COMMISSION IMPLEMENTING REGULATION (EU) 2022/72

of 18 January 2022

imposing definitive countervailing duties on imports of optical fibre cables originating in the People's Republic of China and amending Implementing Regulation (EU) 2021/2011 imposing a definitive anti-dumping duty on imports of optical fibre cables originating in the People's Republic of China

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union ([1]) ('the basic Regulation'), and in particular Article 15 and Article 24(1) thereof,

Whereas:

1. PROCEDURE

1.1. Initiation

(1) On 21 December 2020, the European Commission ('the Commission') initiated an anti-subsidy proceeding with regard to imports of optical fibre cables originating in the People's Republic of China ('China', 'PRC' or 'the country concerned') on the basis of Article 10 of the basic Regulation. It published a Notice of Initiation in the Official Journal of the European Union ('the Notice of Initiation') ([2]).

(2) The Commission initiated the investigation following a complaint lodged by Europacable ('the complainant') on behalf of Union producers. The complainant represented more than 25 % of the total Union production of optical fibre cables ('OFC'). The complaint contained evidence of subsidisation and of resulting material injury that was sufficient to justify the initiation of the investigation.

(3) Prior to the initiation of the anti-subsidy investigation, the Commission notified the Government of China ('GOC') ([3]) that it had received a properly documented complaint, and invited the GOC for consultations in accordance with Article 10(7) of the basic Regulation. Consultations were held on 16 December 2020 with the GOC. However, no mutually agreed solution could be reached.

(4) On 24 September 2020, the European Commission initiated a separate anti-dumping investigation with regard to the same product originating in the People's Republic of China ([4]) ('the separate anti-dumping investigation'). The injury, causation and Union interest analyses performed in the present anti-subsidy investigation and the separate anti-dumping investigation are *mutatis mutandis* identical, since the definition of the Union industry, the sampled Union producers, the period considered and the investigation period are the same in both investigations.

1.2. Comments concerning initiation

(5) The Commission received comments on initiation from the GOC, the China Chamber of Commerce for Import and Export of Machinery and Electronic Products ('CCCME'), one importer (Connect Com), and the complainant.

([1]) OJ L 176, 30.6.2016, p. 55.
([2]) OJ C 442, 21.12.2020, p. 18.
([3]) The term 'GOC' is used in this Regulation in a broad sense, including the State Council, as well as all Ministries, Departments, Agencies, and Administrations at central, regional or local level.
([4]) Notice of initiation of an anti-dumping proceeding concerning imports of optical fibre cables originating in the People's Republic of China (OJ C 316, 24.9.2020, p. 10).

(6) The GOC claimed that the investigation should not be initiated because the complaint did not satisfy the evidentiary requirements of Articles 11(2) and 11(3) of the WTO Agreement on Subsidies and Countervailing Measures ('SCM Agreement') and of Article 10(2) of the Basic Regulation. According to the GOC, there was insufficient evidence of countervailable subsidies, injury and a causal link between the subsidised imports and the injury. In response to this claim of the GOC, the complainant argued that the complaint contained information that was reasonably available to and that the complaint provided for more than ample evidence demonstrating the existence of subsidisation, injury and a causal link between the two. The GOC reiterated that the complaint did not contain sufficient evidence to meet the evidentiary standard and regardless of what information might be reasonably available to the complainant, there always needs to be sufficient evidence regarding the existence and nature of a subsidy, material injury and a causal link.

(7) The Commission rejected the claim of the GOC. Indeed, the evidence submitted in the complaint constituted the information reasonably available to the complainant at that stage. As shown in the memorandum on sufficiency of evidence, which contains the Commission's assessment on all the evidence at the disposal of the Commission concerning the PRC, and on the basis of which the Commission initiated the investigation, there was sufficient evidence at initiation stage that the alleged subsidies were countervailable in terms of their existence, amount and nature. The complaint also contained sufficient evidence of the existence of injury to the Union industry, which was caused by the subsidised imports.

(8) Following final disclosure, the GOC argued that the Commission could not have used facts available to remedy the lack of evidence provided in the complaint. The Commission noted that the GOC misunderstood what the Commission did at initiation stage. As set out in recital (7), the complaint contained sufficient evidence pursuant to Article 10(2) of the basic Regulation to justify the initiation of an investigation. Logically, the complaint could not have included all the necessary information requested from the GOC, as this was part of the detailed assessment done by the Commission during the investigation. Moreover, the Commission examined the complaint in light of all the available information to the Commission as regards the alleged subsidisation, including its past practice. This does not mean that the Commission applies facts available but rather that the Commission uses all the information available to confirm the allegations made in the complaint. Therefore, the claim was rejected.

(9) During the pre-initiation consultations and in its submission following initiation, the GOC alleged more specifically that the complainant used Chinese laws selectively and misinterpreted their connection with respect to the OFC industry and stated that policy documents, such as China's High-tech Product Catalogue, Broadband China Strategy, the 13th Five-Year Plan, or Made in China 2025, are just guidance documents that are not binding. The China Chamber of Commerce for Import and Export of Machinery and Electronic Products ('CCCME') repeated this claim. The GOC also stated that the document 'Made in China 2025' does not specifically refer to OFC. The complainant argued that the Commission already established in previous investigations that China's Five-Year Plans are of a binding nature.

(10) The Commission noted that the GOC does not dispute the existence of such plans, programmes, or recommendations but only the extent to which they are binding for the OFC industry. The Commission further observed that the complainant provided evidence indicating that 'optical fibre' is mentioned in several government documents, while 'fiber optic network' is mentioned in the Made in China 2025 Strategy. The GOC failed to produce any evidence showing that those statements would not be applicable to the product concerned.

(11) The GOC also stated that State-owned enterprises (SOEs), State-owned banks or the Chinese Export & Credit Insurance Corporation ('Sinosure') cannot be qualified as public bodies and that the complainant unjustifiably relied on previous Commission's findings for entirely unrelated industries. The CCCME repeated the claim that State-owned banks cannot be qualified as public bodies. The complainant argued that the Commission has recognised State-owned banks and Sinosure as public bodies in previous investigations. The GOC claimed that past findings of the Commission for unrelated industries could not constitute sufficient evidence in the complaint that State-owned banks and Sinosure acted as public bodies in the current investigation.

(12) The Commission noted that this claim of the GOC is connected to the claim already evoked above, and that the complaint among others mentioned the Bank Law in China, which the GOC does not dispute to belong to the Chinese legislation. The Commission also highlighted that recent EU anti-subsidy investigations had concluded differently on this matter ([5]). The fact that these investigations covered industries unrelated to the OFC industry does not cast aside the qualification of the above institutions as public bodies. Moreover, evidence of government ownership may be considered to amount to evidence 'tending to prove or indicating' that an entity is a public body capable of conferring a financial contribution ([6]).

(13) Following initiation, the GOC further argued that the complainant did not establish the conditions for applying an out-of-country benchmark for loans and for land use rights. The Commission found, however, that the allegations contained in the complaint are supported by recent EU anti-subsidy investigations concluding on those matters the need for external benchmarks adjusted to the prevailing conditions in the PRC ([7]).

(14) Furthermore, the GOC claimed that various subsidy schemes alleged by the complainant could not be considered a subsidy as the complaint did not provide for detailed evidence concerning the existence, amount and nature of these subsidies, or the direct relationship between the subsidy and the product concerned.

(15) The complainant argued that the complaint provided examples of specific direct transfers of funds and specifically referred to annual reports of numerous Chinese exporting producers of OFC which clearly indicated direct transfers of funds received in the form of grants. In addition, the complainant provided a document published by one of the exporting producers identifying the financial support it received from the GOC.

(16) The GOC further claimed, in relation to various subsidies, that the complainant failed to provide evidence of benefit and specificity. The Commission is of the view that the complainant provided sufficient evidence of benefit and specificity as was reasonably available to it. In any event, the Commission examined the evidence in the complaint and provided its own assessment of all relevant elements in the memorandum of sufficiency of evidence, which was put on the open file upon initiation. The GOC reiterated its comments following initiation, but did not provide any further evidence.

(17) Therefore, the Commission concluded that there was sufficient evidence provided in the complaint tending to show the existence of the alleged subsidisation by the GOC.

(18) Following initiation, the GOC and the CCCME argued that the complainant incorrectly set aside the fact that the OFC industry in the Union were granted subsidies very similar to those in the PRC and that the Commission should not apply double standards. The complainant argued that these allegations are irrelevant in the investigation at hand. The GOC disagreed and claimed that the Commission, by investigating alleged subsidies in China, it distorts the market to the detriment of non-Union competitors. Such approach would lead to protectionist measures, ultimately obstructing international trade and development.

([5]) Commission Implementing Regulation (EU) 2017/969 of 8 June 2017 imposing definitive countervailing duties on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China and amending Commission Implementing Regulation (EU) 2017/649 imposing a definitive anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China (OJ L 146, 9.6.2017, p. 17) ('HRF case'), Commission Implementing Regulation (EU) 2018/1690 of 9 November 2018 imposing definitive countervailing duties on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries and with a load index exceeding 121 originating in the People's Republic of China and amending Commission Implementing Regulation (EU) 2018/1579 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121 originating in the People's Republic of China and repealing Implementing Regulation (EU) 2018/163 (OJ L 283, 12.11.2018, p. 1) ('Tyres case') and Commission Implementing Regulation (EU) 2019/72 of 17 January 2019 imposing a definitive countervailing duty on imports of electric bicycles originating in the People's Republic of China (OJ L 16, 18.1.2019, p. 5) ('E-bikes case'), Commission Implementing Regulation (EU) 2020/776 of 12 June 2020 imposing definitive countervailing duties on imports of certain woven and/or stitched glass fibre fabrics originating in the People's Republic of China and Egypt and amending Commission Implementing Regulation (EU) 2020/492 imposing definitive anti-dumping duties on imports of certain woven and/or stitched glass fibre fabrics originating in the People's Republic of China and Egypt (OJ L 189, 15.6.2020, p. 33) ('GFF case').

([6]) See Panel Report, *United States – Countervailing Duty Measures on Certain Products from China*, WT/DS437/R, adopted 16 January 2015, para. 7.152.

([7]) See the cases cited in footnote 5 before.

(19) This claim concerning subsidies in the EU had no weight on the Commission's assessment underlying the initiation of this case, as they do not fall within the factors considered for this purpose.

(20) Finally, in its comments following initiation, the GOC claimed that no actual sales information was provided in the undercutting/underselling calculation and that the questionnaire responses of the sampled Union producers did not provide a meaningful summary of sensitive information. The GOC asserted that this had prevented it from properly rebutting the injury claims made by the complainant, and that these questionnaire responses seemed to contradict the complaint with regard to the alleged injury.

(21) The Commission considered that the version open for inspection by interested parties of the complaint and the questionnaire replies contained all the essential evidence and non-confidential summaries of data granted confidential treatment in order for interested parties to exercise their rights of defence throughout the proceeding. It is recalled that Article 29 of the basic Regulation allows for the safeguarding of confidential information in circumstances where disclosure would be of significant competitive advantage to a competitor or would have a significantly adverse effect upon a person supplying the information or upon a person from whom that person has acquired the information. The claims of the GOC in this regard were therefore rejected.

(22) On the substantive requirements for the initiation of the investigation, the GOC and CCCME argued that the complainant failed to provide any comparable data on sales prices and profitability. The GOC and CCCME also claimed that the target profit indicated by the complainants was not justified and that the injury suffered by the complainants could have been caused by other elements including over stocking by one Union producer.

(23) Connect Com supported the arguments of the GOC on initiation. In particular, Connect Com claimed that an anti-dumping and a parallel anti-subsidy investigations would possibly result in a double remedy for the EU industry and could lead to an abuse of countervailing measures. Connect Com argued that the allegations in the complaint on the existence of a subsidy, on injury and on a causal link between the subsidy and injury were not supported by sufficient evidence. Concerning the lack of evidence on a causal link, Connect Com claimed that there were number of alternative reasons for a decrease in the EU industry's market share such as the increase of imports from other third countries during the period considered and that there was an overcapacity in the EU. In addition, Connect Com claimed that the complaint was a mere copy of the complaint of the anti-dumping investigation and that the complainant should have differentiated the alleged injury due to dumping from the alleged injury due to subsidy.

(24) Moreover, the GOC and the CCCME claimed that there was no injury shown in the complaint, since the Union industry increased its production and the slight decrease in production capacity deriving from the inability of the Union Industry of supplying all newly developed consumption in Europe was not in itself an indicator of material injury. Sales volumes increased as well, while the Union industry retained a market share of almost 80 % and the profitability trend was unclear and did not show injury. In this respect, the complainant submitted that the increase in the Union consumption benefitted Chinese imports, the remaining market share did not bear relevance for the assessment of the injury, and the effects of tenders won by Chinese producers would materialise after a certain time lag. The CCCME responded that consumption, production and production capacity data showed that the Union industry was able to supply most of the increase in EU consumption, while expanding its business.

(25) In addition, the GOC and the CCCME claimed that the complaint contained no evidence of a causal link between subsidized imports and injury. Firstly, the GOC and the CCCME argued that there was no correlation between imports from China and the development of the Union industry. By way of example, they submitted that amidst the strongest increase in import volume from China in 2017-2018, the Union industry had the most significant increase in profitability. Secondly, third-country imports increased between 2018 and 2019, contrary to imports from China, and their effect could not therefore be attributable to China, and, if there is injury, this was a self-inflicted injury due to the Union industry's slow reaction to market movements.

(26) The complainant reacted to this claim, stating that a causal link could be established, since the injury happened at the same time as the increase in imports from China, and that third-country imports could not be considered as a cause of injury because they were either *de minimis* or showed no evidence of injurious pricing.

(27) The CCCME responded recalling that, amidst the strongest increase in import volume from China in 2017-2018, the Union industry had the most significant increase in profitability and that there was no correlation between the increase of imports from China and the decreasing sales volumes of the Union industry. Instead, as regards third-country imports, the CCCME noted that in total third-country imports increased, while imports from China decreased between 2018 and 2019. Finally, the CCCME observed that the complainant did not challenge the arguments that virtually all injury indicators in the complaint displayed positive trends and that the alleged injury was at least to a certain degree self-inflicted. Moreover, the CCCME claimed that the effects of the Covid-19 pandemic and allegations on the existence of a power-cable cartel should also be taken into account in evaluating the impact of subsidized imports on the situation of the Union industry. Furthermore, the GOC and the CCCME stated that import data presented by the complainant were not reliable because they were outdated and based on assumptions in terms of weight of the product concerned and its proportion in the CN code 8544 70 00. In addition, according to the GOC and the CCCME, undercutting calculations in the complaint were flawed because they referred only to one exporter in one specific tender.

(28) The complainant referred to its reply in the parallel anti-dumping investigation, that a longer period should be considered to see the increase in volume of imports, not denied by the CCCME and confirmed by third-party data from market intelligence (CRU), and that calculations were not flawed because the complainant was bound to provide only reasonably available information, which included information from several producers in the Union and in China.

(29) The CCCME responded that it was the duty of the complainant to substantiate its claims and provide proof in respect of import data and that market intelligence (CRU) data referred to optical fibres and not to optical fibre cables. As regards undercutting and underselling calculations, the CCCME reiterated that they did not meet the standard to constitute sufficient evidence and that for significant calculations the complainant referred only to the prices of one Chinese producer (e.g., the free circulation export price used for the calculation of the injury margin for H1 2019 and the export price used for the costs of production for the underselling margin for H2 2019).

(30) The Commission considered that none of the allegations on initiation disproved the conclusion that there was sufficient evidence for the initiation of an anti-subsidy proceeding. Indeed, the complaint contained sufficient evidence that subsidized imports had materially injured the Union industry. The specific injury analysis of the complaint showed increased penetration of the EU market (both in absolute and relative terms) by imports from China made at prices which substantially undercut the Union industry's prices. This suggested that the alleged subsidised imports had materially injured the Union industry, shown for example by decreases in sales and market share or by a deterioration of financial results.

(31) The evidence provided in the complaint contained separate undercutting and underselling calculations for each representative product type. The Commission was satisfied with the level of evidence of undercutting and underselling brought forward by the complainant and considered that the complaint met the sufficient evidence standard required for the initiation of the investigation.

(32) In reply to the claim that the complainant failed to provide reliable/comparable data on sales prices, the Commission considered that the version open for inspection by interested parties of the complaint contained all the essential evidence and non-confidential summaries of data provided under confidential cover in order for interested parties to exercise their right of defence throughout the proceeding.

(33) Article 29 of the basic Regulation (as well as Article 12(4) of the SCM Agreement) allow for the safeguarding of confidential information in circumstances where disclosure would be of significant competitive advantage to a competitor or would have a significantly adverse effect upon a person supplying the information or upon a person from whom that person has acquired the information.

(34) In relation to sufficient evidence of a causal link, the following should be noted. Firstly, the complaint showed that the situation of the Union industry deteriorated at the same time as the increase in subsidized imports at prices which significantly undercut those of the Union industry. This already tended to show the existence of a causal link. Secondly, concerning other factors such as third-country imports and other elements mentioned by the GOC and the CCCME , their impact was not as such as to cause deterioration of the Union industry, whereas, the analysis did not reveal self-inflicted injury. Moreover, concerning the allegation that the subsidy investigation would result in a

double imposition, the Commission, as reported at recital (765), made sure that the imposition of a cumulated duty reflecting the level of subsidisation and the full level of dumping would not result in offsetting the effects of subsidisation twice. Finally, concerning import volumes, the complainant provided data based on reasonable assumptions such as the weight of the product concerned produced and sold by the Union industry, and used market intelligence to complete the analysis where public information was not available. Concerning the time period of the measuring of imports in the complaint, the alleged injury has been caused by both dumping and subsidies practices, and therefore a different investigation period would have been unreasonably burden on the complaining industry.

1.3. **Registration of imports**

(35) On 24 August 2021, in accordance with Article 29a(2) of the basic Regulation, the Commission informed the interested parties of its intention not to impose provisional countervailing measures and to continue the investigation.

(36) Since no provisional countervailing measures were imposed, no registration of imports was performed.

1.4. **Investigation period and period considered**

(37) The investigation of subsidisation and injury covered the period from 1 July 2019 to 30 June 2020 ('the investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2017 to the end of the investigation period ('the period considered').

(38) Both the current anti-subsidy investigation and the separate anti-dumping investigation mentioned in recital (4) have the same investigation period and the same period considered.

1.5. **Interested parties**

(39) In the Notice of Initiation, the Commission invited interested parties to contact it in order to participate in the investigation. In addition, the Commission specifically informed the complainant, the GOC, other known Union producers, the known exporting producers, known importers and users about the initiation of the investigation and invited them to participate.

(40) Interested parties had an opportunity to comment on the initiation of the investigation and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings. No one requested an intervention.

1.6. **Sampling**

1.6.1. *Sampling of Union producers*

(41) In its Notice of Initiation, the Commission stated that it had provisionally selected a sample of Union producers. The Commission selected the sample on the basis of the volume of production and sales of the like product in the Union during the investigation period. This sample consisted of three Union producers. The sampled Union producers accounted for 52 % of Union production in the investigation period and was considered representative of the Union industry. The Commission invited interested parties to comment on the provisional sample. No comments were received and therefore the sample was confirmed.

1.6.2 *Sampling of importers*

(42) 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.

(43) Five unrelated importers provided the requested information and agreed to be included in the sample. After analysing the sampling information supplied by the importers, the Commission decided that sampling was not necessary and asked all cooperating importers to submit their replies to the questionnaire.

1.6.3. *Sampling of exporting producers in China*

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

(45) Twenty five exporting producers in the country concerned provided the requested information and agreed to be included in the sample. In accordance with Article 27(1) of the basic Regulation, the Commission selected a sample of two groups of exporting producers on the basis of the largest representative volume of exports to the Union which could reasonably be investigated within the time available. The sampled groups of exporting producers represented more than 40 % of the exports reported by cooperating exporting producers of optical fibre cables from China to the Union during the investigation period.

(46) In accordance with Article 27(2) of the basic Regulation, all known exporting producers concerned, and the authorities of the country concerned, were consulted on the selection of the sample.

(47) Comments on the selection of the sample were received from one non-sampled exporting producer, Yangtze Optical Fibre and Cable Joint Stock Limited Company ('YOFC'), which wanted to be included in the sample.

(48) YOFC argued that considering the large number of cooperating exporting producers, the two sampled companies accounted for a relatively low proportion of export volume to the Union that was not representative for the Chinese exporters and that the Commission's practice in previous anti-dumping investigations was to sampled at least three companies. Furthermore, YOFC claimed that a sample of three companies could better avoid the situation that, due to changes to the sampled companies, the sample could be reduced to one company. Finally, YOFC argued that certain subsidy programmes are regional, so to have a more comprehensive overview of the subsidy schemes in the China the geographical spread should be considered when selecting a sample.

(49) Pursuant Article 27(1) of the basic Regulation the selection of the sample should be based on the largest representative volume of production, sales or exports which can reasonably be investigated within the time available. As stated in recital (45), the sampled groups of exporting producers accounted for more than 40 % of the reported exports from China to the Union during the investigation period, a representative level. The Commission considered that the sample as selected contained the largest quantity of imports that could be reasonably investigated within the time available. In this context, the two sampled exporting producer groups contain a large number of entities (four exporting producers, seven sales entities, and more than 20 related companies providing inputs or financing). Furthermore, whether a sampled company will indeed cooperate or not after being sampled is a necessary but not sufficient condition for an exporting producer to be considered for the selection of a sample under Article 27(1) of the basic Regulation. The Commission also considered the geographical spread of the companies selected in the sampled, covering two provinces in China with the two exporting producer groups and many more provinces with all the related companies providing inputs or financing. As all requirements in Article 27(1) of the basic Regulation were hence met there was no obligation to sample a third company.

(50) YOFC also claimed that it should be included in the sample as it is an experienced producer that exports high quality optical fibre cables to the Union, and its manufacturing process is different from other Chinese producers (it is vertically integrated, uses European technology to produce optical fibre cables, has advanced technologies, is the sole National Intelligent Manufacturing Demonstration Unit in China, and has achieved high automatization in the production of optical fibres). It further claimed that its export volume to the Union during the investigation period was relatively large. Moreover, YOFC submitted that one of the sampled Union producers indirectly holds shares of YOFC and two of the related companies concerned of YOFC and, therefore, including YOFC in the sample would enable the Commission to have a more comprehensive knowledge of the structure of the industry. YOFC also claimed that there are five exporting producers in the group, which are located in Hubei Province, Guangdong Province, Sichuan Province, Jiangsu Province and Shanghai City, so by including YOFC in the sample, the Commission would obtain information on subsidy programmes in more provinces.

(51) As explained above, the sample of exporting producers was selected on the basis of the largest percentage of the volume of exports from the country in question which could reasonably be investigated within the time available, having a good geographical spread within China. YOFC was not among the largest exporting producers and therefore was not sampled. At any rate, the two sampled groups of exporting producers are large experienced groups of companies as well that manufacture and sell high quality optical fibre cables to the Union, including also vertically integrated entities. Furthermore, there is no information in the file indicating that the technology used by the sampled exporting producers would be less advanced than other Chinese exporting producers. YOFC has not presented any evidence that would contradict this fact. Moreover, the fact that one sampled Union producer holds shares in an exporting producer is not relevant for the selection of the sample of the exporting producers. Therefore, these claims were rejected.

1.7. **Individual examination**

(52) Six of the non-sampled Chinese exporting producers that returned the sampling form informed the Commission of their intention to request individual examination under Article 27(3) of the basic Regulation. The Commission made the questionnaire available online on the day of initiation. Moreover, the Commission informed the non-sampled exporting producers that they were required to provide a questionnaire reply if they wished to be examined individually. Two companies provided a questionnaire reply.

(53) One of the companies who provided a questionnaire reply, requested to be individually examined for the same reasons as in its request to be included in the sample, as set out in recitals (48) and (50) above.

(54) The other company who provided a questionnaire reply, requested to be individually examined because it was related to a Union importer and it claimed to not have received any of the alleged subsidies.

(55) Due to the complexity of the investigation and the complex structure of the sampled exporting producers, the Commission decided not to grant individual examination as it would have been unduly burdensome and could have impeded the Commission to complete the investigation within the statutory deadlines.

1.8. **Questionnaire replies and verification visits**

(56) The Commission sent a questionnaire to the complainant and the questionnaires for the Union producers, importers, users, and exporting producers in China were made available online on the day of initiation ([8]).

(57) The Commission also sent a questionnaire to the GOC, which included specific questionnaires for Sinosure, the banks and other financial institutions that provided financing or export credits to the sampled exporting producers, and the top 10 producers and distributors of the input materials used by the sampled exporting producers. The GOC was also asked for administrative convenience to gather any responses provided by these financial institutions and to send them directly to the Commission.

(58) The Commission received a questionnaire reply from the GOC, which included a questionnaire reply from the Export-Import Bank of China ('EXIM bank'). However, no reply was received from Sinosure, any of the other banks or financial institutions, or from the main producers and distributors of the input materials.

(59) Without prejudice to the application of Article 28 of the basic Regulation, the Commission sought and crosschecked all the information deemed necessary for the determination of subsidy, resulting injury and Union interest. Due to the outbreak of the COVID-19 pandemic and the consequent measures taken to deal with the outbreak ('the COVID-19 Notice') ([9]), the Commission was unable to carry out verification visits at the premises of the GOC, the sampled companies and the cooperating importers and users. Instead, the Commission performed a remote crosscheck ('RCC') of the information provided by the GOC, during which officials from the relevant ministries and other government authorities participated. The Commission furthermore carried out RCCs of the following companies via videoconference:

([8]) Available at https://trade.ec.europa.eu/tdi/case_details.cfm?id=2508.

([9]) Notice on the consequences of the COVID-19 outbreak on anti-dumping and anti-subsidy investigations (2020/C 86/06) (OJ C 86, 16.3.2020, p. 6).

Union producers:

— Acome S. A. (France),

— Corning Optical Communications Sp. z o.o., and its related companies (Poland, Denmark, France, Germany, Italy, Spain),

— Prysmian S.p.A., and its related companies (Denmark, Finland, France, Germany, Italy, Netherlands, Romania, Slovakia, Spain, Sweden)

Importers:

— Cable 77 Danmark ApS (Denmark),

— Connect Com GmbH (Germany),

— Eku Kabel GmbH (Germany),

— Har&Ca S.r.l. (Italy),

— Infraconcepts B.V. (Netherlands)

Users:

— Deutsche Telekom GmbH (Germany)

Exporting producers in China:

FTT Group:

— FiberHome Telecommunication Technologies Co., Ltd, Wuhan,

— Nanjing Wasin Fujikura Optical Communication Ltd, Nanjing,

— Fiberhome Technologies Group Co., Ltd, Wuhan,

— China Information Communication Technologies Group Corporation, Wuhan,

— Jiangsu Telecom Industrial Co., Ltd, Nanjing

ZTT Group:

— Jiangsu Zhongtian Technology Co., Ltd, Nantong,

— Zhongtian Power Optical Cable Co., Ltd, Nantong.

