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## Legislation

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<sup>(1)</sup> Text with EEA relevance.

## I

(Legislative acts)

## REGULATIONS

## COUNCIL REGULATION (EU, Euratom) 2019/1197

of 9 July 2019

**on measures concerning the implementation and financing of the general budget of the Union in 2019 in relation to the withdrawal of the United Kingdom from the Union**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 352 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 203 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the consent of the European Parliament <sup>(1)</sup>,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) On 29 March 2017, the United Kingdom submitted the notification of its intention to withdraw from the Union pursuant to Article 50 of the Treaty on European Union (TEU). The Treaties will cease to apply to the United Kingdom from the date of entry into force of the withdrawal agreement or, failing that, two years after that notification, that is from 30 March 2019, unless the European Council, in agreement with the United Kingdom, unanimously decides to extend that period. In the absence of a withdrawal agreement with the United Kingdom and of an extension of the two-year period referred to in Article 50(3) TEU a financial settlement with regard to the financial obligations following from the United Kingdom's membership in the Union needs to be agreed in a future international agreement between the United Kingdom and the Union.
- (2) This Regulation is without prejudice to the respective obligations of the Union and the United Kingdom resulting from the whole period of the United Kingdom's membership in the Union.
- (3) It is therefore necessary to lay down rules on the relations between the Union, on the one hand, and the United Kingdom and its beneficiaries, on the other, as regards the financing and implementation of the general budget of the Union ('the budget') in 2019.
- (4) The Treaties do not provide powers other than those under Article 352 of the Treaty on the Functioning of the European Union (TFEU) and Article 203 of the Treaty establishing the European Atomic Energy Community for the adoption of the measures concerning the implementation and financing of the budget in 2019 in relation to the withdrawal of the United Kingdom from the Union.

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<sup>(1)</sup> Consent of 17 April 2019 (not yet published in the Official Journal).

- (5) The United Kingdom and persons and entities established in United Kingdom are participating in a number of Union programmes or actions on the basis of the United Kingdom's membership in the Union. The participation takes place on the basis of agreements with the United Kingdom or persons or entities established in the United Kingdom or decisions in favour of the United Kingdom or persons or entities established in the United Kingdom which constitute legal commitments.
- (6) For many of those agreements and decisions, the rules governing the eligibility require the beneficiary to be a Member State or a person or entity established in a Member State. The eligibility of the United Kingdom or persons or entities established in the United Kingdom is in such cases linked to the United Kingdom being a Member State. The withdrawal of the United Kingdom from the Union therefore entails the loss of eligibility of such recipients of Union financing under the agreements and decisions. However, this does not concern cases where persons or entities established in the United Kingdom would participate in an action under, and subject to the conditions applicable under, the respective Union rules for persons and entities established in a third country.
- (7) It would be beneficial both for the Union and its Member States and for the United Kingdom and persons and entities established in the United Kingdom to implement the budget for 2019 as it has been adopted for that year. It would also be beneficial if the legal commitments signed and adopted before the date of withdrawal could continue to be executed throughout 2019.
- (8) It is therefore appropriate to lay down conditions under which the United Kingdom and persons and entities established in the United Kingdom could continue to be eligible in 2019 with regard to the agreements signed with them and the decisions adopted with regard to them until the date on which the Treaties cease to apply to and in the United Kingdom ('date of withdrawal'). The conditions would be that the United Kingdom has confirmed the commitment in writing to the Commission to continue to pay a contribution calculated on the basis of the estimated own resources from the United Kingdom as set out in the budget for 2019 as definitively adopted, that a first instalment has been paid by the United Kingdom and that the United Kingdom has confirmed the commitment in writing to the Commission to allow audits and controls in full by the Union in compliance with the applicable rules. In view of the need for certainty, it is appropriate to limit the time for the fulfilment of the conditions. The Commission should adopt a decision on the fulfilment of the conditions.
- (9) The condition as regards the contribution from the United Kingdom is based on the budget for 2019 as adopted. Therefore, it is reasonable that no Member State should be in a less favourable position as regards their contribution than laid down in the budget for 2019 as adopted, following the adoption of this Regulation. Therefore, to ensure the beneficial effect of this Regulation for all Member States, it is appropriate to deduct a specific amount from the amount of the contribution by the United Kingdom to be entered in the general budget of the Union. Such specific amount should benefit the Member States which would otherwise be at a disadvantage following the adoption of this Regulation, as further specified in dedicated practical arrangements setting out the distribution of the payments due and entrusting the Commission with the disbursement of the specific amount.
- (10) As long as the conditions for eligibility of the United Kingdom and persons and entities established in the United Kingdom under this Regulation continue to be fulfilled, it is also appropriate to provide for their eligibility, in 2019, for the purposes of conditions set in calls, tenders, contests or any other procedure which may lead to financing from the Union's budget, with the exception of specific cases related to security and to the loss of membership of the United Kingdom in the European Investment Bank, and to provide Union funding to them. Such Union funding should be limited to eligible expenditure incurred in 2019, except for public procurement contracts signed before the end of 2019 in application of Title VII of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council <sup>(2)</sup> ('the Financial Regulation'), which continue to be implemented in accordance with their terms, and except for the United Kingdom agricultural direct payment scheme for the claim year 2019, which should be excluded from eligibility. In line with the Financial Regulation, calls, tenders, contests or other procedures, as well as any ensuing agreements with, or decisions in favour of, the United Kingdom or persons or entities established in the United Kingdom, are to stipulate the conditions for eligibility and for continuation thereof by reference to this Regulation.

<sup>(2)</sup> Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

- (11) It is also appropriate to provide that the eligibility of the United Kingdom and persons and entities established in the United Kingdom would continue under the conditions that the United Kingdom continues to pay the contribution for 2019 and that controls and audits can be carried out effectively. Where these conditions are no longer fulfilled, the Commission should take a decision establishing such failure. In such a case, the United Kingdom and persons and entities established in the United Kingdom should cease to be eligible for Union financing.
- (12) It is also appropriate to provide for the continuation, in 2019, of eligibility of actions in which Member States or persons or entities established in the Member States receive Union funds and which are related to the United Kingdom. However, the potential non-acceptance by the United Kingdom of controls and audits should constitute an element to be taken into account for the purposes of sound financial management when assessing the implementation of such actions.
- (13) The actions should continue to be implemented in compliance with the relevant rules governing such actions, including the Financial Regulation. Therefore, it is necessary to treat the United Kingdom as a Member State for the purpose of the application of such rules.
- (14) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States but can rather, as they concern the Union budget and programmes and actions implemented by the Union, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the TEU. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (15) In order to allow for a limited flexibility, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of a possible extension of the deadlines set out in points (a), (b) and (c) of the first subparagraph of Article 2(1), and amendments to the payment schedule for the months after August 2019. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making<sup>(3)</sup>. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts. Where, in the case of a risk of a serious disruption of the implementation and financing of the Union budget in 2019, imperative grounds of urgency so require, the delegated act should enter into force without delay and should apply as long as no objection is expressed by the European Parliament or the Council.
- (16) To avoid any unnecessary disruption for beneficiaries of EU spending programmes and other actions at the date of the withdrawal of the United Kingdom from the Union, this Regulation should enter into force as a matter of urgency on the day following that of its publication in the *Official Journal of the European Union* and should apply from the day following that on which the Treaties cease to apply to and in the United Kingdom, unless a withdrawal agreement concluded with the United Kingdom has entered into force by that date. Given that at the date of withdrawal an adopted budget of the Union, which provides for the participation of the United Kingdom in its financing, covers only 2019, it should only apply to the eligibility for the year 2019,

HAS ADOPTED THIS REGULATION:

#### Article 1

### Subject matter and scope

1. This Regulation lays down rules on the implementation and the financing of the general budget of the Union ('the budget') in 2019 in relation to the withdrawal of the United Kingdom from the Union and on actions under direct, indirect and shared management for which the eligibility is fulfilled through the membership of the United Kingdom in the Union at the date on which the Treaties cease to apply to and in the United Kingdom ('date of withdrawal').

<sup>(3)</sup> OJ L 123, 12.5.2016, p. 1.

2. This Regulation applies without prejudice to the territorial cooperation programmes covered by Regulation (EU) 2019/491 of the European Parliament and of the Council <sup>(4)</sup> and to the learning mobility activities under the Erasmus+ programme covered by Regulation (EU) 2019/499 of the European Parliament and of the Council <sup>(5)</sup>.

## Article 2

### Conditions for eligibility

1. Where the United Kingdom or a person or entity established in the United Kingdom receive Union funds under an action carried out in direct, indirect or shared management pursuant to legal commitments signed or adopted before the date of withdrawal and eligibility under that action depends on the membership of the United Kingdom in the Union, they shall continue to be eligible for Union funding for eligible expenditure incurred in 2019 following the date of withdrawal, if the following conditions are met, and as long as no decision as referred to in Article 3(2) has entered into force:

- (a) the United Kingdom has confirmed at the latest on 30 April 2019 in writing to the Commission that it will contribute in euros the amount displayed in the line 'United Kingdom' and the column 'Total own resources' of table 7 of the part 'A. Introduction and financing of the general budget of the Union' of the revenue part of the budget for 2019 set out in the general budget of the European Union for the financial year 2019 <sup>(6)</sup>, as adopted on 12 December 2018, reduced by the amount of own resources made available by the United Kingdom in respect of the financial year 2019 before the date of withdrawal, in accordance with the payment schedule laid down in this Regulation;
- (b) the United Kingdom has paid at the latest on 13 May 2019 on the account determined by the Commission the first payment which corresponds to the instalment referred to in the second subparagraph of this paragraph multiplied by the result of the following: the number of full months between the date of withdrawal and the end of the year 2019 reduced by the number of months between the month of the first payment, excluding that month, and the end of the year 2019;
- (c) the United Kingdom has confirmed at the latest on 30 April 2019 the commitment in writing to the Commission that it will continue to accept the controls and audits which cover the entire period of the programmes and actions in accordance with the applicable rules; and
- (d) the Commission has adopted the decision referred to in paragraph 2 confirming that the conditions referred to in points (a), (b) and (c) of this subparagraph have been fulfilled.

The amount referred to in point (a) of the first subparagraph shall be broken down into equal instalments. The number of instalments shall correspond to the number of full months between the date of withdrawal and the end of the year 2019.

The amount referred to in point (a) of the first subparagraph shall be entered in the general budget of the Union as other revenue after deduction of a specific amount aiming at ensuring the budgetary distribution as provided in the column 'Total own resources' of the table referred to in point (a) of the first subparagraph and subject to dedicated practical arrangements to that effect.

The commitment referred to in point (c) of the first subparagraph shall include in particular the cooperation in the protection of the financial interests of the Union and the acceptance of the rights of the Commission, the Court of Auditors and the European Anti-Fraud Office to access data and documents relating to Union contributions, and perform controls and audits.

2. The Commission shall adopt a decision on whether the conditions laid down in points (a), (b) and (c) of the first subparagraph of paragraph 1 have been fulfilled.

<sup>(4)</sup> Regulation (EU) 2019/491 of the European Parliament and of the Council of 25 March 2019 in order to allow for the continuation of the territorial cooperation programmes PEACE IV (Ireland-United Kingdom) and United Kingdom-Ireland (Ireland-Northern Ireland-Scotland) in the context of the withdrawal of the United Kingdom from the Union (OJ L 85 I, 27.3.2019, p. 1).

<sup>(5)</sup> Regulation (EU) 2019/499 of the European Parliament and of the Council of 25 March 2019 laying down provisions for the continuation of ongoing learning mobility activities under the Erasmus+ programme established by Regulation (EU) No 1288/2013, in the context of the withdrawal of the United Kingdom from the Union (OJ L 85 I, 27.3.2019, p. 32).

<sup>(6)</sup> Definitive adoption (EU, Euratom) 2019/333 of the European Union's general budget for the financial year 2019 (OJ L 67, 7.3.2019, p. 1).

3. The Commission is empowered to adopt delegated acts in accordance with Article 7 concerning the extension of the deadlines set in points (a), (b) and (c) of the first subparagraph of paragraph 1 of this Article.

Where, in the case of a risk of serious disruption of the implementation and financing of the Union budget in 2019, imperative grounds of urgency so require, the procedure provided for in Article 8 shall apply to delegated acts adopted pursuant to this paragraph.

#### Article 3

### **Continuation of eligibility of United Kingdom and of persons and entities established in the United Kingdom**

1. The eligibility of the United Kingdom and persons and entities established in the United Kingdom established in accordance with Article 2 shall continue in the year 2019 as long as the following conditions are fulfilled:

- (a) the United Kingdom has, following the first payment made in accordance with point (b) of the first subparagraph of Article 2(1), paid on the account determined by the Commission the monthly instalment referred to in the second subparagraph of Article 2(1) on the first working day of each month until August 2019;
- (b) the United Kingdom has paid on the account determined by the Commission on the first working day of September 2019 the remaining monthly instalments referred to in the second subparagraph of Article 2(1), unless the Commission communicates to the United Kingdom a different payment schedule for this payment by 31 August 2019; and
- (c) no significant deficiencies have been observed in the execution of the controls and audits referred to in point (c) of the first subparagraph of Article 2(1).

2. Where one or more of the conditions referred to in paragraph 1 are not fulfilled, the Commission shall adopt a decision to that effect. That decision shall be published in the *Official Journal of the European Union*.

As of the date of entry into force of the decision referred to in the first subparagraph of this paragraph, the United Kingdom and persons and entities established in the United Kingdom shall cease to be eligible under paragraph 1 of this Article, and under Articles 2 and 4, actions shall cease to be eligible under Article 6(2), and Article 5 shall cease to apply.

3. The Commission is empowered to adopt delegated acts in accordance with Article 7 concerning a different payment schedule for the payment referred to in point (b) of paragraph 1 of this Article.

Where, in the case of a risk of a serious disruption of the implementation and financing of the Union budget in 2019, imperative grounds of urgency so require, the procedure provided for in Article 8 shall apply to delegated acts adopted pursuant to this paragraph.

#### Article 4

### **Participation in calls and eligibility of resulting expenditures**

1. As of the date of entry into force of the decision referred to in point (d) of the first subparagraph of Article 2(1), and as long as no decision as referred to in Article 3(2) has entered into force, the United Kingdom or persons and entities established in the United Kingdom shall be eligible in 2019 for the purposes of conditions set in any calls, tenders, contests or any other procedure which may lead to financing from the Union's budget to the same extent as Member States and persons or entities established in the Member States, and be eligible for Union funding for eligible expenditure incurred in 2019.

Notwithstanding the first subparagraph:

- (a) contracts signed in application of Title VII of the Financial Regulation until the end of 2019 shall be implemented in accordance with their terms and until their end date;
- (b) expenditure in respect of the United Kingdom direct payments scheme for the claim year 2019 pursuant to Regulation (EU) No 1307/2013 of the European Parliament and of the Council<sup>(7)</sup> shall not be eligible for Union funding.

<sup>(7)</sup> Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 (OJ L 347, 20.12.2013, p. 608).

2. The first subparagraph of paragraph 1 shall not apply:
  - (a) where the participation is limited to the Member States and persons or entities established in the Member States for security reasons;
  - (b) to financial operations carried out within financial instruments managed directly or indirectly under Title X of the Financial Regulation or to financial operations guaranteed by the Union budget under the European Fund for Strategic Investments (EFSI) established by Regulation (EU) 2015/1017 of the European Parliament and of the Council <sup>(8)</sup> or under the European Fund for Sustainable Development (EFSD) established by Regulation (EU) 2017/1601 of the European Parliament and of the Council <sup>(9)</sup>.

#### Article 5

##### Other necessary adaptations

If the conditions laid down in Article 2(1) are fulfilled, and as long as no decision as referred to in Article 3(2) has entered into force, for the purpose of the application of any rules governing the actions carried out under the legal commitments referred to in Article 2(1), the calls referred to in Article 4 and the actions carried out under the legal commitments signed or adopted following the calls referred to in Article 4, which are necessary to give effect to Articles 2(1) and 4(1), the United Kingdom shall be treated as a Member State, subject to the provisions of this Regulation.

However, the United Kingdom or United Kingdom representatives shall not be allowed to participate in any committee assisting in the management under the rules of the relevant basic act, or expert groups or other bodies advising on the programmes or on the actions, with the exception of monitoring or similar committees specific for the particular operational, national or similar programmes in shared management.

#### Article 6

##### Eligibility of actions that relate to the United Kingdom, where the Member States or persons or entities established in the Member States receive the Union funds

1. Actions under direct, indirect and shared management for which the Member States or persons or entities established in the Member States receive Union funds under legal commitments signed or adopted before the date of withdrawal and for which the eligibility is fulfilled through the membership of the United Kingdom in the Union at the date of withdrawal, shall be eligible for Union funding for eligible expenditure incurred in 2019 as of the date of withdrawal.
2. Actions for which the eligibility condition of a minimum number of participants from different Member States in a consortium is fulfilled at the date of withdrawal through a member of the consortium which is a person or entity established in the United Kingdom, shall be eligible for Union funding for eligible expenditure incurred in 2019 where the conditions of Article 2(1) are fulfilled and as long as no decision as referred to in Article 3(2) has entered into force.
3. The non-fulfilment of the condition referred to in point (c) of the first subparagraph of Article 2(1) or a Commission decision as referred to in Article 3(2) concerning the non-fulfilment of conditions referred to in point (c) of Article 3(1), shall be taken into account by the responsible authorising officer for the purposes of assessment of a possible serious deficiency in complying with the main obligations in the implementation of the legal commitment referred to in paragraph 1 of this Article.

#### Article 7

##### Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Articles 2 and 3 shall be conferred on the Commission for an indeterminate period of time from date of entry into force of this Regulation.

<sup>(8)</sup> Regulation (EU) 2015/1017 of the European Parliament and of the Council of 25 June 2015 on the European Fund for Strategic Investments, the European Investment Advisory Hub and the European Investment Project Portal and amending Regulations (EU) No 1291/2013 and (EU) No 1316/2013 — the European Fund for Strategic Investments (OJ L 169, 1.7.2015, p. 1).

<sup>(9)</sup> Regulation (EU) 2017/1601 of the European Parliament and of the Council of 26 September 2017 establishing the European Fund for Sustainable Development (EFSD), the EFSD Guarantee and the EFSD Guarantee Fund (OJ L 249, 27.9.2017, p. 1).



3. The delegation of power referred to in Articles 2 and 3 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act adopted pursuant to Articles 2 and 3 shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of one month of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by one month at the initiative of the European Parliament or of the Council.

#### Article 8

##### **Urgency procedure**

1. Delegated acts adopted under this Article shall enter into force without delay and shall apply as long as no objection is expressed in accordance with paragraph 2. The notification of a delegated act to the European Parliament and to the Council shall state the reasons for the use of the urgency procedure.
2. Either the European Parliament or the Council may object to a delegated act in accordance with the procedure referred to in Article 7(6). In such a case, the Commission shall repeal the act immediately following the notification of the decision to object by the European Parliament or by the Council.

#### Article 9

##### **Entry into force and application**

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

It shall apply from the date following that on which the Treaties cease to apply to and in the United Kingdom pursuant to Article 50(3) of the TEU.

However, this Regulation shall not apply if a withdrawal agreement concluded with the United Kingdom in accordance with Article 50(2) of the TEU has entered into force by the date referred to in the second paragraph of this Article.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 9 July 2019.

*For the Council*  
*The President*  
M. LINTILÄ

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## II

(Non-legislative acts)

## REGULATIONS

## 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**

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 <sup>(1)</sup>, 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 <sup>(2)</sup>, 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, <sup>(3)</sup> the European Federation for Table- and Ornamental ware ('FEFP' 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* <sup>(4)</sup> ('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 8 June 2016 on protection against dumped imports from countries not members of the European Union <sup>(5)</sup> ('the basic Regulation').

<sup>(1)</sup> OJ L 176, 30.6.2016, p. 21, as last amended by Regulation (EU) 2018/825 of the European Parliament and of the Council on 7 June 2018.

<sup>(2)</sup> 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, OJ L 131, 15.5.2013, p. 1.

<sup>(3)</sup> OJ C 268, 12.8.2017, p. 5.

<sup>(4)</sup> OJ C 167, 15.5.2018, p. 6.

<sup>(5)</sup> OJ L 176, 30.6.2016, p. 21, as last amended as last amended by Regulation (EU) 2018/825 of the European Parliament and of the Council of 30 May 2018 (OJ L 143, 7.6.2018, p 1).

### 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. <sup>(6)</sup>

#### 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. <sup>(7)</sup> 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 <sup>(8)</sup>). 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. <sup>(9)</sup> The resulting final sample included five Union producers, out of which two SMEs, covering all major product types and located in five Member States <sup>(10)</sup>. That sample represented over 10 % of the estimated total production of the Union industry in 2017.

<sup>(6)</sup> Note to the file of 14 May 2018, no. t18.005007 (available in the open file).

<sup>(7)</sup> Note to the file of 15 May 2018, no. t18.005080 (available in the open file).

<sup>(8)</sup> SMEs are defined as laid down in Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises, OJ L 124, 20.5.2003, p. 36.

<sup>(9)</sup> Note to the file of 15 June 2018, no. t18.007051 (available in the open file).

<sup>(10)</sup> Due to confidentiality reasons the Member States cannot be disclosed. See recitals (22) to (25).

- (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. <sup>(11)</sup> 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.
- (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 <sup>(12)</sup>.
- (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 <sup>(13)</sup> 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 <sup>(14)</sup>.

<sup>(11)</sup> Note to the file of 15 June 2018, no. t18.007051 (available in the open file).

<sup>(12)</sup> The three sampled groups of exporting producers were composed of Guangdong Songfa Ceramics Co., Ltd and Chaozhou Lianjun Ceramics Co., Ltd and their related companies ('the Songfa group'); Hunan Hualian China Industry Co., Ltd and Hunan Liling Hongguanyao China Industry Co., Ltd and their related companies ('the Hunan Hualian group') and Yiyang Red Star Ceramics Limited, Rong Lin Wah Industrial (Shenzhen) Co., Ltd and Zibo Huaguang Ceramics Technology and Culture Co., Ltd and their related companies ('the Fung Lin Wah group').

<sup>(13)</sup> Letter from Fung Lin Wah group, 25 July 2018 No. t18.008389.

<sup>(14)</sup> The Silver Phoenix group was added to the sample consisting of companies: Zibo Huaguang Ceramics Technology and Culture Co, Ltd, Zibo Huaguang Ceramics Technology and Culture Co Bone China Branch and Shandong Zibo Niceton-Marck Huaguang Ceramics Co., Ltd, Note Verbale dated 1 August 2018 No. t18.008426.

#### 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 <sup>(15)</sup>).
- (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 <sup>(16)</sup>.
- (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 group') 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. <sup>(17)</sup> 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 <sup>(18)</sup>. Second, the CCCLA criticized that anonymity would prevent it from providing meaningful comments on the representativeness of the sample, from determining whether a sampled company produces branded or non-branded products and from verifying the correctness of the Commission's injury findings.

<sup>(15)</sup> Due to confidentiality reasons the Member States cannot be disclosed. See recitals (22) to (25).

<sup>(16)</sup> T18.009968.

<sup>(17)</sup> Note to the file of 22 June 2018, no. t18.007294 (available in the open file).

<sup>(18)</sup> Note to the file of 22 June 2018, no. t18.007294 (available in the open file).

- (24) According to the jurisprudence of the Court of Justice the protection of rights of defence must be, where necessary, reconciled with the principle of confidentiality, which is specifically laid down in Article 19 of the basic Regulation. <sup>(19)</sup> While that reconciliation permits the receipt of non-confidential summaries of such information (carried out, for instance, in the form of ranges and/or indexed elements of information) where that information would not lead to a disclosure of business secrets, it is not absolute.
- (25) Applying that principle, the Commission has ensured throughout the current investigation that all relevant issues could be verified and dealt with in the files available for inspection by interested parties. These files included notes on the sample selection and its representativeness, open submissions of the sampled Union producers including ranges and/or indexed information and other relevant communication with those companies and their representatives, such as on the percentage of branded products produced by the different sampled companies. No information, other than that of which an open version was disclosed to the interested parties, was used in the choice of sampled companies or the determination of the Commission's injury findings. The disclosure of the names of these companies would therefore not have provided the interested parties with any additional information that would have been relevant to verifying the correctness of the Commission's findings. Hence, the Commission deemed the information provided in the documents disclosed to the interested parties sufficient to satisfy the rights of defence of interested parties, while disclosing the names of the Union producers would have likely caused irreparable and disproportionate economic harm to them. The claim was therefore rejected.

1.3.6. *Procedure for the determination of the normal value under Article 2(6a) of the basic Regulation*

- (26) In view of the sufficient evidence available at the initiation of the investigation tending to show the existence in the PRC of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation, the Commission considered it appropriate to initiate the investigation on the basis of Article 2(6a) of the basic Regulation.
- (27) Consequently, in order to collect the necessary data for the eventual application of Article 2(6a) of the basic Regulation, in the Notice of Initiation the Commission invited all known producers in the PRC to provide the information requested in Annex III to the Notice of the Initiation regarding the inputs used for producing the product under review. The two producers that sent sampling replies also submitted the information requested in Annex III.
- (28) In order to obtain information it deemed necessary for its investigation with regard to the alleged significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation, the Commission also sent a questionnaire to the GOC. In that questionnaire, the GOC was invited to provide its views on the evidence contained in the applicant's request, on any other evidence on file concerning the existence of significant distortions, including specifically the Report, as well as on the appropriateness of the application of Article 2(6a) of the basic Regulation in the case at hand. No reply was received.
- (29) In the Notice of Initiation, the Commission also invited all interested parties to make their views known, submit information and provide supporting evidence regarding the appropriateness of the application of Article 2(6a) of the basic Regulation within 37 days of the date of publication of this Notice in the Official Journal of the European Union.
- (30) In the Notice of Initiation the Commission also specified that, in view of the evidence available, it might need to select an appropriate representative country pursuant to Article 2(6a)(a) of the basic Regulation for the purpose of determining the normal value based on undistorted prices or benchmarks.
- (31) On 18 July 2018, the Commission published a first note to the file <sup>(20)</sup> ('the Note of 18 July') seeking the views of the interested parties on the relevant sources that the Commission might use for the determination of the normal value, in accordance with Article 2(6a)(e) second indent of the basic Regulation. Based on the replies to Annex III to the Notice of Initiation, the Commission provided a list of all factors of production such as materials, energy and labour used in the production of ceramic tableware and kitchenware by the exporting producers. In addition, based on the criteria guiding the choice of undistorted prices or benchmarks, the Commission identified three potential representative countries: Brazil, Thailand and Turkey.

<sup>(19)</sup> Judgment of the Court of 20 March 1985, Case C-264/82 *Timex v Council and Commission*, ECLI:EU:C:1985:119, at paragraph 24.

<sup>(20)</sup> Sherlock number No. t18.008032.

- (32) The Commission gave the opportunity to all interested parties to comment. The Commission received comments from the CCCLA and the applicant.
- (33) The Commission addressed the comments received by interested parties in a second note <sup>(21)</sup> on the sources for the determination of the normal value, dated 9 October 2018 ('the Note of 9 October'). In the Note of 9 October, the Commission further specified the list of factors of production and concluded that, at that stage, Turkey was the most appropriate representative country under Article 2(6a)(a), first indent of the basic Regulation. The Commission invited interested parties to comment. The Commission received comments from the CCCLA and the applicant. The present Regulation has addressed these comments in section 3.2.3 below.

#### 1.3.7. *Subsequent procedure*

- (34) On 26 April 2019, the Commission disclosed the essential facts and considerations on the basis of which it intended to maintain the anti-dumping duties ('final disclosure'). All parties were granted a period of 20 days within which they could make comments on the disclosure. Upon request of the CCCLA, a hearing was held on 17 May 2019.
- (35) The comments made by interested parties were considered by the Commission and taken into account, where appropriate.

