Commission Implementing Regulation (EU) 2019/1198 of 12 July 2019 imposing a definitive anti-dumping duty on imports of ceramic tableware and kitchenware originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) No 2016/1036

COMMISSION IMPLEMENTING REGULATION (EU) 2019/1198

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union[(1)], and in particular Article 11(2) thereof,

Whereas:

1. PROCEDURE

1.1. Measures in force

(1) In May 2013, the Council, by Council Implementing Regulation (EU) No 412/2013[(2)], imposed a definitive anti-dumping duty on imports of ceramic tableware and kitchenware originating in the People's Republic of China ('China' or 'the PRC'). The individual anti-dumping duties currently in force range from 13,1 % to 26,1 %. All non-sampled cooperating exporting producers received a duty of 17,9 % and all other companies are subject to the residual duty of 36,1 % ('the original measures'). The investigation that led to the imposition of the original measures will hereinafter be referred to as 'the original investigation'.

1.2. Initiation of an expiry review

(2) Following the publication of a notice of impending expiry of the original measures,[(3)] the European Federation for Table- and Ornamental ware ('FEPF' or 'the applicant') representing more than 28 % of the total Union production of ceramic tableware and kitchenware in 2017 requested the initiation of an expiry review. It argued that the expiry of the original measures would be likely to result in continuation of dumping and a continuation or recurrence of injury to the Union industry.

(3) On 15 May 2018 the Commission announced, by a notice published in the *Official Journal of the European Union*[(4)] ('the Notice of Initiation'), the initiation of an expiry review of the original measures applicable pursuant to Article 11(2) of the Regulation (EU) 2016/1036 of the European Parliament and of the Council of

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8 June 2016 on protection against dumped imports from countries not members of the European Union[(5)] ('the basic Regulation').

1.3. **Investigation**

1.3.1. *Review investigation period and period considered*

(4) The investigation of a continuation of dumping covered the period from 1 April 2017 to 31 March 2018 ('the review investigation period'). The examination of the trends relevant for the assessment of the likelihood of continuation or recurrence of injury covered the period from 1 January 2014 to the end of the review investigation period ('the period considered').

1.3.2. *Interested parties*

(5) In the Notice of Initiation, the Commission invited all interested parties to participate in the investigation. In particular, it advised the following parties of the initiation of the expiry review: the applicant, the known producers in the Union and their relevant associations, the known exporting producers in the PRC, the known unrelated importers in the Union and the authorities of the PRC.

(6) All interested parties were invited to make their views known, submit information and provide supporting evidence within the time limits set out in the Notice of Initiation. Interested parties were also granted the opportunity to request in writing a hearing by the Commission investigation services and/or the Hearing Officer in trade proceedings.

(7) The complainant Union producers, represented by the applicant, requested the Commission to keep their names confidential to avoid a possible risk of retaliation from the Chinese local authorities and/or from private actors in the PRC. They maintained that revealing the complainants' identities could potentially have a severe negative impact on their business activities and relationship with Chinese counterparts with whom they had strong links.

(8) The Commission assessed these requests and the supporting evidence provided. It concluded that there was indeed evidence of a significant risk of retaliation. On this basis, it granted confidential treatment to the names of the complainant producers.[(6)]

1.3.3. *Sampling*

(9) In the Notice of Initiation, the Commission stated that it might sample the interested parties in accordance with Article 17 of the basic Regulation.

1.3.3.1. Sampling of Union producers

(10) In the Notice of Initiation, the Commission stated that it had provisionally selected a sample of Union producers in accordance with Article 17(1) of the basic Regulation. Prior to the initiation, 25 Union producers had provided the information requested for the selection of the sample and expressed their willingness to cooperate

with the Commission. On that basis, the Commission had provisionally selected a sample of four producers, which were found to be representative of the Union industry.[7] The selection was made based on the producers' production volumes of the like product, size, geographic location in the Union and product segment. The four Union producers covered all major product types and were located in four Member States. Out of these producers, two were small and medium-sized enterprises (SMEs[8]). The provisional sample accounted for over 10 % of the estimated total Union production in 2017.

(11) Following the establishment of the provisional sample, one of the sampled producers informed the Commission it had erroneously labelled itself as an SME while in fact, it was not. In order to maintain a representative sample, the Commission amended its provisional sample to include one additional SME.[9] The resulting final sample included five Union producers, out of which two SMEs, covering all major product types and located in five Member States[10]. That sample represented over 10 % of the estimated total production of the Union industry in 2017.

(12) The China Chamber of Commerce for Exports and Imports of Light Industrial Products and Art Crafts (‘CCCLA’) commented on the low percentage of representativeness of the sampled companies (over 10 %) in comparison with the original investigation (over 20 %). The Commission, however, considered that given the fragmented character of the ceramic tableware industry and the need to include both large and small companies producing different product types in different Member States, the sample included the largest representative volume of sales that could reasonably be investigated within the time available.

1.3.3.2. Sampling of importers

(13) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked unrelated importers to provide the information specified in the Notice of Initiation. Fifteen importers made themselves known to the Commission, of which twelve provided the required information. In view of the number of replies, the Commission decided to limit the number of importers it would investigate and selected a sample. In accordance with Article 17(1) of the basic Regulation, the Commission selected two companies corresponding to the largest representative volume of imports and sales of the product under review in the Union, which could reasonably be investigated within the time available.[11] According to the figures reported at sampling stage, the sampled companies accounted for 2 – 5 % of the imports of the product concerned during the review investigation period.