1.9. **Non-imposition of provisional measures and subsequent procedure**

(60) On 10 May 2021, the Commission sent an additional request for information to the cooperating non-sampled exporting producers, to the sampled exporting producers and to the sampled Union producers including but not limited to sales data on the basis of groups of product control numbers ('PCNs'), investments and tenders. The replies were checked by the Commission during the RCCs.

(61) On 24 August 2021, pursuant to Article 29a(2) of the basic Regulation, the Commission informed interested parties that it intended not to impose provisional measures and to continue with the investigation.

(62) The Commission continued seeking and checking all information it deemed necessary for its definitive findings.

1.10. **Final disclosure**

(63) On 14 September 2021, the Commission informed all parties of the essential facts and considerations on the basis of which it intended to impose a definitive anti-subsidy duty on imports of the product concerned ('final disclosure').

(64) All parties were granted a 20 days period within which they could make comments on the definitive disclosure. Interested parties had an opportunity to comment on the initiation of the investigation and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.

(65) Comments were received from the complainant, the GOC, the CCCME, the two sampled exporting producers, and one unrelated importer, namely Connect Com GmbH ('Connect Com'). Two cooperating non-sampled exporting producers provided clarifications on clerical errors made by the Commission on their cooperating status and exact name, which were corrected accordingly.

(66) Following final disclosure, interested parties were granted an opportunity to be heard according to the provisions stipulated under point 5.7 of the Notice of initiation. A hearing took place with CCCME.

(67) The Commission addressed in this regulation comments submitted during the anti-subsidy procedure. Comments submitted in the context of the separate anti-dumping investigation were not addressed in this regulation unless the parties explicitly indicated that the comments submitted covered both procedures.

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product concerned

(68) The product concerned is single mode optical fibre cables, made up of one or more individually sheathed fibres, with protective casing, whether or not containing electric conductors, originating in China, currently falling under CN code ex 8544 70 00 (TARIC code 8544 70 00 10) ('the product concerned').

(69) The following products are excluded:

(i) cables in which all the optical fibres are individually fitted with operational connectors at one or both extremities; and

(ii) cables for submarine use. Cables for submarine use are plastic insulated optical fibre cables, containing a copper or aluminium conductor, in which fibres are contained in metal module(s).

(70) The optical fibre cables ('OFC') are used as an optical transmission medium in telecommunication networks in long haul, metro and access networks.

2.2. Like product

(71) The investigation showed that the following products have the same basic physical, chemical and technical characteristics as well as the same basic uses:

— the product concerned;

— the product produced and sold on the domestic market of the country concerned; and

— the product produced and sold in the Union by the Union industry.

(72) The Commission decided at this stage that those products are therefore like products within the meaning of Article 2(c) of the basic Regulation.

2.3. Claims regarding product scope

(73) The ZTT Group requested the exclusion from the investigation of optical ground wire ('OPGW') and optical phase conductor ('OPPC') cables. It argued that although these cables fell under the product definition, they had different physical characteristics and use (i.e. power transmission), were subject to different technical standards, were manufactured using different raw materials and according to different production processes, and were sold in separate markets. Furthermore, it was claimed that OPGW and OPPC cables represented only a small portion of sales to Union. The ZTT Group also requested that in case the Commission considered that OPGW and OPPC cables fell within the product scope of the investigation, the specific features, end-use or market segment factors of these products be taken into account in the investigation.

(74) OPGW and OPPC cables are used for data transmission and share the basic characteristics of other OFC, including: (i) they include optical fibres; (ii) the coated optical fibre diameter is the same range; (iii) the number of fibres is also in the same range; (iv) the number of fibres per module is equally the same; and (v) the construction of the cable core is the same. The fact that OPGW and OPPC cables have an additional use (power transmission) and certain features (such as electrical features, no flame resistance requirement, high tensile strength requirement, etc.) does not detract from this fact.

(75) Furthermore, all cable types are subject to a certain extent to different technical specifications and standards. Regarding the raw materials, the fact that one material used for one component of the OFC may differ from one type of cable to another is irrelevant: all types of OFC are manufactured using optical fibres. Regarding the manufacturing processes, the investigation revealed that certain specially protected designs of standard optical cables had a layer of steel wire around their jacket, and these cables were made on the same machines as OPGW machines. Furthermore, the manufacturing of the armouring of OPGW and OPPC cables only applied to one stage of the construction of these cables, and this did not justify their exclusion from the product scope of the investigation. Furthermore, the fact that the sales of OPGW and OPPC cables represented a smaller portion of sales to the Union during the investigation period is irrelevant for the assessment of the claim. Finally, the Union industry is producing OPGW and OPPC cables as well and therefore is in direct competition with the Chinese exporters for these cables as well.

(76) Based on the foregoing, the Commission concluded that OPGW and OPPC are OFC that have the same basic physical, technical and chemical characteristics as the other OFC that are covered by the definition of the product concerned and therefore no separate analysis for these products was needed. In fact, the product control numbers used by the Commission for the calculation of dumping and injury margins properly identifies OPGW and OPPC cables and adequately enables the Commission to conduct a fair price comparison between Union and Chinese producers. Therefore, the claim was rejected.

(77) The ZTT Group also suggested four methods to address and avoid any possible issues of circumvention in the event that OPGW and OPPC cables were excluded from the product scope of the investigation such as (i) visual inspection and documentary check by customs officials, (ii) system of certification, (iii) end-use control customs procedure and (iv) system of monitoring. As it was concluded that OPGW and OPPC are covered by the investigation, it was not needed to address the suggested methods for preventing circumvention.

3. **SUBSIDISATION**

3.1. **Introduction: Government plans, projects and other documents**

(78) Before analysing the alleged subsidisation in the form of subsidies or subsidy programmes, the Commission assessed government plans, projects, and other documents, which were relevant for the sector of the product concerned and/or its inputs and hence represented integral context for the substantive findings. It found that all subsidies or subsidy programmes under assessment form part of the implementation of the GOC's central planning to encourage the OFC industry for the following reasons.

(79) 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 at all levels of government and cover 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 the PRC results in resources being allocated to sectors designated as strategic or otherwise politically important by the government, rather than being allocated in line with market forces ([10]).

(80) The OFC equipment is regarded as a key product by the GOC, as found in public policy documents and lists ([11]). Such categorisation is of significant importance as it qualifies given sectors for coverage by a variety of specific policies and support measures designed to spur development in each sector ([12]). OFC being a key component of internet networks infrastructure, it plays a paramount role in the roll-out of optical fibre networks and broadband internet. The development of the latter in the PRC is guided and managed by numerous plans, directives and other documents, which are issued at national, regional and municipal level, and are mutually interlinked. Examples of such key policy documents include the following plans, projects and other documents.

([10]) Commission Staff Working Document on Significant Distortions in the Economy of the People's Republic of China for the purposes of Trade Defence Investigations, 20 December 2017, SWD(2017) 483 final/2 (the 'Report') – Chapter 4, p. 41-42, 83.

([11]) See the Guiding Catalogue of key products and services in strategic emerging industries. http://www.gov.cn/xinwen/2018-09/22/5324533/files/dcf470fe4eac413cabb686a51d080eec.pdf and the Made in China 2025 Catalogue of "Four Essentials". http://www.cm2025.org/show-14-126-1.html and http://www.cm2025.org/uploadfile/2016/1122/20161122053929266.pdf, all last accessed on 18. August 2021.

([12]) Report – Chapter 2, p. 17

(81) The 13th Five-Year Plan for National Economic and Social Development of the PRC ('the 13th Five-Year Plan'), which covers the period 2016-2020, highlights the strategic vision of the GOC for improvement and promotion of key industries. The 13th Five-Year Plan emphasised the GOC's intention to strengthen the development of strategic high technologies, among which information technology is included in Chapter 6. Chapter 23 further stipulated that information networks, under which OFC fall, are considered a *'strategic emerging industry'*. In this respect, the 13th Five-Year Plan states that the GOC will *'help ensure rapid development of the production and innovation chains of emerging industries to accelerate industry clustering according to their specific characteristics*' and *'encourage Chinese enterprises to allocate innovation resources globally'*.

(82) Following final disclosure, the GOC claimed that there is no reference to OFC in the 13th Five-Year Plan and that the Commission simply assumed that OFC falls under the categorisation of *'information networks'*. According to the GOC, Chapter 6 of the 13th Five-Year Plan clearly mentions that its focus will be *'general-purpose'* technologies and Chapter 23 makes no mention of the OFC industry and the term *'information network'* in Chapter 23 makes it clear that it does not concern OFC or specific products but rather general infrastructure. Likewise, Chapter 25 speaks of *'optic networks'* and not about specific products, such as OFC.

(83) Chapter 4 'The Development Philosophy' of the 13th Five-Year Plan lists *'information technology adoption'* among the development priorities. This Chapter defines the focus and priorities in order to achieve the objectives of the 13th Five-Year Plan and the items listed therein are of a strategic importance. Therefore, *'information technology'* is considered as a key component of the country's development for the period covered by the 13th Five-Year Plan. Furthermore, the 13th Five-Year Plan refers to *'information technology'* in numerous Chapters concerning diverse sectors of the economy and society.

(84) Section 2 'Strategic Industries' of Chapter 23 'Develop Strategic Emerging Industries' in the 13th Five-Year Plan provides that *'we will foster strategic industries in the fields of aerospace, oceanography, information networks, the life sciences, and nuclear technology*' Furthermore, Chapter 25 'Build Ubiquitous, Efficient Information Network' provides that *'We will accelerate the construction of high-speed, mobile, secure, and ubiquitous next generation information infrastructure and spread the use of information network technology*' which includes *'new generation high-speed fibre-optic networks'*, *'an advanced and ubiquitous wireless broadband network'*, and *'new information network technology'*. In addition, Box 9 provides a list of information technology projects among which is the National Broadband Agenda with a focus to *'establish a high-speed, high-capacity optical telecommunications system'*.

(85) The 13th Five-Year Plan is the key policy document which sets the priorities for national economic and social development of the PRC and as such it underlines the focus areas without necessarily providing all the details for the concrete achievement of the priorities. Therefore, the fact that OFC as such is not mentioned in the 13th Five-Year Plan does not mean that it is not concerned as a key and indispensable component for the achievement of the more general strategic goal of development of information technology and information network infrastructure.

(86) The 'new generation of information technology industry', which includes OFC as information and communication device, is also an encouraged industry under the Made in China 2025 initiative ([13]). In this initiative, the promoted 'information communication equipment' is also defined as *'super high speed and large capacity intelligent optical transmission technology'* and further under 'Strategic Tasks and Priorities', priority is given to acceleration of the deployment and construction of *'fiber optic network'*.

(87) By being an encouraged industry in the Made in China 2025 strategy, the OFC industry is eligible to benefit from considerable State funding. A number of funds had been created to support the Made in China 2025 initiative ([14]) and hence indirectly the OFC industry, such as the National Integrated Circuit fund ([15]), the Advanced Manufacturing Fund ([16]) and the Emerging Industries Investment Fund ([17]).

([13]) Notice of the State Council on the Issue of Made in China 2025 (Guofa (2015) No 28) - Government Information Disclosure Column (www.gov.cn), last accessed on 28 June 2021.
([14]) See US-China Economic and Security Review Commission: The 13th Five-Year Plan, page 12.
([15]) http://www.gov.cn/xinwen/2014-10/14/content_2764849.htm, last accessed on 6 August 2021.
([16]) http://www.forestry.gov.cn/lczb/5/20210429/101204144404645.html, last accessed on 18 August 2021.
([17]) https://www.ndrc.gov.cn/fzggw/jgsj/gjss/sjdt/201806/t20180612_1154987.html?code=&state=123, last accessed on 6 August 2021.

(88) By including the construction of fibre optic network as one objective in the Made in China 2025 strategy, or in any other strategic planning document, products which are essential to achieve the enhanced and improved expansion of the construction of those networks, such as the optical fibre cables used for transmission, fall under the scope of those strategic plans and are thus beneficiary of the corresponding preferential measures.

(89) Furthermore, OFC is often included under the umbrella of 'New generation of Information Technology Industry' and in particular as 'Information and communication equipment'. The Made in China 2025 Roadmap ([18]) gives 10 strategic sectors, which are the key industries for the GOC. It describes in Sector 1 'New generation of information technology industry'/ 1.2 Information and communication equipment the product categories *'high-speed and large-capacity optical transmission equipment (400G/1Tbps)'* and *'high-speed optical access equipment (10G/100Gbps)'* as products that fall under the development priorities of this sector. The new generation of information technology thus benefits from the advantages stemming from the support mechanisms listed in the document, including, among others, financial support policies, fiscal and taxation policy, and State council oversight and support ([19]).

(90) Furthermore, OFC is related to the category 'new materials'. In the Made in China 2025 Roadmap in Section 9 'new materials' and its subcategories, including key strategic materials (point 9.2), high performance fibres and composite materials are listed. As can be seen in the Catalogue of High and New Technology Products (2006) in No 6020004 and 6020005, optical fibre products, especially those linked to optical fibre preform, which is a main input material for the production of OFC, are considered to constitute 'new materials'.

(91) Following final disclosure, the GOC claimed that the Commission did not explain on what basis it considered OFC as 'new materials'. It stressed that Section 9.2.3 of the roadmap document only refers to *'high-performance fibres and composite materials'* and that only the main input material for the production of OFC is considered to constitute 'new materials' and not OFC as such.

(92) In this respect, the Commission reiterated that in the Catalogue of High and New Technology Products (2006) optical fibre products, including notably optical fibre preform, are considered to constitute 'new materials'. Optical fibre preform is a key input material with high added value for the production of OFC, representing a substantial part of the cost of production. Therefore, the Commission concluded that since optical fibre preform, which is a semi-finished product of OFC is listed as 'new material', there is a direct link between OFC and the category of 'new materials'.

(93) Additionally, further to the Made in China 2025 Roadmap, in November 2016, the list of 10 strategic sectors was refined into a Catalogue of Four Essentials ([20]) published by the National Manufacturing Strategy Advisory Committee (NMSAC), an advisory group to the National Leading Small Group on Building a National Manufacturing Power. This group was established by the GOC to develop plans, policies, projects, and work arrangements to promote the development of the manufacturing industry and to coordinate matters across regions and departments ([21]). In this catalogue, each of the 10 strategic sectors is split into four chapters: (i) core essential spare parts, (ii) key essential materials, (iii) advanced essential processes/technologies and (iv) industry technology platforms. Optical fibre cables can be found under sector 1: new generation information technology, point (i) core basic spare parts, sub-point 38 Ultra-low-loss optical fibre based on 400G bandwidth (mains network) and under point (ii) key basic materials, sub-point 22 New-generation fibre optic materials.

(94) Following final disclosure, the GOC reiterated its position that the 13th Five-Year Plan and the Made in China 2025 initiative are not mandatory or legally binding documents.

(95) In this respect, the Commission pointed out that rather than making only general statements of encouragement, the 13th Five-Year plan uses language which points to its binding nature. In any case, as stated in recital (85), the 13th Five-Year Plan is the key policy document which sets the priorities for national economic and social development and is the basis for various binding legal acts that the authorities need to take into account and implement when adopting new rules or when distributing public resources.

([18]) https://www.cae.cn/cae/html/files/2015-10/29/20151029105822561730637.pdf, last accessed on 28 June 2021.
([19]) See Made in China 2025, Chapter 4: Strategic Support and Supply.
([20]) http://www.cm2025.org/show-14-126-1.html, last accessed on 6 August 2021.
([21]) http://www.gov.cn/zhengce/content/2015-06/24/content_9972.htm, last accessed on 6 August 2021.

(96) Regarding the Made in China 2025 initiative, it needs to be read in conjunction with the Made in China 2025 Roadmap and considering the funds that had been created to support the Made in China 2025 initiative. Although the Made in China 2025 initiative mainly sets general principles to be followed, its implementation through the disbursement of State funding to certain encouraged industries is binding and makes it specifically targeting such encouraged industries and not generally applicable. In addition, the Made in China 2025 strategy uses wording that implies objectives and targets to be met such as *'we will speed up the deployment and construction of fiber optic networks'* and *'we will vigorously promote breakthrough development in key areas'* when referring to *'a new generation of information technology industry'* including *'information and communication devices'*.

(97) Therefore, the Commission rejected the claims of the GOC.

(98) The OFC industry is also covered by the Intelligent Manufacturing Development Plan (2016-2020) published by the Chinese Ministry of Industry and Information Technology ('MIIT') ([22]), which aims at implementing the 13th Five-Year Plan and has set up 10 key tasks that aim at shortening the product development cycle, improving production efficiency, product quality, reducing operating cost, resources and energy consumption, and accelerating the development of intelligent manufacturing. In 2018, the State Council announced China's plans to expand its programme for smart manufacturing by adding about 100 pilot projects that same year and according to publicly available information, two companies related to sampled exporting producers, Zhongtian technology precision materials Ltd and Fiberhome Communication Technology, were included on the List of Smart Manufacturing Pilot Demonstration Projects by the MIIT, the first in 2017 ([23]) and the latter in 2018 ([24]). Furthermore, one of the cooperating exporting producers, Yangtze Optical Fibre and Cable, was listed as 'National First Batch Smart Manufacturing Pilot Enterprise' ([25]).

(99) There are clear indications that being mentioned on one of these lists, which are related to the Made in China 2025 strategy, is not only a laudatory remark, but that there are financial benefits associated with it. In the document called 'MOF Notice concerning the transferred amounts for 2017 local industry transformation and upgrade programmes', there is a corresponding entry in line 151 stating that Fiberhome Communication Technology under the programme 'New Manufacturing mode of 5G communication network core equipment' received a subsidy in the amount of 12 million RMB.

(100) Numerous additional documents support the finding that the GOC has created a broad framework of support of internet technology infrastructure and broadband networks that cover *inter alia* the OFC industry. Already in 2009 in the Plan for the Adjustment and Revitalization of the Electronic Information Industry ([26]), the GOC explicitly expressed its objective to *'guide and promote the construction of […] the broadband fiber-optic access network'*.

(101) In the Broadband China Strategy of 2013 ([27]) the GOC formulated the aim to promote *'access networks […] in accordance with the ideas of high-speed access'* and that *'in urban areas, access network construction and renovation will be carried out using technical methods such as fibre-to-the-home and fibre-to-the-building'*. Also, according to this strategy, the *'extension of optical fibre to the user side'* shall be promoted and *'a fixed broadband access network with optical fibre as the main source'* shall be gradually build.

(102) In the chapter in the Broadband China Strategy addressing the policy instruments, the GOC describes the instruments that are used to achieve the goals of this strategy, i.e. making *'full use of various special funds from the central government to guide relevant local funds to invest in broadband network research and development and industrialization'* and of providing *'subsidised interest support for loans to eligible broadband construction projects in national development zones in the western region'* and finally of strengthening *'tax concession support'* and of *'support [for] the construction of broadband networks'*. As set out in recital (80), the Commission considered OFC to be a key component of internet networks infrastructure and indispensable for the set-up of broadband systems.

([22]) http://www.gov.cn/xinwen/2016-12/08/content_5145162.htm, last accessed on 6 August 2021.
([23]) http://www.miit.gov.cn/n1146295/n1652858/n1652930/n4509627/c5862297/part/5862506.doc, last accessed on 18 August 2021.
([24]) https://www.miit.gov.cn/ztzl/rdzt/znzzxggz/wjfb/art/2020/art_4430cca546bd4f4c9dd7c96b31bc7c11. html, last accessed on 18 August 2021.
([25]) https://www.directindustry.com/soc/yangtze-optical-fibre-cable-joint-stock-limited-company-212621.html, last accessed on 6 August 2021.
([26]) http://www.gov.cn/zwgk/2009-04/15/content_1282430.htm, last accessed on 2 August 2021.
([27]) http://www.gov.cn/zwgk/2013-08/17/content_2468348.htm, last accessed on 2 August 2021.

(103) The Broadband China Strategy does not merely state non-binding objectives with regard to the development of the internet infrastructure. When viewed together with other documents it is clear that financial contributions from the GOC are an essential element used to achieve the objectives of this strategy. In the Opinions on Promoting the Construction of Fiber Optic Broadband Networks ([28]), it is stated that *'local governments at all levels are encouraged to provide financial subsidies for the use of fiber-optic broadband in public service institutions'* and that *'investment and policy support in research and development of core chips, devices, system equipment and applications for fiber-optic broadband communications'* shall be increased and *'technological innovation in fiber-optic communications'* shall be encouraged.

(104) Following final disclosure, the GOC claimed that the Broadband China Strategy is only a guidance document concerning broadband infrastructure. In this regard, the GOC noted that the Panel in 'China – GOES' found that *'general information about governmental policy, with no direct connection to [a] program at issue, in not "sufficient evidence" of specificity'*.

(105) In this respect, the Commission recalled that as stated in recital (102), in the chapter in the Broadband China Strategy addressing the policy instruments, the GOC describes the instruments that are used to achieve the goals of this strategy such as the use of various special funds, subsidised interest support, tax concession support etc. Therefore, the Commission considered in recital (103) that when viewed together with other documents, it is clear that financial contributions from the GOC are an essential element used to achieve the objectives of this strategy. Therefore, even though Broadband China Strategy is claimed to be of a guidance nature, its implementation through the disbursement of State funding to certain encouraged industries only makes it binding and specifically targeting such encouraged industries and not generally applicable. In any event, the reference to the Panel Report in 'China – GOES' is not decisive as concerns specificity, because in this case the numerous plans and policy documents issued by GOC covered in this section provide specific guidance and support for the product concerned. Therefore, the claim was rejected.

(106) In the Guiding Opinions of the State Council on Actively Promoting the 'Internet Plus' ([29]) from 2015, a clear objective is formulated by stating that this document shall help to *'accelerate the implementation of the "Broadband China" strategy, organize and implement the national new generation information infrastructure construction project [and] promote the transformation of fiber optic broadband network.'* And the way to achieve this goal is described under '(6) Strengthen guidance and support' where it is elaborated that fiscal and taxation support shall be increased and tasks are specified such as *'actively invest in the research and development and application demonstration of qualified "Internet +" integrated innovation key technologies. Coordinate the use of existing financial special funds to support the construction of "Internet +" related platforms and application demonstrations.'*

(107) In 2015, the GOC furthermore outlined the plan for financial investments foreseen to *'speed up infrastructure construction'* in the 'Guidance from the General Office of the State Council on Speeding up the Construction of High-Speed Broadband Networks and Promoting the Speed Reduction of Network Speed-up Fees' ([30]). In this document it is stated that the GOC, in order to achieve this objective *'will accelerate the construction of all-fiber network cities and fourth-generation mobile communications (4G) networks, with more than 430 bil yuan invested in network construction in 2015 and no less than 700 bil yuan in 2016-2017'* and *'promote the fiber-to-the-home process, complete the fiber-optic transformation of 45 000 copper cable access zones in 2015, and [to] build more than 80 million new fiber-to-the-home households.'*

(108) The approach of the GOC to define encouraged industries and products in catalogues in order to allocate resources accordingly, based on their strategic or political importance as attributed by the GOC, and to implement and supervise the plans at each administrative level can be further observed by examining the Catalogue of Strategic and Emerging Products and Services of the National Development and Reform Commission (NDRC) from 2016 ([31]). Again, the establishment of a new generation of IT industry is envisaged, including a new generation of information network industry. To achieve this objective, certain products are included in the catalogue of strategic and emerging products. OFC clearly is one of the products as the reference to '*Optical communication equipment. Including fiber'* is unequivocal. The enumeration of technological specificities of the equipment concerned, such as *'G.657 fiber for*

([28]) http://www.gov.cn/zwgk/2010-04/08/content_1576039.htm, last accessed on 2 August 2021.
([29]) http://www.gov.cn/zhengce/content/2015-07/04/content_10002.htm, last accessed on 2 August 2021.
([30]) http://www.gov.cn/zhengce/content/2015-05/20/content_9789.htm, last accessed on 5 August 2021.
([31]) https://www.ndrc.gov.cn/xxgk/zcfb/gg/201702/t20170204_961174.html?code=&state=123, last accessed on 3 August 2021.

FTTx, large effective area G.655 fiber, G.656 fiber, low-loss and ultra-low-loss light that meets G.652 standards Fiber, […] Optical transmission equipment, single channel line rate 10Gbit/s, 40Gbit/s, 100Gbit/s, 200Gbit/s, 400Gbit/s' show not only that OFC is considered a strategic and emerging product by the GOC but also the degree of detailed planning by the GOC that extends to the level of certain technological products.

(109) The same approach – to define objectives in plans and further implementing them by defining technical details in catalogues – is used in the Catalogue of High and new Technology Products ([32]), where OFC are covered as communication product in No 1020011, which includes '*SDH optical fiber transmission system with single-mode fiber transmission medium, high-speed data transmission channel, the transmission rate of 10Gbit / s and 40Gbit / s, for communication lines and metro backbone network*'. Already in 2003, OFC was listed in the Catalogue of Encouraged Hi-Tech Products for Foreign investment in the category Communication Equipment and Products ([33]) under number 42 as '*10Gb/s and above SDH fiber communication equipment*'.

(110) Following final disclosure, the GOC and Connect Com claimed that the Commission did not demonstrate that the various documents mentioned in Section 3.1 *'specifically'* support or encourage the OFC industry although Article 4(2)(a) of the basic Regulation requires the Commission to demonstrate that a GOC document *'explicitly limits access'* to certain enterprises and that such a requirement under Article 2.1(a) of the SCM Agreement entails the demonstration of a limitation that is *'express…unambiguous and clear'* ([34]). Connect Com further referred to Article 4(5) of the basic Regulation which requires that specificity must be clearly justified on the basis of positive evidence and claimed that the Commission did not meet this requirement. The GOC further argued that the Commission bases itself on the incorrect assumption that if network infrastructure is supposedly encouraged, everything that makes up that network is encouraged. The GOC stated that numerous documents mentioned by the Commission, such as the 13th Five-Year plan, the Made in China 2025 initiative, the Intelligent Manufacturing Development plan (2016-2020), the 2009 Plan for Adjustment and Revitalization of the Electronic Information industry and the Broadband China Strategy of 2013, do not concern the product OFC or the OFC industry but rather downstream networks or the deployment of broadband, i.e. general infrastructure. According to the GOC, given that building networks requires many inputs and products, the Commission should clearly explain exactly which products and services making the infrastructure it considers to be encouraged. Additionally, the GOC claimed that the *'roll-out'* of the network or broadband is not related to goods but rather to infrastructure development and services, since such roll-out concerns the improvement of general telecommunication services.

(111) The Commission disagreed. As explained in recital (80), OFC is a key component of internet networks infrastructure and it plays a paramount role in the roll-out of optical fibre networks and broadband internet. The broadband infrastructure refers to networks of deployed telecommunications equipment and technologies necessary to provide high-speed internet access and other advanced telecommunication services ([35]) and OFC is a main part of the transmission equipment. Therefore, the building of the broadband infrastructure and networks requires the use of products necessary to the transmission of data and does not consists mainly in the provision of services as the GOC seems to imply. Actually, the provision of services would be the result of the existence of such infrastructure once built. Therefore, if the building of the broadband infrastructure is encouraged by the GOC, key products which are indispensable for the building of such infrastructure and which form an integral part of it are also encouraged by the GOC. The Commission is of the opinion that the normative framework resulting from the implementation of the various documents mentioned in Section 3.1 *'explicitly limits access'* to a preferential treatment to certain enterprises in encouraged industries, such as the OFC industry which is part of the information technology and broadband networks. Consequently, the various documents that were mentioned in Section 3.1 constituted sufficient positive evidence to conclude the specificity of the support and encouragement of the OFC industry by the GOC. Therefore, the claims of the GOC and Connect Com were rejected.