## 2. PRODUCT CONCERNED AND LIKE PRODUCT

### 2.1. Product concerned

- (36) The product concerned is the same as the one in the original investigation, that is ceramic tableware and kitchenware, excluding ceramic condiment or spice mills and their ceramic grinding parts, ceramic coffee mills, ceramic knife sharpeners, ceramic sharpeners, ceramic kitchen tools to be used for cutting, grinding, grating, slicing, scraping and peeling, and cordierite ceramic pizza-stones of a kind used for baking pizza or bread, currently falling under CN codes ex 6911 10 00, ex 6912 00 21, ex 6912 00 23, ex 6912 00 25 and ex 6912 00 29 (TARIC codes 6911 10 00 90, 6912 00 21 11, 6912 00 21 91, 6912 00 23 10, 6912 00 25 10 and 6912 00 29 10) and originating in the People's Republic of China ('the product concerned').
- (37) Ceramic tableware and kitchenware can be made of porcelain (including China / bone China), of common pottery, stoneware, earthenware or fine pottery or other materials. The final ceramic product depends on the type and composition of the main raw materials such as clay, kaolin, feldspar and quartz.
- (38) Ceramic tableware and kitchenware products are commercialised in a large variety of forms that have been evolving over time. They are used in a wide range of places, e.g. households, hotels, restaurants or care establishments and are principally intended to come into contact with food.

### 2.2. Like product

- (39) As established in the original investigation, ceramic tableware and kitchenware produced and sold by the Union industry in the Union and ceramic tableware produced and sold on the domestic market of the PRC and ceramic tableware and kitchenware imported into the Union from the PRC share the same basic physical and chemical characteristics and the same end uses. They are therefore considered to be like products within the meaning of Article 1(4) of the basic Regulation.

## 3. LIKELIHOOD OF CONTINUATION OF DUMPING

- (40) In accordance with Article 11(2) of the basic Regulation, the Commission examined whether the expiry of the measures in force would be likely to lead to a continuation of dumping from the PRC.

### 3.1. Cooperation from the sampled companies

- (41) Based on Eurostat, during the review investigation period China exported 376 421 tonnes of ceramic tableware and kitchenware to the Union for a total value of 671 978 000 EUR. For the same period, the declared export volume and value of the cooperating Chinese exporting producers was 292 866 tonnes and 484 020 950 EUR corresponding to 78 % and 72 % respectively. In a fragmented industry such as the ceramic tableware, this can be considered as a high level of cooperation.

<sup>(21)</sup> Sherlock number No t18.010261.

- (42) At the same time, one of the four sampled groups withdrew from cooperation without providing a questionnaire reply and another one provided a severely deficient questionnaire reply that did not enable the Commission to obtain all the information it deemed necessary. Moreover, a third sampled group decided to withdraw from cooperation during the verification visit <sup>(22)</sup>. During the verification of this group the Commission found that the data provided in the questionnaire reply could not be sufficiently verified due to lack of underlying evidence. In particular, the company failed to provide documentation evidencing production output as well as documentation concerning delivery of raw materials / finished goods during the review investigation period. Certain electronic documents, such as purchase orders and purchase contracts related to supply transactions during the review investigation period were also not available at the company's premises. Moreover, for at least one transaction the documentation provided did not correspond to the verified information / documentation that the Commission had received from the company's supplier. All these findings corroborate the conclusion that the information provided was not reliable and that part of the production and origin of EU export sales during the review investigation period was misdeclared.
- (43) Thus, three out of the four sampled groups, despite their initial agreement, eventually did not cooperate in the investigation. The Commission informed the companies at hand as well as the authorities of China <sup>(23)</sup> that in accordance with Article 18 of the basic Regulation, it may base its findings regarding continuation and / or recurrence of dumping on facts available.

### 3.2. Dumping during the review investigation period

#### 3.2.1. Normal value

- (44) According to Article 2(1) of the basic Regulation, *'the normal value shall normally be based on the prices paid or payable, in the ordinary course of trade, by independent customers in the exporting country'*.
- (45) However, according to Article 2(6a)(a) of the basic Regulation, *'in case it is determined [...] that it is not appropriate to use domestic prices and costs in the exporting country due to the existence in that country of significant distortions within the meaning of point (b), the normal value shall be constructed exclusively on the basis of costs of production and sale reflecting undistorted prices or benchmarks', and 'shall include an undistorted and reasonable amount of administrative, selling and general costs and for profits' ('administrative, selling and general costs' is referred hereinafter as 'SG&A').*
- (46) As further explained below, the Commission concluded in the present investigation that, based on the evidence available, the application of Article 2(6a) of the basic Regulation was appropriate.

#### 3.2.2. Existence of significant distortions

##### 3.2.2.1. Introduction

- (47) Article 2(6a)(b) of the basic Regulation defines *'significant distortions are those distortions which occur when reported prices or costs, including the costs of raw materials and energy, are not the result of free market forces as they are affected by substantial government intervention. In assessing the existence of significant distortions regard shall be had, inter alia, to the potential impact of one or more of the following elements:*
- the market in question being served to a significant extent by enterprises which operate under the ownership, control or policy supervision or guidance of the authorities of the exporting country;
  - state presence in firms allowing the state to interfere with respect to prices or costs;
  - public policies or measures discriminating in favour of domestic suppliers or otherwise influencing free market forces;
  - the lack, discriminatory application or inadequate enforcement of bankruptcy, corporate or property laws;
  - wage costs being distorted;
  - access to finance granted by institutions which implement public policy objectives or otherwise not acting independently of the state'.

<sup>(22)</sup> Withdrawal letter signed by the management of Chaozhou Lianjun Ceramics Co., Ltd and Guangdong Songfa Ceramics Co., Ltd (Songfa group), dated 1 March 2019, t.19.001056.

<sup>(23)</sup> Note Verbale dated 8 March 2019, t19.001089.



- (48) According to Article 2(6a)(b) of the basic Regulation, the assessment of the existence of significant distortions within the meaning of Article 2(6a)(a) shall take into account, amongst others, the non-exhaustive list of elements in the former provision. Pursuant to Article 2(6a)(b) of the basic Regulation, in assessing the existence of significant distortions, regard shall be had to the potential impact of one or more of these elements on prices and costs in the exporting country of the product concerned. Indeed, as that list is non-cumulative, not all the elements need to be given regard to for a finding of significant distortions. Moreover, the same factual circumstances may be used to demonstrate the existence of one or more of the elements of the list. However, any conclusion on significant distortions within the meaning of Article 2(6a)(a) must be made on the basis of all the evidence at hand. The overall assessment of the existence of distortions may also take into account the general context and situation in the exporting country, in particular when the concept of a 'socialist market economy' is enshrined in the Chinese Constitution and the entire legal system provides the government with substantial powers to intervene in the economy in such a way that prices and costs are not the result of the free development of market forces.
- (49) Article 2(6a)(c) of the basic Regulation provides that '*[w]here the Commission has well-founded indications of the possible existence of significant distortions as referred to in point (b) in a certain country or a certain sector in that country, and where appropriate for the effective application of this Regulation, the Commission shall produce, make public and regularly update a report describing the market circumstances referred to in point (b) in that country or sector.*
- (50) In that respect, the Commission had previously produced the 'Commission Staff Working Document on Significant Distortions in the Economy of the People's Republic of China for the Purposes of Trade Defence Investigations' (hereinafter 'the Report'). The Report points to the existence of substantial government intervention at many levels of the economy, including specific distortions in many key factors of production (such as land, energy, capital, raw materials and labour) as well as in specific sectors (such as the ceramic sector). The Report was placed in the investigation file at the initiation stage. The request also contained relevant evidence complementing the Report.
- (51) The request supported allegations on significant distortions in the meaning of Article 2(6a)(b) referred to above, complementing the Report.
- (52) Firstly, the applicant referred in Section 3.B.i. of the request to the existence of significant distortions in China as established in the Report. The applicant additionally expanded this information in a separate document annexed to its request (the 'ThinkDesk report').<sup>(24)</sup>
- (53) Based on the above documents, the applicant alleged the existence of distortions in relation to factors of production. Moreover, the applicant alleged the existence of links between Chinese policy makers and management boards of tableware and kitchenware producing companies, qualified by the applicant as 'relatively large'.
- (54) The applicant's request also provides examples of substantial State support to tableware and kitchenware producers during the recent years. The ThinkDesk report highlights the financial reward and support measures granted to the ceramic sector by Chinese authorities. Moreover, the abovementioned report refers to the existence of an economic policy to boost innovative capacities and technology upgrading within the ceramic sector. In this respect, it mentions certain financial support measures granted by governments on all administrative levels.<sup>(25)</sup>
- (55) Among other supportive measures, the applicant demonstrated the existence of government support for exports in the form of VAT rebates or export credits insurance via the state-owned China Export & Credit Insurance Corporation (Sinasure), which the Chinese ceramics producers have benefited from.<sup>(26)</sup> Furthermore, the ThinkDesk report bears out that the relevance of the ceramic industry for local economies has led to a strong financial and non-monetary support from regional governments.<sup>(27)</sup> Additionally, enterprises have been awarded financial support related to commercialisation, patents, and trademarks.<sup>(28)</sup>

<sup>(24)</sup> Market-Distortions in the Kitchen and Tableware Ceramics Industry. THINK!DESK China Research & Consulting, 2017.

<sup>(25)</sup> Ibid., p. 35.

<sup>(26)</sup> Ibid., pp. 43-45.

<sup>(27)</sup> Ibid., p. 11.

<sup>(28)</sup> Ibid., pp. 37-42.

- (56) The applicant relied on the Report and the ThinkDesk report to claim the current dominant role of the State in the Chinese economy and concluded that the ceramic tableware and kitchenware sector was subject to significant market distortions.
- (57) The Commission examined whether it was appropriate or not to use domestic prices and costs in China, due to the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation. The Commission did so on the basis of the evidence available on the file, including the evidence contained in the Report, which relies on publicly available sources. That analysis covered the examination of the substantial government interventions in PRC's economy in general, but also the specific market situation in the relevant sector including the product under review.
- (58) Pursuant to Section 5.2.2 of the Notice of Initiation and in accordance with Article 2(6a)(c) of the basic Regulation, all interested parties were invited to rebut, comment or supplement the evidence contained in the investigation file at the time of initiation tending to show the existence of significant distortions. None of the exporting producers made use of this possibility. Moreover, the exporting producers were specifically invited in the exporting producers' questionnaire to make claims and provide supporting evidence if they consider that some or all of their costs were not affected by significant distortions. One exporting producer claimed that his raw material costs were not distorted. However, despite an express request before verification, it did not provide any supporting evidence on spot. Moreover, as explained in recital (42) above, it even decided to stop cooperating altogether.
- (59) Following disclosure, the CCCLA asserted that the WTO Anti-dumping Agreement does not provide for the procedural hurdle of commenting on a country Report. The Commission noted this claim is linked to the position of the CCCLA on the WTO conformity of the new methodology which is addressed below in recitals (126) and (127). Consequently, the claim was rejected.
- (60) Following disclosure, the CCCLA also claimed that at no point were Chinese exporting producers offered a meaningful opportunity to demonstrate that they had not been individually affected by the significant distortions mentioned in the Report and the ThinkDesk report. Further, the CCCLA claimed that, under the EU's new anti-dumping methodology (Regulation (EU) 2017/2321 of the European Parliament and of the Council of 12 December 2017), an individual exporter no longer had the opportunity to demonstrate that it could be treated separately from the alleged country-wide situation, unlike the methodology applicable to the PRC under Article 2(7) of the previous version of the basic Regulation which allowed individual exporters to be granted market economy treatment if they so demonstrated. Therefore, the CCCLA claimed that the Commission had violated the principle of good administration, due process and rights of defence in relation to it an all Chinese exporters and made a breach of Article 41 of the EU's Charter of Fundamental Rights.
- (61) The Commission recalls that the principle of sound administration, where it constitutes the expression of a specific right such as the right to have one's affairs handled impartially, fairly and within a reasonable time, as provided for in Article 41 of the Charter of Fundamental Rights, must be regarded as a rule of EU law whose purpose is to confer rights on individuals. However, according to the case law, the principle of good administration does not, in itself, confer rights upon individuals, except where it constitutes the expression of specific rights.<sup>(29)</sup> In this regard, it should be noted that, contrary to the CCCLA's claims, all parties had the possibility throughout the expiry review investigation to comment on the existence of significant distortions, the link to the product concerned and their effect on their business. Exporting producers could have replied to section F-5 to the questionnaire. One exporting producer could have tried to adduce evidence supporting his claim that raw material costs are not distorted. As mentioned in recital (58), none of those parties chose to do so. Therefore, those interested parties are unable to invoke the principle of good administration, as expressed in Article 41 of the Charter of Fundamental Rights of the EU for their claim on the existence of significant distortions for the exporting producers concerned. Furthermore, theoretical arguments based on abstract comparisons between different versions of the anti-dumping legislation are not relevant in the context of Article 41 of the Charter, as the Commission is legally bound to follow the legislation in force. This said, the Commission also notes that, according to Article 2(6a)(a), 2<sup>nd</sup> subparagraph, third indent of the basic Regulation, the domestic costs of exporters can be used to construe normal value 'to the extent that they are positively established not to be

<sup>(29)</sup> Judgments of 6 December 2001, *Area Cova v Council and Commission*, Case T-196/99, EU:T:2001:281 paragraph 43; of 4 October 2006, *Tillack v Commission* Case T- 193/04, EU:T:2006:292, paragraph 127; and of 13 November 2008, *SPM v Council and Commission*, Case T-128/05, EU:T:2008:494, paragraph 127.

distorted, on the basis of accurate and appropriate evidence'. That means that the individual situation of an exporting producer can be taken into account, if this requirement is met, so that his own costs will be used for the determination of the normal value. In any event, the Commission recalls that the CCCLA cannot advance a procedural right which does not affect it personally and adversely, so that it cannot claim the violation of a specific right that is personal to its members.

- (62) Hence, the Commission rejected the claim that there had been a violation of Article 41 of the Charter.

### 3.2.2.2. Significant distortions affecting the domestic prices and costs in the People's Republic of China

- (63) The Chinese economic system is based on the concept of a 'socialist market economy'. That concept is enshrined in the Chinese Constitution and determines the economic governance of China. The core principle is the 'socialist public ownership of the means of production, namely, ownership by the whole people and collective ownership by the working people'. The State-owned economy is the 'leading force of the national economy' and the State has the mandate 'to ensure its consolidation and growth.'<sup>(30)</sup> Consequently, the overall setup of the Chinese economy not only allows for substantial government interventions into the economy, but such interventions are expressly mandated. The notion of supremacy of public ownership over the private one permeates the entire legal system and is emphasized as a general principle in all central pieces of legislation. The Chinese property law is a prime example: it refers to the primary stage of socialism and entrusts the State with upholding the basic economic system under which the public ownership plays a dominant role. Other forms of ownership are tolerated, with the law permitting them to develop side by side with the State ownership<sup>(31)</sup>.
- (64) In addition, under Chinese law, the socialist market economy is developed under the leadership of the Chinese Communist Party (CCP). The structures of the Chinese State and of the CCP are intertwined at every level (legal, institutional, personal), forming a superstructure in which the roles of CCP and the State are indistinguishable. Following an amendment of the Chinese Constitution in March 2018, the leading role of the CCP was given an even greater prominence by being reaffirmed in the text of Article 1 of the Constitution. Following the already existing first sentence of the provision: '[t]he socialist system is the basic system of the People's Republic of China' a new second sentence was inserted which reads: '[t]he defining feature of socialism with Chinese characteristics is the leadership of the Communist Party of China'<sup>(32)</sup>. This illustrates the unquestioned and ever growing control of the CCP over the economic system of China. This leadership and control is inherent to the Chinese system and goes well beyond the situation customary in other countries where the governments exercise general macroeconomic control within the boundaries of which free market forces are at play.
- (65) The Chinese State engages in an interventionist economic policy in pursuance of goals, which coincide with the political agenda set by the CCP rather than reflecting the prevailing economic conditions in a free market.<sup>(33)</sup> The interventionist economic tools deployed by the Chinese authorities are manifold, including the system of industrial planning, the financial system, as well as the level of the regulatory environment.
- (66) First, on the level of overall administrative control, the direction of the Chinese economy is governed by a complex system of industrial planning which affects all economic activities within the country. The totality of these plans cover a comprehensive and complex matrix of sectors and crosscutting policies and is present on all levels of government. Plans at provincial level are detailed while national plans set broader targets. Plans also specify the means in order to support the relevant industries/sectors as well as the timeframes in which the objectives need to be achieved. Some plans still contain explicit output targets while this was a regular feature in previous planning cycles. Under the plans, individual industrial sectors and/or projects are being singled out as (positive or negative) priorities in line with the government priorities and specific development goals are attributed to them (industrial upgrade, international expansion etc.). The economic operators, private and State-owned alike, must effectively adjust their business activities according to the realities imposed by the planning system. This is not only because of the binding nature of the plans but also because the relevant Chinese authorities at all level of government adhere to the system of plans and use their vested powers accordingly, thereby inducing the economic operators to comply with the priorities set out in the plans (see also section 3.2.2.5 below).<sup>(34)</sup>

<sup>(30)</sup> Report – Chapter 2, pp. 6-7.

<sup>(31)</sup> Report – Chapter 2, p. 10.

<sup>(32)</sup> <http://en.pkulaw.cn/display.aspx?cgid=311950&lib=law> (accessed on 27 March 2019).

<sup>(33)</sup> Report – Chapter 2, pp. 20-21.

<sup>(34)</sup> Report – Chapter 3, pp. 41, 73-74.

- (67) Second, on the level of allocation of financial resources, the financial system of China is dominated by the State-owned commercial banks. Those banks, when setting up and implementing their lending policy need to align themselves with the government's industrial policy objectives rather than primarily assessing the economic merits of a given project (see also section 3.2.2.8 below).<sup>(35)</sup> The same applies to the other components of the Chinese financial system, such as the stock markets, bond markets, private equity markets etc. Also these parts of the financial sector other than the banking sector are institutionally and operationally set up in a manner not geared towards maximizing the efficient functioning of the financial markets but towards ensuring control and allowing intervention by the State and the CCP.<sup>(36)</sup>
- (68) Third, on the level of regulatory environment, the interventions by the State into the economy take a number of forms. For instance, the public procurement rules are regularly used in pursuit of policy goals other than economic efficiency, thereby undermining market based principles in the area. The applicable legislation specifically provides that public procurement shall be conducted in order to facilitate the achievement of goals designed by State policies. However, the nature of these goals remains undefined, thereby leaving broad margin of appreciation to the decision-making bodies.<sup>(37)</sup> Similarly, in the area of investment, the Chinese government maintains significant control and influence over destination and magnitude of both State and private investment. Investment screening as well as various incentives, restrictions, and prohibitions related to investment are used by authorities as an important tool for supporting industrial policy goals, such as maintaining State control over key sectors or bolstering domestic industry.<sup>(38)</sup>
- (69) In sum, the Chinese economic model is based on certain basic axioms which provide for and encourage manifold government interventions. Such substantial government interventions are at odds with free play of market forces, resulting in distorting the effective allocation of resources in line with market principles.<sup>(39)</sup>
- 3.2.2.3. Significant distortions according to Article 2(6a)(b), first indent of the basic Regulation: the market in question being served to a significant extent by enterprises which operate under the ownership, control or policy supervision or guidance of the authorities of the exporting country
- (70) In the PRC, enterprises operating under the ownership, control and/or policy supervision or guidance by the State represent an essential part of the economy.
- (71) With regard to State ownership, as the Chinese ceramic tableware and kitchenware industry is highly fragmented, it is difficult to draw general conclusions on the sector's ownership patterns. The applicant's request analysed nine listed companies, which are relatively large kitchen and tableware manufacturers and exporting a significant share of their output. According to the applicant, in eight of these nine companies the State held at the time of analysis a stake up to 5 %, while various state-owned entities held a cumulative stake of close to 50 % in the ninth company.<sup>(40)</sup> The State capital stakes in other leading ceramic tableware and kitchenware producing companies,<sup>(41)</sup> range from 46,5 % in Jiangsu Gaochun,<sup>(42)</sup> over 30,34 % in Jingdezhen Redleaf Ceramics,<sup>(43)</sup> to 33 % in Sanyuan Ceramics.<sup>(44)</sup> The Commission has no figures at its disposal about the other Chinese companies in the sector. The evidence on file therefore does not support a finding of significant State ownership in the ceramic tableware and kitchenware industry.

<sup>(35)</sup> Report – Chapter 6, pp. 120-121.

<sup>(36)</sup> Report – Chapter 6, pp. 122-135.

<sup>(37)</sup> Report – Chapter 7, pp. 167-168.

<sup>(38)</sup> Report – Chapter 8, pp. 169-170, 200-201.

<sup>(39)</sup> Report – Chapter 2, pp. 15-16, Report – Chapter 4, p. 50, p. 84, Report – Chapter 5, p. 108-9.

<sup>(40)</sup> Market-Distortions in the Kitchen and Tableware Ceramics Industry. THINK!DESK China Research & Consulting, 2017, p.8.

<sup>(41)</sup> Global Ceramic Tableware Market Report 2018. Global Information Inc. 30 January 2018. <https://www.giiresearch.com/report/qyr602180-global-ceramic-tableware-market-report.html> (accessed on 19 March 2019).

<sup>(42)</sup> 46,5 % of the capital is State-owned. See: [http://vip.stock.finance.sina.com.cn/corp/view/vCB\\_AllBulletinDetail.php?stockid=600562&id=4701962](http://vip.stock.finance.sina.com.cn/corp/view/vCB_AllBulletinDetail.php?stockid=600562&id=4701962) (accessed on 20 March 2019).

<sup>(43)</sup> 30,34 % of the capital is State-owned. See: [https://www.qichacha.com/firm\\_ea2f1ec36b900f808018856d5507b514.html](https://www.qichacha.com/firm_ea2f1ec36b900f808018856d5507b514.html) (accessed on 20 March 2019).

<sup>(44)</sup> At least 33 % of the capital is State-owned. See: [http://f10.eastmoney.com/f10\\_v2/ShareholderResearch.aspx?code=sh600429](http://f10.eastmoney.com/f10_v2/ShareholderResearch.aspx?code=sh600429) (accessed on 20 March 2019).

- (72) With regard to control by the State, the government and the CCP maintain structures that ensure their continued influence over enterprises. The State (and in many respects also the CCP) not only actively formulates and oversees the implementation of general economic policies by individual enterprises, but it also claims its rights to participate in their operational decision making. The elements that point to the existence of government control over enterprises in the ceramic tableware and kitchenware sector is further developed in section 3.2.2.4 below.
- (73) As concerns policy supervision and guidance by the State in the ceramics sector, the analysis is set out in sections 3.2.2.4 and 3.2.2.5 below. With the high level of government control and intervention in the ceramic sector as described below, even privately owned ceramic tableware and kitchenware producers are prevented from operating under market conditions.
- (74) On the basis of the above, the Commission concluded that the ceramic tableware and kitchenware market in the PRC was served to a significant extent by enterprises subject to control or policy supervision or guidance by the Chinese government.

3.2.2.4. Significant distortions according to Article 2(6a)(b), second indent of the basic Regulation: State presence in firms allowing the state to interfere with respect to prices or costs

- (75) The Chinese State is in a position to interfere with prices and costs through State presence in firms. In particular, CCP cells in enterprises, state owned and private alike, represent an important channel through which the State can interfere with business decisions. According to the PRC's company law, a CCP organisation is to be established in every company (with at least three CCP members as specified in the CCP Constitution<sup>(45)</sup>) and the company shall provide the necessary conditions for the activities of the party organisation. In the past, this requirement appears not to have always been followed or strictly enforced. However, since at least 2016 the CCP has reinforced its claims to control business decisions in SOEs as a matter of political principle. The CCP is also reported to exercise pressure on private companies to put 'patriotism' first and to follow party discipline.<sup>(46)</sup> In 2017, it was reported that party cells existed in 70 % of some 1.86 million privately owned companies, with growing pressure for the CCP organisations to have a final say over the business decision within their respective companies.<sup>(47)</sup> These rules are of general application throughout the Chinese economy, across all sectors, including the ceramic sector. Hence, it is determined that these rules apply also to the producers of ceramic tableware and kitchenware and the suppliers of their inputs.
- (76) Specifically in the ceramic tableware and kitchenware sector, tight links exist between decision making processes of Chinese ceramic tableware and kitchenware-making companies and the State, in particular the CCP. The ThinkDesk report puts forward names of persons occupying managing positions in six of those companies who hold or held State or public functions.<sup>(48)</sup> The Commission established on the basis of other sources that in relation to three of these leading ceramic tableware producers: the chairman of the board of directors and general manager of the sampled company Guangdong Songfa Ceramics Co. Ltd, one of the biggest exporters on the Union market, served as delegate to the 11th National People's Congress of China<sup>(49)</sup> and was a member of the 12th People's Congress of Guangdong Province;<sup>(50)</sup> the chairman of another listed Guangdong company - the Great Wall of Cultural Group Holding Co Ltd. - held the post of delegate to the said 12th People's Congress of Guangdong Province;<sup>(51)</sup> the chairman of the listed company Guangdong Sitong Group Co., Ltd. was also member of the Chaozhou Municipal Committee of the People's Political Consultative Conference;<sup>(52)</sup> moreover, the same company's vice-chairman and general manager has been at the same time occupying the post of

<sup>(45)</sup> Report – Chapter 2, p. 26.

<sup>(46)</sup> Report – Chapter 2, pp. 31-2.

<sup>(47)</sup> <https://www.reuters.com/article/us-china-congress-companies-idUSKCN1B40JU> (accessed on 27 March 2019).

<sup>(48)</sup> Market-Distortions in the Kitchen and Tableware Ceramics Industry. THINK!DESK China Research & Consulting, 2017, pp. 33-34.

<sup>(49)</sup> [https://en.wikipedia.org/wiki/List\\_of\\_members\\_of\\_the\\_11th\\_National\\_People%27s\\_Congress](https://en.wikipedia.org/wiki/List_of_members_of_the_11th_National_People%27s_Congress) (accessed on 27 March 2019).

<sup>(50)</sup> <https://www.bloomberg.com/research/stocks/private/person.asp?personId=288132508&capId=264629710> (accessed on 7 March 2019).

<sup>(51)</sup> <https://www.bloomberg.com/profiles/people/16816270-tingxiang-cai> (accessed on 27 March 2019) <http://leaders.people.com.cn/n/2013/0122/c58278-20285148.html> (accessed on 14 March 2019).

<sup>(52)</sup> <https://www.bloomberg.com/profiles/people/18792970-zhencheng-cai> (accessed on 27 March 2019).

member of the Standing committee of the 13th Chaozhou Municipal People's Congress.<sup>(53)</sup> In addition, the Commission established that all candidates to be elected in 2018 as non-independent director in the board of Songfa Ceramics Co. Ltd were members of the CCP.<sup>(54)</sup>

- (77) The Commission also found with regard to Songfa Ceramics that in 2017 and 2018 the company was the recipient of financial transfers that have been defined in their accounts as 'subsidies for the expenses for Party members' activities related to the 'two new types of organisations'.<sup>(55)</sup> The term 'two new types of organisations' defines a State policy aiming at creating grassroots organisations (essentially party cells) in corporate enterprises and in 'social organisations'.<sup>(56)</sup> Regardless of the amounts of the financial transfers to Songfa, the sole fact of their existence proves the close link between the ceramics producing enterprises and the CCP, and the fact that the CCP develops its activities within the company.
- (78) The State's presence and intervention in the financial markets (see also section 3.2.2.8 below) as well as in the provision of raw materials and inputs have an additional distorting effect on the market.<sup>(57)</sup>
- (79) Based on all of the above, the Commission concluded that the State presence in firms in the ceramic tableware and kitchenware sector, as well as in the financial sector and other input sectors, combined with the framework described in section 3.2.2.3 and in the subsequent sections, allows the GOC to interfere with respect to prices and costs.

3.2.2.5. Significant distortions according to Article 2(6a)(b), third indent of the basic Regulation: public policies or measures discriminating in favour of domestic suppliers or otherwise influencing free market forces

- (80) The direction of the Chinese economy is to a significant degree determined by an elaborate system of planning which sets out priorities and prescribes the goals the central and local governments must focus on. Relevant plans exist on all levels of government and cover virtually all economic sectors. The objectives set by the planning instruments are of binding nature and the authorities at each administrative level monitor the implementation of the plans by the corresponding lower level of government. Overall, the system of planning in China results in resources being driven to sectors designated as strategic or otherwise politically important by the government, rather than being allocated in line with market forces.<sup>(58)</sup>
- (81) The Chinese ceramic sector, including production of ceramic consumer goods, such as ceramic tableware and kitchenware, is a labour-intensive sector, which possesses a traditional value in China, and in relation to this the Chinese State has been closely overseeing, steering and managing its development through various planning documents.<sup>(59)</sup> Ceramic tableware and kitchenware production is governed by the Chinese rulebook related to light industries, via the overarching instrument of the 13th Light Industry Development Plan for the years 2016-2020. The latter Plan notably states that for all sectors covered (therefore also for the tableware and kitchenware sector) it implements the spirit of the decisions taken in the National Congress of the CPC and a range of Plenary Sessions of the 18th Party Congress. This plan imposes multiple provisions in covered sectors (including the

<sup>(53)</sup> <https://www.bloomberg.com/profiles/people/18792977-zhentong-cai> (accessed on 27 March 2019).

