all other third countries (tonnes)	100.971	81.464	81.602	88.706
Index (2008 =100)	100	81	81	88
Market Share	12,20%	11,80%	10,90%	12,20%
Average Import price (EUR/tonne)	2.378	2.354	2.591	2.522
Index (2008 =100)	100	99	109	106
Volume of imports from Turkey (tonnes)	36.952	33275	32.887	40.553
Index (2008 =100)	100	90	89	110
Market Share	4,50%	4,80%	4,40%	5,60%
Average Import price (EUR/tonne)	2.027	2.014	2.171	2.058
Index (2008 =100)	100	99	107	102

Disclosure No. 113

	2008	2009	2010	2011 / IP
Volume of imports from PRC (tonnes)	535.593	449.346	516.618	485.814
Index (2008 = 100)	100	84	96	91
Market share	64,80%	65,30%	68,80%	66,90%
Average import price (EUR/tonne)	1.274	1.307	1.473	1.499
Index (2008 = 100)	100	103	116	118

Source: Council Regulation 1072/2012 Recital 149 and 113

3.13. Causation

As we already pointed out previously – and as now acknowledged by the Commission – Chinese imports have decreased substantially since 2008 and import prices from China have increased by 18%. Moreover, injury indicators showed a positive development when Chinese imports increased and Chinese import prices decreased, whereas they showed a negative trend when Chinese imports decreased and Chinese import prices increased. This is exactly the opposite of what one would expect if Chinese imports were truly causing injury to the Union industry.

The EU now seeks to refute these claims by pointing out that (1) the market share of Chinese imports increased (although it actually decreased between 2010 and the IP) and (2) that Chinese import prices consistently undercut EU prices.

First, with respect to the market share of Chinese imports, we submit that since 2008, Chinese imports have decreased by 30% more than Union industry sales, based on the Commission's data.²⁶ This trend is even more apparent during the IP. From 2010 to the IP the imports decreased by a staggering 5,892% when compared to the relatively minor decrease experienced by Union producer sales in the same period. The focus of the Commission on market shares ignores the clear difference in absolute volume between imports from China and EU sales.

Second, notwithstanding the Commission's claim that despite increases in the Chinese import price it has consistently remained lower than the EU sale price, there has not been any indication that there is a continuous year-on-year negative impact on the injury factors. Since 2008 the Union Industry has been profitable, and significantly so in the IP (the period of price depression specifically referenced in the provisional regulation), increasing profit levels to 3,5%.²⁷ Sales have remained stable since 2009²⁸ and allowed a higher EU sales price (compared to Chinese prices) to be set, which has contributed towards the Union industry's profits. Any effort made to reduce the cost of production and employment costs is not enough to support such a turnaround in profits.²⁹ As for the facts provided by the Commission, there is no sufficient explanation or evidence to prove that any "*price depression*" has existed at all.

However, the consumption levels in the EU do display a clear link to the poor performance of the injury factors prior to the IP. The economic crisis from 2008 to 2009 shrank consumer budgets and prompted consumers to become more careful with their household income. As the provisional regulation demonstrates, the Commission could not avoid acknowledging that lower consumption levels in the EU may have contributed to the Union industry's poor performance.³⁰ The data on consumption provided by the Commission (in contrast to that concerning Chinese imports) demonstrates a clear correlation with important injury factors. The level of consumption decreased by 16% during 2008 and 2009³¹ following the economic crisis. This was mirrored in almost an identical

²⁶ Table 2, provisional regulation.

²⁷ Table 10, provisional regulation.

²⁸ Table 4, provisional regulation.

²⁹ Table 10, provisional regulation.

³⁰ Recital 165, provisional regulation.