(112) Furthermore, according to the GOC, internet access networks and broadband infrastructure are general infrastructure. The GOC made reference to the interpretation of *'general infrastructure'* by the Panel in 'EC and certain Member States – Large Civil Aircraft' *as 'infrastructure that is not provided to or for the advantage of only a single entity or limited group of entities, but rather is available to all or nearly all entities'*. The GOC further argued that the Appellate Body in 'US – Softwood Lumber IV' confirmed that *'only explicit exception to the general principle that the provision of "goods" by a government will result in a financial contribution is when those goods are provided in the form of "general infrastructure."'*

([32]) http://www.gov.cn/zwgk/2006-12/21/content_474651.htm, last accessed on 7 August 2021.
([33]) http://www.most.gov.cn/xwzx/xwfb/200312/t20031214_10451.html, last accessed on 7 August 2021.
([34]) Appellate Body Report, 'European Communities and Certain Member States – Measures Affecting Trade in Large Civil Aircraft'
([35]) https://itlaw.wikia.org/wiki/Broadband_infrastructure, last accesses on 26 October 2021.
https://www.investopedia.com/terms/b/broadband.asp, last accessed on 26 October 2021.

(113) In this respect, the Commission pointed out that the interpretation of *'general infrastructure'* to which the GOC referred relates to the definition of provision of goods by a government in the form of general infrastructure. This interpretation does not relate to the specificity analysis of a subsidy programme. Moreover, the object of this investigation is not the provision of optical fiber cable by a government, which GOC claimed to be *'general infrastructure'*, but rather all the countervailing subsidies granted to the exporting producers of OFC, which in turn export this OFC to telecom operators in the Union. Therefore, the Commission considered the claim as unfounded and irrelevant for the assessment of the encouragement of the OFC industry by the GOC and therefore rejected it.

(114) Following final disclosure, Connect Com claimed that the general funding for the expansion of the fibre optical network does not represent a specific subsidy for OFC and referred to recital (749) below according to which, OFC do not make up more than 5 % of the total volume of optical fibre network.

(115) In this respect, the Commission stressed that recital (749) reads as follows: *'the investigation established that OFC represents only a minor share of the total rollout cost of digital networks projects - in the case of 5G being much less than 5 %'*. First, this statement refers to the cost of production and not to the volume. Second, the fact that OFC might represent a minor share of the total rollout of the network does not invalidate the fact that OFC is a key and indispensable product for the deployment of such network. As explained at recitals (80) and (111), OFC is an integral component of the last-generation high-speed broadband networks based on this technology, which therefore would not be able to function without it. Subsidies to this key component are thus by definition specific and instrumental for the successful functioning of the whole optical fibre network. Therefore, the claim was rejected.

(116) Furthermore, the Temporary Provisions on Promoting Industrial Structure Adjustment (Decision No 40 from 2005 of the State Council) ('Decision No 40'), Chapter III refers to 'The Guiding Catalogue for Industry Restructuring' which is composed of three kinds of contents, namely encouraged project contents, limited projects content and eliminated projects content. According to Article XVII of the Decision, if *'the investment project belongs to the encouragement content it shall be examined and approved and put on records according to the relevant national regulations on investment; all financial institutions shall provide credit support according to the credit principles; the self-using equipment imported in the total amount of investment, with the exception of commodities in the Non-exempt Imported Commodities Content of Domestic Invested Projects (amended in 2000) issued by the Ministry of Finance, can be exempt from import duty and import links value-added tax, unless there are new regulations on the non-exempt investment projects content. Other favorite policies on the encouraged industrial projects shall be implemented according to relevant national Regulations'*.

(117) Consequently, Decision No 40 read together with the Guiding Catalogue for Industry Restructuring provides for specific treatment of certain projects within certain encouraged industries.

(118) The Guiding Catalogue for Industry Restructuring (2011 Version)(2013 Amendment) ([36]) and the Guiding Catalogue for Industry Restructuring (2019 Version) ([37]) approved by Decree of the National Development and Reform Commission of the People's Republic of China No 29 of 27 August 2019, which entered into force on 1 January 2020, list under 'Category I Encouragement':

'XXVIII. *Information Industry*

[…]

13. *Equipment manufacture of wavelength division multiplexing (WDM) optical fiber transmission systems with a speed of 32 waves or more;*

14. *Equipment manufacture of digital synchronization series optical fiber communication systems with a speed of 10GB/S or more;*

[…]

([36]) Catalogue for Guiding Industry Restructuring (2011 Version) (2013 Amendment) (Issued by Order No 9 of the National Development and Reform Commission on March 27, 2011, and amended in accordance with the Decision of the National Development and Reform Commission on Amending the Relevant Clauses of the Catalogue for Guiding Industry Restructuring (2011 Version) issued by Order No 21 of the National Development and Reform Commission on February 16, 2013).

([37]) http://www.gov.cn/xinwen/2019-11/06/5449193/files/26c9d25f713f4ed5b8dc51ae40ef37af.pdf, last accessed on 18 August 2021.

28. *Manufacture of new (non-dispersive) single-mode fiber and optical fiber preforms*'

(119) Therefore, the Guiding Catalogue for Industry Restructuring includes under 'information industry' specific projects related to the OFC industry as encouraged.

(120) The GOC claimed that Decision No 40 is not mandatory or legally binding, but instead is merely a guidance document. In addition, according to the GOC, Article V of Decision No 40, which refers to *'[s]trengthen the construction of information infrastructure including broadband communication'*, clearly concerns only the improvement of infrastructure and does not mention OFC. Thus, the GOC argued that this document could not have provided support or encouragement to the OFC industry.

(121) First, the Commission disagreed that Decision No 40 has no mandatory effect. Indeed, Decision No 40 lays down the temporary regulations promoting the industrial restructuring and it refers to 'The Guiding Catalogue for Industry Restructuring', which defines three kinds of content: encouraged projects content, limited projects content and eliminated projects content. Article XVII of Decision No 40 establishes the treatment of investment projects belonging to the encouraged content in a mandatory manner, e.g. *'all financial institutions shall provide credit support according to the credit principles'* and *'other favourite policies on the encouraged industrial projects shall be implemented according to relevant national Regulations'*. Furthermore, Article XXI sets that *'the relevant preferential policies implemented according to The Content of Industries, Products and Technologies Currently Especially Encouraged by the State (amended in 2000) shall be adjusted to be implemented according to the encouragement content of The Guiding Catalogue for Industry Restructuring'*. Therefore, Decision No 40 has a mandatory effect in this respect.

(122) Second, Article V of Decision No 40, which belongs to Chapter II 'Orientation and Priorities of Industrial Restructuring', sets as priority to strengthen the *'construction of information infrastructure including broadband communication'* and as demonstrated in recital (80) and further explained in recital (111), OFC is a key and indispensable component of such infrastructure. As concluded by the Commission in recital (111), if the building of the broadband infrastructure is encouraged by the GOC, key products which are indispensable for the building of such infrastructure and form an integral part of it are also considered encouraged by the GOC. Furthermore, Article XIV of Decision No 40, which belongs to Chapter III 'The Guiding Catalogue of the Industrial Restructuring', states that: *'the encouragement content mainly includes the key technologies, equipment and products that may promote the social and economic development, that are beneficial for saving the resources, protecting the environment and optimizing and upgrading the industrial structure and that need to be encouraged and supported by relevant policies and measures'*. As already pointed out in recital (118), information industry and in particular key input materials for the production of OFC such as single-mode fibre and optical fibre preforms as well as upstream products such as optical fibre transmission systems and optical fibre communication systems are listed as encouraged content. Furthermore, OFC is key equipment for the deployment of *'information infrastructure including broadband communication'*, which is encouraged by the GOC. Therefore, the combined reading of the above provisions shows that OFC is an encouraged product, on the one side because it is an indispensable component of an encouraged infrastructure and on the other side, because its core input materials, which determine the added value of OFC, are also encouraged by the GOC. Therefore, the claim was rejected.

(123) Not only plans and strategies on national level target at supporting the OFC industry. On provincial level so called National High Tech Industry Development Zones were established. One of them is the East Lake New Technology Industry Development Zone. Those zones are intended to, as set out in Section I.2 of the 13th Five Year Plan on National High Tech Industry Development Zones, provide a regional platform in order to implement in-depth national strategies such as 'Internet +' and 'Made in China 2025' ([38]). Companies and enterprises that are located in one of those zones and qualify as an entity conducting business that falls under the scope of the respective strategies enjoy beneficial treatments. As can be seen in the document concerning 'Preferential policies of the National High-tech Industrial Development Zone' ([39]), a general exemption for income tax is awarded within two years from the date of establishment and also afterwards preferential treatments continue with granting a reduced corporate income tax rate, an exemption from export tariffs and other tax benefits.

([38]) 13th Five Year Plan on National High Tech Industry Development Zones (2017), p. 9, http://www.most.gov.cn/xxgk/xinxifenlei/fdzdgknr/fgzc/gfxwj/gfxwj2017/201705/t20170510_132712.html, last accessed on 10 August 2021.

([39]) Preferential policies of the National High-Tech Industrial Development Zones, page 1.

(124) The benefits granted for companies operating in high-tech industry located in the National High-tech Industrial Development Zone are not limited to tax benefits but also include direct financial support. As can be seen in the cited document that sets out the preferential policies of the National High-tech Industrial Development Zones it is up to the State to '*arrange[…] a certain amount of capital construction loans and investment scale each year, and can issue a certain amount of long-term bonds to raise funds from the society*' ([40]). A more precise description is provided in this document when it states that *'[t]he financial support of the Chinese government for the high-tech industrial development zone is mainly to give certain start-up funds to the national-level development zones, and to implement some national-level planned projects to enterprises in the development zones. In most development zones in China, the local government mainly supports the development zone by renting land at low prices*'.

(125) Furthermore, the 'Preferential policies for the national development zones' refer to the Catalogue of Key High Tech Fields Supported by the State from 2016 that lists the supported key high technology fields. This catalogue clearly mentions under 'I. Electronic Information', point 4. 'Communication technology' '*optical transmission network*' and '*optical transmission system technology*', which cover optical fibre cables, as high technology fields supported by the State. One of the sampled exporting producers of OFC is located in Wuhan Province and most of the companies in the group are located in the East Lake New Technology Industry Development Zone. Therefore, these companies qualify for beneficial treatments that are granted under the scheme of National High Tech Industry Development Zones.

(126) This GOC-backed special industry development zone in Wuhan - the East Lake New Technology Industry Development Zone - served as a major production base for OFC. As one of the State Council-approved 'National High-tech Industry Development Zones' and a 'National Indigenous Innovation Demonstration Zone', it became the PRC's first optoelectronics industry base (also called 'China Optics Valley'). OFC producers active in the zone have been benefitting from various forms of incentives and State support.

(127) With regard to inputs used in the production of OFC, the Commission found that aramid, a chemically obtained synthetic fibre and input in the production of OFC, is categorised as a key product by the GOC in the *Guiding Catalogue of key products and services in strategic emerging industries* ([41]). This qualification has put the latter raw material in focus of various GOC policies.

(128) More broadly, chemical fibres are subject to State regulation and market-management policies not only centrally but also under sub-central planning documents, such as the Zhejiang Province's Action Plan for Comprehensive Transformation and Upgrade of Traditional Manufacturing industries - where chemical fibres feature as one of the 10 key industries subject to specific policy management ([42]), or the 13th Five-Year Plan for the Development of the Chemical Industry in Jiangsu Province (2016 – 2020). In the provisions of the latter concerning new chemical materials, the focus is placed notably on supporting the development and industrialisation of high-value added downstream applications such as 'high performance fibres', which encompasses fibres used in the production of OFC.

(129) Following final disclosure, the GOC claimed that various documents cited by the Commission such as the 'Catalogue of Four Essentials', the 'Catalogue of Strategic and Emerging Products and Services of the National Development and Reform Commission 2016' and the 'Guiding Catalogue for Industry Restructuring' do not mention OFC as such but rather refer to input materials. The GOC further stated that the Commission did not carry out a pass-through or pass-back analysis to demonstrate that alleged subsided received by upstream or downstream industries have been passed to the OFC industry.

([40]) Preferential policies of the National High-Tech Industrial Development Zones, page 1.

([41]) See section 3.3.1 of the Catalogue. http://www.gov.cn/xinwen/2018-09/22/5324533/files/dcf470fe4eac413cabb686a51d080eec.pdf, last accessed on 18 August 2021.

([42]) See the Notice of the People's Government of Zhejiang Province on Issuing 'The Zhejiang Province's Action Plan for Comprehensive Transformation and Upgrade of Traditional Manufacturing Industries (2017-2020)'. http://jxt.zj.gov.cn/art/2017/6/4/art_1657971_35695741.html, last accessed on 11 August 2021.

(130) With regard to upstream industries, the Commission noted that the sampled exporting producers were vertically integrated and therefore subsidies received by their related suppliers were considered to be passed-through to the exporting producers of OFC. Furthermore, the documents mentioned by the GOC as covering the input materials of OFC, even assuming that they do not also cover at least indirectly or implicitly OFC, *quod non,* are in any event relevant in together with all other preferential policies and documents by the GOC covered in this section. All the documents in this section cover either optical fibre networks in which OFC is a key component, or its main inputs, hence showing how the OFC sector as a whole is encouraged starting from the upstream production until the downstream output of the product concerned. These documents are also relevant to show specificity of the various subsidy programmes. A pass-through analysis is needed only for subsidies actually granted to raw materials supplied at less than adequate remuneration and used by the exporting producers for the production of the product concerned, and only if the seller and the buyer of these input materials are unrelated. As explained below in Section 3.8.2, raw materials sourced by unrelated suppliers at less than adequate remuneration have not been countervailed in this investigation. Furthermore, as stated above in this recital, the cooperating exporting producers are mainly integrated.

(131) Considering the above-mentioned plans and programmes, the OFC industry is thus regarded as a key/strategic industry, whose development is actively pursued by the GOC as a policy objective. OFC stands out as a product of paramount importance for the GOC in the building of networks and infrastructure serving entire strata of key connectivity and digital policy areas developed and overseen by the State. On the basis of the policy documents referred to in this section, the Commission concluded that the GOC intervenes in the OFC industry to implement the related policies and interferes with the free play of market forces in the OFC sector, notably by promoting and supporting the sector through various means.

3.2. **Partial non-cooperation and use of facts available**

(132) Following final disclosure, the GOC made some general remarks concerning the Commission's decision to apply the provisions of Article 28(1) of the basic Regulation with regard to preferential lending, export credit insurance, and input materials.

(133) The GOC claimed that all of the Commission's requests for information to which the GOC could not provide responses, were unreasonable, since these requests assumed the existence of legal powers which the GOC did not possess.

(134) Furthermore, the GOC argued that the Commission did not properly evaluate the facts before it and did not provide a proper explanation of why the facts available reasonably replaced any necessary information that was missing.

(135) As set out below in recitals (146), (160) and (168), the Commission was of the opinion that the GOC did have the legal power to obtain the requested information, as shareholder or responsible authority of the entities for which the Commission requested the information. The Commission did set out in its communication to the GOC, repeated in sections 3.2.1 to 3.2.3 below, why it had to rely on facts available. The Commission considered publicly available information to be a reasonable replacement for the information that was not provided by the GOC. The Commission therefore rejected the claims of the GOC.

3.2.1. *The application of the provisions of Article 28(1) of the basic Regulation in relation to preferential lending*

(136) For administrative convenience, the Commission requested the GOC to forward specific questionnaires to any financial institution that provided loans or export credits to the sampled companies.

(137) At first, only a reply from EXIM bank was received. The GOC did not respond to the Commission's request to provide questionnaire replies of all financial institutions that provided loans or export credits to the sampled companies. In the deficiency letter, the Commission therefore repeated its request with regard to the financial institutions with a view to maximising the possibilities to engage them in the investigation by providing the necessary information for the Commission to make findings on the existence and extent of the alleged subsidisation.

(138) Following the deficiency letter, the GOC indicated that questionnaire responses from the financial institutions that provided loans were not relevant to the investigation, since none of the loans and export credits were granted in accordance with the government plans and projects as alleged in the complaint and set out in the questionnaire.

(139) The Commission disagreed with this view. First, it is the Commission's understanding that the information requested from State-owned entities is available to the GOC for all entities where the GOC is the main or major shareholder. In addition, the GOC also has the necessary authority to interact with the financial institutions even when they are not State-owned, since they all fall under the jurisdiction of the Chinese banking regulatory authority.

(140) In the end, the Commission only received information on corporate structure, governance and ownership from one State-owned bank but not from any of the other financial institutions which had provided loans to the sampled companies. Moreover, the Commission did not receive any verifiable company-specific information from the banks, other than the EXIM Bank.

(141) Furthermore, although EXIM Bank provided some general explanations on the functioning of their loan approval and risk management systems, it did not provide specific information concerning the assessment of the loans provided to the sampled companies. It argued that it was not in a position to disclose these documents, as they were considered internal and business confidential.

(142) Therefore, the Commission asked the sampled groups of exporting producers to grant access to company-specific information held by all banks, State-owned and private, from which they received loans. Although the sampled companies gave their agreement to provide access to the bank data pertaining to them, the partially cooperating bank refused to provide the required detailed information.

(143) Since it has received no information in relation to most of the banks that provided loans to the sampled companies, the Commission considered that it has not received crucial information relevant to this aspect of the investigation.

(144) Therefore, the Commission informed the GOC that it might have to resort to the use of facts available under Article 28(1) of the basic Regulation when examining the existence and the extent of the alleged subsidisation granted through preferential lending.

(145) In the reply to the Commission's letter, the GOC objected to the application of Article 28(1) of the basic Regulation. It argued that the GOC is not obliged to provide the requested information and that the requested information does not constitute necessary information.

(146) The Commission maintained its position that as the regulatory body, the GOC is the authority to provide answers to the specific questions asked to the financial institutions that provided financing to the sampled exporting producers. As set out in the Commission's letter, the information requested from State-owned entities is available to the GOC for all entities where the GOC is the main or major shareholder and the GOC has the necessary authority to interact with the financial institutions even when they are not State-owned, since they all fall under the jurisdiction of the Chinese banking regulatory authority.

(147) Furthermore, the Commission considered the requested information to be crucial to assess the control of the GOC over the conduct of the financial institutions with respect to its lending policies and assessment of risk, where they provided loans to the OFC industry.

(148) Following final disclosure, the GOC claimed that the information by the Commission with regard to information from financial institutions providing loans or export credits to the sampled companies was not necessary, or even relevant, for the Commission to complete its analysis, since none of the loans at issue were granted pursuant to government plans or other GOC documents.

(149) The missing information concerned two aspects. First, the information on the ownership and governance structure of the non-cooperating banks was necessary for the Commission to determine whether these banks are public bodies or not. Second, company-specific information from the partially cooperating bank, EXIM Bank, such as the loan approval process and the creditworthiness assessment by the bank for the loans provided to the sampled exporting producers, were necessary in order to determine whether loans were provided at preferential rates to these producers. Such internal documents could only have been provided by the banks and the GOC, since the sampled exporting producers would not have access to them.

(150) The GOC also argued that the requested information was not available to it. The GOC asserted that it was legally impossible to obtain the requested information, because there is no basis in Chinese law for the GOC to compel financial institutions to divulge such confidential information. By requesting this information, the Commission placed an unreasonable burden on the GOC.

(151) The Commission noted that consent was requested separately from each company for the loan transactions of each specific bank. The Commission considered that such a specific consent should be sufficient as such to grant access to the records related to the sampled companies. In addition, the partially cooperating bank actually provided an overview of their outstanding loans with the companies, thus showing that they were not restricted in providing information as such on specific transactions. However, none of the banks provided any information related to their own internal assessment of the transactions that had been disclosed.

(152) Finally, the Commission did not consider that it had imposed an unreasonable burden on the GOC by asking the information on preferential lending. From the start, the Commission had limited its investigation to those financial institutions that had provided loans to the sampled companies. The Commission did identify these financial institutions and the request to forward the questionnaires was provided to the GOC together with the questionnaire to be filled in by the GOC at an early stage of the investigation. This provided ample time for the GOC to comply with the request of the Commission. Therefore, the Commission considered that it had done its utmost best to facilitate its request to the GOC.

(153) The Commission thus maintained that it had to rely partially on facts available when examining the existence and the extent of the alleged subsidisation granted through preferential lending.

(154) Following final disclosure, the complainant argued that the Commission did not receive crucial information from the GOC in relation to preferential lending, which has resulted in subsidy margins that likely under-represent the true benefit from preferential loans conferred on the exporting producers.

(155) The sampled exporting producers did cooperate in the investigation and provided detailed information on the loans they received from the banks. Since the benefit was calculated on the basis of the difference between this information and a benchmark interest rate, the subsidy margin was considered to represent the true benefit conferred on the sampled exporting producers. Therefore, the claim had to be rejected.

3.2.2. *The application of the provisions of Article 28(1) of the basic Regulation in relation to export credit insurance*

(156) For administrative convenience, the Commission requested the GOC to forward a specific questionnaire to Sinosure.

(157) In its initial questionnaire reply, the GOC claimed that Sinosure did not provide subsidies to the OFC industry and it considered that the specific questionnaire intended for Sinosure was not relevant. The GOC only provided the annual report of Sinosure.

(158) Following the deficiency letter, the GOC reiterated its view that Sinosure did not provide subsidies specific to the sampled exporting producers or the OFC industry, although it provided a partial reply to the specific questionnaire. However, neither the GOC nor Sinosure gave any of the supporting documentation requested concerning Sinosure's corporate governance, such as its Articles of Association, and provided a complete and correct list of the export credits provided to the sampled exporting producers. Furthermore, no specific information about the export credit insurance provided to the OFC industry, the level of its premiums or detailed figures relating to the profitability of its export credit insurance business were received from the GOC or Sinosure.

(159) In the absence of such information, the Commission considered that it had not received crucial information relevant to this aspect of the investigation.

(160) It is the Commission's understanding that the information requested from State-owned entities (be it companies or public/financial institutions) is available to the GOC for all entities where the GOC is the main or major shareholder. This is also the case for Sinosure, which is a fully State-owned entity. Therefore, the Commission informed the GOC that it might have to resort to the use of facts available under Article 28(1) of the basic Regulation when examining the existence and the extent of the alleged subsidisation granted through export credit insurance.

(161) In the reply to the Commission's letter, the GOC maintained its position that Sinosure did not provide subsidies specific to the OFC industry and that it follows the market-oriented principle to carry out relevant insurance business and has no specific preferential treatment concerning the OFC industry as requested by any policy documents.

(162) The information that the GOC provided with regard to Sinosure was incomplete and did not allow the Commission to draw conclusions on crucial parts of the investigation regarding export credit insurance, specifically whether Sinosure is a public body and whether the premiums charged to the sampled companies were market conform.

(163) Following final disclosure, the GOC argued that all necessary information was submitted to the Commission and, since Sinosure did not provide subsidies that are specific to the OFC industry, the information requested was not relevant in the current investigation.

(164) As set out in recital (162), the Commission did not receive information from Sinosure to assess the correctness of the claim by the GOC that Sinosure was not a public body and whether the premiums charged by Sinosure were market conform. This information was considered necessary to allow the Commission to draw a conclusion whether the export credit insurance provided by Sinosure established a countervailable subsidy that conferred a benefit to the sampled exporting producers.

(165) The Commission thus concluded that it had to rely partially on facts available for its findings concerning export credit insurance.

(166) Following final disclosure, the complainant argued that the Commission did receive incomplete information from the GOC in relation to Sinosure, not allowing to draw conclusions on crucial parts of the investigation regarding export credit insurance. As a result, the subsidy rate calculated for each sampled exporting producer could very likely under-represent the true benefit from export credit insurance conferred on the exporting producers. The complainant considered that the Commission should apply the highest rate found for one exporting producer automatically to the other exporting producer.

(167) The sampled exporting producers did cooperate in the investigation and provided detailed information on the export credit insurance they received from Sinosure. Since the benefit was calculated on the basis of the difference between this information and an appropriate external benchmark, the subsidy amount was considered to represent the actual benefit conferred on the sampled exporting producers. Therefore, the claim had to be rejected.

3.2.3. *Use of facts available in relation to input materials*

(168) The Commission requested the GOC to forward a specific questionnaire to the top 10 producers and distributors of the input materials used in the production of OFC, as well as to any other suppliers of the materials in question, which have provided inputs to the sampled companies. In its reply to the questionnaire, the GOC claimed that it does not have control over the input materials suppliers to request that they provide the confidential information requested in the questionnaire and that it would be an unreasonable burden for the GOC to coordinate with a very significant number of input materials suppliers of the sampled companies. The Commission found on the basis of publicly available data, however, that the main germanium producers are (partially) State-owned, as set out in Section 3.8.2. Thus, the GOC was in a position to provide the requested information.

(169) Upon request by the Commission, the GOC provided government plans and notices issued by the Yunnan Province Government affecting the germanium industry. Yet, the GOC refused to comply with the Commission's request to forward the questionnaire to input suppliers in order to get more detailed information on the ownership structure of the enterprises manufacturing and supplying the input materials in question. Therefore, because of the only partial cooperation of the GOC in respect to input materials used in the production of OFC, the Commission did not obtain the necessary information about the input suppliers.

(170) Following final disclosure, the GOC claimed that the Commission illegally used facts available with respect to information from input material producers and distributors, arguing that it is unreasonable to expect the GOC to coordinate with uncountable input producers.

(171) The Commission exceptionally only asked further questions in its deficiency letter to the GOC on one of the main input materials, germanium, for the reasons explained in Section 3.8.2 below. However, the necessary information related to this input material was not fully provided by the GOC.

(172) This missing information mainly concerned two aspects: first, information on the ownership and governance structure of the non-cooperating producers of input materials. Without such information the Commission could not determine whether these producers are public bodies or not. Second, company-specific information from the non-cooperating producers of input materials, such as e.g. information on the price setting of the inputs provided to the sampled companies. Such information is necessary in the sense of Article 28 of the Basic Regulation in order to determine whether inputs had been provided at less than adequate remuneration to the sampled companies. Furthermore, such information could only be provided by the producers, and could thus not be supplied through the questionnaire replies of the sampled companies.

(173) Therefore, the Commission thus concluded that it had to rely partially on facts available for its findings concerning the provision of input materials at less than adequate remuneration in accordance with Article 28(1) of the basic Regulation.

3.3. **Subsidies and subsidy programmes within the scope of the current investigation**

(174) On the basis of the information contained in the complaint, the Notice of Initiation and the replies to the Commission's questionnaires, the alleged subsidisation through the following subsidies by the GOC were investigated:

(i) Grant Programmes

— Technology, innovation and development grants and funds;

— Industrial transformation and upgrading funds;

— Project-based grants;

— Asset-related grants;

— Equipment and construction services grants;

— Research and development funding;

— Subsidies related to raw materials;

— Other grants.