1.3.3.3. Sampling of exporting producers in the PRC

(14) To decide whether sampling is necessary and, if so, to select a sample, the Commission asked all known exporting producers in the PRC to provide the information specified in the Notice of Initiation. In addition, it asked the Mission of the People's Republic of China to the European Union to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.

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(15) Five-hundred-thirty-four (534) Chinese exporting producers / groups of exporting producers returned the sampling forms and agreed to be included in the sample. These cooperating Chinese exporting producers together represented around 82 % and 76 % of the Chinese sales volumes and values of ceramic tableware and kitchenware to the Union during the review investigation period. After analysing the information supplied by the Chinese exporting producers, the Commission decided to limit its investigation to a reasonable number of exporting producers by using a sample in accordance with Article 17(1) of the basic Regulation. On 29 June 2018 (note for the file No. t18.007505) the Commission selected a sample of three groups of exporting producers based on the largest sales volume to the Union during the review investigation period. According to Eurostat, the three sampled groups covered around 8,8 % of the total Chinese exports to the Union in the review investigation period[(12)].

(16) The CCCLA commented on the low percentage of representativeness of the sampled companies in comparison with the original investigation (almost 20 %). The Commission, however, considered that given the fragmented character of the ceramic tableware industry, selecting the three largest groups in terms of their declared export sales to the Union was the largest representative volume of exports that could reasonably be investigated within the time available.

(17) On 25 July 2018, one of the sampled groups[(13)] informed the Commission services of its decision to withdraw from cooperation and not to submit a questionnaire reply. Subsequently, in line with Article 17(4) of the basic Regulation the Commission decided to select a new sample by adding one more group, the fourth largest in terms of Union sales during the review investigation period[(14)].

1.3.4. *Questionnaires and verification visits*

(18) The Commission sent questionnaires to the three sampled groups of Chinese exporting producers and to the government of the PRC ('GOC'), to the five sampled Union producers and the two sampled unrelated importers. Two groups of Chinese exporting producers, four sampled Union producers and two sampled importers provided complete questionnaire replies.

(19) One small Union producer informed the Commission that it would not be able to provide a meaningful reply to the questionnaire and consequently withdrew its cooperation. Due to the late stage in the procedure, it was not possible to replace the sampled company. The withdrawal of the company had an impact on the representativeness of the sample, as it was reduced to three large producers and one SME instead of two SMEs. However, the amended sample still represented over 10 % of the estimated total production of the Union industry in 2017, including all relevant product segments (porcelain, stoneware and earthenware), large companies and SMEs as well as maintaining a representative geographic spread (four Member States[(15)]).

(20) One group of the sampled Chinese exporting producers provided a severely deficient questionnaire reply with sections on domestic sales and costs left blank, which did not enable the Commission to obtain all information that it deemed necessary for

the investigation. Consequently, the Commission informed this group that, as far as this group is concerned, it may base its findings on facts available as provided for in Article 18 of the basic Regulation[16].

(21) The Commission verified all the information it deemed necessary for a determination of the likelihood of a continuation of dumping and injury and of the Union interest. Verification visits were carried out at the premises of the following interested parties:

(a) Chinese exporting producers:

— Hunan Hualian China Industry Co., Ltd and Hunan Liling Hongguanyao China Industry Co., Ltd and their related trading companies ('the Hunan Hualian group') in Hunan Province, China.

— Guangdong Songfa Ceramics Co., Ltd and Chaozhou Lianjun Ceramics Co., Ltd ('the Songfa goup') in Guangdong Province, China.

(b) Union producers:

— Verification visits were carried out at the premises of four sampled Union producers.

(c) Unrelated Importers:

— Ritzenhoff & Breker GmbH & Co. KG, Bad Driburg, Germany.

— Ritzenhoff AG, Marsberg, Germany.

1.3.5. *Confidentiality request*

(22) Similar to the request made by the complainant Union producers at initiation stage as outlined above in recital (7), the sampled Union producers requested that their identities be kept confidential for fear that they could face retaliation by customers or competitors concerned by this investigation, in accordance with Article 19(1) of the basic Regulation. The Commission individually examined the merits of each confidentiality request. It established that there was indeed evidence of a significant possibility of retaliation in each case and accepted that the names of those companies should not be disclosed.[17] Moreover, the Commission considered that it was not appropriate to disclose the five Member States where the sampled companies are located since this would also inevitably disclose the identity of the companies concerned.

(23) The CCCLA, both before and after final disclosure, claimed that the non-disclosure of the sampled Union producers' identity constituted a severe breach of the rights of defence of other interested parties. First, it maintained that no information had been provided on the links of Union producers with Chinese companies in the same sector. However, in the note to the file containing its assessment of the evidence put forward by the Union producers, the Commission had indicated the links that exist with Chinese companies which could be compromised by the disclosure of the Union producers' identity[18]. Second, the CCCLA criticized that anonymity would prevent it from providing meaningful comments on the representativeness of the sample, from