<sup>(54)</sup> Information documents pertaining to the 3rd Extraordinary Shareholders' General Assembly of 2018, 5 November 2018, p. 6. [http://file.finance.sina.com.cn/211.154.219.97:9494/MRGG/CNSESH\\_STOCK/2018/2018-10/2018-10-26/4820591.PDF](http://file.finance.sina.com.cn/211.154.219.97:9494/MRGG/CNSESH_STOCK/2018/2018-10/2018-10-26/4820591.PDF) (accessed on 22 March 2019).

<sup>(55)</sup> Information documents pertaining to the 3rd Extraordinary Shareholders' 2018 General Assembly of Songfa Ceramics Co. Ltd, 5 November 2018, p. 6. [http://file.finance.sina.com.cn/211.154.219.97:9494/MRGG/CNSESH\\_STOCK/2018/2018-10/2018-10-26/4820591.PDF](http://file.finance.sina.com.cn/211.154.219.97:9494/MRGG/CNSESH_STOCK/2018/2018-10/2018-10-26/4820591.PDF) (accessed on 22 March 2019).

<sup>(56)</sup> See the policy analysis document published on 31 March 2017 on the internet page of the United Front Work Department of the Central Committee of the CCP, which includes the following statement concerning the 'two new organisations' policy: 'Foster the United Front work towards the new social class and foster the establishment of the Party in the "two new organisations": all levels of the United Front Work Department shall spontaneously strengthen their efforts to get in touch with all relevant administration departments so as to foster the Party's organisations in the "two new organisations" and duly examine the ideological and political situation of this new social class'. <http://www.zyztzb.gov.cn/xdzcjd/84407.jhtml> (accessed on 22 March 2019). See also Shih L., Lohse-Friedrich K., *Centralized Leadership - Heterogeneous Party Base: Changes in the membership structure of the Chinese Communist Party*, China Monitor, Mercator Institute for China Studies, Section 5.2. <https://www.merics.org/en/china-monitor/content/3511> (accessed on 27 March 2019).

<sup>(57)</sup> Report – Chapters 6 and 12.

<sup>(58)</sup> Report – Chapter 4, pp. 41-42, 83.

<sup>(59)</sup> Report – Chapter 17.3.

ceramic tableware and kitchenware sector) regarding supply and demand management, corporate structure organisation, value chain management, export patterns, as well as production and investment planning. It sets an annual growth target for added value in the sectors concerned of 6-7 %. It also enumerates a number of support measures, the aim of which is notably to lead light industry enterprises to achieve international competitiveness. <sup>(60)</sup> For the ceramic sector, it stipulates very detailed provisions on product development. Among others, in relation to ceramic tableware and kitchenware products, the State instructs to 'develop in priority low-resource consuming products such as high-grade bone porcelain, high-quartz porcelain, talc porcelain, high feldspar porcelain, and green household ceramic products without heavy metal dissolution; strengthen the enterprises capacities for production innovation and design; raise the products' added value; strengthen the legacy and development of the artistic ceramics' traditional techniques; develop in priority artistic ceramic fine products; develop in priority high-purity, ultra-fine ceramic materials with outstanding performances such as high-strength, high-resistance, high-temperature proof, corrosion-proof, thermal-shock-proof, molten-metal-proof etc, high-performance ceramic heat exchange materials, high-performance new ceramic membrane materials, high-quality household ceramic materials.' <sup>(61)</sup> It also contains provisions regarding companies' export activities: '[...] Actively conquer new and emerging markets such as the Middle-East, Russia, Africa, Europe, South-East Asia, West-Asia, South-America, Central-America, etc.:'; 'strengthen the international production capacity cooperation, support brand enterprises to 'reach out' [to foreign markets], set up logistics centres and distribution centres in major sales markets,...]'. <sup>(62)</sup> As one of the measures to implement the goals above, the Plan stipulates Chinese instruments that manage market entry – notably legislation restricting investments in certain sectors: 'The State Council shall, in the form of a list, clearly set out the industries, fields, business sectors in which investment operations are prohibited or restricted.' Furthermore, the State enumerates in the Plan a range of support measures that will be available to support sectors concerned (therefore also ceramic tableware and kitchenware production) such as, among others, innovation funds, preferential loans, export incentives, financial transfers, tax relieves, land-use cost relief or employment-stabilisation schemes. Evidence on the file provided in the Applicant's request, and based on the Annual Reports of several ceramic tableware and kitchenware-making companies includes examples of the said support measures. <sup>(63)</sup>

- (82) The GOC's intervention into the ceramic tableware and kitchenware sector is apparent not only through the central Plan described above, but also through a full range of top-down planning documents issued at all levels – from national to municipal. A notable example is the Guangdong Province, which hosts the highest number of cooperating exporting producers in this investigation, and features the highest production of ceramic goods in China <sup>(64)</sup>. In that Province, the sector has been governed between 2016 and 2018 by a regional Plan - the Guangdong ceramic industry transformation and upgrading technology route and action plan (hereinafter 'Guangdong Action Plan'). <sup>(65)</sup> In line with central planning documents, the Guangdong Action Plan stipulates notably, among its main objectives, 'a continuous optimisation of industry structures: [through the] significant increase [of] the proportion of [...] high value-added products; the build[ing of] at least two national demonstration bases for a new industrialisation model; [the] foster[ing of] at least: two industrial clusters of over RMB 50 billion, 1-2 enterprises (groups) with an annual main business income of over RMB 10 billion, and 40 enterprises with an annual main business income of over RMB 1 billion.' <sup>(66)</sup> The said Action Plan further instructs to 'improve the level of industry development', inter alia: by 'optimizing industry clusters: further accelerat[ing] the construction of ceramic production bases such as Foshan, Chaozhou, Meizhou and Qingyuan', by 'Extend[ing] the industry value chain: actively get[ing] integrated into the global ceramic industry value chain,' [and] 'actively participat[ing] in international exchanges and cooperation: mak[ing] full use of two types of resources <sup>(67)</sup> and two types of markets <sup>(68)</sup>, implement[ing] the go-out strategy, improve[ing] the industry's international competitiveness.' <sup>(69)</sup> The Guangdong Action Plan, following the lines of the central 13th FYP on Light Industries, sets out specifically targeted guidance for product development to be embraced by Guangdong ceramics producers: 'As regards household (art) ceramics: develop high-end, complete sets of products as well as household ceramics turned into art products and art ceramics turned into household products; jointly develop

<sup>(60)</sup> Report – Chapter 17, pp. 446 – 453.

<sup>(61)</sup> Report – Chapter 17, p. 450.

<sup>(62)</sup> Report – Chapter 17, pp. 448-449.

<sup>(63)</sup> Market-Distortions in the Kitchen and Tableware Ceramics Industry. THINK!DESK China Research & Consulting, 2017, pp.35-62.

<sup>(64)</sup> Report – Chapter 17, p.438.

<sup>(65)</sup> <http://www.miit.gov.cn/threestrategy/planRecord.action?id=8> (accessed on 8 March 2019).

<sup>(66)</sup> Guangdong ceramic industry transformation and upgrading technology route and action plan (2016-2018), Section II.1.

<sup>(67)</sup> Meant here 'domestic' and 'foreign'.

<sup>(68)</sup> Ibid.

<sup>(69)</sup> Guangdong ceramic industry transformation and upgrading technology route and action plan (2016-2018), Sections III.4.1 and III.4.2.

materials such as glass ceramics, reinforced porcelain, bone china, magnesia porcelain, high quartz porcelain, high-grade enamel, etc; develop fine colour glazes.' <sup>(70)</sup> Ultimately, the Action Plan sets out a specific distribution of roles with regard to the implementation of its provisions, assigning these execution tasks, notably: to the Province's Economic and Information Technology Commission in 'taking the lead in coordinating and guiding the transformation and upgrading of the ceramic industry in the whole province', the Province's Environmental Protection Department in 'supervising and guiding the local environmental protection authorities which, in accordance with law, proceed to the environmental protection appraisal and approval, the environmental protection authorisation and daily environmental supervision and management of ceramic industry projects,' to the Province's Departments of land and resources, finance, taxation, and electric power in 'perform[ing] their duties to ensure that relevant policies are duly implemented', and to each city's competent economic and information technology authorities in 'ensur[ing] the close coordination and cooperation of the relevant departments as well as joint management, so as to make sure that key enterprises' transformation and upgrading projects are speedily set up, in accordance with planned schedule.' <sup>(71)</sup>

- (83) As illustrated in the previous recital regarding Guangdong Province, the management of the ceramic sector in the Province goes down to the very local level. As an example, producers of ceramic goods in the City of Chaozhou - one of the key ceramics production sites <sup>(72)</sup> (referred to in the Guangdong Action Plan) - are also bound to abide by a local sectoral plan: the Roadmap and Action Plan of the City of Chaozhou for the Transformation and Technological Upgrading of the Ceramic Sector <sup>(73)</sup> (hereafter the Chaozhou Action Plan), which itself fulfils the letter of a general industrial plan for the city (the 13th FYP For The Economic And Social Development Of The City Of Chaozhou) <sup>(74)</sup>. The Chaozhou Action Plan notably gave specific instructions as to what the city should achieve in terms of the industrial structure and production - the goals consisted in, e.g. the city hosting at least five producers with an annual output value of more than RMB 500 million or at least ten companies achieving stock market listings (with the support of special State measures <sup>(75)</sup>) by 2018. The Chaozhou Action Plan also regulated the city's goals in term of product structure: by the end of the planning period at least 10 % of large enterprises had to use high technology, while the share of newly introduced products would have to account for at least 10 % of the turnover. <sup>(76)</sup>
- (84) Chaozhou is not the only city where companies' operations are subject to State planning: ceramics manufacturers in Foshan city, another major ceramic production base referred to in the Guangdong Action Plan, is subject to the Foshan Municipality Plan for the development of a modern ceramics industry 2010-2020 ('Foshan Plan'). <sup>(77)</sup> As per the latter document, local industry is to be re-shaped 'in accordance with the principle "support a large number of enterprises, transform and upgrade some enterprises, transform and eliminate a number of enterprises", ensur[ing] the gradual transformation of the current ceramics industry from a low-end into a high-end industry'. <sup>(78)</sup> The Foshan Plan has set a gradual range of quantitative and qualitative output targets for local companies: by 2012 'maintain the industry's steady development and moderate growth so as to reach RMB 72 billion; ensure that there are 10 enterprises whose yearly output value exceeds RMB 1 billion; high-end construction ceramics, sanitary ceramics, art ceramics, special ceramics and ceramic creative industries shall gradually emerge'; by 2015 'maintain the industry's steady development and moderate growth so as to reach RMB 80 billion; ensure that there are two enterprises whose yearly output value exceeds RMB 2 billion and 15 enterprises whose yearly output value exceed RMB 1 billion; [and] the relative share of high-end construction ceramics, sanitary ceramics, art ceramics, special ceramics and ceramic creative industries in the overall ceramics industry shall significantly increase.; while in the medium and long term (2016-2020), in line with the Foshan plan: 'the production volume shall maintain China's leading position in the ceramics industry as well as an important share of the worlds' ceramics industry [and] indicators such as the ceramics overall output value and volume, profit, R&D expenditure ratio, overall economic content, etc. shall reach a relatively high level, so as to ensure that Foshan effectively becomes the world's "ceramics capital".' <sup>(79)</sup>
- (85) The Commission considered that the above body of evidence concerning the ceramics tableware and kitchenware sector was sufficient to consider that public policies or measures influence free market forces in the ceramics sector.

<sup>(70)</sup> Ibid., Section III.4.4.

<sup>(71)</sup> Ibid., Section V.1.

<sup>(72)</sup> Report - Chapter 17, p. 453.

<sup>(73)</sup> Report - Chapter 17, pp. 455-457.

<sup>(74)</sup> Report - Chapter 17, pp. 453-455.

<sup>(75)</sup> See footnote 55.

<sup>(76)</sup> Report - Chapter 17, p. 456.

<sup>(77)</sup> <https://www.wenkuxiazai.com/word/e640dd6227d3240c8447ef38-1.doc> (accessed on 19 March 2019).

<sup>(78)</sup> Foshan Municipality Plan for the development of a modern ceramics industry 2010-2020, Section III.3

<sup>(79)</sup> Ibid.



- (86) In any case, as regards distortions of raw materials, the CCCLA alleged that no distortions of raw materials used in the production of the product under review would exist. The CCCLA provided no evidence to support its allegation. The Commission notes that while it was not required to perform such an analysis with regard to the raw materials used in the production of the product under review to establish that public policies affect free market forces in the tableware sector, it found an overwhelming number of public policy documents and measures which have the potential to influence the free play of market forces in the market of raw materials used in the production of ceramic tableware and kitchenware.
- (87) With regard to quartz (HS code 250510), which is widely used by the ceramic industry in China, the Jiangxi <sup>(80)</sup> comprehensive plan for mineral resources 2016-2020 <sup>(81)</sup> lists powdered quartz as one of the minerals subject to State policy management, notably one for which supply security and supply capacity are to be increased. <sup>(82)</sup> Quartz powder is also included in the State quantitative regulation mechanism for development and utilisation as one of the minerals the mining and development of which is to be encouraged. <sup>(83)</sup> Quartz sand for ceramics also appears in the National 13th FYP on Mineral Resources 2016-2020 <sup>(84)</sup> as one of the minerals for which minimum size criteria apply for the opening of mines. <sup>(85)</sup>
- (88) With regard to bentonite (HS code 250810), another raw material used in certain ceramic tableware and kitchenware manufacturing processes, the Jiangxi comprehensive plan for mineral resources (see above) lists it as one of the minerals for which development and exploration are to be speeded up 'so as to the resource advantage shall be turned into an economic advantage as soon as possible'. <sup>(86)</sup>
- (89) With regard to pigments (HS code 320710), which are widely used in the ceramic tableware and kitchenware production, they are featured in the Development plan for industry, technology and innovation capacities (2016-2020), <sup>(87)</sup> as one of the petrochemical and chemical industry priority development areas, with the State instructing under that plan to 'ensure the sustained production of around 1 000 tonnes of Phthalocyanine pigments, heterocyclic organic pigments and other types of organic pigments'. <sup>(88)</sup>
- (90) With regard to gypsum (HS code 252010), this raw material appears in the national 13th FYP on mineral resources (see above) as one of the minerals for which minimum size criteria apply for the opening of mines. <sup>(89)</sup>
- (91) Finally, kaolin (HS code 2507), which constitutes one of the main raw materials in the production of ceramic tableware and kitchenware, is covered by several regional and local planning documents dealing with the management of extraction and production. Notably, the Guangxi Province <sup>(90)</sup> Mineral Resources Plan (2016-2020) <sup>(91)</sup> establishes provisions regarding a Hepu Kaolin Resources Industry Base, which implies 'expand[ing] the mining of Hepu kaolin soil, improve[ing] the kaolin deep processing capacity and level, and focus[ing] on the development of construction, sanitary, household and art ceramics, kaolin industry for paper and painting, and further increase[ing] the added value of mineral products; by 2020, establish[ing] 8 to 10 kaolin deep processing backbone enterprises, and mak[ing] Hepu area a key kaolin production base at country level.' <sup>(92)</sup> It also contains provisions aiming at shaping industrial extraction structures and capacity, including with regard to kaolin supply: 'In accordance with the economic and social development needs, we shall strongly promote the development of specific characteristics, advantages and emerging mineral resources industries. Focusing on minerals such as [...], kaolin, [...], taking the resource conditions into account, in areas with strong environmental bearing capacity and

<sup>(80)</sup> Jiangxi Province, due to its proximity with adjacent Guangdong and Fujian Provinces (which host the highest number of ceramic production sites in China), should be considered a potential close source of supply of raw materials for tableware production.

<sup>(81)</sup> [http://www.jxgtt.gov.cn/resource/uploadfile/zh\\_cn/201707/20170724171609765.pdf](http://www.jxgtt.gov.cn/resource/uploadfile/zh_cn/201707/20170724171609765.pdf) (accesses on 14 March 2019).

<sup>(82)</sup> Jiangxi comprehensive plan for mineral resources 2016-2020, Section II.2.

<sup>(83)</sup> *Ibid.*, Section VI.1.

<sup>(84)</sup> [http://www.mnr.gov.cn/gk/ghjh/201811/t20181101\\_2324927.html](http://www.mnr.gov.cn/gk/ghjh/201811/t20181101_2324927.html) (accessed on 14 March 2019)

<sup>(85)</sup> National 13th FYP on Mineral Resources 2016-2020, Annex IV.

<sup>(86)</sup> Jiangxi comprehensive plan for mineral resources 2016-2020, Section III.1.2.4.

<sup>(87)</sup> [http://ghs.ndrc.gov.cn/ghwb/gjjgh/201706/t20170622\\_852124.html](http://ghs.ndrc.gov.cn/ghwb/gjjgh/201706/t20170622_852124.html) (accessed on 14 March 2019).

<sup>(88)</sup> Development plan for industry, technology and innovation capacities (2016-2020), table 6.

<sup>(89)</sup> National 13th FYP on Mineral Resources 2016-2020, Annex IV.

<sup>(90)</sup> Guangxi Province, due to its proximity with adjacent Guangdong Province (which hosts the highest number of ceramic production sites in China), should be considered a potential close source of supply of raw materials for tableware production.

<sup>(91)</sup> [www.cnpowdertech.com/2018/zhengjingyaowen\\_0206/24547.html](http://www.cnpowdertech.com/2018/zhengjingyaowen_0206/24547.html) (accessed on 14 March 2019).

<sup>(92)</sup> Guangxi Province Mineral Resources Plan (2016-2020), Section III.2.6.

with comprehensive supporting facilities, we shall promote the building of large and medium-sized mines with market competitiveness, ensure effective industry concentration and scale development so as to improve the supply capacity, mining and use level of key minerals'.<sup>(93)</sup> Finally, the Plan regulates minimum production capacities for mining companies by setting minimum mining volumes by company category, including for kaolin output.<sup>(94)</sup>

- (92) The market for kaolin production is also covered by the Guangdong Province Mineral Resources Plan (2016-2020)<sup>(95)</sup>, which is of particular importance, as Guangdong Province is key for ceramic production (see recital (82)). Similarly to the Guangxi Province Plan described above, the Guangdong Plan puts forward numerous provisions regarding the management and planning of minerals extraction and production, including with regard to kaolin. It notably sets out among its guiding concepts: '(...) the speed[ing]-up [of] strategic actions and targets to ensure a breakthrough as regards mineral prospection, [the] improve[ment of] resource exploration, mining and protection layouts' or the 'further foster[ing of] supply side structural reforms'.<sup>(96)</sup>
- (93) As in the case of ceramic tableware and kitchenware production, planning documents regarding kaolin extend from the province concerned down to the municipal level. As an example, the city of Beihai, in Guangxi Province (see above), possesses its own plan dedicated to the management of mineral resources<sup>(97)</sup>, which features provisions regarding kaolin extraction and production. Notably, that said plan sets for the city's industrial fabric the following mining, production and use targets for mineral resources: 'by 2020, ensure the steady economic development of the whole city's mining industry, ensure that the mineral industry achieves RMB 450 million in production value and a mineral production volume of 9 million tons,' and the following industrial goals, including for kaolin and quartz sand: 'on the basis of the existing mining capacity, focus on the mining and use of kaolin and quartz sand to be used for glass [and] set up Guangxi's largest processing, importing and exporting base for kaolin (ceramic earth), high-purity quartz sand and other non-ferrous mineral products, largest ceramics manufacturing base, and largest cement production base.'<sup>(98)</sup> The Plan draws up also targets for 2025, including for use and production increases: 'Strongly develop non-ferrous and construction materials' mining and use; focus on the development of deep processing industries such as kaolin, quartz sand to be used for glass, etc.; strive to ensure that the mineral industry accounts for RMB 600 million in production value by 2025; [...] effectively and significantly expand and industrialise mining; significantly increase economical and intensive use of mineral resources'. Notably it also indicates the clear goal of the local authorities, which is to 'achieve a comprehensive management of mineral industry.'<sup>(99)</sup> One of the elements upon which such management policy rests is the regulation of the local industry's structure and output: 'Determine one key mining area for the whole city: Hepu kaolin key mining area, covering 542,49 km<sup>2</sup>. In this key mining areas there are currently 6 large-sized kaolin mines. By 2020 the number of kaolin mines in this key mining area shall be controlled at 8 or less and the size of production shall be large or medium sized. Among the 8 areas envisioned, 7 areas have already been delineated, and one has still to be delineated.'<sup>(100)</sup>
- (94) As illustrated in the Planning documents referred to above, it appears that the GOC guides the development of the ceramic tableware and kitchenware sector in accordance with a broad range of policy tools and directives related, inter alia: to market composition and restructuring, raw materials, investment, capacity management, product range, geographical location, upgrading, etc. Through these and other means, the GOC directs and controls a full range of aspects in the development and functioning of the sector.<sup>(101)</sup> The current problem of overcapacity in the ceramic tableware and kitchenware sector, as described in section 3.3.1 below, is arguably the clearest illustration of the implications of the GOC's policies and the resulting distortions.<sup>(102)</sup>
- (95) In sum, the Commission established that the GOC has public policies in place influencing free market forces in the ceramics tableware and kitchenware sector, including the raw materials used in that sector.

<sup>(93)</sup> Ibid., Section IV.1.

<sup>(94)</sup> Ibid., Section V.1.2.

<sup>(95)</sup> [www.gd.gov.cn/govpub/zfwj/kcgh2008-2015.doc](http://www.gd.gov.cn/govpub/zfwj/kcgh2008-2015.doc) (accessed on 15 March 2019).

<sup>(96)</sup> Guangdong Province Mineral Resources Plan (2016-2020), Section II.1.

<sup>(97)</sup> [http://www.beihai.gov.cn/zwgk/jcxcgk/zfwj/szfwj/201802/t20180217\\_1666351.html](http://www.beihai.gov.cn/zwgk/jcxcgk/zfwj/szfwj/201802/t20180217_1666351.html) (accessed on 14 March 2019).

<sup>(98)</sup> Beihai City Mineral Resources Plan (2016 to 2020), Section II.3.2.

<sup>(99)</sup> Ibid., Section II.3.3.

<sup>(100)</sup> Ibid., Section III.2.2.

<sup>(101)</sup> Report – Chapter 17, pp. 462 – 463.

<sup>(102)</sup> Report – Chapter 17, pp. 438 – 439.

3.2.2.6. Significant distortions according to Article 2(6a)(b), fourth indent of the basic Regulation: the lack, discriminatory application or inadequate enforcement of bankruptcy, corporate or property laws

- (96) According to the information on file, the Chinese bankruptcy system delivers inadequately on its own main objectives such as to fairly settle claims and debts and to safeguard the lawful rights and interests of creditors and debtors. This appears to be rooted in the fact that while the Chinese bankruptcy law formally rests on principles that are similar to those applied in corresponding laws in countries other than China, the Chinese system is characterised by systematic under-enforcement. The number of bankruptcies remains notoriously low in relation to the size of the country's economy, not least because the insolvency proceedings suffer from a number of shortcomings, which effectively function as a disincentive for bankruptcy filings. Moreover, the role of the State in the insolvency proceedings remains strong and active, often having direct influence on the outcome of the proceedings. <sup>(103)</sup>
- (97) In addition, the shortcomings of the system of property rights are particularly obvious in relation to ownership of land and land-use rights in China. <sup>(104)</sup> All land is owned by the Chinese State (collectively owned rural land and State-owned urban land). Its allocation remains solely dependent on the State. There are legal provisions that aim at allocating land use rights in a transparent manner and at market prices, for instance by introducing bidding procedures. However, these provisions are regularly not respected, with certain buyers obtaining their land for free or below market rates. <sup>(105)</sup> Moreover, authorities often pursue specific political goals including the implementation of the economic plans when allocating land. <sup>(106)</sup>
- (98) Therefore, the Chinese bankruptcy and property laws do not work properly, thus resulting in distortions when maintaining insolvent firms afloat and when allocating land use rights in the PRC. These laws also apply with respect to ceramic tableware and kitchenware production. Moreover, the Commission has already established in the past that the sector benefited from land use rights operations, which were subject to State distortions <sup>(107)</sup>.
- (99) In light of the above, the Commission concluded that there was discriminatory application or inadequate enforcement of bankruptcy and property laws in the ceramic tableware and kitchenware sector.

3.2.2.7. Significant distortions according to Article 2(6a)(b), fifth indent of the basic Regulation: wage costs being distorted

- (100) A system of market-based wages cannot fully develop in China as workers and employers are impeded in their rights to collective organisation. China has not ratified a number of essential conventions of the International Labour Organisation (ILO), in particular those on freedom of association and on collective bargaining. <sup>(108)</sup> Under national law, only one trade union organisation is active. However, this organisation lacks independence from the State authorities and its engagement in collective bargaining and protection of workers' rights remains rudimentary. <sup>(109)</sup> Moreover, the mobility of the Chinese workforce is restricted by the household registration system, which limits access to the full range of social security and other benefits to local residents of a given administrative area. This typically results in workers who are not in possession of the local residence registration finding themselves in a vulnerable employment position and receiving lower income than the holders of the residence registration. <sup>(110)</sup> Those findings lead to the distortion of wages costs in China.
- (101) As mentioned above, labour accounts for a significant proportion of the cost of production of the product under review, as this is a labour-intensive process. The ceramics sector, including the production of tableware, is also subject to the Chinese labour law system described. The latter sector is thus affected by the distortions of wage costs both directly (when making the product concerned) as well as indirectly (when having access to capital or inputs from companies subject to the same labour system in China).
- (102) On the basis of the above, the Commission concluded that wage costs were distorted in the ceramic tableware and kitchenware sector.

<sup>(103)</sup> Report – Chapter 6, pp. 138-149.

<sup>(104)</sup> Report – Chapter 9, p. 216.

<sup>(105)</sup> Report – Chapter 9, pp. 213-215.

<sup>(106)</sup> Report – Chapter 9, pp. 209-211.

<sup>(107)</sup> Report – Chapter 17, p. 462.

<sup>(108)</sup> Report – Chapter 13, pp. 332-337.

<sup>(109)</sup> Report – Chapter 13, p. 336.

<sup>(110)</sup> Report – Chapter 13, pp. 337-341.