(ii) Provision of preferential financing, directed credits and funding through equity, quasi-equity and other capital instruments (e.g. policy loans, credit lines, bank acceptance drafts, export financing).

(iii) Preferential Export credit and export credit insurance and guarantee.

(iv) Revenue foregone through Tax Exemption and Reduction programmes

— Enterprise Income Tax ('EIT') reduction for High and New Technology Enterprises;

— Preferential pre-tax deduction of research and development expenses;

— Accelerated depreciation of instruments and equipment used by High-Tech enterprises for High-Tech development and production;

— Dividend exemption between qualified resident enterprises;

— Exemption or waiving of real estate and land use taxes;

— Provision of power at reduced rate.

(v) Government provision of goods and services for less than adequate remuneration ('LTAR')

— Government provision of land use rights for less than adequate remuneration;

— Government provision of input materials for less than adequate remuneration.

3.4. **Grant programmes**

(175) The Commission found that the sampled groups of companies benefitted from a variety of grants programmes such as grants related to technology, innovation and development, asset-related grants, interest discounts on loans, grants supporting exports, grants targeting the development of smart and medium size enterprises, and special grants related to the economic impact of the COVID-19 pandemic. Grants related to technology, innovation and development constituted a significant part of the grants reported by the sampled groups of companies. Therefore, the Commission grouped the grants in two categories: (i) grants related to technology, innovation and development and (ii) other grants.

3.4.1. *Grants related to technology, innovation and development*

(176) Both sampled groups received grants related to research and development ('R&D') and industrialisation, technological upgrading and innovation during the investigation period.

(a) Legal basis

— The 13th Five-year Plan on Technological Innovation;

— Notice on the Establishment of the 2018 Annual Projects of the Key Special Projects of Optoelectronics and Microelectronics Devices and Integration, Ministry of Science and Technology, Guo Ke Gao Fa Ji Zi (2019) No 49;

— Notice on Issuing the Establishment of the Broadband Communications and New Network Key Special Projects of National Key R&D Program in 2019, Ministry of Science and Technology, Guo Ke Gao Fa Ji Zi (2020) No 6;

— Industry support funds and special funds for R&D and industrialization, Dong Ban Fa (2018) No 62;

— National High-Tech Research and Development Program (863) Management Measures;

— Development and Industrialization of Convergent Optical Transmission Equipment-13 Hubei Science and Technology Development [2014] No 10 Notice from the Provincial Department of Science and Technology on the release of the 2014 Hubei Province Science and Technology Plan Projects (the first batch);

— Project Funds for Double Innovation Service Platform;

— Notice on Issuing the First Batch of Provincial Industrial and Information Industry Transformation and Upgrading Special Fund Indicators in 2019;

— The Third Research Institute of the Ministry of Public Security Project Research Appropriation Direct funding;

— Notices on allocating special funds for technical renovation, special funds for industrial revitalization, special funds for technical transformation, and special funds for industrial development;

— The local programmes Wuhan Municipal Market Supervision Administration allocated high-value cultivation projects; and

— Document of Nanjing Economic and Technological Development Zone Management Committee, 2018 No 149.

(b) Findings

(177) The Commission found that the majority of the grants related to technological upgrading, renovation or transformation received by the sampled companies explicitly related to research and development. Few grants related to the transformation and innovation of the companies or their manufacturing process and hence indirectly relate to research and development.

(178) One exporting producer in one of the sampled groups reported 113 grants for the investigation period from which, in value, over 80 % were related to R&D projects. The value of R&D grants of the second exporting producer in the same group represented more than 70 % of the total grants it reported for the investigation period.

(179) Regarding this group of companies, the Commission further established that the GOC provided grants for R&D industrialisation at various levels in the group. In particular, the GOC awarded special purpose funds to the parent companies, one of which is directly managed by the State-owned Assets Supervision and Administration Commission ('SASAC'), which have been further allocated to subsidiaries, including one of the exporting producers, for R&D projects.

(180) One of the exporting producers in the group received a certain amount of funds from its parent companies in the framework of contracts for entrusted R&D services provided to the parent companies. The grants were awarded by the GOC to the parent companies. However, during the RCC, the Commission found that the grants awarded by the GOC were ultimately paid in the form of fees for R&D services to the exporting producer. Moreover, the provisions of the contracts indicated that the R&D results, including all IP rights resulting from these services, belong to both parties and that the right for application remained with the company executing the R&D project, i.e. the exporting producer. The Commission established that the R&D services in question also covered the product concerned. Therefore, on this basis, the Commission considered the funds provided in the form of R&D fees as a grant fully awarded by the GOC to the exporting producer. Related suppliers in the group also received significant grants for R&D projects.

(181) A large proportion of the companies in this sampled group are located in the Wuhan East Lake New Technology Development Zone and have received R&D funds because they are situated in this zone. This high-tech zone is often referred to as the 'Optics Valley' ([43]) due to the focus on optoelectronics production, including OFC. As described in recitals (123) to (125) above, the Wuhan East Lake New Technology Industry Development Zone served as a major production base for OFC and OFC producers active in the zone have been benefitting from various forms of incentives and State support, including grants. ([44])

(182) Regarding the second sampled group, the Commission established that the value of grants that support R&D or serve transformation or innovation purposes represented around 90 % of the grants received during the investigation period for one of the exporting companies and more than 40 % for the other exporting company.

(183) The implementation of the plans and programmes described above in recitals (81) to (126) translated into concrete monetary payments. Indeed, among the instruments through which the GOC steers the development of the OFC sector, there are direct State subsidies. The publicly available 2019 Annual report of the exporting producer FTT confirms that the company had RMB 393,8 million of deferred income in governmental subsidies and RMB 45,8 million of governmental subsidies as 'other income' at the end of 2019 ([45]). The publicly available 2019 annual report of the exporting producer ZTT confirms that the company had RMB 150,3 million of deferred income in governmental subsidies and had received RMB 361,1 million of governmental subsidies related to daily company activities at the end of 2019 ([46]).

([43]) https://asiatimes.com/tag/donghu-high-tech-zone/, last accessed on 18 August 2021.

([44]) See article *Wuhan East Lake: a National High Tech Zone mixing investment and tax benefit policies*, Pedata website, 27 February 2013, https://free.pedata.cn/755314.html, last accessed on 10 August 2021. See excerpt: *'Ten companies have been listed on the "New Third Board" and received the corresponding government subsidies; […] As regards attracting equity investment institutions to settle in the park or to invest in enterprises located in the park, the relevant departments of Hubei Province, Wuhan Municipality, and the East Lake High-tech Zone have respectively established venture capital guidance funds. Compared with high-tech zones in coastal areas, although the equity investment industry in the inland East Lake High-tech Zone started later, its attractiveness for VC/PE institutions is relatively significant due to its low business registration barrier, strong incentive policy support, and large number of government guidance funds.'*

([45]) https://pdf.dfcfw.com/pdf/H2_AN202004291379049397_1.pdf, p. 133, 138-139, last accessed on 11 August 2021.

([46]) https://pdf.dfcfw.com/pdf/H2_AN202004291379029468_1.pdf, p. 205, 215, last accessed on 11 August 2021.

(184) The grant programmes from which the sampled groups of companies benefitted are to a large extent similar in their design. Depending on the purpose, criteria are set upon which enterprises can apply and if the criteria are complied with, the financial support is granted.

(185) Some of the grants that are provided to the sampled companies have their legal basis in the 'National High-Tech Research and Development Program', the so-called '863 Management Measures'. These Management Measures once more illustrate the functioning of State planning in the PRC as described above in recital (79). Article 2 states that *'The National High-Tech Research and Development Plan (863) is a science and technology program with clear national objectives, which is supported by central financial allocations.'* Article 29 of the same document establishes the procedure for the approval of projects that are eligible. It reflects the mechanism described above: after an application, the acceptance and evaluation of it, an expert group will put forward the proposals of the project and the project funding estimates and eventually a joint office will approve and sign the grant.

(186) There are further legal provisions which form the basis for subsidy programmes in which OFC manufacturers participate.

(187) One of those legal documents is the 'Notice on the Establishment of the 2018 Annual Projects of the Key Special Projects of Optoelectronics and Microelectronics Devices and Integration'. This notice states that the responsibility for the coordination and monitoring of the implementation of the projects lies with so-called Lead Units of the projects, which are selected companies benefitting from the respective programme and supervising the other beneficiaries.

(188) The specific content of the grants that are awarded on the basis of this scheme is specified in its enclosures. For instance, one of the programmes applicable during the IP is described as '25G/100G Hybrid Photonic Integrated Chip and Module in Passive Optical Network (PON)' and amounts to 50.54 million RMB. One of the sampled exporting producers was awarded a grant under this programme. The aim of the GOC to encourage R&D with this grant is evident from its 'Project Objectives' that are *inter alia* described as *'Research on high-power 25G laser chip technology for passive optical network (PON)'*. Passive optical network is a fibre-optic telecommunications technology for delivering broadband network access to end-customers.

(189) Based on the same legal document, approval is given to a project named '25G/50G/100G PON Silicon-based Optoelectronic Chip and Subsystem Project for Optical Access' with a total project funding of 64.17 million RMB. The objective of the grant leaves no doubt that the grants are supposed to benefit research on optical modulators, optical detectors, photodetectors, and on silicon based multi-channel 100Gb/s PON technology which are all used for optical fibre networks.

(190) Another project set by this Notice is named 'Optical Emission and Control Integrated Chip Technology Project in Coherent Optical Communication System', with a funding of 41.77 million RMB, that is foreseen to be implemented during the period from August 2019 to July 2022. By defining research objectives concerning lasers, laser chips and modulators this grant supports manufacturers in the optical network industry in general and more specifically OFC manufacturers. One of the sampled exporting producers is among the beneficiaries of this programme.

(191) An additional scheme supporting the internet industry, and in particular OFC manufactures, is stemming from the 'Notice on Issuing the Establishment of the Broadband Communications and New Network Key Special Projects of National Key R&D Program in 2019'. Based on this Notice, a project called 'Low Power Consumption, High Integration and High Performance 100G Optical Transmission System Research and Application Demonstration' was approved and a funding amounting 95.47 million RMB was established. In the description of the project objectives it is expressed that this grant shall help becoming independent from the supply from foreign devices needed for 100G high-speed optical transmission technology and in order to do so it is requested to research and realize high-speed optoelectronic devices and modules and 100G optical transmission platform equipment based on independent chip devices. One of the sampled exporting producers received a R&D grant based on this programme worth 8 360 000 Yuan.

(c) Conclusion

(192) The grants related to technology, innovation and development, including the grants for R&D projects described in recitals (184) to (191), confer subsidies within the meaning of Article 3(1)(a)(i) and Article 3(2) of the basic Regulation, i.e. a transfer of funds from the GOC to the producers of the product concerned in the form of grants. As mentioned in recital (183) above, most of these funds are booked as government subsidies in the accounts of the sampled exporting producers.

(193) These subsidies are specific within the meaning of Article 4(2)(a) of the basic Regulation because only companies operating in key areas or technologies, as listed in the guidelines, administrative measures and catalogues that are published on a regular basis, are eligible to receive them and OFC is among the eligible sectors.

(194) Following final disclosure, the GOC and Connect Com claimed that none of the R&D grants are geared towards the OFC industry and that the Wuhan East Lake New Technology Development Zone does not provide support to companies producing OFC as any alleged support stemming from this Zone relates to upstream or downstream industries of OFC. The GOC further argued that the Commission did not demonstrate that the grants at issue are specific within the meaning of Article 4(2)(a) of the basic Regulation and failed to meet the requirement set out by the Panel in *'EC – Aircraft'*, according to which, specificity requires the establishment of an explicit limitation of the alleged subsidy and that a limitation must *'distinctly express all that is meant, leaving nothing merely implied or suggested.'* The GOC further claimed that the Commission's conclusion that these grants are explicitly limited to the OFC industry was manifestly incorrect, referring to the Appellate Body Report in the *'US-Large Civil Aircraft'* case according to which, the inquiry of whether a subsidy is explicitly limited focuses on *'not only whether the subsidy was provided to particular recipients identified in the complaint, but focuses also on all enterprises or industries eligible to receive that same subsidy'*.

(195) The Commission has already demonstrated the specificity of grants in recital (193) above. Indeed, only companies operating in key areas or technologies as listed in the guidelines, administrative measures and catalogues are eligible. Furthermore, the cooperating exporting producers provided grants-related documents, such as legal documents and granting notices, which demonstrated that the grants were provided to companies belonging to certain specified industries or sectors and/or involved in specific industrial projects encouraged by the State. Therefore, the Commission reiterated its conclusion that these grants are only available to a clearly specified sub-set of certain enterprises and/or sectors of the economy, certainly a much narrower and specifically defined as the ones at stake in the *'EC-Aircraft'* dispute. In addition, the Commission found that the eligibility conditions of these grants were not clear and objective and they did not apply automatically; consequently, they did not meet the non-specificity requirements of Article 4(2)(b) of the basic Regulation.

(196) The Commission disagreed with the statement of the GOC that the Wuhan East Lake New Technology development Zone did not provide support to companies producing OFC and that any alleged support stemming from this Zone relates to upstream or downstream industries of OFC. First, the Commission found that one of the exporting producers benefitted from R&D funds granted by the authorities of the Wuhan East Lake New Technology development Zone to its parent company. Second, even if the GOC's allegation that any alleged support stemming from this Zone relates only to upstream or downstream industries of OFC was true, it does not demonstrate that the related OFC producers did not benefit from such grants. Indeed, the Commission investigated all related companies that supplied input materials to the exporting producers and allocated part of their subsidies, including grants, to the product concerned. Therefore, this claim was considered unfounded.

(d) Calculation of the subsidy amount

(197) In order to establish the benefit during the investigation period, the Commission considered grants received during the investigation period as well as grants received before the investigation period but for which the depreciation period continued during the investigation period. Regarding grants which are not depreciated, the benefit was considered to be the amount received during the investigation period. Concerning project-related grants and asset-related grants, the benefit was considered to be the portion of the total grant amount that was depreciated during the investigation period.

(198) Regarding the grants received as a remuneration of R&D services described in recital (180), the Commission considered the amounts received as R&D fees during the investigation period and allocated them to the product concerned based on the proportion that the turnover of the product concerned has in the total exporting producer's turnover.

(199) Following final disclosure, Connect Com requested the Commission to disclose the amount of the share of grants specifically granted for the production of OFC and allocated to the production of the product concerned for the cooperating exporting producers, claiming it could not exercise effectively its rights of defence.

(200) The Commission was not able to share such information as it is considered sensitive business information. The company also failed to explain how knowing such an amount would be vital to defend its rights. Therefore, the claim was rejected.

(201) The Commission considered whether to apply an additional annual commercial interest rate in accordance with section F.a) of the Commission's Guidelines for the calculation of the amount of subsidy ([47]). However, such an approach would have involved a variety of complex hypothetical factors for which there was no accurate information available. Therefore, the Commission found it more appropriate to allocate amounts to the investigation period according to the depreciation rates of the R&D projects and assets, in line with the calculation methodology used in previous cases ([48]).

3.4.2. *Other grants*

(202) As mentioned in recital (175), the Commission found that the two sampled groups of companies also received other grants, such as asset-related grants, interest discounts on loans, grants supporting exports, and grants targeting the development of small and medium size enterprises.

(a) Legal Basis

(203) These grants were awarded to the companies by national, provincial, city, county or district government authorities and all appeared to be specific to the sampled companies, or specific in terms of geographical location or type of industry. The information regarding the legal basis, under which these grants were awarded, was not disclosed by all sampled companies. However, the Commission received from some companies a copy of documents issued by a government authority, which awarded the funds, referred to as 'the notice'.

(b) Findings of the investigation

(204) Examples of such other grants are asset-related grants, patent funds, science and technology funds and awards, business development funds, export promotion funds, grants for industry quality increase and efficiency enhancement, municipal commerce support funds, foreign economic and trade development funds and production safety awards.

(205) Given the large amount of grants that the Commission found in the books of the sampled groups of companies, only a summary of the key findings is presented in this Regulation. Evidence of the existence of numerous grants and the fact that they had been granted by various levels of the GOC was initially provided by the two sampled groups. Detailed findings on these grants were provided to the individual companies in their specific disclosure documents.

([47]) OJ C 394, 17.12.1998, p. 6.

([48]) Such as e.g. Council Implementing Regulation (EU) 452/2011 (OJ L 128, 14.5.2011, p. 18) (*Coated fine paper*), Council Implementing Regulation (EU) No 215/2013 (OJ L 73, 11.3.2013, p. 16) (*Organic coated steel*), Commission Implementing Regulation (EU) 2017/366 (OJ L 56, 3.3.2017, p. 1) (*Solar panels*), Commission Implementing Regulation (EU) 1379/2014 (OJ L 367, 23.12.2014, p. 22) (*Filament glass fibre*), Commission Implementing Decision 2014/918 (OJ L 360, 17.12.2014 p. 65) (*Polyester Staple Fibers*).

(c) Conclusion

(206) These other grants constitute subsidies within the meaning of Article 3(1)(a)(i) and (2) of the basic Regulation as a transfer of funds from the GOC in the form of grants to the sampled groups of companies took place and a benefit was thereby conferred.

(207) The sampled groups of companies provided information as to the amount of the grants and the authority that awarded and paid each grant. The companies concerned also mostly booked this income under the heading 'subsidy income' in their accounts and had these accounts independently audited. The information on these grants has been taken by the Commission as positive evidence of a subsidy that conferred a benefit.

(208) These grants are also specific within the meaning of Articles 4(2)(a) and 4(3) of the basic Regulation given that, from the documents provided by the cooperating exporting producers, they appear to be limited to certain companies, certain industries, such as the OFC industry, or specific projects in specific regions. In addition, some of the grants are contingent upon export performance within the meaning of Article 4(4)(a).

(209) Furthermore, these grants do not meet the non-specificity requirements of Article 4(2)(b) of the basic Regulation, given that the eligibility conditions and the actual selection criteria for enterprises to be eligible are not transparent, not objective and do not apply automatically.

(210) Following final disclosure, the GOC argued that to the extent that any of the alleged grants are provided by local and/or regional government, they cannot be considered as regionally specific subsidies. The GOC pointed out that a regional subsidy under Article 2.2 of the SCM Agreement cannot be considered to be specific if it is granted by the region itself (i.e. by the regional or local government) ([49]) and that the Commission needed to show that there is a limitation on access to the grants on the basis of geographical location alone ([50]).

(211) In this respect, the Commission pointed out that in recital (208) it concluded that the grants other than grants related to technology, innovation and development, are specific within the meaning of Articles 4(2)(a), 4(3) and 4(4)(a) of the basic Regulation. Most of these grants appeared to be limited to certain companies operating in certain industries, such as the OFC industry. Only certain grants appeared to relate to specific projects in specific regions. The fact that these grants were awarded to the companies by national, provincial, city, county or district government authorities does not mean that these grants do not have their legal basis at national level and did not concern specific projects in specific regions. The GOC did not provide any concrete evidence that these grants are not specific (for instance, that the grants were provided to all companies within the jurisdiction of the local entity, acting as the granting authority). Consequently, the Commission reiterated that on the basis of the evidence at its disposal it concluded that these grants do not meet the non-specificity requirements of Article 4(2)(b) of the basic Regulation and are specific under Articles 4(2)(a), 4(3) and 4(4)(a) of the basic Regulation and therefore it rejected the claim of the GOC.

(212) Following final disclosure, Connect Com claimed that a subsidy is only specific if it related directly to the OFC industry and not if it concerns a number of industries, *'such'* as OFC production as stated by the Commission in recital (208).

(213) In this respect, the Commission clarified that Article 4(2) of the basic Regulation provides that *'in order to determine whether a subsidy is specific to an enterprise or industry or group of enterprises or industries ('certain enterprises') within the jurisdiction of the granting authority, the following shall apply (…)'*. It results from the wording of this provision that specificity can refer also to a *'group of enterprises or industries'*. Therefore, the Commission rejected the claim.

(214) Connect Com also claimed that the Commission ignored Article 4(2)(b) of the basic Regulation, according to which specificity shall not exist where the granting authority establishes objective criteria governing the eligibility for and the amount of a subsidy.

([49]) Panel Report, EC – Large Civil Aircraft, paras. 7.1230 – 7.1231; Panel Report, US – AD/CVD (China), paras. 9.138 – 9.139.

([50]) Panel Report, United States — Definitive Anti-Dumping and Countervailing Duties on Certain Products from China, WT/DS379/R, paras. 9.140 – 9.144, 9.157.

(215) With this regard, the Commission explained that, as pointed out in recitals (195) and (209), these grants do not meet the non-specificity requirements of Article 4(2)(b) of the basic Regulation, given that the eligibility conditions and the actual selection criteria for enterprises to be eligible are not transparent, not objective and do not apply automatically. Therefore, the claim was rejected.

(d) Calculation of the subsidy amount

(216) The Commission calculated the benefit in accordance with the methodology described in recital (197) above.

3.4.3. *Conclusion on grants programmes*

(217) The subsidy rates established with regard to all grants during the investigation period for the sampled exporting producers were as follows:

Grants

Company name	Subsidy rate
FTT Group: — FiberHome Telecommunication Technologies Co., Ltd — Nanjing Wasin Fujikura Optical Communication Ltd — Hubei Fiberhome Boxin Electronic Co., Ltd	1,79 %
ZTT Group: — Jiangsu Zhongtian Technology Co., Ltd — Zhongtian Power Optical Cable Co., Ltd	0,33 %

3.5. **Preferential financing**

3.5.1. *Financial institutions providing preferential financing*

(218) According to the information provided by the two sampled groups of exporting producers, 32 financial institutions located within the PRC had provided financing to them. Of these 32 financial institutions, 25 were State-owned. The remaining financial institutions were either privately owned or the Commission was not able to determine whether they were State-owned or privately owned. However, only one State-owned bank filled in the specific questionnaire, despite a request to the GOC that covered all financial institutions which had provided loans to the sampled companies.

3.5.1.1. State-owned financial institutions acting as public bodies

(219) The Commission ascertained whether the State-owned banks were acting as public bodies within the meaning of Articles 3 and 2(b) of the basic Regulation. Interpreting the basic Regulation in line with the EU's WTO obligations, the applicable test to establish that a State-owned undertaking is a public body is as follows ([51]): '*What matters is whether an entity is vested with authority to exercise governmental functions, rather than how that is achieved. There are many different ways in which government in the narrow sense could provide entities with authority. Accordingly, different types of evidence may be relevant to showing that such authority has been bestowed on a particular entity. Evidence that an entity is, in fact, exercising governmental functions may serve as evidence that it possesses or has been vested with governmental authority, particularly where such evidence points to a sustained and systematic practice. It follows, in our view, that evidence that a government exercises meaningful control over an entity and its conduct may serve, in certain circumstances, as evidence that the relevant entity possesses governmental authority and exercises such authority in the performance of governmental functions. We stress, however, that, apart from an express delegation of authority in a legal instrument, the existence of mere formal links*

([51]) WT/DS379/AB/R (US – Anti-dumping and Countervailing Duties on Certain Products from China), Appellate Body Report of 11 March 2011, DS 379, paragraph 318. See also WT/DS436/AB/R (US — Carbon Steel (India)), Appellate Body Report of 8 December 2014, paragraphs 4.9 - 4.10, 4.17 - 4.20 and WT/DS437/AB/R (United States – Countervailing Duty Measures on Certain Products from China) Appellate Body Report of 18 December 2014, paragraph 4.92.

between an entity and government in the narrow sense is unlikely to suffice to establish the necessary possession of governmental authority. Thus, for example, the mere fact that a government is the majority shareholder of an entity does not demonstrate that the government exercises meaningful control over the conduct of that entity, much less that the government has bestowed it with governmental authority. In some instances, however, where the evidence shows that the formal indicia of government control are manifold, and there is also evidence that such control has been exercised in a meaningful way, then such evidence may permit an inference that the entity concerned is exercising governmental authority.'

(220) The Commission sought information about State ownership as well as formal indicia of government control in the State-owned banks. It also analysed whether control had been exercised in a meaningful way. For this purpose, the Commission had to partially rely on facts available due to the refusal of the GOC and the State-owned banks to provide evidence on the decision making process that had led to the preferential lending, as set out in recitals (136) to (153) above.

(221) In order to carry out this analysis, the Commission first examined information from the State-owned bank that had filled in the specific questionnaire.

(1) ***Partially cooperating State-owned financial institutions***

(222) Only one State-owned bank, namely EXIM, provided a questionnaire reply.

(a) Ownership and formal indicia of control by the GOC

(223) Based on the information received in the questionnaire reply, the Commission established that the GOC held, either directly or indirectly, more than 50 % of the shares in this financial institution.

(224) Concerning the formal indicia of government control of the cooperating State-owned bank, the Commission qualified it as a 'key State-owned financial institution'. In particular, the notice 'Interim Regulations on the Board of Supervisors in Key State-owned Financial Institutions' ([52]) states that: *'The key State-owned financial institutions mentioned in these Regulations refer to State-owned policy banks, commercial banks, financial assets management companies, securities companies, insurance companies, etc. (hereinafter referred to as State-owned financial institutions), to which the State Council dispatches boards of supervisors'.*

(225) The Board of Supervisors of the key State-owned financial institutions is appointed according to the 'Interim Regulations of Board of Supervisors of Key State-owned Financial Institutions'. Based on Articles 3 and 5 of these Interim Regulations, the Commission established that Members of the Board of Supervisors are dispatched by and accountable to the State Council, thus illustrating the institutional control of the State on the cooperating State-owned bank's business activities.

(226) In addition to these generally applicable indicia, the Commission found the following with respect to EXIM. EXIM was formed and operates in accordance with 'The Notice of Establishing Export-Import Bank of China' issued by the State Council, as well as the Articles of Association of EXIM. According to its Articles of Association, the State directly nominates the management of EXIM. The Board of Supervisors is appointed by the State Council in accordance with the 'Interim Regulations on the Boards of Supervisors in Key State-owned Financial Institutions' and other laws and regulations, and it is responsible to the State Council.

(227) The Articles of Association also mention that the Party Committee of EXIM plays a leading and political core role to ensure that policies and major deployment of the Party and the State are implemented by EXIM. The Party's leadership is integrated into all aspects of corporate governance.

(228) The Articles of Association also state that EXIM is dedicated to supporting the development of foreign trade and economic cooperation, cross-border investment, the One Belt One Road Initiative, cooperation in international capacity and equipment manufacturing. Its scope of business includes short-term, medium-term and long-term loans as approved and in line with the State's foreign trade and 'going out' policies, such as export credit, import credit, foreign contracted engineering loans, overseas investment loans, Chinese government foreign aid loans and export buyer loans.

([52]) Decree of the State Council of the People's Republic of China (No 283).

(229) Furthermore, in its annual report of 2019, EXIM Bank stated that over that it fully implemented all major policies and decisions made by the CPC Central Committee and the State Council.

(230) The Commission also found that State-owned financial institutions have changed their Articles of Associations in 2017 to increase the role of the China Communist Party ('CCP') at the highest decision-making level of the banks ([53]).