³¹ Recital 100, provisional regulation.

drop in sales (decreased by 17%),³² employment (decreased by 17%)³³ and production (decreased by 18%).³⁴

Another omission from the provisional regulation concerns the over-capacity caused by the large investments made by EU producers shortly before the economic crisis. In Table 10 of the provisional regulation the return on investment was -51,3% in 2010, this clearly shows that the significant investments in 2008 and 2009 failed to materialize and led to dramatically decreased returns.³⁵ We also wonder how, from a logical point of view, the ROI for 2010 can be negative if the Union industry actually succeeded in being profitable.

An increase in non-operating expenses was another relevant effect of the economic crisis and would have impacted the profitability of the Union industry producers. Costs of borrowing, increased employee benefits and pension contributions will all have had an impact. These other reasons, along with anti-competition, can be attributed to any deterioration of injury factors up to and including the IP, rather than Chinese imports.

Imports from other countries have played a role in any alleged impact on material injury to Union industry. Up to and including the IP, based on the Commission's data, Turkish imports increased by over 20%. The Commission disregards this as immaterial because Turkey's market share "only" accounts for 5,6% of the Union industry, yet the *de minimis* standard under the basic Regulation is much lower, *i.e.* 1% market share. Moreover, it should be noted that both the increase of China's market share and the decrease of the EU producer's market share are well below this figure.

The Commission has also ignored the effect of second-hand markets on the sales of ceramic tableware in the EU. The provisional regulation states: "Nevertheless, *no reasonable basis could be found for extrapolating from the volumes and prices of a German-speaking platform to the very specific collections of three German companies to other Union countries*".³⁶ It appears to suggest the Commission has not considered this. What the economic recession has done is to motivate consumers to purchase second-hand goods and to prompt the development of new business models including "up-cycling", where older ceramic products are improved to increase their value and sell for a higher profit. Both second hand and new markets have increased competition with the traditional porcelain sold by EU producers and affected the Union industry's performance.

It is apparent that the Commission disagrees that poor performance of exports from the Union in 2009 have an impact on the injury factors of the Union industry.³⁷ However, the analysis does not take into account some important points. First, although it is acknowledged that exports might not directly impact sales volume, market share, and prices within the Union, they would undoubtedly *indirectly* affect balance sheets and profitability. Second, although you could assume an increase in exports as a

³² Table 4, provisional regulation.

³³ Table 6, provisional regulation.

³⁴ Table 3, provisional regulation.

³⁵ Table 10, provisional regulation.

³⁶ Recital 180, provisional regulation.

³⁷ Recital 169, provisional regulation.

conscious effort to expand into already saturated foreign markets, numerous other factors could influence the rise in exports including the noted drop in costs of production.³⁸ Third, it is not clear how the statement that *“overall exports . . . decreased by 3%”* relates to causation, if it pertains to low exports showing injury it ignores the predominant positive trend and high sales by value. In 2009, exports clearly had an impact on the profitability of the Union industry.

The Commission refers to and confirms the practice of Union producers importing Chinese goods when they commented on: *“the number of business models that spread”*³⁹ and note *“some manufacturers in the Union...became traders products of Chinese origin”*.⁴⁰ This was not a response to a decrease in sales but an initiative that has had the inevitable effect of encouraging more products to be imported from China. Brand protection in the EU supported higher prices and importing products reduced production costs as evidenced.⁴¹ Indeed, this was acknowledged by an EU producer in support of the anti-dumping investigation: *“a lot of EU producers of the products concerned import them from China and then resell them as EU products in order to lower prices, winning the market and determining the crisis of companies which, like us, produce everything inside their own country”*.

In light of the above reasons, it is clear that the real causes of any material injury that may exist are not the Chinese imports but a combination of the economic crisis, new markets, imports from other countries, as well as some other factors listed above. Yet, throughout its causation analysis, the Commission scrutinized injury and other contributing factors in isolation and *“separated the effects”* of these one by one.⁴² Such a black-and-white and rather simple analysis ignores the bigger picture; one single external factor rarely explains the cause of injury. Analysing each contributing factor in isolation will obviously rule out other external contributing factors, as well as contributing internal factors, to the effect that Chinese imports must be to blame. Unless and until the Commission adopts an analysis of all other factors combined, any analysis like the one carried out by the Commission is not objective. For this reason, we request the Commission to provide a combined analysis of the other factors to establish a causal link.