3.2.2.8. Significant distortions according to Article 2(6a)(b), sixth indent of the basic Regulation: access to finance granted by institutions which implement public policy objectives or otherwise not acting independently of the State

- (103) Access to capital for corporate actors in China is subject to various distortions.
- (104) Firstly, the Chinese financial system is characterised by strong position of State-owned banks <sup>(111)</sup>, which, when granting access to finance, take into consideration criteria other than economic viability of a project. Similarly to non-financial SOEs, the banks remain connected to the State not only through ownership but also via personal relations (the top executives of the large State-owned financial institutions are ultimately appointed by the CCP) <sup>(112)</sup> and, again just like non-financial SOEs, the banks regularly implement public policies designed by the government. In doing so, the banks comply with an explicit legal obligation to conduct their business in accordance with the needs of the national economic and social development and under the guidance of the industrial policies of the State <sup>(113)</sup>. This is compounded by additional existing rules, which direct finances into sectors designated by the government as encouraged or otherwise important. <sup>(114)</sup>
- (105) While it is acknowledged that various legal provisions refer to the need to respect normal banking behaviour and prudential rules such as the need to examine the creditworthiness of the borrower, the overwhelming evidence, including findings made in trade defence investigations, suggests that these provisions play only a secondary role in the application of the various legal instruments.
- (106) Furthermore, bond and credit ratings are often distorted for a variety of reasons including the fact that the risk assessment is influenced by the firm's strategic importance to the Chinese government and the strength of any implicit guarantee by the government. Estimates strongly suggest that Chinese credit ratings systematically correspond to lower international ratings.
- (107) This results in a bias for lending to SOEs, large well-connected private firms and firms in key industrial sectors, which implies that the availability and cost of capital is not equal for all players on the market.
- (108) Secondly, borrowing costs have been kept artificially low to stimulate investment growth. This has led to the excessive use of capital investment with ever lower returns on investment. This is illustrated by the recent growth in corporate leverage in the state sector despite a sharp fall in profitability, which suggests that the mechanisms at work in the banking system do not follow normal commercial responses.
- (109) Thirdly, although nominal interest rate liberalization was achieved in October 2015, price signals are still not the result of free market forces, but are influenced by government induced distortions. Indeed, the share of lending at or below the benchmark rate still represents 45 % of all lending and recourse to targeted credit appears to have been stepped up, since this share has increased markedly since 2015 in spite of worsening economic conditions. Artificially low interest rates result in under-pricing, and consequently, the excessive utilization of capital.
- (110) Overall credit growth in China indicates a worsening efficiency of capital allocation without any signs of credit tightening that would be expected in an undistorted market environment. As a result, non-performing loans have increased rapidly in recent years. Faced with a situation of increasing debt-at-risk, the Chinese government has opted to avoid defaults. Consequently, bad debt issues have been handled by rolling over debt, thus creating so called 'zombie' companies, or by transferring the ownership of the debt (e.g. via mergers or debt-to-equity swaps), without necessarily removing the overall debt problem or addressing its root causes.
- (111) In essence, despite the recent steps that have been taken to liberalize the market, the corporate credit system in China is affected by significant systemic issues and distortions resulting from the continuing pervasive role of the state in the capital markets.

<sup>(111)</sup> Report – Chapter 6, pp. 114-117.

<sup>(112)</sup> Report – Chapter 6, p. 119.

<sup>(113)</sup> Report – Chapter 6, p. 120.

<sup>(114)</sup> Report – Chapter 6, pp. 121-122, 126-128, 133-135.

- (112) The ceramic tableware and kitchenware production or the suppliers of raw materials and other inputs also benefits from this financial system. In particular, certain Chinese producers of ceramic tableware and kitchenware had received non-market conform State support in the recent past, which had the characteristics of financial support granted on non-commercial terms.<sup>(115)</sup> Therefore, the latter support and the general substantial government intervention in the financial system described above leads to the market conditions being severely affected at all levels.
- (113) In light of the above, the Commission concluded that the ceramic tableware and kitchenware producers had access to finance granted by institutions which implement public policy objectives or otherwise not acting independently from the state.

#### 3.2.2.9. Systemic nature of the distortions described

- (114) The Commission noted that the distortions described in the Report are characteristic for the Chinese economy. The evidence available shows that the facts and features of the Chinese system as described above in Sections 3.2.2.2. – 3.2.2.5. as well as in Part A of the Report apply throughout the country and across the sectors of the economy. The same holds true for the description of the factors of production as set out above in Sections 3.2.2.6. - 3.2.2.8. above and in Part B of the Report.
- (115) In its comments of 30 July 2018 to the Note of 18 July 2018, the CCCLA objected to the application of Article 2(6a) of the basic Regulation. In its view, the Commission should first verify the alleged significant distortion(s) in the Chinese ceramic tableware industry and make a positive determination, as required in Article 2(6a)(a), before looking for cost of production ('COP') data from alternative sources. In its additional comments of 13 August 2018, the CCCLA explained that Chinese exporting producers usually do not import the 15 raw materials used for the product concerned, but purchase them from the local market. In addition, it argued that 'the complainant had not claimed a significant distortion in the Chinese raw material market and neither did the Commission find in its "country report" concerning a possible distortion in China regarding the raw materials of the ceramic industry'. Therefore, according to CCCLA, there was no reason to replace the actual domestic purchase prices of the Chinese exporters for these 15 raw materials with the import prices from Brazil, Thailand and Turkey. The point is reiterated in the comments of 19 October 2018, according to which the Commission should look into the actual purchase prices of the Chinese exporting producers for their raw materials.
- (116) The Commission invited the CCCLA to substantiate its claim with 'accurate and appropriate evidence' as required by Article 2(6a)(a), third indent of basic Regulation. However, neither CCCLA nor any of the sampled companies belonging to CCCLA did so, and one of the sampled companies terminated its cooperation during the on spot verification.
- (117) The Commission recalls that in order to produce ceramic tableware and kitchenware, a broad range of inputs is needed. The sampled companies sourced these inputs in China. When the producers of ceramic tableware and kitchenware purchase/contract these inputs the prices they pay (and which are recorded as their costs) are clearly exposed to the same systemic distortions mentioned before. For instance, suppliers of inputs employ labour that is subject to the distortions. They may borrow money that is subject to the distortions on the financial sector/capital allocation. In addition, they are subject to the planning system which applies across all levels of government and sectors.
- (118) As a consequence, not only the domestic sales prices of the product concerned cannot be used but all the input costs (including raw materials, energy, land, financing, labour, etc) are also tainted because their price formation is affected by substantial government intervention, as described in Parts A and B of the Report. Indeed, the government interventions described in relation to the allocation of capital, land, labour, energy and raw materials are present throughout the PRC. This means, for instance, that an input that in itself was produced in China by combining a range of factors of production is exposed to significant distortions. The same applies for the input to the input and so forth.

#### 3.2.2.10. Comments after disclosure on the findings of significant distortions

- (119) After disclosure, the CCCLA made several comments regarding the application by the Commission of Article 2(6a)(b) of the basic Regulation.

<sup>(115)</sup> Report – Chapter 17, pp. 457-459.

- (120) The CCCLA first submitted that the Commission's findings on the existence of significant distortions in the Chinese ceramic tableware and kitchenware sector failed to meet the standards of objective sources and sufficient probative value, in the sense that they relied predominantly on the Commission's Report and the ThinkDesk report. The Commission's Report did not constitute an objective analysis of the economy and economic policies in China, but had only the role of facilitating the applicant's task to put forward a case of sufficient evidence on significant distortions and facilitating the Commission's task in making findings in this regard. Similarly, in the view of the CCCLA, the Think Desk report facilitated the applicant's task of preparing its request and the Commission's task of making findings regarding the existence of significant distortions in the Chinese ceramics and tableware industry. In that sense, according to the CCCLA, both documents have been prepared with a specific purpose and therefore could not be considered as objective, and were likely to omit factual elements in the analysis of the existence of significant distortions. Moreover, they were also prepared well ahead of the initiation of the expiry review, and the CCCLA submitted that the Commission did not make any new findings beyond the content of the latter documents.
- (121) The Commission recalled that its Report constitutes a body of evidence placed on the file of the investigation, as provided by Article 2(6a)(c) of the basic Regulation. The Report has been published on 21 December 2017, providing an opportunity for everybody (that is not only the parties to a particular anti-dumping investigation) to submit comments, rebut, and supplement the evidence contained in the Report. To date, the Commission has received no such contribution on the Report questioning the objectivity thereof. Moreover, the CCCLA itself did not provide any specific elements rebutting the evidence or the legal conclusions contained in the Report. Accordingly, it has not been shown why the Report would lack objectivity and the claim that the Report could not be relied on in this investigation was rejected. Similarly, the CCCLA could have challenged any factual or legal element from the ThinkDesk report as any other submission from the complainant. Since the association did not give any detail why information therein was not objective, the claim that the Commission should have discarded the ThinkDesk report, was rejected.
- (122) The CCCLA further took issue with the fact that both reports had been prepared well ahead of the initiation of the expiry review. It submitted that the Commission did not make any new findings beyond the content of the latter documents.
- (123) The Commission disagreed with this point of view. In this investigation, it had established that the relevant evidence contained in the Report is pertinent and applicable to the current expiry review investigation and thus had taken it into account in assessing the existence of significant distortions in the PRC. Likewise, with regard to the ThinkDesk report, the Commission made use of its content to guide its research with regard to additional elements specifically relevant for the sector of ceramic tableware and kitchenware. The Commission further referred to the substantial additional evidence and research contained notably in Section 3.2.2.5 on the link between horizontal distortions in China and the sector concerned, which goes well beyond the evidence contained in both the Report and the ThinkDesk report. This research permitted the Commission to make numerous additional findings on the existence of significant distortions in the ceramic tableware and kitchenware sector. Therefore, the Commission rejected the CCCLA's claim.
- (124) The CCCLA also submitted that findings of significant distortions were made without any quantitative analysis. In the CCCLA's view, the analysis of such distortions should be supported by a comparison of prices or costs reported by individual exporting producers with the prices or costs in a free market, in order to judge on the significance of distortions.
- (125) Article 2(6a)(b) of the basic Regulation provides in its first sentence that '*significant distortions are those distortions, which occur when reported prices or costs, including the cost of raw materials and energy, are not the result of free market forces because they are affected by substantial government intervention.*' The second sentence of this provision guides the Commission how it should assess the existence of significant distortions: '*in assessing the existence of significant distortions, regard shall be had, inter alia, to the potential impact of one or more [...] elements*' enumerated in the indents of Article 2(6a)(b). Consequently, as explained in recital (48) above and in compliance with Article 2(6a)(b), the Commission's assessment on the existence of such significant distortions is the outcome of an overall assessment of the relevant elements contained in the indents of that provision to make an actual price comparison between the prices or costs of an exporting producer with the undistorted prices or costs in a free market. Furthermore, as specified also in the same recital (48), the overall assessment on the existence of distortions may also take into account the general context and situation in the exporting country and the entire legal system which provides the government with substantial powers to intervene in the economy in such a way

that prices and costs are not the result of the free development of market forces. The requisite standard in the legislation is one of a 'potential' impact of one or more of the relevant criteria listed in the indents of Article 2(6a)(b) to interfere with prices and costs, and there is no requirement whatsoever in the legislation to make an actual quantitative analysis based on a comparison between undistorted benchmark prices and costs with the exporting producers' costs and prices to make a finding of the existence of significant distortions in the country and the sector concerned. This claim was therefore rejected.

- (126) Finally, the CCCLA argued that after the expiry of Section 15 of the China's Protocol of Accession to the WTO (hereinafter 'the Protocol'), the EU should not deviate from the standard methodology in establishing the normal value, that is to use only domestic prices and costs of the exporting country, unless the ADA so permit otherwise. In light of the above, the EU should follow the standard methodology in accordance with Article 2 of the ADA. Moreover, the CCCLA also claimed that the ADA 'does not provide for the substantive possibility to establish the existence of significant distortions'. As there is no legal basis in the ADA or in GATT 1994 for such specific action, the findings of the existence of significant distortions and, as a result of it, the construction of the normal value are not consistent with Articles 1, 2, 6.1 and 18.1 of the Anti-dumping agreement ('ADA').
- (127) In the case at hand, the Commission applied the relevant rules contained in Article 2(6a) of the basic Regulation. The EU legislator adopted these rules with full regard to the EU's obligations under WTO law. The Commission noted that there is no absolute rule in WTO law to always construct normal value on the basis of domestic costs and prices. Furthermore, the Commission disagreed with the view that Section 15 of the Protocol would no longer be relevant for dumping investigations concerning China and recalled that there is an ongoing litigation in the WTO dispute settlement system concerning that matter, in which it had defended that view with reference to the wording of lit. (d), its purpose and the negotiation history of that provision. Consequently, the Commission rejected those claims.

#### 3.2.2.11. Conclusion

- (128) The analysis laid out in sections 3.2.2.2. to 3.2.2.9., which includes an examination of all the available evidence relating to China's intervention in its economy in general as well as in the ceramic sector (including the product under review) showed that prices or costs, including the costs of raw materials, energy and labour, are not the result of free market forces because they are affected by substantial government intervention within the meaning of Article 2(6a)(b) of the basic Regulation as shown by the actual or potential impact of one or more of the relevant elements listed therein. On that basis, and in the absence of any cooperation from the GOC, the Commission concluded that it is not appropriate to use domestic prices and costs to establish normal value in this case.
- (129) Consequently, the Commission proceeded to construct the normal value exclusively on the basis of costs of production and sale reflecting undistorted prices or benchmarks, that is, in this case, on the basis of corresponding costs of production and sale in an appropriate representative country, in accordance with Article 2(6a)(a) of the basic Regulation, as discussed in the following section.

#### 3.2.3. Representative country

##### 3.2.3.1. General remarks

- (130) Having determined that significant distortions affect prices and / or costs in the Chinese ceramic tableware and kitchenware sector, pursuant to Article 2(6a)(b) of the basic Regulation, the Commission constructed the normal value on the basis of costs of production and sale in an appropriate representative country, in accordance with Article 2(6a)(a) of the basic Regulation.
- (131) The choice of the representative country was based on the following criteria:
- (1) A level of economic development similar to the PRC. For this purpose, the Commission used countries with a gross national income per capita similar to the PRC on the basis of the database of the World Bank; <sup>(116)</sup>
  - (2) Production of the product concerned in that country;

<sup>(116)</sup> World Bank Open Data – Upper Middle Income, <https://data.worldbank.org/income-level/upper-middle-income> (accessed on 27 March 2019).

- (3) Availability of relevant public data in that country.
- (4) Where there is more than one possible representative country, preference shall be given, where appropriate, to the country with an adequate level of social and environmental protection.
- (132) As mentioned in recital (31), in the Note of 18 July, the Commission informed interested parties that it had identified three possible representative countries: Brazil, Thailand and Turkey and invited interested parties to comment and suggest other countries. Both the CCCLA and the applicant provided a number of comments on the possible representative countries however none of them proposed another country.

#### 3.2.3.2. A level of economic development similar to the PRC

- (133) Brazil, Thailand and Turkey are all classified as countries with a similar level of economic development as the PRC, meaning they are all classified as 'upper-middle income' countries by the World Bank.
- (134) CCCLA commented <sup>(117)</sup> that in 2017 the GNI per capita of Turkey was significantly higher than that of China or Brazil. Similarly, the applicant also noted <sup>(118)</sup> that the 2016 GDP per capita in Brazil was very similar to that of China while the Turkish GDP per capita was significantly higher. Hence, both parties claimed that this criterion speaks against Turkey.
- (135) The basic Regulation refers to an 'appropriate country with a similar level of economic development'. Consequently, the basic Regulation does not direct the Commission to choose the country with the closest GNI or GDP per capita level to that of China. Rather, the relevant criterion is the similarity of the level of economic development. In order to establish such similarity, it is appropriate to use the upper-middle income classification by the World Bank for the relevant period because this classification is based on several objective economic criteria when identifying a number of potentially suitable countries with a similar level of development. As all three countries were included in the same category of the World Bank database, they were all considered to meet the criterion laid down in Article 2(6a)(a), first indent, of the basic Regulation. Thus, the Commission concluded that all three countries equally fulfilled this criterion and therefore the comment was rejected.

#### 3.2.3.3. Production of the product under review in the representative country and availability of relevant public data in the representative country

- (136) Practically all countries of the world produce some quantities of the product under review. Following the analysis of the available data and in particular data from the Global Trade Atlas ('GTA') <sup>(119)</sup> and Orbis Bureau van Dijk ('Orbis'), <sup>(120)</sup> the Commission identified Brazil, Thailand and Turkey as possible representative countries for this investigation.
- (137) In its comments, the CCCLA expressed its concern regarding the big differences between the average import prices for the factors of production reported by Brazil, Thailand the Turkey. It alleged that these differences are mainly due to the quantity of imports. As a rule, lower import quantities attracted higher prices. The CCCLA also expressed doubts on the accuracy of the import prices expressed at 6-digit Harmonised System (HS) code level and invited the Commission to use higher, 8-digit level codes. With regard to availability of financial data the CCCLA noted that the profit and SG&A of Turkey and Brazil are based on only one or two companies and therefore may be influenced by occasional factors (such as sale of branded products), while the figures for Thailand are based on averages of 8 companies. Thus, CCCLA argued that Thailand should be chosen.
- (138) The applicant on the other hand argued that Brazil should be used as representative country. It claimed that two out of the eight Thai companies identified by the Commission did not seem to produce the product under review and that there was no recent financial data available for Thailand. The applicant also mentioned that in the original investigation a Thai producer could not provide data at sufficient level of detail. The applicant argued that the selling, general and administrative expenses ('SG&A') and profit of the Brazilian producer proposed in the review request was most in line with the SG&A of the Union producers and the profits they would expect to achieve in the absence of dumped imports. The applicant also noted that the average SG&A and profit figures of

<sup>(117)</sup> Comments of CCCLA dated 30 July 2018, t.18.008387 and dated 13 August 2018, t19.000427.

<sup>(118)</sup> Comments of the applicant, dated 30 July 2018, t.18.008388 and dated 13 August 2018, t19.000428.

<sup>(119)</sup> Available at: <http://www.gtis.com/gta/>

<sup>(120)</sup> Available at: <https://orbis4.bvdinfo.com/version-201866/orbis/Companies>



the Thai producers were too low and that from two of them the profit levels reported were below that of the target profit established by the original investigation. The applicant stated that the Brazilian producer proposed by it was able to prepare and submit the requested cost information.

- (139) In response to these claims, the Commission noted that differences in average import prices, as such, do not mean that the data is unreliable. As long as the import quantities of the factors of production are sufficiently representative and there are no other specific circumstances rendering them unrepresentative or unsuitable, there is no objective reason to exclude them or, any of the proposed countries. As far as the level of classification is concerned, the Commission aims at using the most appropriate and detailed level as possible based on the information available on the file. The Chinese exporting producers so far provided the Chinese 8 digit-level codes which in most cases in fact corresponded to a 6-digit HS code as the two last digits were '00'. The Commission, in cases where it was possible, identified and used the equivalent 8 digit-level codes in the nomenclature of the representative country. In the absence of any concrete claim on any concrete factor of production, the Commission used the data as explained more in detail in recital (155) below.
- (140) Moreover, the fact that the financial figures (such as SG&A and profit) for Thailand were based on more companies than those of the other two countries does not, in itself mean that they were more reliable. In any event, the basic Regulation requires 'relevant data' which must be 'readily available' without specifying that this should be the broadest set of data. Moreover, the availability of audited accounts from the Turkish company enables the Commission to exclude the impact of any extra-ordinary event or activity from the financial figures, if applicable. This cannot be said for the companies of the other two countries. So, the most detailed data was available for the Turkish company. Based on the above, the claims of the CCCLA were rejected.
- (141) Regarding the claim of the applicant on the SG&A and profit level of the Brazilian producer, the Commission noted that the question whether the SG&A and profit levels in the representative country were in line with that of the Union producers' or their expectations was not relevant for selecting the most suitable representative country. Furthermore, contrary to the claim of the applicant, the financial data and cost figures of the Brazilian producer identified in the review request were not publicly available. Consequently, the claims of the applicant were rejected.
- (142) The Commission carefully analysed all relevant data available on the file on all factors of production in all three potential representative countries and noted the following:
- (1) In the GTA database, all three countries have imports for most of the raw materials in representative quantities. However, for a number of items (such as silica sand and quartz, pigments and plaster) together representing roughly 20 % of cost of production of an integrated producer, Turkey and Thailand have significantly higher import quantities than Brazil.
  - (2) The producer identified in Turkey has its recent audited financial reports publicly available <sup>(121)</sup>, while this is not the case of the companies identified in Brazil and in Thailand. The financial reports, though not a prerequisite for this type of analysis, still constitute an advantage, as they enable the Commission to ascertain that the most appropriate figures are used and that the effects of eventual extraordinary events are excluded.
  - (3) Turkey has detailed, publicly available information on labour costs <sup>(122)</sup> in the country as well as details on hours worked in the relevant sector (non-metallic mineral sector including ceramic, glass, cement and lime production). The data in Turkey includes social security payments and other labour cost expenses payable by companies. Labour costs are an important factor in the case at hand as they represent on average 45 % - 55 % of the total cost of production.
- (143) Based on the combined effect of all these factors the Commission considered Turkey to be the most appropriate representative country for this investigation. In the note of 9 October, the Commission informed interested parties on its intention to use Turkey as representative country and invited interested parties to comment.

<sup>(121)</sup> <https://kutahyaporselen.com.tr/dokuman/faaliyet-raporlari/31-12-2017-Faaliyet-Raporu-ve-Gorus.pdf>, last accessed on 12 March 2019.

<sup>(122)</sup> Turkish Statistical Institute, [http://www.turkstat.gov.tr/PreIstatistikTablo.do?istab\\_id=2090](http://www.turkstat.gov.tr/PreIstatistikTablo.do?istab_id=2090)

- (144) In its comments <sup>(123)</sup> following the note of 9 October the applicant claimed that when selecting the most suitable representative country the Commission only used two out of the four criteria stipulated by Article 2(6a)(a) of the basic Regulation. The applicant requested the Commission to disclose the final and updated benchmarks for all factors of production based on which normal value shall be established. Finally, the applicant also requested the Commission to assess the impact on the normal value of recent political and economic developments in Turkey that led to a significant drop in the value of the Turkish Lira.
- (145) In response to these comments, the Commission confirmed that as it is already explained in recitals (133) to (142) all three principal criteria were carefully analysed when selecting the representative country. The fourth criterion on adequate level of social and environmental protection is only applicable in cases where no country can be selected based on the first three criteria, which however was not the case in this investigation. The devaluation of the Turkish Lira as the applicant acknowledged as well, took place after the review investigation period and for this reason the Commission did not see the reason to evaluate its impact on the normal value. The applicant's request to be provided with the figures and sources of the different factors of production did not constitute arguments related to the choice of the representative country and was addressed in table 1 below.
- (146) The CCCLA in its comments <sup>(124)</sup> disagreed with the conclusion of the Commission inasmuch as all three possible representative countries equally fulfilled the first criterion on similar level of economic development. The CCCLA argued that by merely relying on the upper-middle income classification of the World Bank the Commission had a pool of 56 countries among which many (such as Equatorial Guinea, Fiji, Marshall Islands, Nauru, St. Lucia etc.) could not certainly be considered as having a similar level of economic development as China. Further, CCCLA disagreed with the Commission that only Turkey had publicly available information on labour costs. To substantiate its claim the CCCLA evoked another investigation <sup>(125)</sup> in which Thailand was proposed as representative country. Finally, CCCLA claimed that the relatively high SG&A and profit figures of the Turkish producer (as compared to the average figures of the Thai producers and / or Chinese producers) were due to the fact that the Turkish producer was mainly selling branded products which attract higher prices. According to CCCLA, given that Chinese exporting producers did not export branded products their cost and profit structure differs from that of the Turkish company rendering the Turkish data unsuitable for replacing Chinese data. To substantiate its claim the CCCLA evoked the downward adjustment on the Brazilian normal value due to branding that was done in the original investigation. The Commission maintained its position that each country equally fulfilled the criterion on similar level of economic development as they all were classified as upper-middle income countries. The decision on the most appropriate representative country was however taken not in isolation but as a combined assessment of the three criteria listed in recital (131) above and as explained in the note of 9 October.
- (147) Regarding the claim on publicly available data the Commission stressed that the selection of the most suitable representative country is a case by case exercise, taking into account inter alia the other specificities of the product under review, the review investigation period and other specificities of the case. For this reason, a choice in one case does not imply that the same country would be the best choice for another case as well. In any event, in the case invoked by CCCLA, Turkey was not among the possible countries considered and therefore the choice was not made between Thailand and Turkey. The Commission recalls that the selection of the representative country is made on a case-by-case basis. Moreover, as explained in recital (142) above, the Commission selected Turkey based on the combined effect of a number of factors, out of which one was indeed the availability of sector specific data on working hours and labour costs on company level (as opposed to wages). The CCCLA did not provide any similarly available data for Thailand, nor was the Commission able to retrieve such detailed data.
- (148) The claim on the unsuitability of the SG&A and profit data of the Turkish producer due to branding was not sufficiently substantiated. In particular, CCCLA failed to show why and to what extent the sale of branded products would result in a higher SG&A for a given company. In addition, the Commission was of the view that there was insufficient evidence on the file substantiating the claim that the Turkish company would only or

<sup>(123)</sup> Comments of the applicant dated 19 October 2018, t19.000430.

<sup>(124)</sup> CCCLA comments dated 19 October 2018, t19.000429.

<sup>(125)</sup> AD647 – Anti-dumping investigation concerning hot-rolled steel sheet piles from China.

mainly sell branded products. On the contrary, the Commission found that the information on the website of the Turkish company indicates <sup>(126)</sup> that Kutahya Porselen Sanayi A.S. sold both branded and non-branded products. Thus, the claims of both the applicant and CCCLA were rejected.

- (149) Following disclosure, the CCCLA claimed that the exchange rate of the Turkish Lira to the Euro devaluated by 25 % during RIP. A devaluation of this magnitude has allegedly a tremendous impact on cost and prices in Turkey and most probably results in distortions that are 'incomparably higher than whatever the Commission might assume to be the case in China'. Therefore, Turkey should not be chosen as an appropriate representative country.
- (150) The Commission reiterated that the choice of the representative country was based on the criteria as mentioned in recital (131). A potential impact of a devaluing currency is not among those criteria. It also noted that it had calculated the benchmarks based on monthly exchange rates and drew an average therefrom for the entire review investigation period. As a result, the potential impact of the exchange rate fluctuations on the annual value of the benchmark was levelled out. In any event, the CCCLA has not demonstrated how the devaluation of the Turkish Lira would actually have affected the value of the factors of production and inputs sourced in Turkey, and if so what the real impact on such values would be. Therefore, the Commission rejected this claim.
- (151) Following disclosure, the CCCLA questioned the reliability of the SG&A and profit data reported by the Turkish producer, claiming that it could not be realistic because an SG&A of the magnitude of 33,14 % normally would result in bankruptcy whereas the Turkish company was still showing a profit of 17,8 %. It asked whether SG&A and profit data from another representative country could be used instead.
- (152) The Commission first noted that the CCCLA failed to provide any supporting evidence for its claim and did not refer to any specific part of the audited accounts of the Turkish producer, which would suggest that they are not reliable. The Commission had no evidence on file indicating that the SG&A and profit achieved by the Turkish company might be influenced, e.g., by abnormalities in the production process. In any event, the Commission recalled that the SG&A and profit data of the company were expressed as a percentage of the costs of goods sold, and not as a percentage of turnover. Moreover, as explained in recital (222) below, some of the sampled Union producers have a similar level of SG&A, and this is comparable to both the sampled Chinese producers and the accounts of the Turkish company used. Therefore, the Commission considered the SG&A data and profit of the Turkish company to be reasonable. Consequently, the claim by the CCCLA was rejected.

#### 3.2.3.4. Conclusion on representative country

- (153) In view of the above analysis, and the data available on the file, the Commission used the data of Turkey and the Turkish company Kutahya Porselen Sanayi A.S. for establishing corresponding costs of production and sale in an appropriate representative country in accordance with Article 2(6a)(a) of the basic Regulation.

#### 3.2.4. Data used for the construction of normal value

- (154) In the Note of 9 October, the Commission stated that, in order to construct the normal value in accordance with Article 2(6a)(a) of the basic Regulation, it intended to use the import data available in the GTA for raw materials, the information provided by the Turkish Statistical Institute ('Turkstat') <sup>(127)</sup> on labour, electricity and natural gas and the financial data of the Turkish company Kutahya Porselen Sanayi A.S for SG&A and profit as available in its audited accounts made public by Orbis.

<sup>(126)</sup> 'Kutahya Porselen mainly exports to the European Union countries - where the quality expectations and purchasing power is high - together with US, Canada, Japan, North European countries and North African countries. Building up co-operation with manufacturers and brand names in France, Spain, Holland, Italy and UK; Kutahya Porselen offers its products to sale in hypermarket chains like IKEA, Carrefour, Auchan, El Corte Ingles and Hipercore.' Available at: <https://kutahyaporselen.com.tr/en/history/> (last accessed 1 February 2019).

