Council Implementing Regulation (EU) No 412/2013 of 13 May 2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of ceramic tableware and kitchenware originating in the People's Republic of China

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THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community[(1)], and in particular Article 9 thereof,

Having regard to the proposal submitted by the European Commission after having consulted the Advisory Committee,

Whereas:

1. PROCEDURE

1.1. Initiation

(1) The Commission, by Regulation (EU) No 1072/2012[(2)] ('the provisional Regulation'), imposed a provisional anti-dumping duty on imports of ceramic tableware and kitchenware originating in the People's Republic of China ('PRC' or 'the country concerned').

(2) The proceeding was initiated on 16 February 2012[(3)] following a complaint lodged on behalf of Union producers ('the complainants'), representing more than 30 % of the total Union production of ceramic tableware and kitchenware.

(3) As set out in recital (22) of the provisional Regulation, the investigation of dumping and injury covered the period from 1 January 2011 to 31 December 2011 ('the investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2008 to the end of the IP ('the period considered').

1.2. Subsequent procedure

(4) Subsequent to the disclosure of the essential facts and considerations on the basis of which it was decided to impose a provisional anti-dumping duty ('provisional disclosure'), several interested parties made written submissions making known their

Changes to legislation: *There are currently no known outstanding effects for the Council Implementing Regulation (EU) No 412/2013. (See end of Document for details)*

views on the provisional findings. The parties who so requested were granted an opportunity to be heard. Two importers and one exporting producer requested and were afforded hearings in the presence of the Hearing Officer of the Directorate-General for Trade.

(5) The Commission continued to seek and verify all information it deemed necessary for its definitive findings. The oral and written comments submitted by the interested parties were considered and, where appropriate, the provisional findings were modified accordingly.

(6) In addition, as explained in recital (55) below, a verification visit was carried out at a Thai producer, the purpose of which was to investigate the suitability of Thailand as an appropriate analogue country.

(7) Subsequently all parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive anti-dumping duty on imports of ceramic tableware and kitchenware originating in the PRC and the definitive collection of the amounts secured by way of provisional duty (‘the final disclosure’). All parties were granted a period within which they could make comments on the final disclosure. The Chinese Chamber of Commerce for Import and Export of Light Industrial Products and Arts-crafts (‘CCCLA’) and a group of importers requested and were granted hearings in the presence of the Hearing Officer of the Directorate-General for Trade.

(8) The comments submitted by the interested parties were considered and taken into account where appropriate.

1.3. **Sampling**

(9) Following provisional disclosure several interested parties challenged the sample of exporting producers from the PRC arguing that the sample is not representative, as it is based only on the largest exported volumes and thus failed to take into account other factors characterising the diversity and fragmentation of the ceramic industry in the PRC.

(10) It follows from Article 17(1) of Regulation (EC) No 1225/2009 (‘the basic Regulation’) that the selection of companies to be included in the sample may be limited to the largest representative volume of exports that can reasonably be investigated within the time available. In view of the fragmentation of the industry it was considered that a selection based on export volumes would allow a representative sample that could be investigated within the time available. In this respect it should nevertheless be noted that the companies selected are located in three different regions in the PRC and have significant production of the product concerned of different types of ceramic material, e.g. porcelain and stoneware as well as production of a wide variety of product types. Therefore, this claim cannot be accepted.

(11) One exporting producer claimed that the use of different methodologies for selecting the sample for the Union industry and importers as compared to the sampling of exporting producers amount to discrimination and that the same criteria should have

been used. The use of different methodologies is discriminatory against the exporting producers and a breach of equal treatment.

(12) The selection of a sample of exporting producers serves only to investigate the existence of dumping of the product concerned from the PRC. In this regard, it is essential to cover the maximum volume of imports of the product concerned in the investigation period. On the other hand, the sample of Union producers was selected for the purpose of determining whether the Union industry was suffering material injury of the basis of numerous different indicators. Concerning importers, the information collected is largely used in the Union interest assessment. It follows that for importers and the Union producers, it is important to collect information from a range of companies active in, for example, different product segments. As the underlying rationale for selecting companies to be included in the samples is different for, on the one hand, Union producers and importers and, on the other hand, exporting producers, they are not in a similar situation. Therefore, neither the principle of non-discrimination nor equal treatment requires the use of an identical methodology for selecting the respective samples. It follows that this claim is wholly unwarranted and is therefore rejected.

(13) Furthermore, one exporting producer maintained its request, as referred to in recital (8) of the provisional Regulation, that it should have been included in the sample. The company has however not put forward any new arguments that would justify its inclusion in the sample. Therefore, and taking into account the findings in recital (10) above, the conclusions in recital (9) of the provisional Regulation are hereby confirmed.

(14) The same non-sampled exporting producer claimed that it was not afforded sufficient time to submit its comments on the final disclosure and that, in addition, the disclosure was insufficient since it did not disclose, *e.g.* figures for allowances, sales prices, adjustments, etc. Therefore, its rights of defence have not been respected.