(231) These new Articles of Association stipulate that:

— the Chairman of the Board of Directors shall be the same person as the Secretary of the Party Committee;

— the CCP's role is to ensure and supervise the Bank's implementation of policies and guidelines of the CCP and the State; as well as to play a leadership and gate keeping role in the appointment of personnel (including senior management); and

— the opinions of the Party Committee shall be heard by the Board of Directors for any major decisions to be taken.

(b) Meaningful control by the GOC

(232) The Commission further sought information about whether the GOC exercised meaningful control over the conduct of EXIM bank with respect to its lending policies and assessment of risk, where they provided loans to the OFC industry. The following regulatory documents have been taken into account in this respect:

— Article 34 of the Law of the PRC on Commercial Banks ('Bank law');

— Article 15 of the General Rules on Loans (implemented by the People's Bank of China)

— Decision No 40;

— Implementing Measures of the China Banking and Insurance Regulatory Commission ('CBIRC') for Administrative Licensing Matters for Chinese-funded Commercial Banks (Order of the CBIRC [2017] No 1)

— Implementing Measures of the CBIRC for Administrative Licensing Matters relating to Foreign-funded Banks (Order of the CBIRC [2015] No 4)

— Administrative Measures for the Qualifications of Directors and Senior Officers of Financial Institutions in the Banking Sector (CBIRC [2013] No 3).

(233) Reviewing these regulatory documents, the Commission found that financial institutions in the PRC are operating in a general legal environment that directs them to align themselves with the GOC's industrial policy objectives when taking financial decisions, for the following reasons.

(234) With respect to EXIM Bank, its public policy mandate is established in the notice of establishing EXIM Bank as well as in its Articles of Association.

(235) At the general level, Article 34 of the Bank law, which applies to all financial institutions operating in China, provides that *'commercial banks shall conduct their business of lending in accordance with the needs of the national economic and social development and under the guidance of the industrial policies of the State'*. Although Article 4 of the Bank Law states that, *'commercial banks shall, pursuant to law, conduct business operations without interference from any unit or individual. Commercial banks shall independently assume civil liability with their entire legal person property'*, the investigation showed that Article 4 of the Bank law is applied subject to Article 34 of the Bank law, i.e. where the State establishes a public policy the banks implement it and follow State instructions.

(236) In addition, Article 15 of the General Rules on Loans provides that *'In accordance with the State's policy, relevant departments may subsidize interests on loans, with a view to promoting the growth of certain industries and economic development in some areas'*.

([53]) https://www.reuters.com/article/us-china-banks-party-idUSKBN1JN0XN, last accessed on 13 August 2021.

(237) Similarly, Decision No 40 instructs all financial institutions to provide credit support specifically to 'encouraged' projects. As already explained in Section 3.1 and more specifically in recitals (81) and (86), projects of the OFC industry belong to the 'encouraged' category. Decision No 40 hence confirms the previous finding with respect to the Bank law that banks exercise governmental authority in the form of preferential credit operations. The Commission also found that the CBIRC has far-reaching approval authority over all aspects of the management of all financial institutions established in the PRC (including privately owned and foreign owned financial institutions), such as ([54]):

— approval of the appointment of all managers of the financial institutions, both at the level of headquarters and at the level of local branches. Approval of the CBIRC is required for the recruitment of all levels of management, from the most senior positions down to branch managers, and even includes managers appointed in overseas branches as well as managers responsible for support functions (e.g. the IT managers); and

— a very long list of administrative approvals, including approvals for setting up branches, for starting new business lines or selling new products, for changing the Articles of Association of the bank, for selling more than 5 % of their shares, for capital increases, for changes of domicile, for changes of organisational form, etc.

(238) The Bank law is legally binding. The mandatory nature of the Five-Year Plans and of Decision No 40 has been established above in Section 3.1. The mandatory nature of the CBIRC regulatory documents derives from its powers as the banking regulatory authority. The mandatory nature of other documents is demonstrated by the supervision and evaluation clauses, which they contain.

(239) Decision No 40 of the State Council instructs all financial institutions to provide credit support only to encouraged projects and promises the implementation of '*other preferential policies on the encouraged projects*'. On this basis, banks are required to provide credit support to the OFC industry as an encouraged industry.

(240) Therefore, the Commission concluded that the GOC has created a normative framework that had to be adhered to by the managers and supervisors of the cooperating State-owned bank, who are appointed by the GOC and accountable to the GOC. Therefore, the GOC relied on this normative framework in order to exercise control in a meaningful way over the conduct of the cooperating State-owned bank whenever it was providing loans to the OFC industry.

(241) The Commission also sought concrete proof of the exercise of control in a meaningful way based on concrete loans provided to the sampled exporting producers. In its questionnaire reply, the partially cooperating State-owned bank explained that it uses sophisticated credit risk assessment policies and models when granting the loans at issue. EXIM bank further explained that there is no policy difference regarding the industry in which the borrower operates, the credit situation and capital status, etc.; nevertheless, such factors impact the credit rating assessment and the cost of the risk of the borrower. It may refer to relevant plans and policies in providing loans; however, in determining individual loan projects it applies a market-based assessment.

(242) As already indicated in recital (141) above, the partially cooperating State-owned bank refused to provide concrete examples of its credit risk assessment relating to the sampled companies on the ground that the information requested is internal of the bank and contains business confidential information that is not permitted to be disclosed even though the Commission had a written consent from the sampled companies waiving their confidentiality rights.

(243) In the absence of concrete evidence of creditworthiness assessments, the Commission therefore examined the overall legal environment as set out above in recitals (232) to (239), in combination with the behaviour of the cooperating State-owned bank regarding loans provided to the sampled companies. This behaviour contrasted with its official stance as in practice it was not acting based on thorough market-based risk assessments.

([54]) According to the Implementing Measures of the CBIRC for Administrative Licensing Matters for Chinese-funded Commercial Banks (Order of the CBIRC [2017] No 1), the Implementing Measures of the CBIRC for Administrative Licensing Matters relating to Foreign-funded Banks (Order of the CBIRC [2015] No 4) and the Administrative Measures for the Qualifications of Directors and Senior Officers of Financial Institutions in the Banking Sector (CBIRC [2013] No 3)

(244) In the course of the investigation, the Commission found that loans were provided to the two sampled groups of exporting producers at interest rates below or close to the People's Bank of China (PBOC) Loan Benchmark Rate and below the Loan Prime Rate as announced by the National Interbank Funding Center (NIFC) that was introduced on 20 August 2019 ([55]), regardless of the companies' financial and credit risk situation. Hence, the loans were provided below market rates when compared to the rate corresponding to the risk profile of the sampled exporting producers.

(245) Following final disclosure, the GOC claimed that the Commission did not demonstrate that the cooperating State-owned bank, namely EXIM bank, is a public body and that the GOC exercised meaningful control over EXIM bank. The GOC stressed that the *'ownership and formal indicia of control'* are not sufficient to demonstrate the existence of a public body and that the Commission did not demonstrate the lack of independence of the management of EXIM bank by arguing that the GOC exercises control over EXIM bank only in supervising the appointment of the management of the bank and its board.

(246) The GOC further claimed that the financial institutions in question are not performing any function that could be considered governmental in nature and the GOC has not exercised meaningful control over EXIM bank. Although Article 34 of the Chinese Bank Law requires that commercial banks act *'under the guidance of the industrial policies'* of the GOC, nowhere in the provision there is a stipulation that requires the banks to act in a certain manner and according to the GOC this provision should be considered a guiding principle for Chinese banks. The GOC also stated that the Chinese Bank Law explicitly prohibits the GOC from exercising any form of control over the decisions of commercial banks. In this respect, the GOC invoked Articles 4 and 5 of the Chinese Bank Law, which respectively provide that commercial banks shall *'make their own decisions'* and operate *'without interference from any unit or individual'*. The GOC further stressed that Article 41 of the Chinese Bank Law provides that *'no entity or individual may coerce a commercial bank into granting loans or providing a guarantee'*. Furthermore, the GOC claimed that Article 15 of the General Rules on loans as well as Decision No 40 are not mandatory but only of a guidance nature. Finally, the GOC disagreed with the assertion that EXIM bank provided loans at below market rates as it follows internationally accepted standards for risk assessment and loan disbursement and it operates independently from the GOC.

(247) The Commission disagreed with the allegations of the GOC. The Commission did not reply only on *'ownership and formal indicia of control'* in order to qualify the cooperating State-owned EXIM bank as a public body but also demonstrated that the GOC exercised meaningful control over the bank for the following reasons.

(248) As explained in recital (238) above, the Commission considered that the Chinese Bank law and Decision No 40 are of a mandatory nature. Furthermore, the findings of this investigation as well as the Commission's findings in previous investigations concerning the same subsidy programme ([56]) did not support the claim that banks do not take government policy and plans into account when making lending decisions. For example, the Commission found that the exporting producers benefited from preferential lending at below-market interest rates. One of the exporting producers befitted from preferential lending by the China Development Bank Fund, which as described in recital (285) below is a policy-oriented investment organisation mainly supporting *'projects in key sectors recognised by the State'*.

(249) The investigation showed that Article 15 of the General Rules on Loans was actually applied in practice, and that Articles 4, 5 and 41 of the Bank law were applicable subject to Article 34 of the Bank Law, i.e. where the State establishes a public policy the banks implement it and follow State instructions. In fact, while Articles 4 and 5 of the Bank Law are part of Chapter I, which sets the general provisions, Article 34 is part of Chapter IV, which establishes the basic rules governing loans. The wording of Article 34: *'commercial banks carry out their loan business upon the needs of national economy and the social development and under the guidance of the State industrial policies'*, demonstrates that this provision is not of a guiding nature but has rather a mandatory character and provides a clear instruction to banks to take into account the State industrial policies when carrying out their loan business. The Commission also noted that the Decision No 40 of the State Council instructs all financial institutions to provide credit support only to encouraged projects and promises the implementation of *'other preferential policies on the encouraged projects'*. While Article 17 of the same Decision requires banks to respect credit principles, the Commission could not establish during the investigation that this was done in practice. To the contrary, loans were provided to the exporting producers irrespective of their financial situation and creditworthiness.

([55]) http://www.pbc.gov.cn/zhengcehuobisi/125207/125213/125440/3876551/de24575c/index2.html, last accessed on 3 August 2021.

([56]) See for example the HRF, Tyres and E-bikes cases cited in footnote 5, respectively in Section 3.4.1.1.b, Section 3.4.1.1.b and Section 3.5.1.1.

(250) Moreover, as concerns specifically EXIM Bank, it is undisputable that this is a policy bank directly pursuing government policies by its own admission. As explained on its website, ([57]) EXIM is a State-funded and State-owned policy bank directly under the leadership of the State Council and dedicated to supporting *inter alia* China's foreign trade and implementing the 'going global' strategy.

(251) On that basis, the Commission concluded that the GOC has created a normative framework with respect to lending to encouraged industries that had to be adhered to by the managers and supervisors of the bank, which are appointed by the GOC and accountable to the GOC. This normative framework did not leave any margin of manoeuvre to the managers and supervisors of the bank as to whether to follow this framework or not with respect to the sampled exporting producers, thus putting the management of that bank in a position of dependence. Therefore, the GOC relied on the normative framework in order to exercise control in a meaningful way over the conduct of the cooperating State-owned bank whenever it was providing loans to the OFC industry.

(252) As explained in recital (241), the Commission sought proof of the exercise of control in a meaningful way based on concrete loans. However, the cooperating State-owned bank did not provide certain necessary information, including its specific credit risk assessment related to the sampled companies. In the absence of concrete evidence of such credit risk assessments, the Commission examined the overall legal environment applicable to lending to encouraged industries such as the OFC industry in combination with the behaviour of the cooperating State-owned bank and established that the bank was not acting based on thorough market-based credit risk assessments. Furthermore, as explained in recital (244), loans were provided to the two sampled groups of exporting producers at interest rates below or close to the risk-free PBOC Benchmark Interest Rates and the Loan Prime Rate regardless of their financial and credit risk situation. Therefore, considering the risk profile of the sampled exporting producers described in Section 3.5.3.3 below and that, according to the risk analysis performed by the Commission, the exporting producers should have received a BB credit rating and should thus have paid interest rates significantly above the risk-free rate, the Commission concluded that the loans at issue were provided below market rates.

(253) The Commission therefore concluded that the GOC has exercised meaningful control over the conduct of the cooperating State-owned bank with respect to its lending policies and assessment of risk concerning the OFC industry.

(c) Conclusion on State-owned banks

(254) The Commission established that the partially cooperating State-owned bank implemented the legal framework set out above in the exercise of governmental functions with respect to the OFC sector. Therefore, it was acting as public body in the sense of Article 2(b) of the basic Regulation read in conjunction with Article 3(1)(a)(i) of the basic Regulation and in accordance with the relevant WTO case-law.

(2) ***Non-cooperating State-owned financial institutions***

(255) As set out in recital (218) above, none of the other State-owned financial institutions, which provided loans to the sampled companies, replied to the specific questionnaire. The GOC provided solely some information on the ownership of a number of banks, but not on their governance structure, risk assessment or examples relating to specific loans to the OFC industry.

(256) Therefore, in line with the conclusions reached in Section 3.2.1, the Commission decided to use facts available to determine whether those State-owned financial institutions qualify as public bodies.

(257) The GOC provided that the following banks, which had provided loans to the sampled groups of exporting producers in the investigation at hand, were partially or fully owned by the State itself or by State-held legal persons: Agricultural Bank of China, Bank of China, Bank of Communications, Bank of Jiangsu, Bank of Kunlun, Bank of Nanjing, Bank of Ningbo, China CITIC Bank China Development Bank, China Construction Bank, China Everbright Bank, China Guangfa Bank, China Merchants Bank, China Minsheng Bank, Hankou Bank, Industrial Bank, Industrial and Commercial Bank of China (ICBC), Ping An Bank, Postal Savings Bank, Shanghai Pudong Development Bank, and Zheshang Bank.

([57]) See http://english.eximbank.gov.cn/Profile/AboutTB/Introduction/ last accessed on 28.10.2021.

(258) Using publicly available information, such as the website, annual reports, information available in bank directories or on the Internet, the Commission found that the following financial institutions that had provided loans to the two sampled groups of exporting producers were partially or fully owned by the State itself or by State-held legal persons:

Name	Information on ownership structure
Bank of Beijing	At least 21 % of the shares held by the local and national government and SOEs
Sinomach Finance Ltd	Belongs to China National Machinery Industry Corporation Ltd (Sinomach), which is a state-owned enterprise

(259) The Commission further established, in the absence of specific information from the financial institutions at issue indicating otherwise, the GOC's ownership and control based on formal indicia for the same reasons as set out above in point (1). In particular, based on facts available, managers and supervisors in the non-cooperating State-owned financial institutions appear to be appointed by the GOC and be accountable to the GOC in the same manner as in the cooperating State-owned bank.

(260) With regard to the exercise of control in a meaningful manner, the Commission considered that the findings concerning the cooperating State-owned financial institution could be considered representative also for the non-cooperating State-owned financial institutions. The normative framework analysed in point (1) above applies to them in an identical manner. Absent any indication to the contrary, based on facts available, ([58]) the lack of concrete evidence of creditworthiness assessments is valid for them in the same manner as for the cooperating State-owned bank.

(261) Following final disclosure, the GOC claimed the insufficiency of the Commission's arguments concluding that all State-owned financial institutions other than EXIM bank also constituted public bodies. The GOC argued that the Commission relied on previous anti-subsidy cases and its own conclusions with respect to the cooperating State-owned financial institutions and lacked to perform a case-by-case analysis giving particular relevance to the specific circumstances of each case and with respect to each of the non-cooperating financial institutions. The GOC further argued that the Commission did not provide sufficient proof to determine the existence of meaningful control over the State-owned financial institutions, as its managers and supervisors appear to be appointed by the GOC.

(262) In this respect, the Commission recalled that in the absence of cooperation from the other State-owned banks, the Commission had to rely on facts available. The Commission concluded that the information from previous investigations, combined with formal indicia of control and the findings of the investigation itself regarding EXIM bank and regarding the actual conduct of the banks towards the exporting producers constituted the best facts available in this case. In any event, the GOC failed to put forward any evidence or argument to rebut the Commission's findings concerning the fact that the other State-owned banks which provided loans to the sampled companies are public bodies within the meaning of Article 2(b) read in conjunction with Article 3(1)(a)(i) of the basic Regulation. The Commission thus maintained its position.

(3) ***Conclusion on State-owned financial institutions***

(263) In light of the above considerations, the Commission established that all State-owned Chinese financial institutions that provided financing to the two sampled groups of cooperating exporting producers are public bodies within the meaning of Article 2(b) read in conjunction with Article 3(1)(a)(i) of the basic Regulation.

([58]) See GFF and Tyres cases mentioned in footnote 5.

(264) In addition, even if the State-owned financial institutions were not to be considered as public bodies, the Commission established on the basis of the same information that they would be considered entrusted or directed by the GOC to carry out functions normally vested in the government within the meaning of Article 3(1)(a)(iv) of the basic Regulation for the same reasons, as set out in Section 3.5.1.2 below. Thus, their conduct would be attributed to the GOC in any event.

3.5.1.2. Private financial institutions entrusted or directed by the State

(265) The following financial institutions were considered to be privately owned, based on the findings established in previous anti-subsidy investigations ([59]) and complemented by publicly available information: HSBC, CITI Bank China, Zijin Rural Commercial Bank, Mizuho Bank, Sumitomo Mitsui Banking (China), MUFG Bank, Bohai international Trust Co., Ltd, and Hubei Rural Credit Cooperative. The Commission analysed whether these financial institutions had been entrusted or directed by the GOC to grant subsidies to the OFC sector within the meaning of Article 3(1)(a)(iv) of the basic Regulation.

(266) According to the WTO Appellate Body, 'entrustment' occurs where a government gives responsibility to a private body and 'direction' refers to situations where the government exercises its authority over a private body ([60]). In both cases, the government uses a private body as a proxy to make the financial contribution, and *'in most cases, one would expect entrustment or direction of a private body to involve some form of threat or inducement'* ([61]). At the same time, Article 3(1)(a)(iv) does not allow Members to impose countervailing measures to products *'whenever the government is merely exercising its general regulatory powers'* ([62]) or where government intervention *'may or may not have a particular result simply based on the given factual circumstances and the exercise of free choice by the actors in that market'* ([63]). Rather, entrustment or direction implies *'a more active role of the government than mere acts of encouragement'* ([64]).

(267) The Commission noted that the normative framework concerning the industry mentioned above in recitals (232) to (238) applies to all financial institutions in the PRC, including privately owned financial institutions. To illustrate this, the Bank Law and the various orders of the CBIRC cover all Chinese-funded and foreign-invested banks under the management of the CBIRC.

(268) Furthermore, the majority of loan contracts with private financial institutions had similar conditions as the contracts with State-owned banks, and the lending rates provided by the private financial institutions were similar to the rates provided by the State-owned financial institutions.

(269) In the absence of any divergent information received from the private financial institutions, the Commission concluded that, in so far as the OFC industry is concerned, all financial institutions (including private financial institutions) operating in China under the supervision of the CBIRC have been entrusted or directed by the State in the sense of Article 3(1)(a)(iv), first indent of the basic Regulation to pursue governmental policies and provide loans at preferential rates to the OFC industry. ([65])

(270) Following final disclosure, the GOC claimed that the Commission failed to demonstrate *entrustment or direction by the GOC,* in particular a *link between the government and the specific conduct* of all financial institutions. The GOC argues that exercising its general regulatory powers by giving a mere guidance or encouragement are not sufficient to show entrustment and direction; there needs to be some form of *threat or inducement*. According to the GOC, the Bank Law explicitly prohibits the interference by the GOC and the General Rules of Loan and Decision No 40 only provide guidance and are not mandatory or legally binding. In addition, the GOC claimed that the Commission failed to its duty to conduct such an analysis for each entity.

([59]) See GFF and Tyres cases mentioned in footnote 5.
([60]) WT/DS/296 (DS296 United States – Countervailing duty investigation on Dynamic Random Access Memory (DRAMS) from Korea), Appellate Body Report of 21 February 2005, para. 116.
([61]) Appellate Body Report, DS 296, para. 116.
([62]) Appellate Body Report, DS 296, para. 115.
([63]) Appellate Body Report, DS 296, para. 114 agreeing with the Panel Report, DS 194, para. 8.31. on that account.
([64]) Appellate Body Report, DS 296, para. 115.
([65]) See GFF and Tyres cases mentioned in footnote 5.

(271) The Commission disagreed with this view. Since the normative framework explained in recitals (232) to (239), which applies to all banks in China, is legally binding as further confirmed in recitals (248) and (249), it does not amount to a mere encouragement or guidance by the government. The Commission already established in recital (239) above that Decision No 40 instructs all financial institutions to provide credit support only to encouraged projects even though Article 17 of the same Decision also asks the bank to respect credit principles. Furthermore, the Commission established in recital (251) that the GOC relied on this normative framework in order to exercise control in a meaningful way over the financial institutions not leaving them any margin of manoeuvre as to whether to implement it or not. Therefore, there is a clear link between the GOC and the specific conduct of the private banks, which demonstrates entrustment and direction by the GOC.

(272) In addition, the Commission recalled that in the absence of cooperation from the private banks, it had to rely on facts available. Since there was partial cooperation from only one State-owned bank, the Commission used the information available for this bank, which was proven to be a public body, and compared it with the lending conditions offered by the non-cooperating private banks. Moreover, the RCCs with the sampled companies did not reveal any significant differences between loan conditions or rates provided by the private financial institutions and those provided by State-owned financial institutions. The fact that there was an overlap in rates shows that the private banks also provided loans below market terms in compliance with the normative framework referred to above. Therefore, the GOC's claim that the Commission failed to its duty to conduct such an analysis for each entity is unfounded.

(273) Consequently, the Commission confirmed its conclusion that, in so far as the OFC industry is concerned, all financial institutions, including private financial institutions, operating in China have been entrusted or directed by the State in the sense of Article 3(1)(a)(iv), first indent of the basic Regulation to pursue governmental policies and provide loans at preferential rates to the OFC industry.

3.5.2. *Credit ratings*

(274) In previous anti-subsidy investigations, the Commission already determined that domestic credit ratings awarded to Chinese companies were not reliable, based on a study published by the International Monetary Fund ([66]), showing a discrepancy between international and Chinese credit ratings, combined with the findings of the investigation concerning the sampled companies. Indeed, according to the IMF, over 90 % of Chinese bonds are rated from AA to AAA by local rating agencies. This is not comparable to other markets, such as the Union or the United States of America ('US'). For example, less than 2 % of firms enjoy such top-notch ratings in the US market. Chinese credit rating agencies are thus heavily skewed towards the highest end of the rating scale. They have very broad rating scales and tend to pool bonds with significantly different default risks into one broad rating category ([67]). According to the China bond market insight 2021 by Bloomberg ([68]), five Chinese local rating agencies dominate the bond market: China Chengxin, Dagong, Lianhe, Shanghai Brilliance, and Golden credit rating, and around 90 % of the bonds are rated AAA by local rating agencies. However, many of the issuers have received a lower S&P global issuer rating of A and BBB ([69]).

(275) In addition, foreign rating agencies, such as Standard and Poor's and Moody's, typically apply an uplift over the issuer's baseline credit rating based on an estimate of the firm's strategic importance to the Chinese Government and the strength of any implicit guarantee when they rate Chinese bonds issued overseas ([70]).

(276) The Commission also found further information to complement this analysis. First, the Commission determined that the State can exercise a certain influence over the credit rating market.

([66]) IMF Working Paper 'Resolving China's Corporate Debt Problem', by Wojciech Maliszewski, Serkan Arslanalp, John Caparusso, José Garrido, Si Guo, Joong Shik Kang, W. Raphael Lam, T. Daniel Law, Wei Liao, Nadia Rendak, Philippe Wingender, Jiangyan, October 2016, WP/16/203.

([67]) Livingston, M. Poon, W.P.H. and Zhou, L. (2017). Are Chinese Credit Ratings Relevant? A Study of the Chinese Bond Market and Credit Rating Industry, in: Journal of Banking & Finance, p. 24.

([68]) China bond market insight 2021, https://assets.bbhub.io/professional/sites/10/China-bond-market-booklet.pdf, last accessed on 8 August 2021.

([69]) China bond market insight 2021, Footnote 59, p. 31.

([70]) Price, A.H., Brightbill T.C., DeFrancesco R.E., Claeys, S.J., Teslik, A. and Neelakantan, U. (2017). China's broken promises: why it is not a market-economy, Wiley Rein LLP, p. 68.

(277) According to the information provided by the GOC, during the investigation period, there were 14 credit rating agencies active on China's bond market, including 12 domestic rating agencies.

(278) Second, there is no free entrance on the Chinese credit rating market. It is essentially a closed market, since rating agencies need to be approved by the China Securities Regulatory Commission ('CSRC') or the PBOC before they can start operations ([71]). The PBOC announced mid-2017 that overseas credit rating agencies would be allowed to carry out credit ratings on part of the domestic bond market, under certain conditions. During the investigation period, there were two foreign-owned and two Sino-foreign joint venture credit rating agencies operating on the Chinese market. However, these credit rating agencies follow Chinese rating scales and are thus not exactly comparable with international ratings, as explained in recital (275).

(279) Finally, a 2017 study performed by the PBOC itself confirms the Commission's findings, stating in its conclusions that *'if the investment level of foreign bonds is set to international rating BBB-and above, then the domestic bond investment grade may be rated at AA-level and above, taking into account the difference between the average domestic rating and the international rating of 6 or more notches'* ([72]).

(280) In view of the situation described in recitals (274) to (279) above, the Commission concluded that Chinese credit ratings do not provide a reliable estimation of the credit risk of the underlying asset. Those ratings were also distorted by the policy objectives to encourage key strategic industries, such as the OFC industry.

3.5.3. *Preferential financing: loans*

3.5.3.1. Types of loans

(1) ***Short-term and long-term loans***

(281) The Commission established that companies in both sampled groups used various short-term and long-term loans to finance their activities. These loans were mainly used for daily operations, working capital needs, for special projects, investments or to replace other loans. Both groups also used short-term and long-term export credits.

(2) ***Loans with the specific purpose to replace other loans***

(282) In the course of the investigation, the Commission found that certain sampled companies contracted loans with the specific purpose to replace loans from other banks. With this practice, companies could rearrange their liabilities and obtain funds in order to repay their previous obligations, which points to problems to repay debt, absent any other reason for it.

(283) The use of loans with the sole purpose of repaying other ongoing loans is considered as an indication that the company is not capable of honouring its current loan liabilities and thus presents an additional risk related to its short and long-term financing.