<sup>(127)</sup> Turkish Statistical Institute, <http://turkstat.gov.tr>

- (155) The following table summarizes the factors of production used in the calculations with their corresponding HS codes or national codes used respectively in China or Turkey and unit values as from the GTA or the Turkstat database:

Table 1

**Factors of production for ceramic tableware**

Factor of Production	Declared National code used in China	Corresponding HS code or national code used in Turkey	Unit price in RMB / kg
<b>Raw Materials</b>			
Silica sands and quartz sands, natural	2505 10 00	2505 10	0,260
Kaolin and other kaolinic clays, whether or not calcined	2507 00 90	2507 00 80	1,038
Bentonite, whether or not calcined	2508 10 00	2508 10	2,580
Chamotte or dinas earth	2508 70 00	2508 70	1,347
Gypsum; Anhydrite	2520 10 00	2520 10	0,122
Feldspar	2529 10 00	2529 10	0,561
Mineral substances, not elsewhere specified or included	2530 90 99	2530 90	8,218
Prepared pigments, prepared opacifiers, prepared colours and similar preparations	320710 00	3207 10	35,924
Glass frit and other glass, in the form of powder, granules or flakes	3207 40 00	3207 40	5,307
Aluminium powders of non-lamellar structure	7603 10 00	7603 10	19,032
<b>Labour</b>			
Labour costs in manufacturing sector	N/A	N/A	35,975
<b>Energy</b>			
Electricity	N/A	N/A	0,526
Natural Gas	N/A	N/A	2,082
<b>Other</b>			
Water	N/A	N/A	1,191

## 3.2.4.1. Raw Materials

- (156) There was considerable difference between companies even within one group of exporting producers regarding the raw materials used, especially for the various types of clays and glaze. In particular, at the cooperating group the Commission found that during the review investigation period, one company bought the ready-made mixture, the so-called 'green paste' composed of different clay types, while the other bought all individual raw materials separately and mixed those in house. During the review investigation period this company bought at least 25 different input materials for its production of clay out of which the five most important ones represented 92 % of the total raw materials cost of clay. Similarly, while one company bought the ready-made paints,

the other bought close to 40 different input materials for its production of glaze, the five most important of which represented 90 % of the total raw material costs of glaze or paints. The Commission therefore worked with the five most important variants both for clays and paints/glaze. A similar approach was used for the production of moulds, where one input material out of 12 input materials represented over 97 % of the total raw material costs of moulds. Consequently, the intermediary materials glaze, moulds and paints were not listed in table 1, but the most important input materials used for producing each of them.

- (157) For all raw materials, the undistorted unit price was determined by the weighted average import price to the representative country from all third countries. Imports from the PRC however were excluded given the existing significant distortions in this country as established in section 3.2.2.10 above. Where necessary, unrepresentative volumes with unreasonably high unit prices were removed from the base data.
- (158) In order to establish the undistorted price of raw materials as delivered at the gate of a representative country producer, the Commission would have normally added the import duty of the representative country to the import price and an estimation of transport costs. In this case, however, given that the dumping margins, as explained in recital (174) below, were already so high as to confirm the existence of dumping during the review investigation period, an increase of the dumping margin as a result of this adjustment is therefore not relevant for the outcome of this review.
- (159) Silica board was considered as a consumable and represented roughly [1 – 5 %] <sup>(128)</sup> of the total cost of manufacturing of the Hunan group during the review investigation period. These costs were not replaced individually with a representative benchmark price. Instead, the percentage of the cost of consumables over the cost of raw materials of the exporting producer was then transposed to the cost of raw materials established based on undistorted prices.

#### 3.2.4.2. Labour

- (160) The Turkish Statistical Institute publishes detailed information on wages in different economic sectors in Turkey. The Commission used the wages reported in the manufacturing sector for 2016, for the economic activity C.23 (Manufacture of other non-metallic mineral products) <sup>(129)</sup> according to NACE Rev.2 classification <sup>(130)</sup>. The 2016 average monthly value was duly adjusted for inflation using the domestic producer price index <sup>(131)</sup> as published by the Turkish Statistical Institute.

#### 3.2.4.3. Electricity

- (161) The price of electricity for companies (industrial users) in Turkey is published by the Turkish Statistical Institute in its regular press releases. The Commission used the data on the industrial electricity prices in the corresponding consumption band in Kuruş/kWh <sup>(132)</sup> as published on 28 September 2018 (covering the review investigation period) <sup>(133)</sup>.

#### 3.2.4.4. Natural gas

- (162) The price of natural gas for companies (industrial users) in Turkey is published by the Turkish Statistical Institute in its regular press releases. The Commission used the corresponding tariff schedule based on a similar level of consumption <sup>(134)</sup> covering the review investigation period <sup>(135)</sup>.

#### 3.2.4.5. Water

- (163) The cost of water for industrial use in Turkey is published by the Presidency of the Republic of Turkey Investment Office <sup>(136)</sup> based on data provided by three regional sources; the Istanbul, Eskisehir and Antalya Water and Sewerage Administration. The Commission used the data of Eskisehir since the Turkish company used for SG&A and profit is located in this region.

<sup>(128)</sup> Exact percentage cannot be disclosed due to confidentiality reasons.

<sup>(129)</sup> [http://www.turkstat.gov.tr/PreIstatistikTablo.do?istab\\_id=2090](http://www.turkstat.gov.tr/PreIstatistikTablo.do?istab_id=2090), as last accessed on 11 March 2019.

<sup>(130)</sup> This is a statistical classification of economic activities used by Eurostat, <https://ec.europa.eu/eurostat/web/nace-rev2>, as last accessed on 29 March 2019.

<sup>(131)</sup> [http://www.turkstat.gov.tr/PreIstatistikTablo.do?istab\\_id=2104](http://www.turkstat.gov.tr/PreIstatistikTablo.do?istab_id=2104), as last accessed on 18 March 2019.

<sup>(132)</sup> <http://www.turkstat.gov.tr/ZipGetir.do?id=27666&class=onceki>, as last accessed on 11 March 2019. 100 Kuruş = 1 Turkish Lira.

<sup>(133)</sup> The data is available by half year periods, the Commission took the average of 1<sup>st</sup> and 2<sup>nd</sup> half 2017 and first half 2018.

<sup>(134)</sup> <http://www.turkstat.gov.tr/ZipGetir.do?id=27666&class=onceki>, as last accessed on 11 March 2019. 100 Kuruş = 1 Turkish Lira.

<sup>(135)</sup> The average of tariffs published for the 1<sup>st</sup> and 2<sup>nd</sup> half of 2017 and the first half of 2018 was taken.

<sup>(136)</sup> <http://www.invest.gov.tr/en-US/investmentguide/investorsguide/Pages/BusinessPremises.aspx>, as accessed on 21 April 2018.

### 3.2.5. *Manufacturing overhead costs, SG&A and profits*

- (164) According to Article 2(6a)(a), fourth paragraph of the basic Regulation, 'the constructed normal value shall include an undistorted and reasonable amount for administrative, selling and general costs and for profits'.
- (165) In order to establish an undistorted value, for SG&A and profit, the Commission used the financial data from the Turkish company Kutahya Porselen Sanayi A.S. More precisely, the Commission used the SG&A and profit figures as reported in the company's audited accounts for the year 2017 and the first quarterly report for 2018. Based on available company information the majority of the business activity concerned the product concerned and based on the information from the financial statements, no extraordinary events occurred during this period necessitating the adjustment of the reported data. The percentage of SG&A and profits was corrected to an ex-works level by deducting the packaging costs and transportation cost from the total SG&A and from the turnover.
- (166) As a result, the following items were added to the undistorted cost of manufacturing:
- (1) SG&A of 33.14 % expressed on the cost of goods sold applied to the sum of costs of manufacturing;
  - (2) A profit of 17,8 % expressed on the cost of goods sold applied to the costs of manufacturing.

#### 3.2.5.1. *Calculation*

- (167) In order to establish the constructed normal value, the Commission adopted the following methodology. First, the Commission established the undistorted manufacturing costs. The Commission then multiplied the usage factors as observed at the level of the cooperating exporting producer's production process for materials, labour, electricity and water by the undistorted costs per unit observed in the representative country Turkey. In addition, for the consumables (silica board) referred to in recital (159) above, the Commission applied a percentage equal to the share of production on the costs of manufacturing reported by the exporting producer to the undistorted direct manufacturing costs.
- (168) Second, to the manufacturing costs identified above the Commission applied Kutahya Porselen Sanayi A.S.'s SG&A and profit.
- (169) On the basis of the above, for the cooperating exporting producer, the Commission constructed the normal value per product type on an ex-works basis in accordance with Article 2(6a)(a) of the basic Regulation.

#### 3.2.6. *Export price*

- (170) The cooperating exporting producer exported the product concerned directly to independent customers in the Union. Thus, the export price was the price actually paid or payable for the product concerned when sold for export to the Union, in accordance with Article 2(8) of the basic Regulation.

#### 3.2.7. *Comparison and dumping margin*

- (171) The Commission compared the constructed normal value as established in accordance with Article 2(6a)(a) of the basic Regulation on an ex-works basis with the export price at ex-works level to the Union.
- (172) For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation. All export sales were on FOB level, thus the export price was adjusted for inland freight, handling and loading costs, packaging, bank charges and credit costs (in the range of between 10 % - 15 %).
- (173) The question whether to adjust the normal value for the partial VAT refund on exports was left open since the dumping margins already established the existence of dumping during the review investigation period. An increase of the dumping margin as a result of the VAT adjustment is therefore not relevant for the outcome of this review.
- (174) On this basis, the weighted average dumping margin of Hunan Hualian group, expressed as a percentage of the group's CIF Union frontier price, duty unpaid, was 35,1 %.

### 3.2.8. Dumping margin for the rest of Chinese exporting producers

- (175) According to Eurostat, during the review investigation period, the average Chinese export price (CIF) of the product concerned to the Union was roughly 1,8 EUR/kg. This is below the average, estimated at CIF level, export price of the cooperating exporting producer in the same period which was [2,0 – 2,4 EUR/kg] <sup>(137)</sup>.
- (176) Calculating with the average normal value of the cooperating exporting producer and the average Chinese export price (adjusted to EXW based on the available data <sup>(138)</sup>) during the review investigation period the dumping margin was in the range of (65 % to 75 %). If the Commission were to use the normal value established by the Union industry in the review request, the dumping margin would be even higher. This means that based on facts available, Chinese exports of the product concerned to the Union during the review investigation period were sold on dumped prices.

### 3.2.9. Conclusion on continuation of dumping

- (177) Based on the data of the cooperating exporting producer, Hunan Hualian group, dumping continued during the review investigation period with a dumping margin of 35 %. Similarly, based on countrywide statistical data (Eurostat), Chinese exports of the product concerned were sold to the Union at dumped prices during the review investigation period, with a dumping margin around 70 %.
- (178) Thus the Commission concluded that dumping continued during the review investigation period.

## 3.3. Evidence of likelihood of continuation of dumping from the PRC

- (179) Further to the finding of the existence of dumping during the review investigation period, the Commission investigated the likelihood of continuation of dumping, should the measures be repealed. In order to do this, the Commission analysed the following additional elements: the production capacity and spare capacity in the PRC, pricing behaviour of Chinese exporting producers in other markets, and the attractiveness of the Union market.

### 3.3.1. Production capacity and spare capacity in the PRC

- (180) China is the world's largest exporter of ceramic tableware and kitchenware and has tens of thousands of active producers of various sizes <sup>(139)</sup>. In the review request, the applicant alleged that China has a production capacity of 5,5 million tonnes with a spare capacity reaching over 36 % in 2016 that was forecast not to decrease below 30 % by 2021. <sup>(140)</sup> Production capacity of such magnitude means that China alone could cover multiple times the total Union consumption that was estimated at roughly 634 000 tonnes during the review investigation period (see recital (205) below). The problem of overcapacity was also acknowledged in the financial reports of some of the big Chinese producers <sup>(141)</sup>.
- (181) Following the imposition of the measures, exports of ceramic tableware continued to enter the Union in big quantities and were still representing almost 60 % of the Union consumption as it is explained more in detail in section 4.3.1 below. This indicates that Chinese exporting producers of ceramic tableware have strong business relations with their clients in the Union.
- (182) Based on the above, the Commission concluded that China was among the biggest producers of ceramic tableware in the world and had significant spare capacity, which given the existing, strong business relationships, could be easily exported to the Union if measures were repealed.

<sup>(137)</sup> Given that the price is based on the data of one group, for confidentiality reasons ranges are provided.

<sup>(138)</sup> The adjustments were made based on the verified data of Hunan Hualian.

<sup>(139)</sup> Think!Desk China Research Consulting report on Market Distortions in the Kitchen and Tableware Ceramics Industry, provided in Annex 8 of the open review request.

<sup>(140)</sup> Annex 13 of the Applicant's request: Research report on China Ceramic Industry - 2017-2021, China Research and Intelligence, pp. 58-59.

<sup>(141)</sup> For example in the 2017 Financial report of the Sitong group, pages 8-9 available on: [http://static.sse.com.cn/disclosure/listedinfo/announcement/c/2018-04-12/603838\\_2017\\_n.pdf](http://static.sse.com.cn/disclosure/listedinfo/announcement/c/2018-04-12/603838_2017_n.pdf).

### 3.3.2. Exports to third countries

#### 3.3.2.1. Cooperating exporting producer

- (183) Similarly to the Union sales, all exports to third countries were sold to independent customers and on FOB basis. Thus, in accordance with Article 2(8) of the basic Regulation, the Commission used the export price actually paid or payable for the product concerned when sold for export to the rest of the world.
- (184) The normal value was constructed as explained in recitals (154) - (167) above.
- (185) The Commission compared the constructed normal value with the export price to third countries on ex works level in accordance with Article 2(10) of the basic Regulation. Therefore, the FOB export price was adjusted for inland freight, handling and loading costs, packaging, bank charges and credit costs (in the range of between 10 % - 15 %).
- (186) The above comparison resulted in a dumping margin of around 57 % for the cooperating exporting producer during the review investigation period.

#### 3.3.2.2. China as a whole

- (187) According to GTA, China <sup>(142)</sup> exported 1 523 910 tonnes amounting to 3 755 428 981 RMB or an average FOB value of 19,09 RMB/kg.
- (188) The normal value was constructed as explained in recitals (154) - (167) above.
- (189) The Commission compared the constructed normal value with the export price on EXW level in accordance with Article 2(10) of the basic Regulation. Therefore, the FOB export price was adjusted for inland freight, handling and loading costs, packaging, bank charges and credit costs (in the range of between 10 % - 15 %).
- (190) The above comparison showed a countrywide dumping margin for exports to all third countries (excluding the Union) in the range of between 15 - 24 %.

### 3.3.3. Conclusion on Chinese exports to third markets

- (191) The Commission found that during the review investigation period exports to third countries were sold on dumped prices by the cooperating exporting producer. The Commission also found, that based on the available statistics, Chinese exports to the rest of the world were also sold on dumped prices.
- (192) Thus the Commission concluded that during the review investigation period dumping took place on third markets as well.

### 3.3.4. Attractiveness of the Union market

- (193) The Union is one of the biggest markets of ceramic tableware in the world. As already mentioned in recital (181) above, following the imposition of the anti-dumping measures in 2012, Chinese exports of the product concerned continued to enter the Union in significant quantities. During the review investigation period, Chinese exports of ceramic tableware to the Union represented almost 60 % of the Union consumption. This clearly demonstrates that the Union remained an attractive and important market destination for Chinese ceramic tableware and kitchenware.

## 3.4. Conclusion on the likelihood of continuation of dumping

- (194) Chinese imports of the product concerned continued to enter the Union market at dumped prices during the review investigation period. The Commission also found that the PRC was the biggest exporter of ceramic tableware in the world and had significant spare capacities.
- (195) In addition, the Commission found that the pricing behaviour of the Chinese exporting producers in third markets supports the likelihood of continuation of dumping to the Union, should the measures be allowed to lapse.

<sup>(142)</sup> Total exports of China excluding export to the Union following national code 6911 1019 and national code 6912 0010



- (196) Finally, the Commission established that the Union market remained an attractive market for Chinese exporting producers of ceramic tableware even after the impositions of measures.
- (197) Given the above, the Commission concluded that there was a strong likelihood that the repeal of the anti-dumping measures would result in increased exports of ceramic tableware from the PRC to the Union at dumped prices.

#### 4. INJURY

##### 4.1. Union production and Union industry

- (198) During the review investigation period the like product was manufactured in the Union by more than 130 known producers. Production is concentrated in the Czech Republic, France, Germany, Italy, Poland, Portugal, Romania and the United Kingdom. The total Union production was estimated at 279 339 tonnes during the RIP on the basis of extrapolated Eurostat data, cross-checked and adjusted based on questionnaire responses submitted by the sampled Union producers and data submitted by the applicant. The Union producers accounting for the total Union production constitute the Union industry within the meaning of Articles 4(1) and 5(4) of the basic Regulation.
- (199) Following initiation one Union producer submitted doubts as to the reliability of the data used by the applicants in the review request. In particular, the company claimed that the data relied upon by the applicant is not transparent for third parties and largely not based on official Eurostat or Prodcom data, but on data from associations of Union producers supporting the review request. The company claimed that, based on Prodcom data alone, there would have been no standing for the applicant in their review request, as they would represent only 21,8 % of Union production.
- (200) The CCCLA also commented on the reliability of the data used in the review request. They claimed that the price information used was unreliable since the dumping, undercutting and underselling calculations did not take into account product characteristics such as decoration, consumer perception or branding.
- (201) The Commission noted, first, that in accordance with Article 11(2) of the basic Regulation, it had carried out a thorough examination before initiation. It had analysed the data in the request and contacted all known Union producers to also provide data on production as well as their position with regard to the complaint.
- (202) Second, the methodology applied to the calculation of the production figures in the request was the same as that applied during the original investigation in line with Article 11(9) of the basic Regulation. Clarifications of the methodology were provided in the review request itself as well as in further submissions by the applicant after initiation.
- (203) Third, the calculations done by the applicant in the review request were indeed based on a limited amount of product types and did not take into account more refined product characteristics. However, it would not have been possible for the applicant to provide a more sophisticated calculation at that time. Detailed information on the variation on prices taking into account broken-down product types and characteristics is not publically or reasonably available. At the time of initiation, and based on the data available at that time, the Commission was satisfied that there was sufficient support (standing) and sufficient evidence to initiate the review investigation. The claims were therefore rejected.

##### 4.2. Consumption in the Union

- (204) The Union consumption was established on the basis of Eurostat import statistics and sales volumes of the Union industry in the Union as submitted by the applicant. These sales volumes were cross-checked and updated when necessary as regards verified information from sampled Union producers.

(205) During the period considered the Union consumption developed as follows:

Table 1

	2014	2015	2016	2017	RIP
Union consumption (tonnes)	598 829	596 718	607 335	622 226	634 255
<i>Index (2014 = 100)</i>	100	100	101	104	106

Source: Eurostat, FEFP and verified questionnaire replies

(206) During the period considered, Union consumption increased by 5,9 %.

### 4.3. Imports into the Union from the PRC

#### 4.3.1. Volume and market share

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

Table 2

Imports from the PRC	2014	2015	2016	2017	RIP
Volume of imports (tonnes)	339 011	329 004	339 731	346 026	356 667
<i>Index (2014 = 100)</i>	100	97	100	102	105
Market share (%)	56,6 %	55,1 %	55,9 %	55,6 %	56,2 %

Source: Eurostat

(208) The volume of total imports from the PRC increased by 5 % over the period considered and amounted to 356 667 tonnes during the review investigation period. The imports, although still at a high level, have decreased since the imposition of the provisional anti-dumping measures in November 2012. The market share of Chinese imports has seen a similar decrease since the original investigation, fluctuating only slightly during the period considered and remained relatively stable at 56,2 % during the RIP. It can be reasonably assumed that the decrease and current stabilization of the market shares is the result of the anti-dumping measures in force.

#### 4.3.2. Price and price undercutting

(209) Over the period considered the price of imports from the PRC into the Union developed as follows:

Table 3

Imports from the PRC	2014	2015	2016	2017	RIP
Average import price (EUR/tonne)	1 626	1 922	1 855	1 827	1 791
<i>Index (2014 = 100)</i>	100	118	114	112	110

Source: Eurostat

(210) Over the period considered the prices of Chinese imports increased by 10 %, from 1 626 EUR/tonne to 1 791 EUR/tonne. This is the average import price per tonne of all imports of the product concerned and therefore, the trend could be affected by changes in the product mix.

- (211) A comparison of sales prices on the Union market was made between the weighted average sales prices of the sampled Union producers to independent customers on the Union market and the weighted average prices of the sampled exporting producers from the PRC. The relevant sales prices of the Union producers were adjusted where necessary to an ex-works level, i.e. excluding freight costs in the Union, commission costs and after deduction of discounts and rebates.
- (212) In its comments, the CCCLA claimed that Chinese producers sell only generic products while Union producers sell high end and branded products. <sup>(143)</sup>
- (213) In the original investigation, Union industry prices had been adjusted to account for differences in quality, level of trade and branding. On quality, it had been concluded that from a consumer perspective, lower-grade quality products compete with A-grade quality products on the Union market. As a consequence, prices of lower-grades products had been adjusted to A-grade level prices. <sup>(144)</sup>
- (214) A similar adjustment was however not done in the current review investigation. It was found that the sampled Chinese and Union producers sell at A, B or AB-grade quality levels. The Chinese producers did produce lower-grade quality products (C-grade and lower), but these were not exported to the Union during the review investigation period. Union producers also produced lower-grade quality products, but either exported these products to third countries, or sold them at very low prices to charities or as waste products. In the latter case, these sales and prices were not included in the calculations.
- (215) The difference in quality between A, B and AB-grade quality levels is marginal as compared to the difference with lower levels (C-grade and further). In addition, such grading is not universal or based on any industry wide standards but is rather company specific. This means that one producer could label a product as A-grade quality, which another company would have labelled B-grade quality if produced in their own factory. The investigation showed that in some cases, a Union producer sold the same product with the same specifications and physical characteristics to the same client as a Chinese producer, while not necessarily attributing it the same quality grade in their internal production system. Given that no objective distinction could be made between A, B and AB-grade quality products, products with this qualification were put in the same quality category. This means that Union and Chinese producers sold similar quality level products on the Union market during the review investigation period. The Commission, therefore, concluded that no quality-related adjustment was necessary.
- (216) Adjustments were also done in the original investigation to account for differences in level of trade. At the time, the sampled Chinese producers sold their products almost exclusively at the level of wholesalers, while on the EU side sales were also made at retail and other levels. As this difference in distribution chains affected the price levels, Union prices were adjusted to take this into account. <sup>(145)</sup>
- (217) However, in the current review investigation, both the sampled Chinese producers as well as the sampled Union producers made the majority of their sales to wholesalers and distributors, but also a significant number of sales to retailers and others. In addition, the investigation established that any price differences noted between the levels of trade did not follow a logical trend. It was therefore concluded that, in light of comparable levels of trade and a lack of clear link between level of trade and price setting, there was no need to adjust Union industry prices on this basis.
- (218) In the original investigation, adjustments were also done to neutralize a price element linked to branding. At that time it was found that the Chinese exporting producers did not sell branded products but rather 'private label' or generic products, whereas EU producers sold a mix of mostly branded and also generic products. As branded products are normally perceived by customers to signify a certain prestige, assured quality and design, they command higher market prices than generic products, despite having the same physical and technical characteristics. To neutralize this price effect, an adjustment was done to Union industry prices. <sup>(146)</sup>

<sup>(143)</sup> 13 July 2018, no. t18.007913.

<sup>(144)</sup> Regulation 1072/2012, recitals (61) and (116) (OJ L 318, 15.11.2012, p. 28).

<sup>(145)</sup> Regulation 1072/2012, recitals (98) and (116) (OJ L 318, 15.11.2012, p. 28).

<sup>(146)</sup> Regulation 1072/2012, recitals (99) and (116) (OJ L 318, 15.11.2012, p. 28).

- (219) In the current review investigation, however, the situation has changed from the original one. The sampled Chinese producers do not sell only generic products but also branded products, while the EU sampled producers currently sell more non-branded than branded products. Moreover, the investigation has shown that Chinese and Union producers in some cases even sell identical products with the same specifications and physical characteristics to the same clients (see recital (215)).
- (220) The Commission thus rejected the CCCLA claim that Chinese producers sell only generic products while Union producers sell high end and branded products.
- (221) More generally and as also explained in the original investigation, the additional value of a branded product cannot generally be exactly quantified as it depends on many different factors, such as customer perception, brand recognition and other non-quantifiable factors.<sup>(147)</sup> For some of the sampled Union producers, for example, the branded products may have an additional value due to name recognition in some specific regions or Member States, while the same branded products might be less known in other regions or Member States. For these sampled Union producers, therefore, the branding of products does not necessarily translate into higher prices.
- (222) In its comments the CCCLA also argued that a high SG&A percentage (i.e. 40 %) is indicative of the sale of branded products.<sup>(148)</sup> However, the verified data of the sampled Union producers show a level of SG&A for a Union producer that sells almost exclusively branded products, which is almost the same as the SG&A for a Union producer that sells almost exclusively non-branded products. Indeed, all four sampled producers have a similar level of SG&A, which is also similar to or lower than the sampled Chinese producers as well as that in the audited accounts of the Turkish company used in this investigation. For these producers, therefore, the branding of products does not translate into higher SG&A (see also recitals (146) and (148)).
- (223) Therefore, given the mix of branded and generic products sold by the sampled Chinese and Union producers and in light of an appreciation of the companies' position on the Union market, pricing strategy and SG&A levels, the claims made by the CCCLA were rejected and the Commission concluded it was not necessary to adjust Union prices for branding.
- (224) Union industry prices were compared with prices charged by the Chinese exporting producers adjusted to CIF Union frontier. The CIF prices were then adjusted upwards for the post-importation costs, i.e. customs clearance, handling and loading costs, conventional customs duties and anti-dumping duties. On the basis of the above methodology, the comparison showed that during the review investigation period the imports of the product concerned undercut the Union industry's prices by 17,7 %.

#### 4.4. Economic situation of the Union industry

- (225) Pursuant to Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports on the Union industry included an evaluation of all economic factors and indices having a bearing on the state of the Union industry during the period considered.
- (226) The macroeconomic indicators (production, production capacity, capacity utilisation, sales volume, market share, employment, productivity, magnitude of dumping margins and recovery from the effects of past dumping) were assessed at the level of the whole Union industry. The assessment was based on the information provided by the applicant, cross-checked with the verified questionnaire replies of the sampled Union producers and available official statistics.
- (227) The analysis of microeconomic indicators (stocks, sale prices, profitability, cash flow, investments, return on investments, ability to raise capital, wages and cost of production) was carried out at the level of the sampled Union producers. The assessment was based on their information which was duly verified during on-spot verification visits.

<sup>(147)</sup> Regulation 1072/2012, recitals (100) and (116) (OJ L 318, 15.11.2012, p. 28).

<sup>(148)</sup> 13 July 2018, no. t18.007913.

- (228) The Union industry is highly fragmented but can largely be divided into two segments: SMEs and larger companies. For some microeconomic indicators (sales price, cash flow, investments, average wage per employee, stocks, profitability and cost of production) the results of the sampled companies have been weighted in accordance with the share of the segment to which that specific company belonged. For this purpose the specific weight in terms of production volumes of each segment in the total ceramic tableware sector were used (42 % SMEs, 58 % large companies). This ensured that the situation of the smaller companies was properly reflected to prevent an imbalance in the overall injury analysis due to the results of large companies.

#### 4.4.1. Macroeconomic indicators

##### 4.4.1.1. Production, production capacity and capacity utilisation

- (229) Over the period considered the production, the production capacity and the capacity utilisation of the Union industry developed as follows:

Table 5

	2014	2015	2016	2017	RIP
Production volume (tonnes)	262 848	262 054	269 112	279 742	279 339
<i>Index (2014 = 100)</i>	100	100	102	106	106
Production capacity (tonnes)	324 072	320 268	328 074	330 382	330 234
<i>Index (2014 = 100)</i>	100	99	101	102	102
Capacity utilisation	81 %	82 %	82 %	85 %	85 %
<i>Index (2014 = 100)</i>	100	101	101	104	104

Source: Eurostat, FEFP and verified questionnaire replies

- (230) It follows that there was a modest increase in production volume (by 6 %) and capacity (by 2 %), while the capacity utilisation increased by 4 % over the period considered, to reach 85 %.

##### 4.4.1.2. Sales volume and market share in the Union

- (231) Over the period considered sales in the Union by the Union industry developed as follows:

Table 6

	2014	2015	2016	2017	RIP
Sales volume (tonnes)	177 174	179 226	185 419	196 355	196 484
<i>Index (2014 = 100)</i>	100	101	105	111	111
Market share (of Union consumption)	29,6 %	30,0 %	30,5 %	31,6 %	31,0 %

Source: Eurostat, FEFP and verified questionnaire replies

- (232) The sales by the Union industry on the Union market increased by 11 % during the period considered. At the same time, the market share of the Union industry increased only slightly from 29,6 % to 31,0 %.

