Commission Regulation (EU) No 1072/2012 of 14 November 2012 imposing a provisional anti-dumping duty on imports of ceramic tableware and kitchenware originating in the People's Republic of China

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THE EUROPEAN COMMISSION,

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)] ('the basic Regulation'), and in particular Article 7 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

1. Initiation

(1) On 16 February 2012, the European Commission announced, by a notice published in the *Official Journal of the European Union*[(2)] ('the notice of initiation'), the initiation of an anti-dumping proceeding with regard to imports into the Union of ceramic tableware and kitchenware originating in the People's Republic of China ('the country concerned', 'China' or 'the PRC').

(2) The proceeding was initiated following a complaint lodged on 3 January 2012 on behalf of EU producers ('the complainants'), representing more than 30 % of the total Union production of ceramic tableware and kitchenware. The complaint contained *prima facie* evidence of dumping of the said product and of material injury resulting therefrom, which was considered sufficient to justify the opening of a proceeding.

2. Parties concerned by the proceeding

(3) The Commission officially advised the complainants, other known Union producers, the known exporting producers in the PRC, importers, traders, users, suppliers and associations known to be concerned, and the representatives of the PRC of the initiation of the proceeding. The Commission also advised producers in the Russian Federation, which was proposed in the notice of initiation as a possible analogue country. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation. All interested parties who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

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(4) In view of the apparent high number of exporting producers and unrelated importers, the notice of initiation requested exporting producers and unrelated importers to make themselves known to the Commission and to provide basic information on their activities related to the product concerned during the period from 1 January 2011 to 31 December 2011. This information would allow the Commission, in accordance with Article 17 of the basic Regulation, to decide whether sampling would be necessary and if so, to select samples.

(5) In view of the large number of Union producers involved in this proceeding, the notice of initiation announced that the Commission had provisionally selected a sample of Union producers for the determination of injury in accordance with Article 17 of the basic Regulation. That pre-selection had been made by using the information available to the Commission at initiation stage and it was based on the producers' sales volume, size, geographic location in the Union and product segment. It included six Union producers covering all major product types and located in five Member States, out of which two where small and medium-sized enterprises (SMEs). That preliminary sample accounted for over 15 % of the estimated total Union production. However, one of the preliminary sampled producers did not wish to be part of the sample and several interested parties submitted that a Member State with large production volumes had been overlooked and should be included in a representative sample. In view of this, the Commission changed its preliminary sample and the resulting final sample included seven Union producers covering all major product types and located in six Member States, out of which two were SMEs. That sample represented over 20 % of the estimated total Union production.

(6) Around 400 exporting producers or groups of exporting producers in the PRC who account for over 60 % of total exports provided the requested information and agreed to be included in the sample. On the basis of the information received the Commission provisionally selected a sample of five exporting producers with the highest export volume to the Union and invited all exporting producers known to the Commission to make comments on the proposed sample. Two exporting producers pre-selected to form part of the sample then corrected their sampling information such that their export volume was not sufficient for them to be included in the sample. The Commission then selected the final sample with the updated five largest companies in terms of export volume. The sampled companies account for almost 20 % of the exports to the Union of all cooperating exporting producers.

(7) The companies or groups of companies finally selected to be included in the sample are:

(a) Hunan Hualian China Industry Co., Ltd and its related companies,

(b) Guangxi Sanhuan Enterprise Group Holding Co., Ltd and its related companies,

(c) CHL International Ltd and its related companies,

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(d) Shandong Zibo Niceton-Marck Huaguang Ceramics Limited and its related companies ('Niceton'), and

(e) Guangxi Province Beiliu City Laotian Ceramics Co., Ltd

(8) One company contested the selection of sampled companies and claimed that it should be included in the sample. It argued that its inclusion would not make the number of sampled companies unreasonable or cause delays to the investigation, especially since the company is a relatively small exporter. It further claimed that the company is foreign-owned and that the sample would not be representative without its inclusion.

(9) The Commission recalls that the selection of sampled companies was made on the basis of the largest quantities of volumes in accordance with Article 17(1) of the basic Regulation taking into account the number of producers that could reasonably be investigated within the time available. Considering that the company is a relatively small exporter, its inclusion would not add any value to the representativeness of the sample in terms of volume exported. Furthermore, it is also noted that the company came forward very late — four months after the final selection had been communicated to all exporting producers and also after verification visits at the selected companies' premises had taken place. The request to be included in the sample has therefore been rejected.

(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.

(11) In order to allow exporting producers in the PRC to submit a claim for market economy treatment ('MET') or individual treatment ('IT'), if they so wished, the Commission sent claim forms to the Chinese exporting producers that had so requested and to the Chinese authorities.

(12) Eleven Chinese exporting producers or groups of exporting producers requested MET pursuant to Article 2(7) of the basic Regulation, or IT should the investigation establish that they did not meet the conditions for MET. Three of these claimants were included in the sample whereas the other eight were not. One of these exporting producers, not included in the sample, subsequently withdrew its MET request while retaining its claim for IT. The remaining two exporting producers in the sample and four other companies, not included in the sample, requested IT only.