(3) ***Shareholder loan***

(284) The Commission found that one of the sampled exporting producers received a bank loan from China Development Bank through its parent company. The parent company contracted the loan with the bank within a so-called 'shareholder loan' or 'entrusted loan' for an R&D project executed by the exporting producer, and channelled the proceeds of the loan to the exporting producer under the same contractual conditions as it was signed with the

([71]) See Tentative Measures for the Administration of the Credit Rating Business Regarding the Securities Market Promulgated by Chinese Securities Regulatory Commission, Order of the China Securities Regulatory Commission [2007] No 50, 24 August 2007; Notice of the People's Bank of China on Qualifications of China Cheng Xin Securities Rating Co., Ltd and other Institutions Engaged in Corporate Bond Credit Rating Business, Yinfa [1997] No 547, 16 December 1997, and Announcement No 14 [2018] of the People's Bank of China and the China Securities Regulatory Commission on Issues Concerning the Provision of Bond Rating Services by Credit Rating Agencies on the Interbank Bond Market and the Stock Exchange Bond Market.

([72]) PBOC Working Paper No 2017/5, May 25, 2017, p. 28.

bank. During the RCC, the company concerned explained that China Development Bank has special funds for projects that can be provided in the form of loans only to centrally owned entities, which are directly under SASAC's control. However, the loan was directly negotiated between the exporting producer and the bank. In addition, the loan contract specifies that the bank commissions the parent company to grant the *'entrusted loan'* to the exporting producer for project capital input.

(285) The Commission further established that the China Development Bank Fund is a policy-oriented investment organisation, which mainly supports *'projects in key sectors recognised by the State'* through *'project capital investment, entity investment, shareholders loans and investments in local investment and financing company funds, to fill the gaps in key projects'* ([73]).

(286) Taking into account that the proceeds of the loan were used by the sampled exporting producer for its own projects, that the loan was negotiated directly between the sampled exporting producer and the bank, and that the exporting producer had a loan contract with its parent company mirroring the shareholder contract between the parent company and the bank, the Commission considered that the parent company had only the role of an intermediary and agreed with China Development Bank to provide the loan to the exporting producer. Therefore, the Commission included the loan at issue as financing provided by the bank to the exporting producer in question.

3.5.3.2. Specificity

(287) As demonstrated in recitals (232) to (238), several legal documents, which specifically target companies in the sector, direct the financial institutions to provide loans at preferential rates to the OFC industry. These documents demonstrate that the financial institutions only provide preferential financing to a limited number of industries/companies, which comply with the relevant policies of the GOC. The Commission considered that the reference to the OFC industry is sufficiently clear as this industry is identified either by its name or by a reference to the product that it manufactures or the industry group that it belongs to. Furthermore, as explained in recital (286), one of the sampled exporting producers benefitted from loan provided by the China Development Bank Fund, which supports *'projects in key sectors recognised by the State'*. Therefore, the fact that the GOC supports a limited group of encouraged industries, which includes the OFC industry, makes this subsidy specific.

(288) Following final disclosure, the GOC and the ZTT Group claimed that the loans at issue are not specific. According to the GOC, the Commission did not demonstrate that the legislation under which the financial support is given *expressly limits* access to the support and none of the documents referred to by the Commission are geared towards the OFC industry, which according to the GOC is not an encouraged industry in the PRC.

(289) In this respect, the Commission noted that, even though the documents listed in recital (232) and in particular, Decision No 40, the Bank Law and the General Rules on Loans, do not specify encouraged industries to a granular level to include the OFC industry as such, they do refer to the GOC's industrial policies to support encouraged industries. As concluded in Section 3.1, the OFC industry is an encouraged industry. The combined reading of the documents concerned demonstrated that the GOC instructed financial institutions to take into account the industrial policies of the GOC in their lending business operations and that according to these industrial policies of the GOC, financial institutions are obliged to provide credit support to encouraged projects. Therefore, it results that the GOC expressly supports a limited group of encouraged industries, including the OFC industry. Therefore, this subsidy is specific. The Commission thus maintained its conclusions.

(290) The Commission therefore concluded that subsidies in the form of preferential lending are not generally available to all industries but are specific within the meaning of Article 4(2)(a) of the basic Regulation.

([73]) See China Development Bank Fund's website: http://www.cdb.com.cn/English/ywgl/zhjryw/gkfzjj/, last accessed on 18 August 2021.

3.5.3.3. Benefit and calculation of the subsidy amount

(291) The Commission calculated the amount of the countervailable subsidy based on the benefit conferred on the recipients during the investigation period. According to Article 6(b) of the basic Regulation, the benefit conferred on the recipients is the difference between the amount of interest that the company has paid on the preferential loan and the amount that the company would have paid for a comparable commercial loan which the company could have obtained on the market.

(292) As explained in Sections 3.5.1 and 3.5.2 above, the loans provided by Chinese financial institutions reflect substantial government intervention and do not reflect rates that would normally be found in a functioning market.

(293) The sampled groups of companies differed in terms of their general financial situation. Each of them benefitted from different types of loans during the investigation period with variances in respect of maturity, collateral, guarantees and other conditions. For those two reasons, each company had an average interest rate based on its own set of loans received.

(294) The Commission assessed individually the financial situation of each sampled group of exporting producers in order to reflect these particularities. In this respect, the Commission followed the calculation methodology for preferential financing through loans established in the anti-subsidy investigation on hot-rolled flat steel products originating in the PRC, as well as in the anti-subsidy investigations on tyres originating in the PRC and certain woven and/or stitched glass fibre fabrics originating in the PRC ([74]) and explained in the recitals below. As a result, the Commission calculated the benefit from the preferential financing through loans practices for each sampled group of exporting producers on an individual basis, and allocated such benefit to the product concerned.

(1) ***FTT Group***

(295) The Commission noted that the exporting producers in the FTT Group were awarded an AAA credit rating by Chinese credit rating agencies, while the credit rating of their related companies ranged between B and AAA. In light of the overall distortions of Chinese credit ratings mentioned in Section 3.5.2, the Commission concluded that these ratings are not reliable.

(296) As mentioned in recitals (243) to (253) above, the Chinese lending financial institutions did not provide any creditworthiness assessment in this investigation. Therefore, in order to establish the benefit, the Commission had to assess whether the interest rates for the loans accorded to the FTT Group were at market level.

(297) The exporting producers of the FTT Group presented themselves in a generally profitable financial situation with profit margins ranging between 1 % and 3 % according to their own financial accounts although the profit margins were much below the profit margin generally expected in the OFC industry, which was set at 12,4 % in the separate anti-dumping investigation.

(298) One of the exporting producers in the FTT Group used short-term and long-term debt to finance its operations. The Commission assessed the short-term liquidity and the long-term solvency situation of the company.

(299) Regarding short-term liquidity, the Commission used liquidity ratios such as current ratio, quick ratio, cash ratio and cash flow ratio. These ratios measure the company's ability to pay short-term obligations, including short-term debt. The company presented an average current ratio of 1,1 during the IP. Although the current ratio is slightly above 1, the company's current assets are just enough to pay the short-term obligations, which is not sufficient to justify a high credit rating, for which a company should present a ratio of at least 2. The quick ratio of the company was 0,8 in 2019 and 0,6 in 2020, while a quick ratio of at least 1 is considered as a reference. In fact, a company that has a quick ratio below 1 may not be able to pay off its current liabilities in the short-term. The cash ratio of the company was on average 0,1 in the IP; therefore, the company had insufficient cash at hand to pay its short-term debt. The company also showed a negative cash flow from operating activities ('CFO') in 2019 and 2020. The CFO ratio was - 0,07 in 2019 and - 0,00007 in 2020. A CFO ratio lower than 1 means that the company has not generated enough cash to cover its current liabilities.

([74]) See HRF case (recitals 152 to 244), Tyres case (recital 236) and GFF case (recital 300) cited in footnote 5.

(300) Considering the liquidity indicators described in recital (299), the Commission concluded that the company at issue presented short-term liquidity problems which results in having a high risk debtor profile.

(301) The Commission based the long-term solvency risk assessment on various solvency rations such as debt ratios and coverage ratios. The solvency ratios measure the company's ability to meet its long-term debt obligations. They are used by lenders and bond investors when assessing the company's creditworthiness.

(302) Debt ratios measure the amount of liabilities, in particular long-term debt. The company had a high Debt-to-Assets ratio of 0,67, which means that 67 % of the assets of the company are financed by debt. The Debt-to-Equity ratio was 1,9 in 2019 and 2,8 in 2020, which points to the fact the company is financing its activity mainly through debt. The higher the Debt-to-Assets and the Debt-to-Equity ratios are, the higher the financial risk of the company is.

(303) The coverage ratios measure the company's ability to serve its debt and meet its financial obligations. The company based its assessment on the interest coverage ratio and the CFO-to-Debt ratio. The interest coverage ratio shows the ability of the company to finance interest costs. This ratio was 1,4 in 2019 and 0,6 in 2020. In financial analysis terms, an interest coverage ratio of less than 1,5 indicates that the company has difficulties meeting its interest expenses. The CFO-to-Debt ratio shows the ability of the company to repay its debt with cash generated from operating activities. The average CFO-to-Debt ratio of the company in the IP was – 6 % in 2019 and – 0,006 % in 2020. This means that the company would need 16 years according to the 2019 ratio to repay its total debt with the operating cash flow it generates. The data from 2020 shows an even worse situation. Therefore, there is indication of serious problems of the company to generate enough cash in order to repay is debt.

(304) Moreover, this company has contracted loans with the sole purpose to repay loans from other banks. As described in recitals (282) and (283), this type of loans is considered as an indication that the company is not capable of honouring its current loan liabilities and thus presents an additional risk related to its short and long-term financing.

(305) Therefore, considering the liquidity and solvency issues described in recitals (299) to (304), the Commission considered that the company presented a fragile financial situation and a high risk profile for potential lenders and investors.

(306) The second exporting producer in the group did not have any loans. However, the Commission noted that it financed 35 % of its purchases by bank acceptance drafts, which are, as established in Section 3.5.4.2 below, a preferential short-term financial instrument. The debt of this producer represented on average 61 % of the total assets the IP with a Debt-to-Assets ratio of 0,6 while the average Debt-to-Equity ratio in the IP was 1,6. This means that the company mainly financed its operations through debt, which is a factor of risk.

(307) Since this company financed its activities mainly through short-term financing, the Commission focused its analysis on the liquidity situation of the company. The company presented, on average in the IP, a current ratio of 0,9, a quick ratio of 0,7, a cash ratio of 0,1 and a CFO ratio of 0,1. These ratios point to liquidity problems as the total current liabilities exceed the total current assets and the company is in a situation where it cannot pay its current liabilities with cash generated by its current assets and operating activities. In terms of financial analysis, it is generally accepted that liquidity ratios below 1 are an indication of liquidity problems, which is considered as a risk by lending institutions.

(308) Taking into account the serious liquidity and solvency problems that the financial analysis of the two exporting producers in the FTT Group, as described in recitals (298) to (307), pointed out, the Commission considered that the overall financial situation of the FTT Group corresponds to a BB rating, which is the highest rating that does no longer qualify as 'investment grade'. 'Investment grade' means that bonds issued by the company are judged by the rating agency as likely enough to meet payment obligations that banks are allowed to invest in them.

(309) Based on publicly available data on Bloomberg, the Commission used as a benchmark the premium expected on bonds issued by firms with a BB rating, which was applied to the PBOC Loan Benchmark Rate, or after 20 August 2019 to the Loan Prime Rate as announced by the NIFC ([75]) in order to determine the market rate.

([75]) See recital (189) above.

(310) That mark-up was determined by calculating the relative spread between the indices of US AA rated corporate bonds to US BB rated corporate bonds based on Bloomberg data for industrial segments. The relative spread thus calculated was then added to the Loan Benchmark Rate published by the PBOC or, after 20 August 2019, to the Loan Prime Rate published by the NIFC, at the date when the loan was granted ([76]) and for the same duration as the loan in question. This was done individually for each loan provided to the company group.

(311) As for loans denominated in foreign currencies, the same situation in respect of market distortions and the absence of valid credit ratings applies, because these loans are granted by the same Chinese financial institutions. Therefore, as found before, BB rated corporate bonds in relevant denominations issued during the investigation period were used to determine an appropriate benchmark.

(312) The benefit was established by applying the benchmark described in recital (310) to the period of loan financing during the investigation period.

(2) ***ZTT Group***

(313) The Commission noted that the ZTT Group was awarded an AA+ rating by a Chinese credit rating agency in 2018. In view of the overall distortions of Chinese credit ratings, mentioned in Section 3.5.2, the Commission concluded that the AA+ credit rating awarded to the ZTT Group is not reliable.

(314) As mentioned in recitals (243) to (253) above, the lending Chinese financial institutions did not provide any creditworthiness assessment. Hence, in order to establish the benefit, the Commission had to assess whether the interest rates for the loans accorded to the ZTT Group were at market level.

(315) The exporting producers of the ZTT Group presented themselves in a generally profitable financial situation according to their own financial accounts.

(316) However, the analysis of one of the exporting producers in the group showed a decrease in the turnover combined with a significant increase in its liabilities since 2018. The Commission noted that the company is altering its financial leverage, expressed as the debt equity ratio ([77]), increasing its dependency on external financing and limiting the share of wholly owned funds to finance its growth. Furthermore, while the company is in a profitable situation, it should be noted that the profit margin, as well as the return on equity ([78]), decreased since 2018. Similarly, the Commission established the general use of short-term loans with the purpose to finance working capital for the day-to-day operations, by the two exporting producers as well as by other related companies in the group.

(317) Analysing ZTT Group from a consolidated approach, the Commission noted that the group issued bonds with the intention to, in addition to other projects, supplement the company's working capital. By this action, the group recognises its necessity of replenishing working capital to provide sufficient liquidity to the undergoing expansion of the business. Furthermore, during the period 2015 to 2018, ZTT Group's gross profit rate showed a downward trend and was also below the average of comparable optical fibres producers companies ([79]). The investigation also established that Zhongtian Technology Group Co., Ltd, the parent company of the exporting producers, issued short term bonds with the purpose of debt repayment. A debt to equity swap was similarly established ([80]).

([76]) In case of fixed interest loans. For variable interest rate loans, the PBOC benchmark rate or after 20 August 2019 to the Loan Prime Rate was taken.

([77]) The debt equity ratio is a ratio used to evaluate a company's financial leverage. The debt equity ratio is expressed as the comparison of a company's total liabilities to its shareholders equity.

([78]) Return on equity measures a corporation's profitability in relation to stockholders' equity. Return on equity is calculated by dividing profit before tax by shareholders' equity.

([79]) Source Capital IQ, 2018 contained in the Jiangsu Zhongtian Technology Bond Prospectus.

([80]) Under such a deal, the company could convert part of its debt into shares, and thus reduce the liabilities on its balance sheet.

(318) In view of the above, the Commission considered that the overall financial situation of the group corresponds to a BB rating, which is the highest rating that does no longer qualify as 'investment grade'. 'Investment grade' means that bonds issued by the company are judged by the rating agency as likely enough to meet payment obligations that banks are allowed to invest in them.

(319) The premium expected on bonds issued by firms with this BB rating was then applied to the standard lending rate of the PBOC Loan Benchmark Rate, or after 20 August 2019 to the Loan Prime Rate published by the NIFC, in order to determine the market rate.

(320) That mark-up was determined by calculating the relative spread between the indices of US AA rated corporate bonds to US BB rated corporate bonds based on Bloomberg data for industrial segments. The relative spread thus calculated was then added to the Loan Benchmark Rate or by the Loan Prime Rate, at the date when the loan was granted and for the same duration as the loan in question. This was done individually for each loan provided to the company group.

(321) As for loans denominated in foreign currencies, the same situation in respect of market distortions and the absence of valid credit ratings applies, because these loans are granted by the same Chinese financial institutions. Therefore, as found before, BB rated corporate bonds in relevant denominations issued during the investigation period were used to determine an appropriate benchmark.

(322) Following final disclosure, the GOC claimed that the loans at issue did not confer a benefit within the meaning of Article 3(2) of the basis Regulation and Article 1(1)(b) of the SCM Agreement. The GOC considered that the Commission illegally disregarded the credit rating of the cooperating exporting producers and disagreed with the methodology used by the Commission to establish a benchmark, which is based on a lack of consideration of the credit ratings of the exporting producers. The GOC noted that while the Commission's findings regarding loans is based, to a significant extent, on its assessment of the supposedly poor financial situation of the companies at issue, the Commission's assessment in this regard is incorrect, especially with regard to the companies' revolving loans.

(323) In this respect, the Commission referred to its findings and conclusions in Section 3.5.2 where it demonstrated that the Chinese credit ratings do not provide a reliable estimation of the credit risk and that these credit ratings are distorted by the policy objectives of the GOC to encourage key strategic industries. Therefore, the claim of the GOC regarding the credit ratings of the cooperating exporting producers is unfounded. In order to establish a credit rating corresponding to the risk profile of the cooperating exporting producers, the Commission performed a financial analysis of the companies concerned in points (1) and (2) above, which pointed to a financial situation of the corresponding to a BB rating. Therefore, the claim of the GOC was rejected.

(324) The GOC also claimed that the Commission failed to justify why it did not use a comparable loan on the Chinese market and failed to demonstrate on the basis of positive evidence that the market for loans in the PCR is distorted by government intervention. The GOC also claimed that even when resorting to external benchmarks for benefit establishment, the Commission did not make the required adjustments to its proxy benchmark and did not adequately explained how such a proxy *approximates* a comparable commercial loan available on the market. According to the GOC, the Commission should have taken into account differences that existed in *inter alia* the size of the loans, the terms of repayment, and considerations regarding whether or not the loans were actually granted and which have an effect on the lending rates.

(325) In this respect, as explained above, domestic credit ratings awarded to Chinese companies were considered distorted by the policy objectives of the GOC to encourage key strategic industries and therefore unreliable. As a result, the Commission had to look for a benchmark based on undistorted credit ratings. The Commission disagreed with the view of the GOC that it did not make the required adjustments to its proxy benchmark. First, the Commission used the Chinese PBOC Loan Benchmark Rate and the Loan Prime Rate as a starting point for the calculation. Second, the use of the relative spread captures changes in the underlying country-specific market conditions, which are not expressed when following the logic of an absolute spread. The Commission observed that it is not possible to include all factors of the individual risk assessment of a bank into the proxy. However, the Commission's calculation methodology takes into account parameters of individual loans, such as the start date and the duration of the loan, as well as the variability of the interest rate. The GOC's claims were thus rejected.

(326) The GOC objected to the use of the relative spread between AA and BB rated bonds as the mark-up and its addition to the PBOC rates. According to the GOC, the use of a relative spread further distorts the calculation of the benchmark interest rate at which Chinese companies with a BB rating could have obtained a *'comparable commercial loan on the market'* as the PBOC reference rates in the PRC during the relevant years were much higher than the reference rate in the US. In addition, the GOC stated that publicly available information shows that EU OFC producers with BB rating are issuing bonds at significantly lower rates than those used for Chinese producers.

(327) The ZTT Group commented that the Commission should have applied the absolute spread between the US AA rate corporate bonds and the US BB rated corporate bonds to the PBOC Loan Benchmark Rate, which would sufficiently factor in the risk exposure between the corporate bonds of different credit ratings. According to this party, the Commission did not explain why it used the relative spread and why it considered that the Benchmark Interest Rate published by the PBOC or the Loan Prime Rate published by NIFC equals to an AA rating interest rate.

(328) Regarding the comment on the use of the Benchmark Interest Rate published by the PBOC or the Loan Prime Rate published by NIFC as a starting point in the calculation of the benchmark, the Commission pointed out that these rates are considered to be risk-free rates which, in a conservative approach, would be applied to companies having an AA rating.

(329) The issue of the use of the relative spread instead of the absolute spread was already explained in previous investigations ([81]).

(330) First, while the Commission recognised that commercial banks usually use a mark-up expressed in absolute terms, it observed that this practice seems mainly based on practical considerations because the interest rate is ultimately an absolute number. The absolute number is however the translation of a risk assessment that is based on a relative evaluation. The relative evaluation means that the risk of default of a BB-rated company is X % more likely than the risk of default of the government or a risk-free company.

(331) Second, interest rates reflect not only company-specific risk profiles, but also country- and currency-specific risks. The relative spread thus captures changes in the underlying market conditions, which are not expressed when following the logic of an absolute spread. Often, as in the present case, the country- and currency-specific risk varies over time, and the variations are different for different countries. As a result, the risk-free rates vary significantly over time, and are sometimes lower in the US, sometimes in China. These differences relate to factors such as observed and expected GDP growth, economic sentiment, and inflation levels. Because the risk-free rate varies over time, the same nominal absolute spread can signify a very different assessment of the risk. For example, where the bank estimates the company-specific risk of default at 10 % higher than the risk-free rate (relative estimation), the resulting absolute spread can be between 0,1 % (at a risk-free rate of 1 %) and 1 % (at a risk-free rate of 10 %). From an investor perspective, the relative spread is hence a better measure as it reflects the magnitude of the yield spread and the way it is affected by the base interest-rate level.

(332) Third, the relative spread is also country-neutral. For instance, where the risk-free rate in the US is lower than the risk-free rate in China, the method will lead to higher absolute mark-ups. On the other hand, where the risk-free rate in China is lower than in the US the method will lead to lower absolute mark-ups.

(333) The Commission considered the comments of the GOC referring to interest rates applicable to BB-rated companies in the European Union as unfounded since the risk-free rate in the European Union is not the same as the risk-free rate in the PRC and thus it is not possible to compare interest rates in absolute terms.

(334) The ZTT Group further claimed that even if the relative spread is applicable, it shall be applied to the basis points part in the variable interest rates (usually expressed in a structure of reference rate plus basis points) and that this is the case for loans denominated in foreign currencies, where interest rates are expressed in the form of LIBOR plus basis points. Therefore, the risk exposure of borrowing is duly reflected by the basis points added to LIBOR and by applying the relative spread to LIBOR, the commission calculated a benchmark rate completely disconnected to the company's credit rating. As regards loans denominated in CNY, the same spread adjustment shall be made only to basis points where the variable rates are expressed in LRP plus basis points.

([81]) HRF and Tyres cases cited in footnote 5 , recitals (175) to (187) in the HRF case, and from recital (256) in the Tyres case

(335) In this respect, the Commission considered for loans denominated in foreign currencies a conservative approach by using the LIBOR as risk-free reference interest rate. The basis points added to LIBOR indicate the specific risks of a company. First, only for some loans of sampled exporting producers such differentiation between reference interest rate and basis points was given. Second, these basis points were also considered to be market distorted. Therefore, the Commission considered the risk-free rate increased by the relative spread an appropriate proxy to reflect the additional risk of a BB-rated company, such as the sampled exporting producers.

(336) The GOC also argued that the benchmark for loans, which is based on the relative spread between corporate bonds, needs to be adjusted downwards in view of the difference between the two financial instruments.

(337) In this respect, the Commission pointed out that loans and corporate bonds are similar financial debt instruments. In fact, a corporate bond is a kind of a loan used by large entities to raise capital. Both loans and corporate bonds are contracted/issued for a certain period of time and bear an interest/coupon rate. The fact that the financing through a loan is provided by a financial institution and that the financing through a corporate bond is provided by investors, which in most cases are also financial institutions, is irrelevant for the determination of the core characteristics of both instruments. Indeed, both instruments serve to finance business operations, bear the same kind of remuneration and have similar repayment term and conditions. Furthermore, during the investigation, the Commission found out that the corporate bond issued by one of the cooperating exporting producers had a coupon rate and purpose which was very similar to the interest rates and purpose of loans with similar duration, and thus they could be considered interchangeable from the producer's perspective. On this basis, the Commission rejected the claim of the GOC.

3.5.3.4. Conclusion on preferential financing: loans

(338) The Commission established that both sampled groups of exporting producers benefited from preferential financing through loans during the investigation period. In view of the existence of a financial contribution, a benefit to the exporting producers and specificity, the Commission considered preferential financing through loans a countervailable subsidy.

(339) The subsidy rates established with regard to the preferential financing through loans during the investigation period for the sampled groups of companies amounted to:

Preferential financing: loans

Company name	Subsidy rate
FTT Group: — FiberHome Telecommunication Technologies Co., Ltd — Nanjing Wasin Fujikura Optical Communication Ltd — Hubei Fiberhome Boxin Electronic Co., Ltd	0,90 %
ZTT Group: — Jiangsu Zhongtian Technology Co., Ltd — Zhongtian Power Optical Cable Co., Ltd	0,38 %

3.5.4. *Preferential financing: other types of financing*

3.5.4.1 Credit lines

(a) General

(340) The purpose of a credit line is to establish a borrowing limit that the company can use at any time to finance its current operations thus making working capital financing flexible and immediately available when needed. Therefore, the Commission considered that in principle, all short-term financing of the sampled companies, such as short-term loans, bank acceptance drafts etc., should be covered by a credit line instrument.

(b) Findings

(341) The Commission established that Chinese financial institutions provided credit lines to both sampled groups in connection with the provision of financing. These consisted of framework agreements, under which the bank allows the sampled companies to use various debt instruments, such as working capital loans, bank acceptance drafts, other forms of trade financing, etc., within a certain maximum amount.

(342) As mentioned in recital (340) above, all short-term financing should be covered by a credit line. Therefore, the Commission compared the amount of the credit lines available to the cooperating companies during the investigation period with the amount of short-term financing used by these companies during the same period to establish whether all short-term financing was covered by a credit line. In the case where the amount of the short-term financing exceeded the credit line limit, the Commission increased the amount of the existing credit line by the amount actually used by the exporting producers beyond that credit line limit.

(343) Under normal market circumstances, credit lines would be subject to a so-called 'arrangement' or 'commitment' fee to compensate for the bank's costs and risks at the opening of a credit line, as well as to a 'renewal fee' charged on a yearly basis for renewing the validity of the credit lines. However, the Commission found that both sampled groups of companies benefited from credit lines provided free of charge. Therefore, a benefit was conferred to both groups of companies within the meaning of Article 6(d) of the basic Regulation.

(c) Specificity

(344) As mentioned in recital (116), according to Decision No 40, financial institutions shall provide credit support to encouraged industries.

(345) The Commission considered that credit lines are a form of a preferential financial support by financial institutions to encouraged industries such as the OFC sector. As specified in Section 3.1 above, the OFC sector is among the encouraged industries and is therefore eligible for all possible financial support.

(346) Following final disclosure, the GOC claimed that the credit lines allegedly being provided to the OFC industry are not specific and that the Commission failed to demonstrate how the access to the credit lines was *explicitly limited* to the OFC industry. The GOC stressed that all enterprises in the PRC, regardless of industry type, are equally eligible for obtaining credit lines. This claim was reiterated by the FTT Group.

(347) In this respect, the Commission noted that the GOC's assertion that all enterprises in the PRC can benefit from credit lines is inapposite. The GOC failed to demonstrate that companies in the PRC can equally benefit from the preferential conditions observed as regards the OFC industry. Moreover, as credit lines are intrinsically linked to other types of preferential lending such as loans and as they are part of the credit support specifically provided to encouraged industries as explained in recital (239), the specificity analysis as developed in Section 3.5.3.2 above for loans is also applicable to credit lines. As a result, these claims were rejected.

(d) Calculation of the benefit

(348) In accordance with Article 6(d)(ii) of the basic Regulation, the Commission considered the benefit conferred on the recipients to be the difference between the amount that the company has paid as a fee for the opening or the renewal of the credit lines by Chinese financial institutions and the amount that the company would pay for a comparable commercial credit line obtained on the market.