## 4.4.1.3. Employment and productivity

- (233) Over the period considered the employment level and productivity within the Union industry developed as follows:

Table 7

	2014	2015	2016	2017	RIP
Number of employees (full time equivalent)	25 093	25 396	26 290	26 650	26 578
<i>Index (2014 = 100)</i>	100	101	105	106	106
Productivity (tonnes per employee)	10,5	10,3	10,2	10,5	10,5
<i>Index (2014 = 100)</i>	100	99	98	100	100

Source: Eurostat, FEFP and verified questionnaire replies

- (234) The employment increased throughout the period considered and rose by 6 %. Productivity of the Union producers' workforce, measured as output (tonnes) per person employed per year, remained stable during the period considered. This is partly due to the efforts of Union industry in the previous years to respond to the pressure derived from dumped imports from the PRC at that time, already increasing productivity to high levels before the period considered.

## 4.4.1.4. Growth

- (235) During the period considered the production of the Union industry increased by 6 % while the volume of sales to unrelated customers in the Union increased by 11 %. This is explained by a decrease in export sales by Union industry. Union industry managed to benefit from growth on the Union market even though those production facilities that had been more affected by the lower capacity utilisation observed during the original investigation are still in a recovery phase. The Union industry market shares remained stable during the whole period considered.

## 4.4.1.5. Magnitude of dumping and recovery from past dumping

- (236) Dumping continued during the review investigation period at a significant level, as explained under section 3 above. It is noted that Chinese producers undercut Union industry's sales prices to a significant extent.
- (237) During the period considered the Union industry showed signs of recovery from the effects of past dumping. Union production, sales and market share have all gone up since the original investigation, while the volume of imports from the PRC and their market share have decreased. However, Union production, capacity and employment, although increasing, are still not at the level achieved in 2008, which was the start of the period considered in the original investigation. At that time, Union industry was already considered to be in a fragile state due to the huge volumes of low-priced Chinese imports on the Union market that had increased strongly in 2002-2004. <sup>(149)</sup> The Commission, therefore, concluded that the Union industry has regained some economic space but has still not fully recovered from the significant past dumping.

<sup>(149)</sup> Regulation 1072/2012, Recital (134) (OJ L 318, 15.11.2012, p. 28).

## 4.4.2. Microeconomic indicators

## 4.4.2.1. Stocks

(238) Over the period considered stocks levels of the sampled Union producers developed as follows:

Table 8

	2014	2015	2016	2017	RIP
Stocks (tonnes)	1 428	1 162	1 027	943	1 111
<i>Index (2014 = 100)</i>	100	81	72	66	78

Source: Verified questionnaire replies of the sampled Union producers

(239) The level of closing stocks of the Union industry decreased in absolute terms by 22 % over the period considered. This is, however, not a crucial indicator given that the industry under examination basically works on orders.

## 4.4.2.2. Average unit sales prices in the Union and cost of production

4.4.2.3. Over the period considered average unit sales prices to unrelated customers in the Union and average unit cost of production of the sampled Union producers developed as follows:

Table 9

	2014	2015	2016	2017	RIP
Average unit sales price to unrelated parties (EUR/tonne)	3 445	3 565	3 623	3 948	3 853
<i>Index (2014 = 100)</i>	100	104	105	115	112
Unit cost of production (EUR/tonne)	3 398	3 533	3 614	3 810	3 806
<i>Index (2014 = 100)</i>	100	104	106	112	112

Source: Verified questionnaire replies of the sampled Union producers

(240) Over the period considered, both Union industry prices as well as cost of production increased by 12 %.

## 4.4.2.4. Profitability, cash flow, investments, return on investment, ability to raise capital and wages

Table 10

	2014	2015	2016	2017	RIP
Profitability	2,6 %	2,1 %	2,0 %	3,7 %	2,2 %
Cash flow (EUR)	2 107 318	2 984 427	2 901 471	2 997 551	2 538 972
<i>Index (2014 = 100)</i>	100	142	138	142	121
Investments (EUR)	1 951 136	3 011 663	8 085 548	2 409 646	2 439 185
<i>Index (2014 = 100)</i>	100	154	414	124	125

	2014	2015	2016	2017	RIP
Return on investments (net assets)	14,1 %	11,4 %	12,3 %	10,5 %	9,3 %
<i>Index (2014 = 100)</i>	100	81	87	74	66
Annual labour costs per employee (EUR)	21 497	21 527	22 138	22 347	22 576
<i>Index (2014 = 100)</i>	100	100	103	104	105

Source: Verified questionnaire replies of the sampled Union producers

- (241) The Commission established the profitability of the sampled Union producers by expressing the pre-tax net profit of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales. During the period considered the profitability of the Union industry fluctuated between its lowest point at 2,0 % in 2016 and its highest point of 3,7 % in 2017, while it fell by 0,4 percentage points between 2014 and the review investigation period. It remained below the profitability achieved during the original investigation (3,5 % during that investigation period). In addition, profitability remained well below the target profit that was considered acceptable in the original investigation (i.e. 6,0 %).
- (242) During the period considered the cash flow of the Union industry increased by 21 %, while the level of investments increased by 25 %. However, it should be noted that this increase is due to the results of only one of the (large) companies, which was able to make significant investments in order to expand its production capacity. The investments of the other three companies had remained stable or decreased significantly.
- (243) Between 2014 and the review investigation period, the drop of the return on investment, defined as the profit in percentage of the net book value of investments, was higher than the shrinkage of profitability throughout the period considered. During the same period the average wage levels increased slightly but less than the unit cost of production.

#### 4.5. Conclusion

- (244) The injury analysis shows that the situation of the Union industry improved in the period considered. Most of the injury indicators showed a positive trend. The fact that the Union industry benefited from the measures is illustrated, inter alia, by an increase in production, Union sales volumes, market share and higher selling prices. On the basis of the above, the Commission therefore concluded that the Union industry did not suffer material injury within the meaning of Article 3(5) of the basic Regulation during the review investigation period.
- (245) Nevertheless, even if the Union industry has started recovering from the past injury, this recovery advances only slowly. In light of the significant import volumes continuing to come in from the PRC at prices, which undercut the Union industry prices, the Union industry's profitability remained below the target profit, indicating that it is in a fragile situation.
- (246) After disclosure, the CCCLA claimed that the Commission should not have come to this conclusion since almost all economic indicators in the investigation show a positive trend. However, as explained in recitals (244) and (245) above, the Union industry has recovered only slowly since the introduction of the measures. At the time of the imposition of the measures following the original investigation, the Union industry suffered material injury and was thus in severe economic difficulties. The positive trend of the Union industry's macro indicators in relative terms should therefore not be seen in isolation from this weakened starting point in absolute figures at the beginning of the current investigation. In combination with the consistently low profitability of Union industry as well the continuing significant imports from the PRC the Union industry is not yet in a situation where it could easily withstand the recurrence of dumped imports in increased volumes. This is also shown in section 5.4 below, where a simulation was done to assess what would happen to the Union industry if the measures were allowed to lapse. The Commission therefore rejected this claim.



## 5. LIKELIHOOD OF RECURRENCE OF INJURY

- (247) As determined in section 3 above, Chinese imports were made at dumped price levels during the review investigation period and a likelihood of continuation of dumping was found should the measures be allowed to lapse. In accordance with Article 11(2) of the basic Regulation, the Commission therefore examined the likelihood of material injury to recur should measures against the PRC be allowed to lapse.
- (248) To establish the likelihood of recurrence of injury, the following elements were analysed: the production capacity and spare capacities in the PRC, the attractiveness of the Union market, including the existence of anti-dumping or countervailing measures on ceramic tableware and kitchenware in other third countries, the price behaviour of Chinese exporting producers in other third country markets, and the effect on the Union industry's situation.

### 5.1. Production capacity and spare capacities in the PRC

- (249) The PRC is by far the largest global exporter of ceramic table- and kitchenware in the world. It accounts for around 70 % of the world's overall exports. The EU is the PRC's most important export market, based on total value exported during the past years. <sup>(150)</sup>
- (250) As explained in recitals (180) to (182) above, producers in the PRC have significant production capacities and, as a result, spare capacity which largely exceeds the total Union consumption during the review investigation period.

### 5.2. The attractiveness of the Union market

- (251) The Union market is world-wide the largest importer of the product concerned. <sup>(151)</sup> Furthermore, as shown in Table 1 above, Union consumption of the product concerned increased between 2014 and the RIP from 598 829 tonnes to 634 255 tonnes. This shows that Union consumption remains strong and is increasing. The Union market, because of its relatively large size and steadily-increasing consumption, remains attractive for Chinese exporting producers.
- (252) Before the imposition of the measures, Chinese imports represented in average around half a million tonnes, while they amounted to 356 667 tonnes during the review investigation period. The fact that Chinese imports, although at a lower level (see Table 2 above), did not stop after the imposition of measures confirms that Chinese exporting producers find the Union market attractive and continue selling on the Union market.
- (253) In addition, trade defence measures against Chinese ceramic tableware and kitchenware exports are in place in other third countries, illustrating the same type of pricing behaviour as observed for Chinese exports to the Union. <sup>(152)</sup> These trade defence measures will make it more difficult for Chinese exporting producers to export to these markets and further increases the attractiveness of the Union market where these exports may be redirected.

### 5.3. Price behaviour of Chinese exporting producers

- (254) Another element demonstrating the attractiveness of the Union market is the pricing strategy of Chinese exporting producers. Export prices of the sampled Chinese exporting producers of the product concerned are higher for third country markets than for the Union (see recital (188) above). In addition, they are still significantly below the prices of the Union industry on the Union market. In the RIP, the average price of exports of Chinese exporting producers to the Union market was significantly lower than the Union industry's price on the Union market. In fact, Chinese imports have almost the lowest prices on the Union market. The few third countries which export at lower prices account for only a fraction of the total imports into the Union, with a growth potential which is not comparable with the size of the production facilities in the PRC. However, it can be reasonably expected that the Chinese imports will enter the Union market at lower prices should the measures be allowed to lapse, taking fully or partially into account the amount of current anti-dumping duties.

<sup>(150)</sup> Based on statistics extracted from GTA.

<sup>(151)</sup> Based on statistics extracted from GTA.

<sup>(152)</sup> Including anti-dumping and/or safeguard measures by Argentina, Armenia, Brazil, Colombia, Egypt, India, Indonesia, Russia, Turkey and the Ukraine. See: WTO website for Semi-annual reports under Article 16.4 of the Agreement from the various countries.

- (255) Given the high spare capacities in the PRC, the attractiveness of the Union market and the pricing behaviour of Chinese exporting producers as summarised above in recitals (249) to (254), it is likely that significant volumes of low-priced ceramic tableware and kitchenware would be available for sale/redirection to the Union already in the short term in case the measures were allowed to lapse.

#### 5.4. Effect on the Union industry situation

- (256) In order to assess the likely impact of an increase in low-priced Chinese imports on the Union industry, the Commission first looked at a potential loss of market share. It simulated what the impact would be if the exporting producers from the countries concerned would increase their exports to the Union to obtain a share of the Union market similar to that achieved in the original investigation period, that is, before the imposition of the measures. This would amount to a decrease in production by the sampled Union producers of 12 000 tons, and an increase in imports from the PRC by 67 800 tons. As established in the original investigation, such a volume of dumped imports of the product concerned was sufficient to cause material injury to the Union industry.
- (257) For this analysis, the Commission considered that the prices of exporting producers from the PRC and those of the Union industry would remain the same as during the RIP. Furthermore the Commission assumed that the increased Chinese market share would most likely be taken from the Union industry. Table 11 below shows that the market share lost by the PRC since the imposition of anti-dumping measures went for the most part to the Union industry.

Table 11

		Original IP	RIP
Market share Union industry		20,9 %	31,0 %
Market share PRC		66,9 %	56,2 %
Market share other third countries		12,2 %	12,8 %

- (258) Losing sales volume would lead to lower capacity utilisation rates and an increase in the average cost of production. This in turn would lead to a deterioration of the financial situation of the Union industry and to a decrease of its profitability which was already significantly below the target profit and decreased throughout the period considered. Applying a conservative estimate of the decrease in production for the sampled Union producers (half of the possible decrease established in recital (256) at 6 000 tons), the impact analysis showed that in case the measures are repealed the Union industry would suffer losses of 8,5 % on turnover.
- (259) In the alternative, the Union industry might decide to lower its price levels in an attempt to keep its sales volume and market share. This would lead to a further deterioration of its financial situation and, given the already low profitability level achieved in the RIP, would render the Union industry even more loss-making.

#### 5.5. Conclusion

- (260) On the basis of the above, the Commission concluded that the repeal of the measures on the imports from the PRC would likely result in a recurrence of material injury to the Union industry.

### 6. UNION INTEREST

#### 6.1. Introduction

- (261) In accordance with Article 21 of the basic Regulation, the Commission examined whether the maintenance of the original measures would not be against the interest of the Union as a whole. The determination of the Union interest was based on an appreciation of the various interests involved, that is those of the Union industry on the one hand, and those of importers and other parties on the other hand.

- (262) The Commission recalled that, in the original investigation, the adoption of measures was considered not to be against the interest of the Union. Furthermore, the fact that the present investigation is a review, thus analysing a situation in which anti-dumping measures have already been in place, allows for the assessment of any undue negative impact on the parties concerned by the current anti-dumping measures.
- (263) On that basis, it was examined whether, despite the conclusions on the likelihood of a recurrence of dumping and recurrence of injury, compelling reasons existed which would lead to the conclusion that it is not in the Union interest to maintain measures in this particular case.

## 6.2. Interest of the Union industry

- (264) The investigation showed that should the measures expire, this would likely have a significant negative effect on the Union industry. The Union industry's situation would quickly deteriorate in terms of lower sales volumes and sales prices resulting in a strong decrease in profitability. On the other hand, the continuation of measures would allow the Union industry to further recover from past injury caused by dumped imports, and to exploit its potential on a Union market that is not affected by unfair trading practices.
- (265) One non-sampled Union producer and the CCCLA claimed that a prolongation of the measures would not be in the interest of Union producers. According to them, the anti-dumping duties did not provide relief for Union producers, who were not able to increase their market share, sales volumes or their prices. In addition, the anti-dumping duties have increased the price of the products sourced by Union producers in order to complete their portfolio.
- (266) However, the injury analysis in section 4 above (recitals (198) to (245)) has shown that in fact, the Union industry is recovering from the injurious effects of the dumped imports from the PRC. Indeed, Union industry had experienced a market share increase from 20,9 % in the original investigation period (2011) to 31 % in the RIP (see table 11 above), while the sampled Union producers were able to increase their sales volumes from 152 095 tonnes in 2011 to 196 484 in the RIP, and prices from EUR 3 615 per tonne in 2011 to 3 853 in the RIP. This increase in price was possible despite the increase in the cost of imports of products from the PRC by some of the Union producers in order to diversify their portfolio. The Commission therefore rejected this claim.
- (267) After disclosure the CCCLA pointed to the fact that one Union producer did not support the imposition of the measures. It claimed that that producer did not manufacture all types of the ceramic tableware and kitchenware, it completes its product portfolio with the products coming from the PRC and is dependent on reliable source of supply from the PRC. Similarly, CCCLA argued that the two sampled importers claim that Union producers are not capable of delivering the quality and quantities required on the Union market, due to for example high labour costs. This, according to the CCCLA, shows the complementarity between Union products and Chinese imports causing a mixture of interests among the Union industry.
- (268) The Commission noted these arguments coincide with the position of two unrelated importers, which the Commission assessed below in recitals (271) to (277). In the absence of any new elements, they can therefore not influence the balancing of interests under the Union interest test.
- (269) Based on the above it was concluded that maintaining the anti-dumping measures in force is in the interest of the Union industry.

## 6.3. Interest of unrelated importers

- (270) At the initiation stage of this investigation, 45 known unrelated importers were contacted and invited to cooperate. As mentioned in recital (13) above, fifteen importers came forward of which two were included in the sample and filled in the questionnaire form.
- (271) Both companies were against the continuation of the measures, mainly because they believed that Union producers are not capable of delivering the quality and quantities required on the Union market. In their view, Union production is less flexible and less adaptable to changing demand than Chinese production. The companies were also asked what would happen if the duties were to be repealed. To this, both companies replied that, in their opinion, Chinese prices would increase while in parallel Union customers would demand lower prices. This, according to the sampled companies, would lead to a decrease in the margins for the importers.

- (272) In the original investigation it was found that, given the importers' profits and sources of supply, the imposition of measures would not have a significantly adverse impact on the situation of unrelated importers of the product concerned. In the current investigation the analysis of the verified data showed that the product concerned accounts for on average [30 - 40 %] of company sales. <sup>(153)</sup> Both cooperating importers were profitable during the review investigation period, with an average profit on the product concerned from the PRC of [5 - 9 %]. <sup>(154)</sup> Although the average profit was slightly lower than the [6 - 10 %] of the original investigation, it was still healthy. Both companies source their imports of the product concerned almost exclusively from the PRC.
- (273) One non-sampled unrelated importer claimed that Union producers do not supply the products this particular importer sources from the PRC. This importer's products are mainly decorated items that are individually packed in gift-boxes with the same design the porcelain has. According to the importer, the production of these items is very labour intensive which, due to the higher labour costs in the Union, would be too costly for Union industry to produce.
- (274) However, the investigation has revealed that Union producers are capable of producing and indeed do produce decorated items packaged individually or in small sets in decorated gift boxes. Nevertheless, for those importers that source their items from the PRC, the continuation of measures could have a negative effect on their financial situation. However, as such items are of a specialized nature and therefore account for only a small portion of all imports from the PRC, this effect is not expected to have a significant negative effect on the overall situation of importers. The Commission therefore rejected this claim.
- (275) The non-sampled unrelated importer also claimed that there was no differentiation between decorated and white porcelain products in the investigation. According to the importer, there are only a few little potteries that produce decorated items in the Union which means imports from the PRC are necessary to fulfil this type of demand.
- (276) Yet, the investigation has shown that of all products sold during the RIP by the sampled Union producers, 30 % were decorated items. In addition, the comparison between Chinese and Union products was done on the basis of product type, where products were grouped along the following characteristics: type of ceramic material, type of ware, basic shape, decoration and glazing. This means that, for example, only decorated items produced in the Union were compared with decorated items imported from the PRC, coloured glazed items were compared with coloured glaze and white items with white items. Accordingly, this claim cannot be accepted.
- (277) Given the healthy profit margins of the sampled importers despite the imposition of anti-dumping measures, in combination with the fact that importers believe their profit margins would be reduced if the measures were to be repealed, it is likely that maintaining the existing measures would not have a significant adverse effect on the activity of unrelated importers of the product concerned.

#### 6.4. Interest of consumers (households)

- (278) Like in the original investigation, no parties representing the interests of end-users such as associations of consumers came forward or cooperated in any way in the investigation. In the continued absence of cooperation from users in the present expiry review, the Commission considered that its findings in the original investigation are still valid and that the continuation of measures would not negatively affect consumers such as households, or at least not to any significant extent.
- (279) One non sampled Union producer claimed that repeal of the measures would provide relief to Union consumers as i.) the product is a final product which means the duties have a direct impact on consumers, ii.) Chinese products reply to a different demand than Union products and iii.) due to the high market share of the PRC on the Union market, a large proportion of Union consumers is affected by the duties. The CCCLA also claimed that as ceramic tableware and kitchenware is a final product, the anti-dumping duties hit Union consumers directly as there is no intermediate industry to absorb the costs. One non-sampled unrelated importer noted the anti-dumping duties has indeed induced them to increase their consumer prices.

<sup>(153)</sup> Percentages given in ranges for confidentiality reasons.

<sup>(154)</sup> Percentages given in ranges for confidentiality reasons.

(280) It is very unlikely that the repeal of the measures would result in the lowering of prices with the full amount of the duties. Even in the unlikely scenario where consumer prices would be lowered with the full amount of the current anti-dumping duties, the yearly cost of consumers would be reduced by less than EUR 1. <sup>(155)</sup> As the measures cannot be deemed to have had a significant impact on consumers, the Commission rejected these claims.

#### 6.5. Balancing of interests

(281) In balancing the different competing interests in the Union, the Commission gave special consideration to the need to eliminate the trade distorting effects of injurious dumping and to restore effective competition. On the one hand the continuation of measures would protect an important Union industry, including many small and medium enterprises, against a likely recurrence of injury. On the other hand, the assessment of the situation of importers and users as well as the lack of cooperation from users show that the continuation of measures would clearly not have a disproportionate negative impact on them.

#### 6.6. Conclusion

(282) Therefore, the Commission concluded that there are no compelling reasons of Union interest against the maintenance of the definitive anti-dumping measures on imports of tableware and kitchenware originating in the PRC.

### 7. ANTI-DUMPING MEASURES

(283) It follows from the above that the anti-dumping measures applicable to imports of ceramic tableware and kitchenware originating in China should be maintained.

(284) A company may request the application of individual anti-dumping duty rates if it changes subsequently the name of its entity. The request must be addressed to the Commission. <sup>(156)</sup> The request must contain all the relevant information enabling to demonstrate that the change does not affect the right of the company to benefit from the duty rate which applies to it. If the change of name of the company does not affect its right to benefit from the duty rate which applies to it, a notice informing about the change of name will be published in the Official Journal of the European Union.

(285) In view of Article 109 of Regulation 2018/1046 <sup>(157)</sup>, when an amount is to be reimbursed following a judgment of the Court of Justice of the European Union, the interest to be paid should be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the Official Journal of the European Union on the first calendar day of each month.

(286) The Committee established by Article 15(1) of Regulation (EU) 2016/1036 did not deliver an opinion.

HAS ADOPTED THIS REGULATION:

#### Article 1

1. A definitive anti-dumping duty is imposed on imports of ceramic tableware and kitchenware, excluding ceramic condiment or spice mills and their ceramic grinding parts, ceramic coffee mills, ceramic knife sharpeners, ceramic sharpeners, ceramic kitchen tools to be used for cutting, grinding, grating, slicing, scraping and peeling, and cordierite ceramic pizza-stones of a kind used for baking pizza or bread, currently falling under CN codes ex 6911 10 00, ex 6912 00 21, ex 6912 00 23, ex 6912 00 25 and ex 6912 00 29 (TARIC codes 6911 10 00 90, 6912 00 21 11, 6912 00 21 91, 6912 00 23 10, 6912 00 25 10 and 6912 00 29 10) and originating in the People's Republic of China.

<sup>(155)</sup> This calculation was done during the original investigation, based on import volumes and values, the anti-dumping duties and the number of households in the Union at that time. See recital (217), Regulation 412/2013 (OJ L 131, 15.5.2013, p. 24).

<sup>(156)</sup> European Commission, Directorate-General for Trade, Directorate H, Rue de la Loi 170, 1040 Brussels, Belgium.

<sup>(157)</sup> Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

2. The rate of the definitive anti-dumping duty applicable to the net, free-at-Union-frontier price, before duty, of the product described in paragraph 1 and manufactured by the companies listed below, shall be as follows:

Company	Duty (%)	TARIC Additional Code
Hunan Hualian China Industry Co., Ltd; Hunan Hualian Ebillion China Industry Co., Ltd; Hunan Liling Hongguanyao China Industry Co., Ltd; Hunan Hualian Yuxiang China Industry Co., Ltd.	18,3 %	B349
Guangxi Sanhuan Enterprise Group Holding Co., Ltd	13,1 %	B350
CHL Porcelain Industries Ltd	23,4 %	B351
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; Linyi Silver Phoenix Ceramics Co., Ltd; Linyi Chunguang Ceramics Co., Ltd; Linyi Zefeng Ceramics Co., Ltd.	17,6 %	B352
Guangxi Province Beiliu City Laotian Ceramics Co., Ltd	22,9 %	B353
Companies listed in Annex I	17,9 %	See Annex I
All other companies	36,1 %	B999

3. The application of the individual anti-dumping duty rates specified for the companies mentioned in paragraph 2 shall be conditional upon presentation to the customs authorities of the Member States of a valid commercial invoice, which shall be conform to the requirements set out in Annex II. If no such invoice is presented, the duty applicable to 'All other companies' shall apply.

4. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

#### Article 2

The Commission may amend the Annex by adding a new exporting producer to the cooperating companies not included in the sample of the original investigation and thus subject to the weighted average duty of 17,9 %, where any new exporting producer in the People's Republic of China provides sufficient evidence to the Commission that:

- it did not export to the Union the product described in paragraph 1 in the period between 1 October 2010 and 30 September 2011 (original investigation period),
- it is not related to any exporter or producer in the People's Republic of China which is subject to the anti-dumping measures imposed by this Regulation, and
- it has actually exported to the Union the product concerned or it has entered into an irrevocable contractual obligation to export a significant quantity to the Union after the end of the original investigation period.

#### Article 3

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 12 July 2019.