4. Union interest

4.1. Price increase for the consumers

The Commission states that the unrelated importers have margins between 50-200% and therefore will be able to cover the duties without price increases for the consumer.

It might be true that for individual articles the margins are in that range but for the majority of the articles the margin is much lower.

³⁸ Table 11, provisional regulation.

³⁹ Recital 187, provisional regulation.

⁴⁰ Recital 176, provisional regulation.

⁴¹ Table 11, provisional regulation.

⁴² Recital 191, provisional regulation.

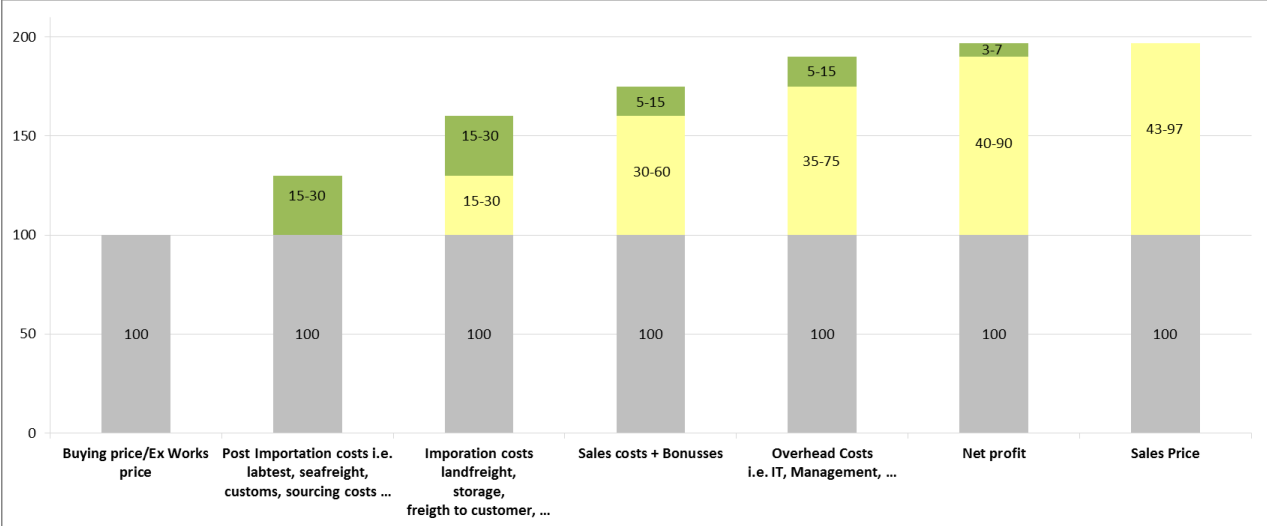
During the audits at unrelated importers side it was proven that they have high import and post import costs between 50-70%

This fact is not mentioned at all, and again it draws the wrong picture.

According to a basic understanding of business administration, margin and net profit are 2 different things. The Commission ignores that, mentioning only the margin at unrelated importers and only net profit on the industry side.

If the Commission looks at the net profit of the sampled unrelated importers it will be easy to discover that after subtracting import and post-import costs the net profit is in a similar range as the net profit of the industry (see table below).

Therefore – of course – the unrelated importers will not be able to cover the anti-dumping duty; the consequence for the consumer will be a price increase.



Principle visualization based on experience of unrelated importers

4.2. Number of employees at independent importers

In Recital 200 the Commission states that within the 5 sampled independent importers employ 350 people for sales and purchasing of the products concerned.