(349) The appropriate benchmarks for the arrangement fee and for the renewal fee were established at 1,5 % and 1,25 % respectively by reference to publicly available data ([82]) and benchmarks used in previous investigations ([83]).

(350) In principle, the arrangement fee and the renewal fee are payable on a lump sum basis at the time of the opening of a new credit line or the renewal of an existing credit line respectively. However, for calculation purposes, the Commission took into account credit lines which have been opened or renewed before the investigation period but which were available to the sampled groups during the investigation period and the credit lines that were opened or renewed during the investigation period. Then, the Commission calculated the benefit based on the period within the investigation period during which the credit line was available.

(351) Following final disclosure, the GOC commented that the Commission failed to demonstrate that a benefit was provided through credit lines. The GOC claimed that the Commission has not demonstrated that the financial assistance at issue makes the recipient *better off* than it would have been, absent that contribution.

(352) In this respect, as pointed out in recital (343), under normal market circumstances, credit lines are subject to an 'arrangement' or 'commitment' fee as well as to a 'renewal fee' charged on a yearly basis for renewing the validity of the credit lines. Taking into account the fact that the cooperating exporting producers befitted from credit lines free of charge, the benefit consisted in the amount of arrangement and renewal fees that the companies should have paid. The fees savings from which the companies benefitted made them *better off* from a financial point of view. Therefore, the claim was rejected.

(353) The FTT Group claimed that the opening of a credit line is not a financial contribution. It stated that credit lines establish only a borrowing limit that a company can use to obtain working capital or financial instruments and that there are no world-wide accepted standards regarding how to arrange the opening credit lines and that there is no evidence that fees are commonly and compulsorily applied by all banks in the world and that the Commission based its assessment and benchmark fee on only one bank, namely HSBC. In addition, the FTT Group argued that the applicable fees are merely bank handling expenses, which are not associated with the risk of opening or renewing a credit line. The GOC also claimed that the Commission erred in its determination of a proper benchmark.

(354) In this respect, the Commission clarified that it has based its conclusion regarding the application of arrangement and renewal fees as well as regarding the appropriate benchmark on publicly available data. In recital (349), the Commission made reference to findings in previous anti-subsidy cases as well as to the practice of two large internationally operating banks, i.e. HSBC and Barclays Bank ([84]), in order to establish an appropriate benchmark. Considering the available information, the Commission estimated that the application of an arrangement fee benchmark of 1,5 % and a renewal benchmark fee of 1,25 % was reasonable. The Commission disagreed with the claim of the FTT Group that the applicable fees are merely bank handling expense, which are not associated with the risk of opening or renewing a credit line. According to business practice, a commitment fee is charged by a lender to a borrower to compensate the lender for keeping a credit line open and financial resources available; the fee also secures a lender's promise to provide the credit line on the agreed terms and compensates the lender for the risks associated with an open credit line ([85]). Actually, a business credit line operates in the same ways as a personal credit card for which banks always charge fees associated with the use of the credit card and the availability of the given amount of money. Therefore, the claims were rejected.

(355) The ZTT Group disagreed with the Commission's statement that having a credit line agreement with a bank is a pre-requisite for obtaining financing from the latter and provided examples of bank in the world that do not require credit lines in order to provide ad-hoc borrowings. According to the ZTT Group, credit lines are framework agreements, under which the bank allows a company to use various debt instruments within a certain maximum credit amount without re-negotiation; however, it does not exclude any stand-alone loans to a company which is

([82]) See https://www.barclays.co.uk/current-accounts/bank-account/overdrafts/overdraft-charges/, last accessed on 18 August 2021, fees for executive overdrafts - *"overdrafts over £15 000 have a set-up fee of 1.5% of the arranged overdraft limit, and a renewal fee of 1.5%"*.

([83]) See GFF case cited in footnote 5 (recitals 354 and 355)

([84]) See footnote 79

([85]) https://corporatefinanceinstitute.com/resources/knowledge/finance/commitment-fee/

assessed and granted on a case-by-case basis without a prior credit line. The ZTT Group also disagreed that all credit lines, especially the ones agreed with large and sophisticated clients, are subject to arrangement or renewal fees. The ZTT Group claimed that the benchmark fees used by the Commission are too high and provided examples of fees charged by Lloyds (up to 1,5 % for arrangement and 1 % for renewal) and HSBC where the exact fee seems to be determined bilaterally/contractually.

(356) First, as explained in recital (340), the purpose of a credit line is to establish a borrowing limit that the company can use at any time to finance its current operations thus making working capital financing flexible and immediately available when needed. Taking into account the short-term financing practices of the sampled cooperating exporting producers in the form of bank acceptance drafts and working capital short-term loans, for which financial resources needed to be immediately available, as well as the fact that most of the time the companies only had oral credit line arrangements without any written evidence, the Commission considered that all short-term financing of the sampled companies were to be covered by a credit line instrument. This conclusion is applicable only to short-term financing and does not concern long-term financing, which is subject to a case-by-case negotiation. Second, regarding the claim that all credit lines, especially the ones agreed with large and sophisticated clients, are subject to arrangement or renewal fees, the Commission observed that the ZTT Group failed to provide evidence of credit line facilities without a commission attached to them. Third, regarding the benchmark fees used by the Commission, as stated in recital (354), the Commission used findings in previous anti-subsidy cases and publicly available data to conclude that the application of an arrangement fee benchmark of 1,5 % and a renewal benchmark fee of 1,25 % was reasonable. In this respect, the Commission pointed out that for instance Barclays Bank charges a set-up fee of 1,5 % of the arranged overdraft limit, and a renewal fee of 1,5 % for overdrafts over £ 15 000. In this case the renewal fee benchmark used by the Commission is lower. A further search showed that Barkley charges business overdraft fees from 1,6 % up to 2,5 % of the limits for the business bands £ 15 001 - £ 20 000 and £ 20 001 – £ 25 000 ([86]). Therefore, the Commission reiterated its conclusion that the benchmark fees it has used are reasonable and based on available market data and thus rejected the claim.

3.5.4.2. Bank acceptance drafts

(a) General

(357) Bank acceptance drafts are a financial product aimed at developing a more active domestic money market by broadening credit facilities. It is a form of short-term financing that might *'reduce fund cost and enhance capital efficiency'* of the drawer ([87]). In addition, as stated by the People's Bank of China on its website, *'the bank acceptance draft can guarantee the establishment and performance of the contract between the buyer and the seller, as well as promote the capital turnover via the intervention of Bank of China's credit'* ([88]). In addition, on its website DBS Bank advertises bank acceptance drafts as a means to *'improve working capital by deferring payments'* ([89]).

(358) Bank acceptance drafts can only be used to settle genuine trade transactions and the drawer must produce sufficient evidence in that respect, e.g. through a purchase/sales agreement, invoice and delivery order etc. Bank acceptance drafts may be used as a standard means of payment in purchase agreements together with other means such as remittance or money order.

(359) The bank acceptance draft is drawn by the applicant (the drawer, which is also the buyer in the underlying commercial transaction) and accepted by a bank. By accepting the draft, the bank accepts to make an unconditional payment of the amount of money specified in the draft to the payee/bearer on the designated date (the maturity date).

([86]) https://www.barclays.co.uk/business-banking/borrow/overdrafts/

([87]) See website of the People's Bank of China: https://www.boc.cn/en/cbservice/cncb6/cb61/200811/t20081112_1324239.html, last accessed on 18 August 2021.

([88]) Ibid.

([89]) See website of DBS Bank: https://www.dbs.com.cn/corporate/financing/working-capital/bank-acceptance-draft-bad-issuance, last accessed on 18 August 2021.

(360) In general, the bank acceptance contracts contain the list of the transactions covered by the amount of the draft with indication of the payment due date with the supplier and the maturity date of the bank acceptance draft.

(361) Usually, bank acceptance drafts are issued within the framework of a bank acceptance draft agreement specifying the identity of the bank, suppliers and buyer, the obligations of the bank and the buyer and detailing the value per supplier, the payment due date agreed with the supplier and the maturity date of the bank acceptance draft.

(362) The Commission established that credit line agreements generally list bank acceptance drafts as possible use of the finance limit along with other short-term financial instruments such as working capital loans.

(363) Depending on the conditions established by each bank, the drawer might be required to make a small deposit in a dedicated account, make a pledge and pay acceptance commission. In any event, the drawer is obliged to transfer the full amount of the bank acceptance draft to the dedicated account at the latest at the maturity date of the bank acceptance draft.

(364) Once accepted by the bank, the drawer endorses the bank acceptance draft and transfers it to the payee, who is also the supplier in the underlying commercial transaction, as a payment of the invoice. Consequently, the payment obligation of the buyer (drawer) towards the supplier (payee) is cancelled. A new payment obligation of the buyer is created towards the accepting bank for the same amount (the drawer has the obligation to pay the bank in cash before the maturity of the bank acceptance draft). Therefore, the issuance of a bank acceptance drafts has the effect to replace the obligation of the drawer towards its supplier by an obligation towards the bank.

(365) The maturity of bank acceptance drafts varies depending on the conditions set by each bank and can go up to 1 year.

(366) The payee (or bearer) of the bank acceptance draft has three options before the maturity:

— wait until maturity to be paid in cash the full amount of the face value of the draft by the accepting bank;

— endorse the bank acceptance draft, i.e. use it as a means of payment for its liabilities towards other parties; or

— discount the bank acceptance draft with the accepting bank or another bank and obtain the cash proceeds against the payment of a discounting rate.

(367) The issuance date of the bank acceptance draft generally corresponds to the payment due date agreed with the supplier. The Commission found that, as far as the sampled companies are concerned, the issuance date was generally on or before the due date of the payment with the supplier and in some cases even few days after the payment due date. The Commission established that the maturity date of the bank acceptance drafts of the sampled companies is from 3 months up to 12 months after the payment due date of the invoice.

(368) Regarding the accounting treatment of bank acceptance drafts, they are recognized as liabilities to the bank in the accounts of the drawers, i.e. the sampled exporting producers.

(369) The Credit Reference Center of the People's Bank of China ('CRCP') recognises bank acceptance drafts as 'unsettled credit' provided by banks at the same level as loans, letters of credit or trade financing. It should also be noted that the CRCP is fed by the financial institutions, which grant various types of loans, and that such financial institutions have thus recognised bank acceptance drafts as liabilities to them. Furthermore, the bank acceptance agreements collected during the investigation provide that, should the buyer not make the full payment on the expiry date of the bank acceptance drafts, the bank would treat the amount unpaid as an overdue loan to the bank.

(370) The Commission established that bank acceptance drafts are largely used as a means of payment in commercial transactions as a substitute to a money order thus facilitating the cash turnover and the working capital of the drawer. From a cash point of view, the instrument *de facto* grants the drawer a deferred due date of payment up to 1 year because the actual cash payment of the transaction amount occurs at the maturity of the bank acceptance draft and not at the moment when the drawer had to pay its supplier. In the absence of such a financial instrument, the drawer would either use its own working capital, which has a cost, or contract a short-term working capital loan with a bank in order to pay its suppliers, which also has a cost. In fact, by paying with bank acceptance draft, the drawer uses the supplied goods or services for a period of 3 months to 1 year without advancing any cash and without bearing any cost.

(371) Under normal market circumstances, as a financial instrument, bank acceptance drafts would imply a cost of financing for the drawer. The investigation showed that all the sampled companies that used bank acceptance drafts during the investigation period only paid a commission for the acceptance service provided by the bank, which was in general 0,05 % of the face value of the draft. However, none of the sampled companies bore a cost for the financing via bank acceptance drafts by deferring the cash payment of the supply of goods and services. Therefore, the Commission considered that the investigated companies benefitted from financing in the form of bank acceptance drafts for which they did not bear any cost.

(372) Considering the above, the Commission concluded that the bank acceptance system put in place in the PRC provided all exporting producers a free financing of their current operations, which conferred a countervailable benefit as described in recitals (384) to (388) below, in accordance with Article 3(1)(a)(i) and 3(2) of the basic Regulation.

(373) The Commission established in a previous investigation ([90]) that bank acceptance drafts effectively have the same purpose and effects as short-term working capital loans, as they are used by companies to finance their current operations instead of using short-term working capital loans, and that consequently, they should bear a cost equivalent to a short-term working capital loan financing.

(374) Following final disclosure, the ZTT Group disagreed with the Commission that bank acceptance drafts are a form of short-term financing and that they act rather as a bank guarantee. According to this party, a bank acceptance draft is an instrument by which the bank takes the obligation to pay a party rather than the original debtor, who still remains liable to pay the bank. The purpose of such instrument is not to act as short-term financing but as to facilitate the sale of goods. The ZTT Group argued that by agreeing to the payment via bank acceptance drafts, the parties to the transactions consented to the payment term of settling the debt between them, amounting to the seller to agree to a credit term until the draft maturity against a bank guaranteed payment and the buyer undertaking the obligation to make the same value available to the bank at the maturity date at the latest.

(375) The Commission disagreed that bank acceptance drafts act merely as a bank guarantee for a payment at maturity date. The Commission observed that in the case of the sampled exporting producers, the bank acceptance draft is an actual means of payment acknowledged in the sales contract, and the payment obligation of the drawer towards the supplier is cancelled by the payment with a bank acceptance draft. The payment of the supplier by the drawer happens at the moment of the endorsement of the bank acceptance draft, while at maturity, the drawer honours its payment obligation towards the bank. Therefore, the bank acceptance draft cannot be classified merely as an additional guarantee of a future payment and this claim was rejected.

(376) Consequently, the Commission reiterated its conclusion that in terms of their effects bank acceptance drafts are a form of a short-term financing allowing the exporting producers to finance their purchases. The benefit provided to the cooperating exporting producers is the financing cost savings due to the fact that the use of financing through bank acceptance drafts was not remunerated.

([90]) See GFF case mentioned in footnote 5, recital 385.

(b) Specificity

(377) Concerning specificity, as mentioned in recital (116), according to Decision No 40, financial institutions shall provide credit support to encouraged industries.

(378) The Commission considered that bank acceptance drafts are another form of preferential financial support by financial institutions to encouraged industries such as the OFC sector. Indeed, as specified in Section 3.1 above, the OFC sector is among the encouraged industries and is therefore eligible for all possible financial support. Bank acceptance drafts, as a form of financing, are part of the preferential financial support system by financial institutions to encouraged industries, such as the OFC industry.

(379) No evidence was provided that any undertaking in the PRC (other than within encouraged industries) can benefit from bank acceptance drafts under the same preferential terms and conditions.

(380) Following final disclosure, the ZTT Group claimed that bank acceptance drafts are not specific since they are widely used by almost all business operators in the PRC and thus are not limited to the OFC sector or to ZTT Group.

(381) In this respect, the Commission referred to recital (116) where it presented evidence that according to Decision No 40, financial institutions are required to provide credit support to encouraged industries.

(382) The Commission based its assessment regarding the specificity of the subsidy scheme on available governmental documents, such as plans and regulations, on encouraged industries. The GOC clearly defined which industries are encouraged limiting the specific preferential financing benefits only to those ones. Therefore, even if a number of other industries specifically defined as encouraged also enjoyed the same or similar preferential conditions as the OFC industry, this does not render preferential financing and in particular bank acceptance drafts generally available to all industries.

(383) Furthermore, even if a form of financing could be in principle available to companies in other industries, the concrete conditions, under which such financing is offered to companies from a certain industry, such as the financing remuneration and the volume of financing, might make it specific. There was no evidence submitted by any of the interested parties demonstrating that the preferential financing through bank acceptance drafts of companies in the OFC industry is based on objective criteria or conditions in the sense of Article 4(2)(b) of the basic Regulation. Therefore, the claim was rejected.

(c) Calculation of the benefit

(384) For the calculation of the amount of the countervailable subsidy, the Commission assessed the benefit conferred on the recipients during the investigation period.

(385) As already mentioned in recitals (357) and (370), bank acceptance drafts are a form of short-term financing that enhance the capital efficiency of the drawer by facilitating its working capital and meeting its cash needs as they are largely used as a means of payment in commercial transactions instead of cash. The Commission found that the sampled exporting producers used bank acceptance drafts to address their needs for short-term financing without paying a remuneration.

(386) The Commission thus concluded that bank acceptance drawers should pay a remuneration for the period of financing. The Commission considered that the period of financing started on the date of the issuance of the bank acceptance draft and ended on the maturity date of the bank acceptance draft. Regarding bank acceptance drafts issued before the investigation period and banks acceptance drafts with a maturity date after the end of the investigation period, the Commission calculated the benefit only for the period of financing covered by the investigation period.

(387) In accordance with Article 6(b) of the basic Regulation, the Commission considered that the benefit thus conferred on the recipients is the difference between the amount that the company had actually paid as remuneration of the financing by bank acceptance drafts and the amount that it should pay by applying a short-term financing interest rate.

(388) The Commission determined the benefit resulting from the non-payment of a short-term financing cost. Considering that bank acceptance drafts are a form of short-term financing and that they effectively have the same purpose as short-term working capital loans, the Commission considered, as established in previous investigations ([91]), that bank acceptance drafts should bear a cost equivalent to a short-term loan financing. Therefore, the Commission applied the same methodology as to short-term loans financing denominated in RMB, described in Section 3.5.3.1 above.

(389) Following final disclosure, the FTT Group submitted that the Commission should consider the fees paid by the group in the calculation of the benefit.

(390) The Commission already noted in recital (371) that the sampled companies that used bank acceptance drafts during the investigation period only paid a commission for the acceptance service provided by the bank, which was in general 0,05 % of the face value of the draft. In fact, this commission paid for the processing of the bank acceptance draft by the bank, is a distinct element from the financing granted by the bank, for which the cooperating exporting producers did not bear any cost. This fee is paid in order to cover the bank's administrative costs of processing the bank acceptance drafts. The Commission countervailed only the financing part of the bank acceptance drafts (namely, the part equivalent to short-term financing); it did not analyse whether the acceptance commission also involved a countervailable subsidy. Therefore, the claim was rejected.

(391) The ZTT Group disagreed with the use of the benchmark for short-term loans as it considered bank acceptance drafts being a guarantee for which a commission should be charged. In this respect, the ZTT Group referred to the New York Federal Reserve which makes it clear that bank acceptance drafts operate more like a guarantee than a loan.

(392) The Commission disagreed with the stance of the ZTT Group. According to publicly available data concerning bank acceptance drafts in the US, in practice the bank typically buys the bank acceptance draft from the drawer by applying a discount rate, which is similar to an interest rate, and therefore, the acceptance serves as a medium for the bank to advance credit ([92]). Furthermore, in other jurisdictions such as Canada and Malaysia, when the bank accepts the draft it advances the funds after deducting the applicable discount rate ([93]). Indeed, the Bank of Canada Discussion Paper: A Primer on the Canadian Bankers' Acceptance Market provides that *'the drafts are purchased by the lenders at a discount to their face amount and the borrower receives the discounted proceeds as a loan. The discount rate at which the lenders purchase the drafts is often based on the CDOR rate'*. According to Article 14(4) of the Malaysian Guideline son Bankers acceptances (2004), *'the drawer of the BA shall be required to discount the [banker acceptance] with the accepting bank if the purchase has yet to be paid, in which case, the accepting bank is required to pay the discounted proceeds to the supplier of the goods'*. Therefore, the bank acceptance drafts primarily operate as a type of financing and not as a guarantee. Therefore, the claim was rejected.

3.5.4.3. Convertible corporate bonds

(393) Companies from the two sampled groups have issued convertible corporate bonds during the investigation period. Both convertible bonds have a progressive interest rate structure with very low interest rates, ranging between 0,2 % and 2 %, which is much below the PBOC Loan Benchmark Rate and below the Loan Prime Rate of the NIFC ([94]).

(394) The Commission established that both sampled companies benefited from preferential financing in the form of convertible bonds.

— Legal basis ([95])

— Law of the People's Republic of China on Securities (version 2014) ('Securities Law') ([96]);

([91]) See GFF case mentioned in footnote 5, recital 399.
([92]) "Quarterly Review, Summer 1981"
([93]) See Bank of Canada Discussion Paper: A Primer on the Canadian Bankers' Acceptance Market and https://fast.bnm.gov.my/fastweb/public/files/BA_Apr2004_Updated.pdf
([94]) See recital (189) above.
([95]) Legislation applicable at the time of the issuance of the convertible bonds.
([96]) Lastly amended on 28 December 2019 by Presidential Decree No 37 with effect from 1 March 2020.

— Administrative Measures on Issuance of Securities by Listed Companies (version 2008) ([97]);

— Administrative Measures on Sponsorship for Securities Issuance and Listing (version 2008) ([98]);

— Administrative Measures on Issue and Underwriting of Securities (version 2018);

— Regulations on the Administration of Corporate Bonds, issued by the State Council on 18 January 2011;

— Administrative Measures for the Issuance and Trading of Corporate Bonds, Order of the China Securities Regulatory Commission No 113, 15 January 2015;

— Measures of the Administration of Debt Financing Instruments of Non-financial Enterprises on the Inter-bank Bond Market Issued by the People's Bank of China, Order of the People's Bank of China [2008] No 12, 9 April 2008.

— Regulatory framework governing convertible bonds

(395) The Regulations on the Administration of Corporate Bonds and the Administrative Measures for the Issuance and Trading of Corporate Bonds set the general legal framework applicable to corporate bonds. However, there is a set of specific legislation applicable to convertible corporate bonds, namely the Administrative Measures on Issuance of Securities by Listed Companies, the Administrative Measures on Issue and Underwriting of Securities and the Administrative Measures on Sponsorship for Securities Issuance and Listing.

(396) Article 14 of the Administrative Measures on Issuance of Securities by Listed Companies defines 'convertible corporate bonds' as *'corporate bonds which are issued by an issuing company pursuant to law and which may be converted to shares during a certain period and under stipulated conditions'*.

(397) Pursuant to Article 11 of the Securities Law (version 2014), which was applicable at the time of the issuance of the convertible bonds by the sampled companies, Article 45 of the Administrative Measures on Issuance of Securities by Listed Companies and Article 2 of the Administrative Measures on Sponsorship for Securities Issuance and Listing, companies that want to issue convertible corporate bonds need to solicit the services of a securities sponsor, which acts as an underwriter. The sponsor organizes the issuance of the bonds, recommends the issuer, submits the application file to the China Securities Regulatory Commission ('CSRC') for approval, negotiates the interest rates at which the bond will be presented to investors and is responsible for finding investors which would accept the agreed terms of issuance of the bond, including the interest rate.

(398) In line with the regulatory framework, convertible bonds cannot be issued and traded freely in China. The issuance of each bond must be approved by the CSRC. Article 16 of the Securities Law (version 2014) stipulates that *'listed companies issuing convertible corporate bonds shall […] satisfy the requirements stipulated in this Law for public offering of shares; and shall obtain the approval of the securities regulatory authorities of the State Council'*. According to Article 3 of the Administrative Measures on Issue and Underwriting of Securities, which applies to convertible bonds, *'the CSRC shall supervise and administer the offering and underwriting of securities to the law'*. Furthermore, according to Article 10 of the Regulations on the Administration of Corporate Bonds, there are annual quotas for the issuance of corporate bonds.

(399) According to Article 16 of the Securities Law (version 2014), the public issuance of bonds should satisfy the following requirements: *'the usage purpose of the proceeds shall comply with State industrial policies'* and *'the proceeds from a public offering of corporate bonds shall be used for approved purpose(s) only'*. Article 12 of the Regulations on the Administration of Corporate Bonds reiterates that the purpose of the raised funds must comply with the industrial policies of the State. Furthermore, Article 10(2) of the Administrative Measures for the Issuance of Securities by Listed Companies, which is a *lex specialis* applicable to convertible bonds, stipulates that *'the purposes of use of the fund raised are in line with the industrial policies of the State'*.

([97]) Lastly amended on 14 February 2020 pursuant to the Decision on Revision of the "Administrative Measures on Securities Issuance by Listed Companies" of the China Securities Regulatory Commission with effect from 14 February 2020.

([98]) Replaced by Administrative Measures on the Sponsor Service for Securities Issuances and Listings, Decree No 170 of the China Securities Regulatory Commission of 12 June 2020 with effect from 12 June 2020.

(400) During the RCC, the GOC explained that this sentence means that the funds raised must not be for projects falling under the 'limited' industries in the 'Guiding Catalogue for Industry Restructuring'. This catalogue consists of three categories of projects, i.e. 'encouraged', 'limited', and 'eliminated'. In the 'limited' category, new projects are prohibited and ongoing production is directed to innovate and upgrade, while in the 'eliminated' category, existing projects are banned from seeking investment. Therefore, it can be concluded that *'in line with the industrial policies of the State'* could only mean that the investment project falls under the 'encouraged' content, which is entitled to receive credit support from financial institutions.

(401) As explained in recital (116), Decision No 40 refers to 'The Guiding Catalogue for Industry Restructuring' and provides that if *'the investment project belongs to the encouragement content it shall be examined and approved and put on records according to the relevant national regulations on investment; all financial institutions shall provide credit support according to the credit principles'*. It follows that the issuance of convertible corporate bonds, which, as shown, necessarily target an encouraged industry, corresponds with the practice of financial institutions to support those industries.

(402) The interest rates on corporate bonds are also strictly regulated. Article 16 of the Administrative Measures for the Issuance of Securities by Listed Companies provides that *'the interest rate of a convertible corporate bond shall be determined by the issuing company and the leading underwriter through negotiations, but it shall satisfy the relevant provisions of the State'*. According to Article 16(5) of the Securities Law (version 2014), *'the coupon rate of the corporate bonds shall not exceed the coupon rate stipulated by the State Council'*. In addition, Article 18 of the Regulations on the Administration of Corporate Bonds, which is generally applicable to all bonds, provides further details by stating that, *'the interest rate offered for any corporate bonds shall not be higher than 40 % of the prevailing interest rate paid by banks to individuals for fixed-term savings deposits of the same maturity'*.

(403) According to Article 17 of the Administrative Measures for the Issuance of Securities by Listed Companies, *'to publicly issue convertible corporate bonds, a company shall entrust a qualified credit rating agency to make credit ratings and follow-up ratings'*. In addition, Article 18 of the generally applicable Administrative Measures for the Issuance and Trading of Corporate Bonds stipulates that only certain bonds complying with strict quality criteria, such as an AAA credit rating, may be issued in a public manner to public investors or be issued in a public manner to qualified investors only at the sole discretion of the issuer. The corporate bonds that fail to meet these standards can be issued in a public manner only to qualified investors.

(a) Financial institutions acting as public bodies

(404) According to the China bond market insight 2021 by Bloomberg, most of the investors are institutional investors, including financial institutions. In particular, commercial banks represent 57 % of the investors and policy banks represent 3 % ([99]). Furthermore, the Commission found that 85 % of the investors of the convertible bond issued by one of the sampled companies are institutional investors, a category of investors that includes financial institutions.