*For the Commission*  
*The President*  
Jean-Claude JUNCKER

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## ANNEX I

**Co-operating Chinese exporting producers not sampled**

Company	TARIC Additional Code
Amaida Ceramic Product Co., Ltd.	B357
Asianera Porcelain (Tangshan) Ltd.	B358
Beiliu Changlong Ceramics Co., Ltd.	B359
Beiliu Chengda Ceramic Co., Ltd.	B360
Beiliu City Heyun Building Materials Co., Ltd.	B361
Beiliu Jiasheng Porcelain Co., Ltd.	B362
Beiliu Quanli Ceramic Co., Ltd.	B363
Beiliu Shimin Porcelain Co., Ltd.	B364
Beiliu Windview Industries Ltd.	B365
Cameo China (Fengfeng) Co., Ltd.	B366
Changsha Happy Go Products Developing Co., Ltd.	B367
Chao An Huadayu Craftwork Factory	B368
Chaoan County Fengtang Town HaoYe Ceramic Fty	B369
Chao'an Lian Xing Yuan Ceramics Co., Ltd.	B370
Chaoan Oh Yeah Ceramics Industrial Co., Ltd.	B371
Chaoan Shengyang Crafts Industrial Co., Ltd	B372
Chaoan Xin Yuan Ceramics Factory	B373
Chao'an Yongsheng Ceramic Industry Co., Ltd.	B374
Chaozhou Baodayi Porcelain Co., Ltd.	B375
Chaozhou Baode Ceramics Co., Ltd,	B376
Chaozhou Baolian Ceramics Co., Ltd.	B377
Chaozhou Big Arrow Ceramics Industrial Co., Ltd.	B378
Chaozhou Boshifa Ceramics Making Co., Ltd.	B379
Chaozhou Cantake Craft Co., Ltd.	B380
Chaozhou Ceramics Industry and Trade General Corp.	B381
Chaozhou Chaofeng Ceramic Making Co., Ltd.	B382
Chaozhou Chengxi Jijie Art & Craft Painted Porcelain Fty.	B383
Chaozhou Chengxinda Ceramics Industry Co., Ltd.	B384
Chaozhou Chenhui Ceramics Co., Ltd.	B385
Chaozhou Chonvson Ceramics Industry Co., Ltd.	B386



Company	TARIC Additional Code
Chaozhou Daxin Arts & Crafts Co., Ltd.	B387
Chaozhou DaXing Ceramics Manufactory Co., Ltd	B388
Chaozhou Dayi Ceramics Industries Co., Ltd.	B389
Chaozhou Dehong Ceramics Making Co., Ltd.	B390
Chaozhou Deko Ceramic Co., Ltd.	B391
Chaozhou Diamond Ceramics Industrial Co., Ltd.	B392
Chaozhou Dongyi Ceramics Co., Ltd.	B393
Chaozhou Dragon Porcelain Industrial Co., Ltd.	B394
Chaozhou Fairway Ceramics Manufacturing Co., Ltd.	B395
Chaozhou Feida Ceramics Industries Co., Ltd.	B396
Chaozhou Fengxi Baita Ceramics Fty.	B397
Chaozhou Fengxi Dongtian Porcelain Fty. No.2	B398
Chaozhou Fengxi Fenger Ceramics Craft Fty.	B399
Chaozhou Fengxi Hongrong Color Porcelain Fty.	B400
Chaozhou Fengxi Jiaxiang Ceramic Manufactory	B401
Guangdong GMT Foreign Trade Service Corp.	B402
Chaozhou Fengxi Shengshui Porcelain Art Factory	B403
Chaozhou Fengxi Zone Jinbaichuan Porcelain Crafts Factory	B404
Chaozhou Fromone Ceramic Co., Ltd.	B405
Chaozhou Genol Ceramics Manufacture Co., Ltd.	B406
Chaozhou Good Concept Ceramics Co., Ltd.	B407
Chaozhou Grand Collection Ceramics Manufacturing Co. Ltd.	B408
Chaozhou Guangjia Ceramics Manufacture Co., Ltd.	B409
Chaozhou Guidu Ceramics Co., Ltd.	B410
Chaozhou Haihong Ceramics Making Co., Ltd.	B411
Chaozhou Hengchuang Porcelain Co., Ltd.	B412
Chaozhou Henglibao Porcelain Industrial Co., Ltd.	B413
Chaozhou Hongbo Ceramics Industrial Co., Ltd.	B414
Chaozhou Hongjia Ceramics Making Co., Ltd.	B415
Chaozhou Hongye Ceramics Manufactory Co., Ltd.	B416
Chaozhou Hongye Porcelain Development Co., Ltd.	B417
Chaozhou Hongyue Porcelain Industry Co., Ltd.	B418
Chaozhou Hongzhan Ceramic Manufacture Co., Ltd.	B419

Company	TARIC Additional Code
Chaozhou Hua Da Ceramics Making Co., Ltd.	B420
Chaozhou Huabo Ceramic Co., Ltd.	B421
Chaozhou Huade Ceramics Manufacture Co., Ltd.	B422
Chaozhou Huashan Industrial Co., Ltd.	B423
Chaozhou Huayu Ceramics Co., Ltd.	B424
Chaozhou Huazhong Ceramics Industries Co., Ltd.	B425
Chaozhou Huifeng Ceramics Craft Making Co., Ltd.	B426
Chaozhou J&M Ceramics Industrial Co., Ltd.	B427
Chaozhou Jencymic Co., Ltd.	B428
Chaozhou Jiahua Ceramics Co., Ltd.	B429
Chaozhou Jiahuabao Ceramics Industrial Co., Ltd.	B430
Chaozhou JiaHui Ceramic Factory	B431
Chaozhou Jiaye Ceramics Making Co., Ltd.	B432
Chaozhou Jiayi Ceramics Making Co., Ltd.	B433
Chaozhou Jiayu Ceramics Making Co., Ltd.	B434
Chaozhou Jin Jia Da Porcelain Industry Co., Ltd.	B435
Chaozhou Jingfeng Ceramics Craft Co., Ltd.	B436
Guangdong Jinqiangyi Ceramics Co., Ltd.	B437
Chaozhou Jinxin Ceramics Making Co., Ltd	B438
Chaozhou Jinyuanli Ceramics Manufacture Co., Ltd.	B439
Chaozhou Kaibo Ceramics Making Co., Ltd.	B440
Chaozhou Kedali Porcelain Industrial Co., Ltd.	B441
Chaozhou King's Porcelain Industry Co., Ltd.	B442
Chaozhou Kingwave Porcelain & Pigment Co., Ltd.	B443
Chaozhou Lemontree Tableware Co., Ltd.	B444
Chaozhou Lianfeng Porcelain Co., Ltd.	B445
Chaozhou Lianjun Ceramics Co., Ltd.	B446
Chaozhou Lianyu Ceramics Co., Ltd.	B447
Chaozhou Lianyuan Ceramic Making Co., Ltd.	B448
Chaozhou Lisheng Ceramics Co., Ltd.	B449
Chaozhou Loving Home Porcelain Co., Ltd.	B450
Chaozhou Maocheng Industry Dve. Co., Ltd.	B451
Chaozhou MBB Porcelain Factory	B452

Company	TARIC Additional Code
Guangdong Mingyu Technology Joint Stock Limited Company	B453
Chaozhou New Power Co., Ltd.	B454
Chaozhou Ohga Porcelain Co.,Ltd.	B455
Chaozhou Oubo Ceramics Co., Ltd.	B456
Chaozhou Pengfa Ceramics Manufactory Co., Ltd.	B457
Chaozhou Pengxing Ceramics Co., Ltd.	B458
Chaozhou Qingfa Ceramics Co., Ltd.	B459
Chaozhou Ronghua Ceramics Making Co., Ltd.	B460
Guangdong Ronglibao Homeware Co., Ltd.	B461
Chaozhou Rui Cheng Porcelain Industry Co., Ltd.	B462
Chaozhou Rui Xiang Porcelain Industrial Co., Ltd.	B463
Chaozhou Ruilong Ceramics Co., Ltd.	B464
Chaozhou Sanhua Ceramics Industrial Co., Ltd.	B465
Chaozhou Sanming Industrial Co., Ltd.	B466
Chaozhou Santai Porcelain Co., Ltd.	B467
Chaozhou Shuntai Ceramic Manufactory Co., Ltd.	B468
Chaozhou Songfa Ceramics Co.,Ltd.	B469
Chaozhou Sundisk Ceramics Making Co., Ltd.	B470
Chaozhou Teemjade Ceramics Co., Ltd.	B471
Chaozhou Thyme Ceramics Co., Ltd.	B472
Chaozhou Tongxing Huajiang Ceramics Making Co., Ltd	B473
Guangdong Totye Ceramics Industrial Co., Ltd.	B474
Chaozhou Trend Arts & Crafts Co., Ltd.	B475
Chaozhou Uncommon Craft Industrial Co., Ltd.	B476
Chaozhou Weida Ceramic Making Co., Ltd.	B477
Chaozhou Weigao Ceramic Craft Co., Ltd.	B478
Chaozhou Wingoal Ceramics Industrial Co., Ltd.	B479
Chaozhou Wood House Porcelain Co., Ltd.	B480
Chaozhou Xiangye Ceramics Craft Making Co., Ltd.	B481
Chaozhou Xin Weicheng Co., Ltd.	B482
Chaozhou Xincheng Ceramics Co., Ltd.	B483
Chaozhou Xinde Ceramics Craft Factory	B484
Chaozhou Xingguang Ceramics Co., Ltd.	B485

Company	TARIC Additional Code
Chaozhou Wenhui Porcelain Co., Ltd.	B486
Chaozhou Xinkai Porcelain Co., Ltd.	B487
Chaozhou Xinlong Porcelain Industrial Co., Ltd.	B488
Chaozhou Xinyu Porcelain Industrial Co., Ltd.	B489
Chaozhou Xinyue Ceramics Manufacture Co., Ltd.	B490
Chaozhou Yangguang Ceramics Co., Ltd.	B491
Chaozhou Yaran Ceramics Craft Making Co., Ltd.	B492
Chaozhou Yinhe Ceramics Co., Ltd.	B493
Chaozhou Yongsheng Ceramics Manufacturing Co., Ltd.	B494
Chaozhou Yongxuan Domestic Ceramics Manufactory Co., Ltd.	B495
Chaozhou Yu Ri Ceramics Making Co., Ltd.	B496
Chaozhou Yuefeng Ceramics Ind. Co., Ltd.	B497
Chaozhou Yufeng Ceramics Making Factory	B498
Chaozhou Zhongxia Porcelain Factory Co., Ltd.	B499
Chaozhou Zhongye Ceramics Co., Ltd.	B500
Dabu Yongxingxiang Ceramics Co., Ltd.	B501
Dapu Fuda Ceramics Co., Ltd.	B502
Dapu Taoyuan Porcelain Factory	B503
Dasheng Ceramics Co., Ltd. Dehua	B504
De Hua Hongshun Ceramic Co., Ltd.	B505
Dehua Hongsheng Ceramic Co., Ltd.	B506
Dehua Jianyi Porcelain Industry Co., Ltd.	B507
Dehua Kaiyuan Porcelain Industry Co., Ltd.	B508
Dehua Ruyuan Gifts Co., Ltd.	B509
Dehua Xinmei Ceramics Co., Ltd.	B510
Dongguan Kennex Ceramic Ltd.	B511
Dongguan Shilong Kyocera Co., Ltd.	B512
Dongguan Yongfuda Ceramics Co., Ltd.	B513
Evershine Fine China Co., Ltd.	B514
Excellent Porcelain Co., Ltd.	B515
Fair-Link Limited (Xiamen)	B516
Far East (Boluo) Ceramics Factory Co., Ltd.	B517
Far East (chaozhou) Ceramics Factory Co., Ltd.	B518

Company	TARIC Additional Code
Fengfeng Mining District Yuhang Ceramic Co. Ltd. ('Yuhang')	B519
Foshan Metart Company Limited	B520
Fujian Jiashun Arts&Crafts Corp. LTD	B521
Fujian Dehua Chengyi Ceramics Co., Ltd.	B522
Fujian Dehua Five Continents Ceramic Manufacturing Co., Ltd.	B523
Fujian Dehua Fujue Ceramics Co., Ltd.	B524
Fujian Dehua Full Win Crafts Co., Ltd.	B525
Fujian Dehua Fusheng Ceramics Co., Ltd.	B526
Fujian Dehua Gentle Porcelain Co., Ltd.	B527
Fujian Dehua Guanhong Ceramic Co., Ltd.	B528
Fujian Dehua Guanjie Ceramics Co., Ltd.	B529
Fujian Dehua Hiap Huat Koyo Toki Co., Ltd.	B530
Fujian Dehua Hongda Ceramics Co., Ltd.	B531
Fujian Dehua Hongsheng Arts & Crafts Co., Ltd.	B532
Fujian Dehua Hongyu Ceramic Co., Ltd.	B533
Fujian Dehua Huachen Ceramics Co., Ltd.	B534
Fujian Dehua Huaxia Ceramics Co., Ltd.	B535
Fujian Dehua Huilong Ceramic Co., Ltd.	B536
Fujian Dehua Jingyi Ceramics Co., Ltd.	B537
Fujian Dehua Jinhua Porcelain Co., Ltd.	B538
Fujian Dehua Jinzhu Ceramics Co., Ltd.	B539
Fujian Dehua Lianda Ceramic Co., Ltd.	B540
Fujian Dehua Myinghua Ceramics Co., Ltd.	B541
Fujian Dehua Pengxin Ceramics Co., Ltd.	B542
Fujian Dehua Rongxin Ceramic Co., Ltd.	B543
Fujian Dehua Shisheng Ceramics Co., Ltd.	B544
Fujian Dehua Will Ceramic Co., Ltd.	B545
Fujian Dehua Xianda Ceramic Factory	B546
Fujian Dehua Xianghui Ceramic Co., Ltd.	B547
Fujian Dehua Xingye Ceramic Co., Ltd.	B548
Fujian Dehua Yonghuang Ceramic Co., Ltd.	B549
Fujian Dehua Yousheng Ceramics Co., Ltd.	B550
Fujian Dehua You-Young Crafts Co., Ltd.	B551

Company	TARIC Additional Code
Fujian Dehua Zhenfeng Ceramics Co., Ltd.	B552
Fujian Dehua Zhennan Ceramics Co., Ltd.	B553
Fujian Jackson Arts and Crafts Co., Ltd.	B554
Fujian Jiamei Group Corporation	B555
Profit Cultural & Creative Group Corporation	B556
Fujian Province Dehua County Beatrot Ceramic Co., Ltd.	B557
Fujian Province Yongchun County Foreign Processing and Assembling Corporation	B558
Fujian Quanzhou Longpeng Group Co., Ltd.	B559
Fujian Quanzhou Shunmei Group Co., Ltd.	B560
Fung Lin Wah Group	B561
Ganzhou Koin Structure Ceramics Co., Ltd.	B562
Global Housewares Factory	B563
Guangdong Baofeng Ceramic Technology Development Co., Ltd.	B564
Guangdong Bening Ceramics Industries Co., Ltd.	B565
Guangdong Daye Porcelain Co., Ltd.	B566
Guangdong Dongbao Group Co., Ltd.	B567
Guangdong Huaxing Ceramics Co., Ltd.	B568
Guangdong Quanfu Ceramics Ind. Co., Ltd.	B569
Guangdong Shunqiang Ceramics Co., Ltd.	B570
Guangdong Shunxiang Porcelain Co., Ltd.	B571
Guangdong Sitong Group Co., Ltd.	B572
Guangdong Songfa Ceramics Co.,Ltd.	B573
GuangDong XingTaiYi Porcelain Co., Ltd	B574
Guangdong Yutai Porcelain Co., Ltd.	B575
Guangdong Zhentong Ceramics Co., Ltd	B576
Guangxi Baian Ceramic Co. Ltd	B577
Guangxi Beiliu City Ming Chao Porcelain Co., Ltd.	B578
Guangxi Beiliu Guixin Porcelain Co., Ltd.	B579
Guangxi Beiliu Huasheng Porcelain Ltd.	B580
Guangxi Beiliu Newcentury Ceramic Llc.	B581
Guangxi Beiliu Qinglang Porcelain Trade Co., Ltd.	B582
Guangxi Beiliu Rili Porcelain Co.,Ltd.	B583
Guangxi Beiliu Xiongfa Ceramics Co., Ltd.	B584

Company	TARIC Additional Code
Guangxi Beiliu Yujie Porcelain Co., Ltd.	B585
Guangxi Beiliu Zhongli Ceramics Co., Ltd	B586
Guangxi Nanshan Porcelain Co., Ltd.	B587
Guangxi Xin Fu Yuan Co. Ltd.	B588
Guangxi Yulin Rongxing Ceramics Co., Ltd.	B589
Guangzhou Chaintime Porcelain Co., Ltd.	B590
Haofa Ceramics Co., Ltd. of Dehua Fujian	B591
Hebei Dersun Ceramic Co., Ltd.	B592
Hebei Great Wall Ceramic Co., Ltd.	B593
Henan Ruilong Ceramics Co., Ltd	B594
Henghui Porcelain Plant Liling Hunan China	B595
HuanYu Ceramic Industrial Co., Ltd. Liling Hunan China	B596
Hunan Baihua Ceramics Co., Ltd.	B597
Hunan Eka Ceramics Co., Ltd.	B598
Hunan Fungdeli Ceramics Co., Ltd.	B599
Hunan Gaofeng Ceramic Manufacturing Co., Ltd.	B600
Hunan Huari Ceramic Industry Co., Ltd	B601
Hunan Huawei China Industry Co., Ltd	B602
Hunan Huayun Ceramics Factory Co., Ltd	B603
Hunan Liling Tianxin China Industry Ltd.	B604
Hunan Provincial Liling Chuhua Ceramic Industrial Co., Ltd.	B605
Hunan Quanxiang Ceramics Corp. Ltd.	B606
Hunan Rslee Ceramics Co., Ltd	B607
Hunan Taisun Ceramics Co., Ltd.	B608
Hunan Victor Imp. & Exp. Co., Ltd	B609
Hunan Wing Star Ceramic Co., Ltd.	B610
Hunan Xianfeng Ceramic Industry Co.,Ltd	B611
Jiangsu Gaochun Ceramics Co., Ltd.	B612
Jiangsu Yixing Fine Pottery Corp., Ltd.	B613
Jiangxi Global Ceramic Co., Ltd.	B614
Jiangxi Kangshu Porcelain Co.,Ltd.	B615
Jingdezhen F&B Porcelain Co., Ltd.	B616
Jingdezhen Yuanjing Porcelain Industry Co., Ltd.	B617

Company	TARIC Additional Code
Jiyuan Jukang Xinxing Ceramics Co., Ltd.	B618
Joyye Arts & Crafts Co., Ltd.	B619
Junior Star Ent's Co., Ltd.	B620
K&T Ceramics International Co., Ltd.	B621
Kam Lee (Xing Guo) Metal and Plastic Fty. Co., Ltd.	B622
Karpery Industrial Co., Ltd. Hunan China	B623
Kilncraft Ceramics Ltd.	B624
Lian Jiang Golden Faith Porcelain Co., Ltd.	B625
Liling Gaojia Ceramic Industry Co., Ltd	B626
Liling GuanQian Ceramic Manufacture Co., Ltd.	B627
Liling Huahui Ceramic Manufacturing Co., Ltd.	B628
Liling Huawang Ceramics Manufacturing Co., Ltd.	B629
Liling Jiahua Porcelain Manufacturing Co., Ltd	B630
Liling Jialong Porcelain Industry Co., Ltd	B631
Liling Jiaxing Ceramic Industrial Co., Ltd	B632
Liling Kaiwei Ceramic Co., Ltd.	B633
Liling Liangsheng Ceramic Manufacture Co., Ltd.	B634
Liling Liuxingtang Ceramics Co., Ltd	B635
Liling Minghui Ceramics Factory	B636
Liling Pengxing Ceramic Factory	B637
Liling Quanhu Industries General Company	B638
Liling Rongxiang Ceramic Co., Ltd.	B639
Liling Ruixiang Ceramics Industrial Co., Ltd.	B640
Liling Santang Ceramics Manufacturing Co., Ltd.	B641
Liling Shenghua Industrial Co., Ltd.	B642
Liling Spring Ceramic Industry Co., Ltd	B643
Liling Tengrui Industrial and Trading Co.,Ltd.	B644
Liling Top Collection Industrial Co., Ltd	B645
Liling United Ceramic-Ware Manufacturing Co., Ltd.	B646
Liling Yonghe Porcelain Factory	B647
Liling Yucha Ceramics Co., Ltd.	B648
Liling Zhengcai Ceramic Manufacturing Co., Ltd	B649
Linyi Jinli Ceramics Co., Ltd.	B650



Company	TARIC Additional Code
Linyi Pengcheng Industry Co., Ltd.	B651
Linyi Wanqiang Ceramics Co., Ltd.	B652
Linyi Zhaogang Ceramics Co., Ltd.	B653
Liveon Industrial Co., Ltd.	B654
Long Da Bone China Co., Ltd.	B655
Meizhou Gaoyu Ceramics Co., Ltd.	B656
Meizhou Lianshunchang Trading Co., Ltd.	B657
Meizhou Xinma Ceramics Co., Ltd.	B658
Meizhou Yuanfeng Ceramic Industry Co., Ltd.	B659
Meizhou Zhong Guang Industrial Co., Ltd.	B660
Miracle Dynasty Fine Bone China (Shanghai) Co., Ltd.	B661
Photo USA Electronic Graphic Inc.	B662
Quanzhou Allen Light Industry Co., Ltd.	B663
Quanzhou Chuangli Craft Co., Ltd.	B664
Quanzhou Dehua Fangsheng Arts Co., Ltd.	B665
Quanzhou Haofu Gifts Co., Ltd.	B666
Quanzhou Hongsheng Group Corporation	B667
Quanzhou Jianwen Craft Co., Ltd.	B668
Quanzhou Kunda Gifts Co., Ltd.	B669
Quanzhou Yongchun Shengyi Ceramics Co., Ltd.	B670
Raoping Bright Future Porcelain Factory ('RBF')	B671
Raoping Sanrao Yicheng Porcelain Factory	B672
Raoping Sanyi Industrial Co., Ltd.	B673
Raoping Suifeng Ceramics and Glass Factory	B674
Raoping Xinfeng Yangda Colour Porcelain FTY	B675
Red Star Ceramics Limited	B676
Rong Lin Wah Industrial (Shenzhen) Co., Ltd.	B677
Ronghui Ceramic Co., Ltd Liling Hunan China	B678
Shandong Futai Ceramics Co., Ltd.	B679
Shandong Gaode Hongye Ceramics Co., Ltd.	B680
Shandong Kunlun Ceramic Co., Ltd.	B681
Shandong Zhaoding Porcelain Co., Ltd.	B682
Shantou Ceramics Industry Supply & Marketing Corp.	B683

Company	TARIC Additional Code
Sheng Hua Ceramics Co., Ltd.	B684
Shenzhen Baoshengfeng Imp. & Exp. Co., Ltd.	B685
Shenzhen Bright Future Industry Co., Ltd. ('SBF')	B686
Shenzhen Donglin Industry Co., Ltd.	B687
Shenzhen Ehome Enterprise Ltd	B688
Shenzhen Ever Nice Industry Co., Ltd.	B689
Shenzhen Fuliuyan Porcelain Co., Ltd.	B690
Shenzhen Full Amass Ind. Dev. Co. Ltd	B691
Shenzhen Fuxingjiayun Ceramics Co., Ltd.	B692
Shenzhen Good-Always Imp. & Exp. Co. Ltd	B693
Shenzhen Gottawa Industrial Ltd.	B694
Shenzhen Hiker Housewares Ltd.	B695
Shenzhen Hua Mei Industry Development Ltd	B696
Shenzhen Mingsheng Ceramic Ltd.	B697
Shenzhen Senyi Porcelain Industry Co. Ltd.	B698
Shenzhen SMF Investment Co., Ltd	B699
Shenzhen Tao Hui Industrial Co., Ltd.	B700
Shenzhen Topchoice Industries Limited	B701
Shenzhen Trueland Industrial Co., Ltd.	B702
Shenzhen Universal Industrial Co., Ltd.	B703
Shenzhen Zhan Peng Xiang Industrial Co., Ltd.	B704
Shijiazhuang Kuangqu Huakang Porcelain Co., Ltd.	B705
Shun Sheng Da Group Co., Ltd. Quanzhou Fujian	B706
Stechcol Ceramic Crafts Development (Shenzhen) Co., Ltd.	B707
Taiyu Ceramic Co., Ltd. Liling Hunan China	B708
Tangshan Beifangcidu Ceramic Group Co., Ltd.	B709
Tangshan Boyu Osseous Ceramic Co., Ltd.	B710
Tangshan Chinawares Trading Co., Ltd	B711
Tangshan Daxin Ceramics Co., Ltd.	B712
Tangshan Golden Ceramic Co., Ltd.	B713
Tangshan Haigelei Fine Bone Porcelain Co., Ltd.	B714
Tangshan Hengrui Porcelain Industry Co., Ltd.	B715
Tangshan Huamei Porcelain Co., Ltd.	B716

Company	TARIC Additional Code
Tangshan Huaxincheng Ceramic Products Co., Ltd.	B717
Tangshan Huyuan Bone China Co., Ltd.	B718
Tangshan Imperial-Hero Ceramics Co., Ltd.	B719
Tangshan Jinfangyuan Bone China Manufacturing Co., Ltd.	B720
Tangshan Keyhandle Ceramic Co., Ltd.	B721
Tangshan Longchang Ceramics Co., Ltd.	B722
Tangshan Masterwell Ceramic Co., Ltd.	B723
Tangshan Redrose Porcelain Products Co., Ltd.	B724
Tangshan Shiyu Commerce Co., Ltd.	B725
Tangshan Xueyan Industrial Co., Ltd.	B726
Tangshan Yida Industrial Corp.	B727
Tao Yuan Porcelain Factory	B728
Teammann Co., Ltd.	B729
The China & Hong Kong Resources Co., Ltd.	B730
The Great Wall of Culture Group Holding Co., Ltd Guangdong	B731
Tienshan (Handan) Tableware Co., Ltd. ('Tienshan')	B732
Topking Industry (China) Ltd.	B733
Weijian Ceramic Industrial Co., Ltd.	B734
Weiyee Ceramics Co., Ltd.	B735
Winpat Industrial Co., Ltd.	B736
Xiamen Acrobat Splendor Ceramics Co., Ltd.	B737
Xiamen Johnchina Fine Polishing Tech Co., Ltd.	B738
Xiangqiang Ceramic Manufacturing Co., Ltd. Liling City Hunan	B739
Xin Xing Xian Xinjiang Pottery Co., Ltd.	B740
Xinhua County Huayang Porcelain Co., Ltd.	B741
Xuchang Jianxing Porcelain Products Co., Ltd.	B742
Yangjiang Shi Ba Zi Kitchen Ware Manufacturing Co., Ltd.	B743
Yanling Hongyi Import N Export Trade Co., Ltd.	B744
Ying-Hai (Shenzhen) Industry Dev. Co., Ltd.	B745
Yiyang Red Star Ceramics Ltd.	B746
China Yong Feng Yuan Co., Ltd.	B747
Yongchun Dahui Crafts Co., Ltd.	B748
Yu Yuan Ceramics Co., Ltd.	B749

Company	TARIC Additional Code
Yuzhou City Kongjia Porcelain Co., Ltd.	B750
Yuzhou Huixiang Ceramics Co., Ltd.	B751
Yuzhou Ruilong Ceramics Co., Ltd.	B752
Zeal Ceramics Development Co., Ltd, Shenzhen, China	B753
Zhangjiakou Xuanhua Yici Ceramics Co., Ltd. ('Xuanhua Yici')	B754
Zhejiang Nansong Ceramics Co., Ltd.	B755
Zibo Boshan Shantou Ceramic Factory	B756
Zibo CAC Chinaware Co., Ltd.	B757
Zibo Fortune Light Industrial Products Co., Ltd.	B758
Zibo Fuxin Porcelain Co., Ltd.	B759
Zibo GaoDe Ceramic Technology & Development Co., Ltd.	B760
Zibo Hongda Ceramics Co., Ltd.	B761
Zibo Jinxin Light Industrial Products Co., Ltd.	B762
Zibo Kunyang Ceramic Corporation Limited	B763
Liling Taiyu Porcelain Industries Co., Ltd	B956
Liling Xinyi Ceramics Industry Ltd.	B957
Gemmi (Shantou) Industrial Co., Ltd.	B958
Jing He Ceramics Co., Ltd	B959
Fujian Dehua Huamao Ceramics Co., Ltd	C303
Fujian Dehua Jiawei Ceramics Co., Ltd	C304
Fujian Dehua New Qili Arts Co., Ltd	C305
Quanzhou Dehua Hengfeng Ceramics Co., Ltd	C306
Fujian Dehua Sanfeng Ceramics Co. Ltd	C485

## ANNEX II

A declaration signed by an official of the entity issuing the commercial invoice, in the following format, must appear on the valid commercial invoice referred to in Article 1(3):

- (1) The name and function of the official of the entity issuing the commercial invoice.
  - (2) The following declaration: 'I, the undersigned, certify that the (volume) of ceramic tableware and kitchenware sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in (country concerned). I declare that the information provided in this invoice is complete and correct.'
  - (3) Date and signature.
-

## DECISIONS

### DECISION (EU) 2019/1199 TAKEN BY COMMON ACCORD BETWEEN THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES

of 13 June 2019

#### on the location of the seat of the European Labour Authority

THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 341 thereof,

Whereas:

- (1) Regulation (EU) 2019/1149 of the European Parliament and of the Council <sup>(1)</sup> establishes the European Labour Authority.
- (2) The location of the seat of the European Labour Authority should be determined,

HAVE ADOPTED THIS DECISION:

#### *Article 1*

The European Labour Authority shall have its seat in Bratislava.

#### *Article 2*

This Decision shall enter into force on the date of its publication in the *Official Journal of the European Union*.

#### *Article 3*

This Decision shall be published in the *Official Journal of the European Union*.

Done at Luxembourg, 13 June 2019.

*The President*

M.C. BUDÁI

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<sup>(1)</sup> Regulation (EU) 2019/1149 of the European Parliament and of the Council of 20 June 2019 establishing a European Labour Authority, amending Regulations (EC) No 883/2004, (EU) No 492/2011, and (EU) 2016/589 and repealing Decision (EU) 2016/344 (OJ L 186, 11.7.2019, p. 21).

**DECISION (EU, Euratom) 2019/1200 OF THE REPRESENTATIVES OF THE GOVERNMENTS OF  
THE MEMBER STATES**  
**of 10 July 2019**  
**appointing Judges to the General Court**

THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 19 thereof,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 254 and 255 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 106a(1) thereof,

Whereas:

- (1) The term of office of 23 Judges of the General Court will expire on 31 August 2019.
- (2) Appointments should therefore be made in order to fill to those posts for the period from 1 September 2019 to 31 August 2025.
- (3) Mr Roberto MASTROIANNI and Ms Ornella PORCHIA have been nominated for a first term as Judges of the General Court to replace Mr Guido BERARDIS and Mr Ezio PERILLO, respectively.
- (4) The panel set up under Article 255 of the Treaty on the Functioning of the European Union has given an opinion on the suitability of these candidates to perform the duties of Judge of the General Court.
- (5) It is therefore appropriate to appoint Mr Roberto MASTROIANNI to replace Mr Guido BERARDIS and Ms Ornella PORCHIA to replace Mr Ezio PERILLO for a first term as Judges of the General Court,

HAVE ADOPTED THIS DECISION:

*Article 1*

The following are hereby appointed Judges to the General Court for the period from 1 September 2019 to 31 August 2025:

- Mr Roberto MASTROIANNI,
- Ms Ornella PORCHIA.