In reality, there are more than 10.000 people working with the product concerned at the 5 sampled unrelated importers. In a hearing dated August 22nd 2012 the Commission was already told that for one independent importer sampled, which is also a retailer, more than 5.000 people work with the product concerned. Obviously the Commission has ignored that fact. The Commission wants to give the impression that only a very few independent importer jobs are jeopardized but on the industry side more than 25.000 are threatened.

This statement is wrong!

(200) Overall, during the IP the sampled importers sourced their supplies mainly from the country concerned and employed some 350 people in the importation and resale of ceramic tableware and kitchenware. They were active in different kinds of products, ranging from gift porcelain items through branded earthenware to simple tableware for households. Their level of cooperation varied. For instance, the two largest importers in the sample, which also have major retail activities, 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.

1072/2012 L318 Page 49 (General Disclosure Page 26 Recital 170)

In reality, only the 5 independent sampled importers have 10.173 employees working in the area of the affected product.

During a hearing on 22/08/2012 the Commission was informed that one of the unrelated importers, who is also a retailer, employed 5,623 people in the area of the affected product.

Evidence [Minutes of Hearing dated 22.08.2012](#)

Another independent importer corrected the Commission's findings with help of the Hearing Officer which results in further 4,200 jobs.

Evidence: [Minutes of Hearing dated 18.01.2013 with EU-Hearing Officer](#)

The commission ignored these facts completely.

(10) More than sixty unrelated importers replied by the deadline to the sampling questions and offered cooperation in the proceeding. From those companies, five were selected to form the sample. These five unrelated importers were selected on the basis of the volumes and value of imports and resales in the Union, their geographical location, their business model and their product segment. The sampled companies corresponded to the largest representative volumes and value of imports and resales in the Union which could reasonably be investigated within the time available. According to the figures reported at the sampling stage, they accounted for ca. 6 % of the imports of the product concerned during the IP.

1072/2012 L318 Page 29 (General Disclosure Page 26 Recital 173)

(127) The employment decreased throughout the period considered and fell by 21 %. The trend follows the same pattern as the decline of sales volumes on the Union market to unrelated customers.

Table 6

	2008	2009	2010	IP
Number of employees	31 559	26 146	24 993	25 093
Index (2008 = 100)	100	83	79	79

1072/2012 L318 Page 41 (General Disclosure Page 26 Recital 170-171)

With this false designation of jobs, the reader of the report get the impression that 25,093 jobs on the side of the Union Producer are threatened by only 350 employees on importers side.

This kind of publication is obscuring the real image of the Regulation 1072/2012! Although the EU-Commission was informed several times written and oral that more than just 350 jobs are affected, the Commission states in the current General Disclosure:

(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.

The Metro AG again informed the EU-Commission through the Hearing Officer the correct number of related jobs; 136.000 people are working in Europe thereof 4.200 (3%) people are working in the field of the product concerned. In total the 5 sampled unrelated importers reported 10.173 related jobs. Trough "extrapolation" the EU-Commission reduced 9.823 jobs (96,55%) and ignores all given facts. The European Commission was requested to possibly explain the extrapolation, but the Commission denied. But all numbers of related jobs are in the open version; therefore the Commission should be able to publish the methodology of the calculation of the related jobs.

The sampled 5 importers represent (due to Recital 127) 6% of the volume of all imports. Based on the real amount of 10,173 employees of these 5 sampled importers, the Commission should recognize that the Union interest should be clearly and unambiguously on the side of the importers.

China now is the largest export market for the European Union, more than 210 billion U.S. Dollar export trade the economy experts calculate for 2013. Only the car brands of Audi, Mercedes and BMW last year sold more than 795,000 luxury limousines to China.

If we want to participate of a free and liberal world trade, than we need accept that somebody can produce things better and cheaper. Porcelain and silk painting are among the oldest arts of Chinese culture. They invented it – after which these products have been introduced in Europe.



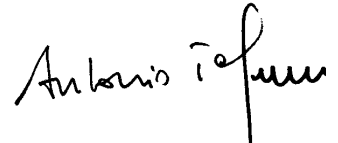
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