(13) The Commission sent questionnaires to the five sampled exporting producers in the PRC and to almost 300 other exporting producers in the PRC that had so

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requested. Moreover, questionnaires were sent to the seven Union producers selected in the sample, the five importers selected in the sample, four associations of retailers and distributors and also to individual retailers and distributors who so requested. In addition, questionnaires were sent to exporting producers in India, Turkey, Brazil, Thailand and Russia, which were considered candidate countries for the selection of an appropriate analogue country.

(14) Replies were received from thirteen exporting producers or groups of exporting producers in the PRC and from three producers from possible analogue countries (Brazil, Thailand and Russia). Furthermore, questionnaire replies were received from the seven Union producers selected in the sample and the five importers selected in the sample. Questionnaire replies were also received from one retailer, one distributor and two associations of retailers and distributors.

(15) In addition, the Commission received submissions from more than 20 importers not related to an exporting producer, several retailers, a provider of marketing programmes and from the Chinese Chamber of Light Industrial Products and Arts-Crafts (CCCLA).

(16) The Commission sought and verified all the information deemed necessary for a provisional determination of dumping, resulting injury and Union interest. Verification visits were carried out at the premises of the following companies:

(a) *Union producers*

(17) Verification visits were carried out at the premises of the seven sampled Union producers.

(18) The sampled Union producers as well as other cooperating Union producers requested, on the grounds of the provisions of Article 19 of the basic Regulation, that their identities be kept confidential. They claimed that the disclosure of their identity could lead to a risk of significant adverse effects.

(19) Certain complainant Union producers supply customers in the Union that also source their products from China, thus benefiting directly from these imports. Those complainants considered themselves therefore in a sensitive position since some of their clients might not be satisfied with their lodging or supporting a complaint against alleged injurious dumping. For these reasons they considered that there was a risk of retaliation by some of their clients. In addition, certain complainant Union producers are also exporting to China. Those companies deemed that lodging or supporting a complaint against alleged injurious dumping could represent a threat to their business in China. The request was granted as it was sufficiently substantiated.

(20) The representatives of certain exporting producers, the CCCLA and some unrelated importers claimed that they could not properly exercise their right of defence because the identity of the complainants and supporters had not been disclosed. They argued that, in those circumstances, parties were precluded from commenting on standing, material injury, whether producers could be excluded from the Union industry according to Article 4(1)(a) of the basic Regulation and/or the representativity of the

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sample. However, it is noted that the Commission ensured that these issues could be verified and dealt with in the files available for inspection by interested parties, such as correspondence to interested parties, via notes on standing and the sample selection and via requiring properly documented submissions from other parties. The claim was therefore rejected.

(b) *Exporting producers in the PRC*

— Hunan Hualian China Industry Co, Ltd, Hunan Hualian Ebillion Industry Co., Ltd, Hunan Liling Hongguanyao China Industry Co., Ltd and Hunan Hualian Yuxiang China Industry Co., Ltd (*Hunan Hualian*)

— Guangxi Sanhuan Enterprise Group Holding Co., Ltd and Guangxi Sanhuan Lucky Xinda Export & Import Co., Ltd (*Guangxi Sanhuan*)

— CHL International Ltd and CHL Porcelain Industries Ltd (*CHL*)

— Shandong Zibo Niceton-Marck Huaguang Ceramics Limited, Shandong Silver Phoenix Company Limited and a related trader based in Hong Kong, Niceton International Limited (*Niceton*)

— Guangxi Province Beiliu City Laotian Ceramics Co., Ltd

— Fujian Dehua Hiap Huat Koyo Toki Co., Ltd

— Shenzhen Baosanhe Ceramics Industrial Co., Ltd

— Chaozhou Fairway Ceramics Manufacturing Co., Ltd

— Chaozhou Mingyu Porcelain Industries Co., Ltd

— Shenzhen Grand Collection Industrial Co., Ltd and Chaozhou Grand Collection Tableware Co., Ltd (*Grand Collection*)

— Tienshan (Handan) Tableware Co., Ltd

— Zibo Kun Yang Ceramic Corporation Limited

(c) *Union importers*

— Symbol srl, Treviso, Italy;

— Metro AG, Dusseldorf, Germany;

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

— Joseph Maeser GmbH, Dornbirn, Austria;

— IKEA Supply AG, Pratteln, Switzerland

(d) *Exporting producer in the analogue country*

(21) The cooperating Brazilian producer requested that its identity should remain confidential as its disclosure could result in significant adverse effects on its business. The request was deemed warranted and hence accepted.

3. **Investigation period**

(22) The investigation of dumping and injury covered the period from 1 January 2011 to 31 December 2011 (‘investigation period’ or ‘IP’). The examination of the trends relevant for the assessment of injury covered the period from 1 January 2008 to the end of the investigation period (the period considered).