(15) According to Article 20(5) of the basic Regulation an interested party should be afforded a time period of at least 10 days to submit comments on the final disclosure. The exporting producer in question received the final disclosure by way of electronic mail on 25 February 2013 and was given until 8 March 2013, *i.e.* 11 days, to submit comments. The disclosure document was, in addition, also sent by registered mail the following day. It follows that the party concerned was given sufficient time to submit comments and this claim must therefore be rejected. In this respect it is also noted that the party's comments were provided within the given deadline and that no request for an extension of the deadline was made. Moreover, having due regard to its obligation to protect confidential information, the Commission disclosed all essential facts and considerations on the basis of which it intended to propose the imposition of definitive measures. More particularly, the respect for the rights of defence does not require that company specific sale figures or allowances made in respect of companies included in the sample, used to establish individual dumping margins must be communicated to a party for which no individual margin is calculated.

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(16) It follows from the above that the claim that the rights of defence were not respected is unfounded and is therefore rejected.

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Introduction

(17) As set out in recitals (24) and recitals (56) to (57) of the provisional Regulation, the product concerned as provisionally defined is ceramic tableware and kitchenware, excluding ceramic knives ('the product concerned'), currently falling within CN codes ex 6911 10 00, ex 6912 00 10, ex 6912 00 30, ex 6912 00 50 and ex 6912 00 90 and originating in the PRC.

2.2. Claims

(18) Following provisional disclosure, no parties contested that ceramic (kitchen) knives were fundamentally different from other kinds of ceramic table and kitchenware due to differences in physical characteristics, production processes and end-uses. All comments by parties having been analysed, the claim to exclude ceramic knives from the product scope of this investigation is definitively accepted.

(19) After publication of provisional measures, several parties claimed that certain ceramic condiment and spice mills and their ceramic grinding parts, should be excluded from the product scope.

(20) This claim is based on the allegation that, in view of their specificities, such mills and other types of ceramic tableware and kitchenware could not be considered as forming one single product. Those mills have a ceramic material mainly made of alumina for the grinding plate which is not used for 'standard' tableware such as cups and plates and for which firing is done at higher temperatures. Their degree of inter-changeability with the main categories of the product under investigation would be limited. This would also apply to ceramic grinding mechanisms without any housing which are normally declared under the above-mentioned codes.

(21) The investigation showed that the ceramic element in these grinders normally represented a minor part of the mill. Moreover, the investigation showed that mills with a ceramic grinding plate, including their ceramic grinding parts, did not have the same basic physical characteristics and basic uses as ceramic tableware and kitchenware. The shape, strength and design of the ceramic grinding parts are different from ceramic tableware and kitchenware.

(22) Some parties submitted that the mills in question should be excluded from the product scope on the basis that they have the same physical characteristics, industry design and end-use as mills with grinding mechanisms made of metal and that when included in certain sets of mills they are normally classified under tariff heading 8210. They also claimed that the ceramic elements in these instances generally represent normally up to 2 % of the value of the product. Nevertheless, given the numerous classification possibilities of mills and sets of mills, the investigation could not retain

these arguments to determine whether ceramic mills should be excluded from the product scope of the investigation.

(23) Several parties backed their claim that the mills in question should be excluded from the product scope on the basis that it would be necessary to use ceramic grinding plates, rather than metal, in certain mills, namely salt mills, as salt corrodes metal grinders. However, the investigation showed that salt mills do not necessarily use ceramic grinding mechanisms.

(24) On the basis of the considerations in the recitals above, the investigation concluded that condiment and spice mills with ceramic grinding elements are fundamentally different from other kinds of ceramic table and kitchenware due to the differences in basic physical characteristics and uses of the ceramic material used for the working parts. Therefore, the claim to exclude them, including stand-alone ceramic grinding mechanisms and their parts, from the product scope of this investigation is accepted.

(25) After the publication of provisional measures, some parties claimed that ceramic knife sharpeners should be excluded from the product scope because of differences in the production processes, end-use and the fact that these items are not aimed at retaining foodstuff due to their specific design and physical characteristics. The investigation confirmed these points. The claim to exclude them from the product scope of this investigation is therefore granted.

(26) In the same vein it was also investigated whether ceramic peelers should be excluded from the product scope. Indeed, the investigation confirmed that ceramic peelers, also, are fundamentally different from other kinds of ceramic table and kitchenware due to the differences in the design and physical characteristics (shape and strength) of the ceramic material used for the working parts, their production processes and end-use. Ceramic peelers should, therefore, also be excluded from the product scope of this investigation.

(27) After the publication of provisional measures, a party also claimed that pizza-stones made of cordierite ceramic should be excluded from the product scope because of their different physical properties (shape and hardness), industrial design and use. Cordierite ceramic is a type of alumina magnesia silicate with specific properties, namely an excellent thermal shock resistance. The investigation confirmed that pizza-stones made of cordierite ceramic have the same physical properties (shape and hardness), industrial design and use as bricks for furnaces or ovens. Consequently, they are different from other ceramic tableware and kitchenware. Following final disclosure, the complainants pointed at the similarity of pizza-stones made of cordierite ceramic as compared to the other products covered by the proceeding. However, they could not demonstrate that pizza-stones made of cordierite ceramic have the same basic physical characteristics and end uses. The claim to exclude them from the product scope of this investigation is therefore granted.

(28) After the publication of provisional measures, a Dutch association claimed that ceramic tableware and kitchenware to be used as promotional products should