*Article 2*

This Decision shall enter into force on the day of its publication in the *Official Journal of the European Union*.

Done at Brussels, 10 July 2019.

*The President*

M. RISLAKKI

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**DECISION (EU, Euratom) 2019/1201 OF THE REPRESENTATIVES OF THE GOVERNMENTS OF  
THE MEMBER STATES****of 10 July 2019****appointing a Judge to the Court of Justice**

THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 19 thereof,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 253 and 255 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 106a(1) thereof,

Whereas:

- (1) Under Articles 5 and 7 of Protocol No 3 on the Statute of the Court of Justice of the European Union, and following the resignation of Mr Carl Gustav FERNLUND as of 7 October 2019, a judge should be appointed to the Court of Justice for the remainder of the term of office of Mr Carl Gustav FERNLUND, which runs until 6 October 2024.
- (2) Mr Nils WAHL has been nominated for the vacant post.
- (3) The panel set up by Article 255 of the Treaty on the Functioning of the European Union has given an opinion on the suitability of this candidate to perform the duties of Judge of the Court of Justice,

HAVE ADOPTED THIS DECISION:

*Article 1*

Mr Nils WAHL is hereby appointed Judge to the Court of Justice for the period from 7 October 2019 to 6 October 2024.

*Article 2*

This Decision shall enter into force on the day of its publication in the *Official Journal of the European Union*.

Done at Brussels, 10 July 2019.

*The President*

M. RISLAKKI

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**COMMISSION IMPLEMENTING DECISION (EU) 2019/1202****of 12 July 2019****on the harmonised standards for equipment and protective systems intended for use in potentially explosive atmospheres drafted in support of Directive 2014/34/EU of the European Parliament and of the Council**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardisation, amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council and repealing Council Decision 87/95/EEC and Decision No 1673/2006/EC of the European Parliament and of the Council <sup>(1)</sup>, and in particular Article 10(6) thereof,

Whereas:

- (1) In accordance with Article 12 of Directive 2014/34/EU of the European Parliament and of the Council <sup>(2)</sup>, products which are in conformity with harmonised standards or parts thereof the references of which have been published in the *Official Journal of the European Union*, are to be presumed to be in conformity with the essential health and safety requirements set out in Annex II to that Directive covered by those standards or parts thereof.
- (2) By letter BC/CEN/46-92 – BC/CLC/05-92 of 12 December 1994, the Commission made a request to CEN and CENELEC for the drafting and revision of harmonised standards in support of Directive 94/9/EC of the European Parliament and of the Council <sup>(3)</sup>. That Directive was replaced by Directive 2014/34/EU without changing the essential health and safety requirements set out in Annex II to Directive 94/9/EC.
- (3) In particular, CEN and CENELEC were requested to draft a standard on the design and testing of equipment for use in potentially explosive atmospheres – part 0: General requirements as indicated in Chapter I.1 of the standardisation programme agreed between CEN and CENELEC and the Commission and attached to request BC/CEN/46-92 – BC/CLC/05-92. CEN and CENELEC were also requested to revise the existing standards with a view to aligning them to the essential health and safety requirements of Directive 94/9/EC.
- (4) On the basis of the request BC/CEN/46-92 – BC/CLC/05-92, CENELEC revised standard ‘EN 60079-0:2012 + A11:2013 Explosive atmospheres - Part 0: Equipment - General requirements (IEC 60079-0:2011 Modified + IS1:2013)’. As a result of that revision CENELEC submitted to the Commission standard ‘EN IEC 60079-0:2018: Explosive atmospheres - Part 0: Equipment - General requirements (IEC 60079-0:2017)’.
- (5) The Commission together with CENELEC has assessed whether the standard ‘EN IEC 60079-0:2018’ drafted by CENELEC complies with the request BC/CEN/46-92 – BC/CLC/05-92.
- (6) The standard ‘EN IEC 60079-0:2018’ satisfies the requirements which it aims to cover and which are set out in Annex II to Directive 2014/34/EU. It is therefore appropriate to publish the reference of that standard in the *Official Journal of the European Union*.
- (7) Standard ‘EN IEC 60079-0:2018’ replaces standard ‘EN 60079-0:2012’. It is therefore necessary to withdraw the reference to standard ‘EN 60079-0:2012’ from the *Official Journal of the European Union*. In order to give manufacturers sufficient time to prepare for application of the revised standard, it is necessary to defer the withdrawal of the reference to standard ‘EN 60079-0:2012’.
- (8) Compliance with a harmonised standard confers a presumption of conformity with the corresponding essential requirements set out in Union harmonisation legislation from the date of publication of the reference of such standard in the *Official Journal of the European Union*. This Decision should therefore enter into force on the day of its publication,

<sup>(1)</sup> OJ L 316, 14.11.2012, p. 12

<sup>(2)</sup> Directive 2014/34/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to equipment and protective systems intended for use in potentially explosive atmospheres (OJ L 96, 29.3.2014, p. 309).

<sup>(3)</sup> Directive 94/9/EC of the European Parliament and the Council of 23 March 1994 on the approximation of the laws of the Member States concerning equipment and protective systems intended for use in potentially explosive atmospheres (OJ L 100, 19.4.1994, p. 1).

HAS ADOPTED THIS DECISION:

*Article 1*

The reference to harmonised standard 'EN IEC 60079-0:2018, Explosive atmospheres - Part 0: Equipment - General requirements (IEC 60079-0:2017)' drafted in support of Directive 2014/34/EU is hereby published in the *Official Journal of the European Union*.

*Article 2*

The reference to harmonised standard 'EN 60079-0:2012 + A11:2013, Explosive atmospheres - Part 0: Equipment - General requirements (IEC 60079-0:2011 Modified + IS1:2013)' drafted in support of Directive 2014/34/EU is hereby withdrawn from the *Official Journal of the European Union* as from 6 July 2021.

*Article 3*

This Decision shall enter into force on the day of its publication in the *Official Journal of the European Union*.

Done at Brussels, 12 July 2019.

*For the Commission*

*The President*

Jean-Claude JUNCKER

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**COMMISSION IMPLEMENTING DECISION (EU) 2019/1203****of 12 July 2019****determining that a temporary suspension of the preferential customs duty is not appropriate for imports of bananas originating in Guatemala**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 20/2013 of the European Parliament and of the Council of 15 January 2013 implementing the bilateral safeguard clause and the stabilisation mechanism for bananas of the Agreement establishing an Association between the European Union and its Member States, on the one hand, and Central America on the other <sup>(1)</sup>, and in particular Article 15(2) thereof,

Whereas:

- (1) The Agreement establishing an Association between the European Union and its Member States, on the one hand, and Central America, on the other <sup>(2)</sup> ('the Agreement') introduced a stabilisation mechanism for bananas, which provisionally started applying to the Central American countries during 2013 and to Guatemala specifically on 1 August 2013.
- (2) The stabilisation mechanism for bananas, which is implemented by Regulation (EU) No 20/2013, establishes that once a defined trigger volume for imports of fresh bananas (heading 0803 90 10 of the European Union Combined Nomenclature of 1 January 2012) is met by one of the countries concerned, the Commission adopts an implementing act, to either temporarily suspend the preferential customs duty applied to imports of fresh bananas from that country or determine that such suspension is not appropriate.
- (3) On 13 May 2019, imports into the Union of fresh bananas originating in Guatemala reached 78 133 tonnes and exceeded the defined trigger volume for imports of 72 500 tonnes as set out in the Annex to Regulation (EU) No 20/2013.
- (4) Pursuant to Article 15(3) of Regulation (EU) No 20/2013, the Commission considered the impact of the imports concerned on the situation of the Union market for bananas in order to decide whether or not the preferential customs duty should be suspended. The Commission examined the effect of the imports concerned on the Union price level, the development of imports from other sources and the overall stability of the Union market for fresh bananas.
- (5) Imports of fresh bananas from Guatemala represented 4,5 % of the imports into the Union of fresh bananas subject to the banana stabilisation mechanism, when the defined trigger volume for imports for 2019 was exceeded.
- (6) At the same time, imports from large exporting countries with whom the Union also has a Free Trade Agreement, notably Colombia, Ecuador and Costa Rica amounted to 26 %, 30 % and 27 % of their defined trigger volumes for imports respectively. So far, especially imports from Costa Rica were lower than in previous years. The 'unused' quantities under the stabilisation mechanism, which amount to approximately 4,5 million tonnes, are significantly higher than the total imports from Guatemala which amount to 78 133 tonnes.
- (7) The import price of fresh bananas from Guatemala was on average 630 EUR/tonne for the first quarter of 2019, which is 3,4 % lower than the average price of 652 EUR/tonne for the other imports of fresh bananas into the Union in the same period. In the first quarter of 2018, the average import price of bananas from Guatemala was 21,7 % lower than the other prices.
- (8) In this context, even if the average wholesale price of 970 EUR/tonne for bananas of all origins in the first quarter of 2019 was 7,6 % lower than the corresponding price in the first quarter of 2018, that is to say 970 EUR/tonne in the first quarter of 2019 compared to 1 050 EUR/tonne in the first quarter of 2018, the average wholesale price of Union produced bananas in the first quarter of 2019 was 9,4 % higher than in the first quarter of 2018, that is to say 1 111 EUR/tonne in the former case compared to 1 007 EUR/tonne in the latter case.

<sup>(1)</sup> OJ L 17, 19.1.2013, p. 13.

<sup>(2)</sup> Agreement establishing an Association between the European Union and its Member States, on the one hand, and Central America on the other (OJ L 346, 15.12.2012, p. 3).

- (9) Since the imports of bananas from Guatemala are small, they have not had an impact on the Union banana market price. There is therefore, neither an indication that the stability of the Union market has been disturbed by the imports of fresh bananas from Guatemala in excess of the defined annual trigger import volume, nor any indication that the excess had any significant impact on the situation of Union producers.
- (10) There is, moreover, no indication of a threat of serious deterioration in the Union market or of serious deterioration in the economic situation of the outermost regions of the Union in April 2019.
- (11) The suspension of the preferential customs duty on imports of bananas originating in Guatemala therefore does not appear to be appropriate at this stage.
- (12) It should be recalled that in 2018, imports from Guatemala exceeded the defined annual trigger import volume on 10 September and that, by the end of that year, they reached a level of 150 thousand tonnes. The Commission however, concluded in its subsequent analysis that neither those imports nor other imports from countries subject to the stabilisation mechanism caused disturbance on the Union market.
- (13) Given that the yearly trigger volume is exceeded already in May 2019, even though the total imports from Guatemala into the Union market are low, the Commission will continue its monitoring in this regard and may adopt measures at the later stage if appropriate.
- (14) Pursuant to Article 14(4) of Regulation (EU) No 20/2013 this Decision should enter into force as a matter of urgency,

HAS ADOPTED THIS DECISION:

*Article 1*

The temporary suspension of preferential customs duty on imports of fresh bananas classified under heading 0803 90 10 of the European Union Combined Nomenclature and originating in Guatemala is not appropriate.

*Article 2*

This Decision shall enter into force on the day of its publication in the *Official Journal of the European Union*.

Done at Brussels, 12 July 2019.

*For the Commission*  
*The President*  
Jean-Claude JUNCKER

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**COMMISSION IMPLEMENTING DECISION (EU) 2019/1204****of 12 July 2019****concerning the applicability of Directive 2014/25/EU of the European Parliament and of the Council to contracts awarded for certain activities related to the provision of certain postal services and other services than postal services in Croatia***(notified under document C(2019) 5194)***(Only the Croatian text is authentic)****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC <sup>(1)</sup>, and in particular Article 35(3) thereof,

After consulting the Advisory Committee for Public Contracts,

Whereas:

**I. FACTS**

- (1) On 7 December 2018, Hrvatska pošta ('Croatian Post', hereinafter referred to as 'the Applicant') submitted to the Commission by email a request <sup>(2)</sup> pursuant to Article 35(1) of Directive 2014/25/EU (hereinafter referred to as 'the Request'). In accordance with Article 35(2) of that Directive, the Commission informed Croatia thereof by email of 7 February 2019. Croatia replied by email of 26 February 2019. The Commission requested additional information to the Applicant on 16 May 2019 and the Applicant's responses were received on 17 May 2019 and on 21 May 2019. Moreover, the Commission requested additional information to the Croatian authorities on 24 May 2019 with a deadline for reply on 31 May 2019 and the Croatian authorities response was received on 11 June 2019.
- (2) The Request concerns certain postal services as well as certain services other than postal services, as referred to in Article 13(1) of Directive 2014/25/EU, provided by the Applicant in the territory of Croatia. The services concerned are described as follows in the Request:

Postal services:

- (a) express parcel delivery services consisting of clearance, sorting, transporting and delivering of parcels with added value (e.g. faster delivery time than standard delivery time; time certain delivery) on the domestic market;
- (b) express parcel delivery services consisting of clearance, sorting, transporting and delivering of parcels with added value on the international market;
- (c) delivering of press and newspapers, magazines and books to customers on the domestic market.

The last category concerns other services than postal services, namely the mass distribution of unaddressed printed advertising, marketing or publicity material on the domestic market.

- (3) The Request was not accompanied by a reasoned and substantiated position adopted by an independent national authority that is competent in relation to the activities concerned, which thoroughly analyses the condition for the applicability of Article 34(1) of Directive 2014/25/EU to the activities concerned, in accordance with paragraphs 2 and 3 of that Article. In accordance with point 1 of Annex IV to Directive 2014/25/EU, the Commission has to adopt an Implementing Decision on the Request within 105 working days. The initial deadline expires on 23 May 2019 <sup>(3)</sup>. This deadline was extended by the Commission with the agreement of the Applicant until 4 July 2019 and it was further suspended, in accordance with second paragraph of Annex IV to Directive 2014/25/EU, until 12 July 2019.

<sup>(1)</sup> OJ L 94, 28.3.2014, p. 243.

<sup>(2)</sup> The request complies with Article 1(1) of Commission Implementing Decision (EU) 2016/1804 of 10 October 2016 on the detailed rules for the application of Article 34 and 35 of Directive 2014/25/EU of the European Parliament and of the Council on procurement by entities operating in the water, energy, transport and postal services sectors (OJ L 275, 12.10.2016, p. 39).

<sup>(3)</sup> OJ C 69, 22.2.2019, p. 6.

- (4) On 13 June 2019, the Applicant withdrew the Request in so far as it extends to the market for delivery of press and newspapers, magazines and books to customers on the domestic market. Apart from this, the Request was maintained in respect to the other services listed under recital 2 above.

## II. LEGAL FRAMEWORK

- (5) Directive 2014/25/EU applies to the award of contracts for the pursuit of activities related to postal services and other services than postal services on condition that the latter services are provided by an entity which also provides postal services within the meaning of Directive 2014/25/EU, unless the activity is exempted pursuant to Article 34 of that Directive.
- (6) Under Directive 2014/25/EU, contracts intended to enable the performance of one of the activities to which the Directive applies are not to be subject to the Directive if, in the Member State in which the activity is carried out, it is directly exposed to competition on markets to which access is unrestricted. Direct exposure to competition is assessed on the basis of objective criteria, which may include the characteristics of the products or services concerned, the existence of alternative products or services considered to be substitutable on the supply side or demand side, the prices and the actual or potential presence of more than one supplier of the products or provider of the services in question.

## III. ASSESSMENT

### 3.1. Unrestricted access to the market

- (7) Access to a market is deemed to be unrestricted if the Member State concerned has implemented and applied the relevant Union legislation opening a given sector or a part of it to competition. That legislation is listed in Annex III to Directive 2014/25/EU, which includes, as regards postal services, Directive 97/67/EC of the European Parliament and of the Council <sup>(4)</sup>.
- (8) As confirmed by Croatia <sup>(5)</sup>, and on the basis of the information available to the Commission, Croatia has implemented <sup>(6)</sup> and applies Directive 97/67/EC. Consequently access to the relevant market is deemed to be unrestricted in accordance with Article 34(3) of Directive 2014/25/EU.

### 3.2. Direct exposure to competition

- (9) Direct exposure to competition should be evaluated on the basis of various indicators, none of which are, *per se*, decisive. In respect of the markets concerned by this Decision, the market share of the main players on a given market constitutes one criterion which should be taken into account. As the conditions vary for the different activities that are concerned by the Request, the examination of the competitive situation should take into account the different situations in the relevant markets.
- (10) This Decision is without prejudice to the application of the rules on competition and other fields of Union law. In particular, the criteria and the methodology used to assess direct exposure to competition under Article 34 of Directive 2014/25/EU are not necessarily identical to those used to perform an assessment under Article 101 or 102 of the Treaty on the Functioning of the European Union or under Council Regulation (EC) No 139/2004 <sup>(7)</sup>. This has been confirmed by the General Court <sup>(8)</sup>.
- (11) The aim of this Decision is to establish whether the activities concerned by the Request are exposed to a level of competition, on markets to which access is not restricted within the meaning of Article 34 of Directive 2014/25/EU, which will ensure that, also in the absence of the discipline brought about by the detailed procurement rules set out in Directive 2014/25/EU, procurement for the pursuit of the activities concerned by the Request will be carried out in a transparent, non-discriminatory manner based on criteria allowing purchasers to identify the solution which overall is the economically most advantageous one.

<sup>(4)</sup> Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service (OJ L 15, 21.1.1998, p. 14).

<sup>(5)</sup> See Croatia's email of 26 February 2019.

<sup>(6)</sup> National transposition act: Postal Services Act (Official Gazette No 144/12, 153/13 and 78/15).

<sup>(7)</sup> Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (OJ L 24, 29.1.2004, p. 1).

<sup>(8)</sup> Judgment of 27 April 2016, Österreichische Post AG v Commission, T-463/14, EU:T:2016:243, para 28.

- (12) In this context, it is important to mention that, in the markets concerned, not all market players are subject to public procurement rules. Therefore, the companies which are not subject to those rules, when acting on those markets, would normally have the possibility to exert competitive pressure on the market players which are subject to public procurement rules <sup>(9)</sup>.

3.2.1.1. *Express parcel delivery services (domestic express parcel delivery services and international express parcel delivery services)*

- (13) The Commission has held in previous decisions <sup>(10)</sup> that the market for mail delivery services can be segmented into express and standard (also referred to as 'deferred') delivery services. This segmentation takes into account that express services are faster and more reliable than a standard service, that each of those services requires a different infrastructure and that express services comprise additional value added service features, such as track and trace services, and are usually also more expensive.
- (14) The Commission has also made in a previous decision <sup>(11)</sup> a distinction between domestic and international parcel delivery services. The Commission held that domestic parcel delivery services are provided by companies operating national distribution networks whereas international parcel delivery consists in collecting parcels to be transported and delivered abroad.
- (15) The Applicant takes the view that the relevant product markets for express parcel delivery services correspond to the two types of postal services regarding packages which are covered by the Request and are set out in points (a) and (b) of recital 2. This approach is in line with Commission previous practice.
- (16) Based on recitals 13, 14 and 15, for the purposes of the assessment under this Decision and without prejudice to competition law, it can be considered that the relevant product markets for express parcel delivery services are the market for domestic express parcel delivery services and the market for international express parcel delivery services.
- (17) As regards the geographical market, in its previous practice <sup>(12)</sup>, the Commission took the view that the markets for express parcel delivery, irrespective of the distinction between domestic and international express delivery services, are national in scope. The Applicant's position is in line with Commission practice.
- (18) The Applicant provides both domestic and international parcel delivery services in Croatia.
- (19) In the absence of any indication of a different scope of the geographic market, for the purposes of the assessment under this Decision and without prejudice to competition law, the geographic scope of the domestic and international express parcel delivery services can be considered to cover the territory of Croatia.

3.2.1.1. Domestic express parcel delivery services - market analysis

- (20) Regarding the assessment whether the activity is directly exposed to competition, it can be established that there are over 20 operators <sup>(13)</sup> active in the domestic express parcel delivery services, including international market operators, such as DHL and GLS. According to available information, the market share of the Applicant in this segment of the market was [...] <sup>(14)</sup> % in 2015, [...] % in 2016 and [...] % in 2017 in terms of volume <sup>(15)</sup> and was of [...] % in 2015, [...] % in 2016 and [...] % in 2017 in terms of value <sup>(16)</sup>.

<sup>(9)</sup> On the markets subject to this Request, only the Applicant is a contracting entity in the sense of Article 4(1) of Directive 2014/25/EU and, hence, is subject to public procurement rules.

<sup>(10)</sup> Commission Implementing Decision 2013/154/EU of 22 March 2013 exempting certain services in the postal sector in Hungary from the application of Directive 2004/17/EC of the European Parliament and of the Council coordinating the procurement procedures of entities operating in the water, energy, transport and postal services (OJ L 86, 26.3.2013, p. 22). See also Commission Decision 90/456/EEC of 1 August 1990 concerning the provision in Spain of international express courier services (OJ L 233, 28.8.1990, p. 19) and COMP/M.5152 of 21 April 2009 — Posten AB/Post Danmark A/S; Commission Decision of 30 January 2013 in Case COMP/M.6570 — UPS/TNT Express.

<sup>(11)</sup> Case COMP/M.5152 — Posten AB/Post Danmark A/S, of 21.4.2009, para 54.

<sup>(12)</sup> Case COMP/M.5152 — Posten AB/Post Danmark A/S, of 21.4.2009, paras 66 and 74.

<sup>(13)</sup> See Croatia's email of 26 February 2019 and the website of the Croatian Regulatory Authority for Network Industries <https://www.hakom.hr/default.aspx?id=859>

<sup>(14)</sup> [...] confidential information.

<sup>(15)</sup> See Request, p. 12, last paragraph.

<sup>(16)</sup> See Request, p. 13, second chart.

- (21) The market shares of the competitors of the Applicant are comparable to those of the Applicant. The market shares of the biggest competitors in terms of value <sup>(17)</sup> are as follows: DHL [...] % in 2015, [...] % in 2016 and [...] % in 2017; Overseas [...] % in 2015, [...] % in 2016 and [...] % in 2017; and GLS [...] % in 2015 and [...] % in 2016 and 2017 <sup>(18)</sup>.
- (22) As regards market entry, over the last 5 years, the Commission notes the entry into this market of new market operators: Cash on Delivery Express, Gebrüder Weiss, Orbis Express and Schenker <sup>(19)</sup>.
- (23) The Croatian Regulatory Authority for Network Industry indicated <sup>(20)</sup> that the postal services related to express parcel delivery in domestic and international circulation are competitive and that the Applicant faces competition in the performance of those services on the territory of Croatia.
- (24) For the purposes of this Decision and without prejudice to competition law, the factors described in recitals 20, 21, 22 and 23 should be taken as an indication of exposure to competition of that activity in Croatia. Consequently, since the conditions set out in Article 34 of Directive 2014/25/EU are met, it should be established that Directive 2014/25/EU does not apply to contracts intended to enable the pursuit of the activity in Croatia.

#### 3.2.1.2. International express parcel delivery services - market analysis

- (25) There are currently over 20 operators <sup>(21)</sup> active in the international express parcel delivery services, including international market operators, such as DHL and DPD. According to available information, the market share of the Applicant in this segment of the market was [...] % in 2015, [...] % in 2016 and [...] % in 2017 in terms of volume <sup>(22)</sup> and was of [...] % in 2015, [...] % in 2016 and [...] % in 2017 in terms of value <sup>(23)</sup>.
- (26) The Applicant is not amongst the first three market operators in this market segment. The first market operator, DHL, had, in terms of value <sup>(24)</sup>, market shares of [...] % in 2015, [...] % in 2016 and [...] % in 2017. DPD had [...] % in 2015, [...] % in 2016 and [...] % in 2017. Overseas had a steady market share of [...] % in 2015, 2016 and 2017 <sup>(25)</sup>.
- (27) As regards market entry, over the last 5 years, the Commission notes the entry into this market of new market operators: Cash on Delivery Express, Gebrüder Weiss, Orbis Express and Schenker <sup>(26)</sup>.
- (28) The Croatian Regulatory Authority for Network Industry indicated <sup>(27)</sup> that the postal services related to express parcel delivery in domestic and international circulation are competitive and that the Applicant faces competition in the performance of those services on the territory of Croatia.
- (29) For the purposes of this Decision and without prejudice to competition law, the factors listed in recitals 25, 26, 27 and 28 should be taken as an indication of exposure to competition of that activity in Croatia. Consequently, since the conditions set out in Article 34 of Directive 2014/25/EU are met, it should be established that Directive 2014/25/EU does not apply to contracts intended to enable the pursuit of the activity in Croatia.

#### 3.2.2. Domestic unaddressed mail delivery services

- (30) Unaddressed advertising mail is characterised by the absence of particular destination address identifying the final addressee individually. It is unsolicited advertising mail, which fulfils certain criteria such as uniform weight, format, contents and layout for distribution to a group of recipients.

<sup>(17)</sup> Data on market shares in terms of volume, of the Applicant's competitors, are not available.

<sup>(18)</sup> See Request, p. 13, second chart.

<sup>(19)</sup> See Request, p. 15 third paragraph.

<sup>(20)</sup> See Letter of the Croatian Regulatory Authority for Network Industry to the Applicant dated 29 October 2018 (Annex 6 to the Request, p. 2, first paragraph).

<sup>(21)</sup> *Idem* footnote 13.

<sup>(22)</sup> See Request, p. 21, last chart.

<sup>(23)</sup> See Request, p. 21 first chart.

<sup>(24)</sup> Data on market shares in terms of volume, of the Applicant's competitors, are not available.

<sup>(25)</sup> See Request, p. 22, first chart.

<sup>(26)</sup> See Request, p. 23, section 5.3.1.

<sup>(27)</sup> See Letter of the Croatian Regulatory Authority for Network Industry to the Applicant dated 29 October 2018 (Annex 6 to the Request, p. 2, first paragraph).



- (31) The Commission has previously held that the market for mail delivery services can be segmented in addressed mail markets and unaddressed mail markets <sup>(28)</sup>. The Applicant considers that the relevant product market in the case at hand is the market for unaddressed mail.
- (32) Based on the information provided by the Applicant and having in mind the existing practice of the Commission, for the purposes of this Decision and without prejudice to competition law, the relevant product market is the market for services related to the domestic unaddressed mail delivery.
- (33) Regarding the assessment whether the activity of the Applicant is directly exposed to competition, it can be observed that the largest market operator is Weber Escal, with more than [...] % market shares between 2014 and 2017 in terms of value <sup>(29)</sup>. The Applicant had a market share of [...] % in 2015, [...] % in 2016 and [...] % in 2017 <sup>(30)</sup> in terms of value, and [...] % in 2015, 2016 and 2017 in terms of volume <sup>(31)</sup>.
- (34) For the purposes of this Decision and without prejudice to competition law, the factors listed in recital 33 should be taken as an indication of exposure of Croatian Post to competition of that activity on the territory of Croatia. Consequently, since the conditions set out in Article 34 of Directive 2014/25/EU are met, it should be established that Directive 2014/25/EU does not apply to contracts intended to enable the pursuit of the activity in Croatia.

#### IV. CONCLUSION

- (35) This Decision is based on the legal and factual situation as of December 2018 to June 2019 as it appears from the information submitted by the Applicant, the Croatian Regulatory Authority for Network Industries and the Croatian Ministry of the Sea, Transport and Infrastructure. It may be revised, should the conditions for the applicability of Article 34 of Directive 2014/25/EU be no longer met, following significant changes in the legal or factual situation,

HAS ADOPTED THIS DECISION:

##### *Article 1*

Directive 2014/25/EU shall not apply to contracts awarded by contracting entities and intended to enable the following activities to be carried out in the territory of Croatia:

- domestic express parcel delivery services;
- international express parcel delivery services;
- domestic unaddressed mail delivery services.

##### *Article 2*

This Decision is addressed to the Republic of Croatia.

Done at Brussels, 12 July 2019.

*For the Commission*  
Elżbieta BIENKOWSKA  
*Member of the Commission*

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<sup>(28)</sup> Case COMP/M.5152 — Posten AB/Post Danmark A/S.

<sup>(29)</sup> See Request, p. 30, first chart.

<sup>(30)</sup> See Request, p. 28, first chart.

<sup>(31)</sup> See Request, p. 29, first chart.





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