(405) Furthermore, as an encouraged industry under the 'Guiding Catalogue for Industry Restructuring', the OFC industry is entitled to credit support by financial institutions based on Decision No 40. The fact that convertible bonds, such as the convertible bonds issued by the sampled companies, bear a low interest rate is a strong indication that financial institutions are the major investor in these bonds. They are obliged to provide *'credit support'* to these companies and would take into account other considerations than the interest remuneration when taking the investment/financing decision, such as policy objectives. Indeed, an investor operating in market conditions would be more sensitive to the financial return on his investment and would most probably not invest in convertible bonds bearing very low interest rate. Moreover, the conclusions reached by the Commission about the financial situation of both groups of exporting producers in Section 3.5.3.3 above in terms of their liquidity and solvency profiles further indicate that investors operating in market conditions would not invest in financial instruments such as convertible bonds, offering low financial return, while the issuer presents high liquidity and solvency risks. Therefore, in the Commission's view only investors having motivations other than a financial return on investment, such as complying with the legal obligation to provide financing to companies in encouraged industries, would make such an investment.

([99]) See China bond market insight 2021, Footnote 59, p. 33.

(406) Consequently, taking into account the facts exposed in recitals (404) and (405), the Commission considered that there is a body of corroborating evidence, according to which a major proportion of the investors in the convertible bonds issued by the sampled companies is constituted by financial institutions which have a legal obligation to provide credit support to OFC producers.

(407) Further, as described in Section 3.5.1 above, the financial institutions are characterized by a strong State presence, and the GOC has the possibility to exercise a meaningful influence on them. The general legal framework, in which these financial institutions operate is also applicable to convertible bonds.

(408) In Section (1) and (2) above, the Commission concluded that State-owned financial institutions are public bodies within the meaning of Article 2(b) read in conjunction with Article 3(1)(a)(i) of the basic Regulation and that they are in any event considered entrusted or directed by the GOC to carry out functions normally vested in the government within the meaning of Article 3(1)(a)(iv) of the basic Regulation. In Section 3.5.1.2 above, the Commission concluded that private financial institutions are also entrusted and directed by the government.

(409) The Commission also sought concrete proof of the exercise of control in a meaningful way based on concrete issuances of convertible bonds. It therefore examined the overall legal environment as set out above in recitals (395) to (403), in combination with the concrete findings of the investigation.

(410) The Commission found that the convertible bonds were issued by the two groups of sampled exporting producers at very low and similar interest rates, regardless of the companies' financial and credit risk situation.

(411) In practice, interest rates on convertible bonds are influenced by the credit rating of the company, similar to loans. However, the Commission concluded in recital (280) that the local credit rating market is distorted and credit ratings are unreliable. As stated in recital (274), five Chinese local rating agencies dominate the bond market and around 90 % of the bonds are rated AAA by local crating agencies, while many of the issuers have received a lower S&P global issuer rating of A and BBB.

(412) This was illustrated by the fact that the credit rating reports for the bonds issued by the sampled companies did not correspond to their actual financial situation.

(413) In light of the above considerations, the Commission concluded that the Chinese financial institutions, which are the major investor in the convertible bonds issued by the sampled companies, followed the policy orientations laid down in Decision No 40 by providing preferential financing at a very low interest rate to companies pertaining to an encouraged industry and thus acted either as public bodies within the meaning of Article 2(b) of the basic Regulation or as bodies which are entrusted or directed by the government within the meaning of Articles 3(1)(a)(iv) of the basic Regulation.

(414) By accepting to invest in convertible bonds with a very low rate of return irrespective of the risk profile of the issuer, the financial institutions provided a benefit to the sampled exporting producers.

(415) Following final disclosure, the GOC contested the conclusion of the Commission that the financial institutions, which purchased a major part of the convertible corporate bonds at issue, have acted as public bodies. The GOC claimed that the purchase of corporate bonds and convertible corporate bonds is a regular commercial practice that occurs in all major jurisdictions, including the Union and the US. According to the GOC, the function performed by financial institutions when they buy bonds or when they provide loans is completely different and thus the Commission was under the obligation to conduct a specific assessment if financial institutions could be considered public bodies for the function of buying bonds and to conduct a case-by-case assessment of each financial institution. The GOC also submitted that the Commission did not analyse whether there existed purchasers of corporate bonds and convertible bonds other than the Chinese banks and financial institutions and if there were private purchasers. Furthermore, the GOC submitted that the purpose of the Chinese financial supervision system with respect to corporate bonds and convertible bonds is to ensure safety of the system and to protect the right and interests of the investors and that this system as such does not demonstrate interference from the government.

(416) The Commission disagreed with the statement of the GOC that it did not carry out a specific assessment of the conduct of financial institutions as public bodies for the function of buying bonds. In addition to the conclusions reached by the Commission in Section 3.5.1 above, the Commission also sought concrete proof of the exercise of control in a meaningful way based on the concrete issuances of convertible bonds and carried out a specific assessment in recitals (409) to (413). While the Commission agreed with the GOC that the purchase of corporate bonds and convertible bonds may be in principle a regular commercial practice that occurs in all major jurisdictions, it pointed out that the purchase of corporate bonds by Chinese financial institutions is characterised by a State interference as demonstrated in recital (413). The Commission also disagreed with the allegation of the GOC that it did not analyse the existence of purchasers of corporate bonds and convertible bonds other than the Chinese banks and financial institutions. In fact, the Commission pointed out in recitals (404) and (406) that 85 % of the investors of the convertible bond issued by one of the sampled companies were institutional investors, including financial institutions, and that there is a body of corroborating evidence, according to which a major proportion of the investors in the convertible bonds issued by the sampled companies is constituted by financial institutions which have a legal obligation to provide credit support to OFC producers. Considering the high proportion of institutional investors, including financial institutions, the Commission was of the opinion that they have determined the characteristics of the convertible corporate bonds at issue, in particular the low coupon rate, and that other investors, such as private investors only adhered to such conditions. Finally, the Commission considered that the Chinese financial supervision system with respect to corporate bonds and convertible bonds is only an element, which together with the normative framework governing financing by financial institutions described in recitals (405) and (407) as well as with the concrete behaviour of the financial institutions pointed to the interference from the GOC. Therefore, the claims of the GOC were rejected.

(b) Specificity

(417) The Commission considered that the preferential financing through convertible bonds is specific within the meaning of Article 4(2)(a) of the basic Regulation. In fact, convertible bonds cannot be issued without the approval of the CSRC, which checks if all the regulatory conditions for the issuance of the convertible bonds are met. As explained in recital (399), according to the Securities Law of the PRC (version 2014) and the Administrative Measures on Issuance of Securities by Listed Companies specifically applicable to convertible bonds, the issuance of convertible bonds must be in line with the State's industrial policies. The Commission considered in recital (400) that *'in line with the industrial policies of the State'* means that the investment project falls under the 'encouraged' content in the Guiding Catalogue of Industry Restructuring to which the OFC industry belongs.

(418) Following final disclosure, the GOC submitted that bonds markets are regulated in every country as this is a question of economic stability. The criteria that must be met by a company in order to issue bonds are financial in nature and are not policy-oriented. The GOC disagreed with the stance that the issuance of convertible bonds *must be in line with the State's industrial policies* and repeated that the OFC industry is not an encouraged industry. The GOC further claimed that the Commission has not demonstrated that the sale of bonds is *explicitly limited* to certain companies.

(419) In this respect, although the Commission agreed that bonds markets are regulated in every country and that most of the criteria that must be met by a company in order to issue bonds are financial in nature, it disagreed with the claim of the GOC that the issuance of convertible bonds is not policy-oriented in China. First, the Commission reiterated its stance that the OFC sector is an encouraged industry. Second, the Commission considered that the wording of the Securities Law of the PRC (version 2014) and the Administrative Measures on Issuance of Securities by Listed Companies specifically applicable to convertible bonds, according to which the issuance of convertible bonds must be in line with the State's industrial policies is clear enough. Finally, the Commission established in recital (414) that by accepting to invest in convertible bonds with a very low rate of return irrespective of the risk profile of the issuer, the financial institutions provided a benefit to the sampled exporting producers. In fact, the financial advantage provided through the purchase of convertible corporate bonds with such a low coupon rate is *'explicitly limited'* to encouraged industries, such as the OFC industry, by the normative framework designed by the GOC. Therefore, the claims of the GOC were rejected.

(c) Calculation of the benefit

(420) Convertible bonds are a hybrid debt instrument which have features of a bond such as interest payments while also providing the opportunity to convert the invested amount into shares under certain conditions. The Commission found that only a negligible part of the convertible bonds of both sampled companies has been converted into shares. Therefore, during the investigation period, the convertible bonds of the two sampled companies operated

only as a bond, providing investors a return in the form of an interest similarly to loans. Since the calculation methodology for loans described in recital (310) is based on bonds, the Commission decided to follow the same methodology given these specific circumstances of this case ([100]). This means that the relative spread between US AA corporate bonds and US BB corporate bonds with the same duration is applied to the Loan Benchmark Rates published by the PBOC or, after 20 August 2019, the Loan Prime Rate published by the NIFC ([101]), to establish a market-based interest rate for bonds.

(421) Following final disclosure, the GOC, the ZTT Group and the FTT Group objected the use of the same benchmark for bonds and convertible bonds as the one applied to loans since bonds, in particular convertible bonds, and loans are different financial instruments and that the bonds market works differently from the private lending market. The GOC claimed that there is no basis for the Commission to use the PBOC benchmark as a starting point and then add a mark-up. According to the GOC, the Commission should directly use the interest rate for bonds issued by BB rated companies and gave examples that European OFC and steel producers with BB rating issued bonds for a similar maturity period at significantly lower rates than the calculated benchmark rate during the same period. The ZTT Group argued that the main advantage of issuing bonds compared to raising loans from banks is that the interest rate (i.e. coupon rate) companies have to pay to the bond investors is often less that the interest rate that they would have to pay on a bank loan. According to the ZTT Group, issuing convertible bonds is even more attractive because they typically bear a lower coupon rate because they enable investors to convert the bonds into equity and thus receive investment returns via equity dividends. The FTT Group also stated that the benefit of convertible bonds is not the interest income but the conversion right. Both the FTT Group and the ZTT Group suggested using the coupon rate of US BB rated corporate bonds as a benchmark for the calculation of the benefit for bonds and convertible bonds.

(422) In recital (337), the Commission explained why it considered that loans and corporate bonds are similar financial debt instruments, which justified the application of the same benchmark for both instruments in the specific circumstances of this case. In recitals (325) to (333), the Commission explained why it judged that the benchmark for loans and corporate bonds is appropriate, why it cannot use the coupon rate of US BB rated corporate bonds as a benchmark and why the comparison with EU interest rates/coupon rates is irrelevant. The Commission agreed that convertible corporate bonds are a hybrid debt instrument which also provides the opportunity to convert the invested amount into shares under certain conditions and are as such in principle different from corporate bonds. The Commission did look into the possibility to quantify this convertibility element as well as the use of the US BB rated corporate bonds as suggested by the GOC, the FTT Group, and the ZTT Group. However, the benchmark proposed by these parties did not take into consideration such convertibility and it was a benchmark for corporate bonds de-linked from the Chinese markets as it concerned bonds issued in a different currency (i.e. USD and not CNY), and with a substantially different risk-free interest rate. No other possible benchmarks were submitted, and no further public information was available to provide for a more accurate benchmark for convertible bonds (e.g. indices for the premium on US AA rated convertible bonds and US BB rated convertible bonds) or for the convertibility aspect of these bonds. The companies' own data also lacked the possibility for any proper comparison on the difference in coupon rate between bonds and convertible bonds, as one of the sampled companies did not have any bonds outstanding and the bonds of the other sampled company did have a different maturity and financing purpose from its convertible bond. Furthermore, the Commission concluded in recital (420) that only a negligible part of the convertible bonds of both sampled companies has been converted into shares, and that in practice the exporting producers used this financing instrument interchangeably with the other financing instruments, that is loans and corporate bonds. Therefore, since during the investigation period these convertible bonds operated only as a bond, providing investors a return in the form of an interest similarly to loans, and since the use of the benchmark at a free-risk rate as published by the PBOC or the NIFC was estimated to be conservative, the Commission confirmed its decision to apply the benchmark for loans as stated in recital (420).

(423) The benefit is the difference between the interest amount that the company should have paid by applying the market-based interest rate referred to in recital (420) and the actual interest paid by the company.

([100]) As there were no data specific to convertible corporate bonds publicly available, the Commission used the data available for corporate bonds, which should also include convertible corporate bonds.

([101]) See recital (189) above.

3.5.4.4 Corporate bonds

(424) One of the sampled groups benefited from preferential financing in the form of corporate bonds.

(a) Legal basis

— Law of the People's Republic of China on Securities (version 2014) ('Securities Law') ([102]);

— Administrative Measures for the Issuance and Trading of Corporate Bonds, Order of the China Securities Regulatory Commission No 113, 15 January 2015;

— Regulations on the Administration of Corporate Bonds, issued by the State Council on 18 January 2011

— Measures of the Administration of Debt Financing Instruments of Non-financial Enterprises on the Inter-bank Bond Market Issued by the People's Bank of China, Order of the People's Bank of China [2008] No 12, 9 April 2008;

(b) Regulatory framework governing corporate bonds

(425) In line with the regulatory framework, bonds cannot be issued or traded freely in China. The issuance of each bond must be approved by various governmental authorities, such as the PBOC, the NDRC or the CSRC, depending on the type of bond and the type of issuer. In addition, according to the Regulations on the Administration of Corporate Bonds, there are annual quotas for the issuance of corporate bonds.

(426) Furthermore, according to Article 16 of the Securities Law applicable during the IP, a public offering of corporate bonds should satisfy the following requirements: *'the usage purpose of the proceeds shall comply with State industrial policies […]' and 'the proceeds from a public offering of corporate bonds shall be used for approved purpose(s) only'*. Article 12 of the Regulations on the Administration of Corporate Bonds reiterates that the purpose of the raised funds must comply with the industrial policies of the State. As explained in recitals (400) and (401), the issuance of corporate bonds under such conditions targets an encouraged industry such as the OFC industry and corresponds with the practice of financial institutions to support those industries.

(427) According to Article 16(5) of the Securities Law (version 2014), *'the coupon rate of the corporate bonds shall not exceed the coupon rate stipulated by the State Council'*. In addition, Article 18 of the Regulations on the Administration of Corporate Bonds provides further details by stating that, *'the interest rate offered for any corporate bonds shall not be higher than 40 % of the prevailing interest rate paid by banks to individuals for fixed-term savings deposits of the same maturity'*.

(428) Furthermore, Article 18 of the Administrative Measures for the Issuance and Trading of Corporate Bonds stipulates that only certain bonds complying with strict quality criteria, such as an AAA credit rating, may be issued in a public manner to public investors or be issued in a public manner to qualified investors only at the sole discretion of the issuer. The corporate bonds that fail to meet these standards can be issued in a public manner only to qualified investors. Therefore, it results that most corporate bonds are issued to qualified investors which have been approved by the CSRC and which are Chinese institutional investors.

(c) Financial institutions acting as public bodies

(429) In China, companies that want to issue corporate bonds need to solicit the services of a financial institution acting as an underwriter. Underwriters organize the issuance of bonds and negotiate the interest rate at which the bond will be presented to investors. The Commission established that the underwriter of the corporate bond issued by one of the sampled groups was among the financial institutions that also provided preferential financing, which was explained in Section 3.5.1 above.

([102]) Lastly amended on 28 December 2019 by Presidential Decree No 37 with effect from 1 March 2020.

(430) Furthermore, according to the China bond market insight 2021 by Bloomberg, the bonds listed in the interbank bond market account for 88 % of the total trading volume of bonds. According to the same study, most of the investors are institutional investors, including financial institutions. In particular, commercial banks represent 57 % of the investors and policy banks represent 3 % ([103]). Therefore, investors buying corporate bonds are mainly Chinese banks, including State-owned banks.

(431) As explained in recitals (405) and (406) above, the Commission considered that there is a body of corroborating evidence, according to which a major proportion of the investors in convertible bonds issued by the sampled companies is constituted by financial institutions which have a legal obligation to provide credit support to OFC producers. The same reasoning and conclusion also applies to corporate bonds as the conditions of issuance are very similar, in particular the condition to comply with the requirements of national laws, regulations and policy, and with the industrial policy of the State.

(432) As described in recital (426), Article 16 of the Securities Law (version 2014) and Article 12 of the Regulations on the Administration of Corporate Bonds require that a public offering of corporate bonds complies with the industrial policies of the State. This has the effect that corporate bonds can only be issued for purposes that are in line with the targets of the planning of the GOC regarding encouraged industries as explained in recitals (393) and (394). The institutional investors, which are, as shown in recitals (397) and (430), to a large extent commercial banks and policy banks, have to follow the policy orientations laid down in Decision No 40.

(433) Thus, the mechanism as described in recitals (116), (401) and (413) above applies to corporate bonds as well, i.e. Decision No 40 read together with the Guiding Catalogue for Industry Restructuring provides for specific treatment of certain projects within certain encouraged industries, such as the OFC industry. The beneficial treatment that was applied in favour of one of the sampled groups aggregated in the decision to invest in corporate bonds issued with an interest rate that does not reflect market based criteria.

(434) As described in Section 3.5.1 above, the financial institutions are characterized by a strong State presence, and the GOC has the possibility to exercise a meaningful influence on them. The general legal framework, in which these financial institutions operate is also applicable to corporate bonds.

(435) In Section (1) and (2) above, the Commission concluded that State-owned financial institutions are public bodies within the meaning of Article 2(b) read in conjunction with Article 3(1)(a)(i) of the basic Regulation and that they are in any event considered entrusted or directed by the GOC to carry out functions normally vested in the government within the meaning of Article 3(1)(a)(iv) of the basic Regulation. In Section 3.5.1.2 above, the Commission concluded that private financial institutions are also entrusted and directed by the government.

(436) The Commission also sought concrete proof of the exercise of control in a meaningful way based on concrete issuances of corporate bonds. It therefore examined the overall legal environment as set out above in recitals (425) to (428), in combination with the concrete findings of the investigation.

(437) The Commission found that the corporate bond was issued with an interest rate below the level that should have been expected in the companies' financial and credit risk situation.

(438) In practice, interest rates on corporate bonds are influenced by the credit rating of the company, similar to loans. However, the Commission concluded in recital (280) that the local credit rating market is distorted and credit ratings are unreliable. As stated in recital (274), five Chinese local rating agencies dominate the bond market and around 90 % of the bonds are rated AAA by local crating agencies, while many of the issuers have received a lower S&P global issuer rating of A and BBB.

(439) This was illustrated by the fact that the credit rating reports for the corporate bond issued by the sampled company did not correspond to its actual financial situation.

([103]) See China bond market insight 2021, Footnote 59, p. 33.

(440) In light of the above considerations, the Commission concluded that the Chinese financial institutions, which acted as underwriters in the issuance of the corporate bond by the sampled company and which are the major investors in the corporate bond, followed the policy orientations laid down in Decision No 40 by providing preferential financing to companies pertaining to an encouraged industry and thus acted either as public bodies within the meaning of Article 2(b) of the basic Regulation or as bodies which are entrusted or directed by the government within the meaning of Articles 3(1)(a)(iv) of the basic Regulation.

(441) By organising the issuance of a corporate bonds with the interest rate below the market rate corresponding to the actual risk profile of the issuer and by accepting to invest in such corporate bond, the financial institutions provided a benefit to the sampled exporting producer.

(d) Specificity

(442) As described in recital (417) above, the Commission considered that the preferential financing through bonds is specific within the meaning of Article 4(2)(a) of the basic Regulation as the bonds cannot be issued without approval from government authorities, and the Securities Law of the PRC (version 2014) states that the issuance of bonds must comply with the State's industrial policies. As already mentioned in recital (131), the OFC industry is regarded as encouraged industry in the Guiding Catalogue of Industry Restructuring.

(e) Calculation of the benefit

(443) Since bonds are in essence just another type of debt instrument, similar to loans, and since the calculation methodology for loans is already based on a basket of bonds, the Commission decided to follow the calculation methodology for loans as described above in Section 3.5.3.3. This means that the relative spread between US AA corporate bonds and US BB corporate bonds with the same duration is applied to the PBOC Loan Benchmark Rate, or after 20 August 2019 to the Loan Prime Rate published by the NIFC, to establish a market-based interest rate for bonds, which is then compared with the actual interest rate paid by the company in order to determine the benefit.

3.5.4.5. Conclusion on preferential financing: other types of financing

(444) The Commission established that both sampled groups of exporting producers benefited from preferential financing in the form of credit lines, bank acceptance drafts and convertible bonds. In view of the existence of a financial contribution, a benefit to the exporting producers and specificity, the Commission considered these types of preferential financing a countervailable subsidy.

(445) The subsidy rate established with regard to the preferential financing described above during the investigation period for the sampled groups of companies amounted to:

Preferential financing: other types of financing

Company name	Subsidy rate
FTT Group: — FiberHome Telecommunication Technologies Co., Ltd — Nanjing Wasin Fujikura Optical Communication Ltd — Hubei Fiberhome Boxin Electronic Co., Ltd	3,51 %
ZTT Group: — Jiangsu Zhongtian Technology Co., Ltd — Zhongtian Power Optical Cable Co., Ltd	2,62 %

3.6. **Preferential insurance: export credit insurance**

(446) The complainant alleged that Sinosure provides short-, medium- and long-term export credit insurance, investment insurance and bond guarantees, among other services, on a concessional basis to encouraged industries. On its general website, Sinosure states that it promotes Chinese exports of goods, especially the exporting of high-tech products. According to a study undertaken by the Organisation for Economic Co-operation and Development ('OECD'), the Chinese high-tech industry, of which the OFC industry is part, received 21 % of the total export credit insurance provided by Sinosure ([104]). Furthermore, Sinosure has taken an active role in fulfilling the 'Made in China 2025' Initiative, guiding enterprises to use national credit resources, carrying out scientific and technological innovation and technological upgrading, and helping 'going out' enterprises become more competitive in the global market ([105]).

(a) Legal basis

(a) Notice on the Implementation of the Strategy of Promoting Trade through Science and Technology by Utilising Export Credit Insurance (Shang Ji Fa [2004] No 368), issued jointly by MOFCOM and Sinosure;

(b) 840 plan included in the Notice by the State Council of 27 May 2009;

(c) Notice on Cultivation and Development of the State Council on Accelerating Emerging Industries of Strategic Decision (GuoFa [2010] No 32 of 18 October 2010), issued by the State Council and its Implementing Guidelines (GuoFa [2011] No 310 of 21 October 2011)

(d) Notice on the issuance of the 2006 edition of China's High-tech Products Export Catalogue No 16 of the National Science and Technology Department (2006).

(b) Findings of the investigation

(447) The two sampled groups of companies had outstanding export insurance agreements with Sinosure during the investigation period.

(448) As mentioned in recital (158) above, Sinosure failed to provide the supporting documentation requested concerning its corporate governance such as Articles of Association. In addition, Sinosure did not provide more specific information about the export credit insurance provided to the OFC industry, the level of its premiums or detailed figures relating to the profitability of its export credit insurance business.

(449) Therefore, the Commission had to complement the information provided by facts available.

(450) According to information provided in previous anti-subsidy investigations ([106]) and according to Sinosure's website ([107]), Sinosure is a State-owned policy-oriented insurance company established and supported by the State to support the PRC's foreign economic and trade development and cooperation. The company is 100 % owned by the State. It has a board of directors and a board of supervisors. The Government has the power to appoint and dismiss the company's senior managers. Based on this information, the Commission concluded that there is formal indicia of government control with respect to Sinosure.

(451) The Commission further sought information about whether the GOC exercised meaningful control over the conduct of Sinosure with respect to the OFC industry.

([104]) OECD Study on Chinese export credit policies and programmes, page 7, para 32, available at https://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=TAD/ECG(2015)3&doclanguage=en, last accessed on 18 August 2021.

([105]) See Sinosure website, Company profile, Supporting 'Made in China', https://www.sinosure.com.cn/en/Resbonsiblity/smic/index.shtml, last accessed on 17 August 2021.

([106]) See Tyres case cited in footnote 5, recital 429.

([107]) https://www.sinosure.com.cn/en/Sinosure/Profile/index.shtml, last accessed on 18 August 2021.

(452) According to the Notice on the issuance of the 2006 edition of China's High-tech Products Export Catalogue No 16, *'products included in the 2006 edition of the Export Catalogue may enjoy preferential policies granted by the State for the export of high-tech products'*. The Export Catalogue of High-Tech Products specifically lists optical fibres, optical fiber communication transmission equipment and optical fibre cables. ([108])

(453) Furthermore, according to the Notice on the Implementation of the Strategy of Promoting Trade through Science and Technology by Utilising Export Credit Insurance ([109]), Sinosure should increase its support for key industries and products by strengthening its overall support for the export of high and new technology products, including 'information and communications' products. It should treat high and new technology industries, such as the OFC industry, listed in the China's High-tech Products Export Catalogue, as its business focus and provide comprehensive support in terms of underwriting procedures, approval with limits, claims processing speed and rate flexibility. With regard to rate flexibility, it should give products the maximum premium rate discount within the floating range provided by the credit insurance company. As mentioned in recitals (86) and (118), the OFC industry is included in the more general category of 'Information Industry'. Furthermore, the Annual Report of Sinosure for 2019 states that Sinosure has *'supported steady development of key Industries'* and *'accelerated growth of strategic emerging Industries'* ([110]).

(454) On this basis, the Commission concluded that the GOC has created a normative framework that had to be adhered to by the managers and supervisors appointed by the GOC and accountable to the GOC. Therefore, the GOC relied on such normative framework in order to exercise control in a meaningful way over the conduct of Sinosure.

(455) The Commission also sought concrete proof of the exercise of control in a meaningful way based on concrete insurance agreements. During the RCC, the GOC maintained that in practice Sinosure's premiums were market-oriented and based on risk assessment principles. However, no specific examples with respect to the OFC industry or the sampled companies were provided.

(456) In the absence of concrete evidence, the Commission therefore examined the concrete behaviour of Sinosure with regard to the insurance provided to the sampled companies. This behaviour contrasted with their official stance, as they were not acting based on market principles.

(457) After comparing the total claims paid with the total insured amounts, based on the data in the Sinosure's Annual Report for 2019 ([111]), the Commission concluded that on average Sinosure would need to charge 0,22 % of the insured amount as a premium to cover the cost of the claims (without even taking into account overhead expenses). However, in practice, the premiums paid by the sampled companies were much lower than the minimum fee needed to cover operational costs.

(458) Therefore, the Commission concluded that the legal framework set out above is being implemented by Sinosure in the exercise of governmental functions with respect to the OFC sector. Sinosure acted as a public body in the sense of Article 2(b) of the basic Regulation read in conjunction with Article 3(1)(a)(i) of the basic Regulation and in accordance with the relevant WTO case-law. Furthermore, the sampled exporting producers received a benefit, since the insurance was provided at rates below the minimum fee needed for Sinosure to cover its operational costs.

(459) The Commission also determined that the subsidies provided under the export insurance programme are specific, because they could not be obtained without exporting and are thus export contingent within the meaning of Article 4(4)(a) of the basic Regulation.

([108]) China's High-tech Products Export Catalogue, e.g. No 775, 780, 781, 1035, 1098, 1100, 1104, 1107 and 1109.
([109]) http://www.mofcom.gov.cn/aarticle/b/g/200411/20041100300040.html, last accessed on 12 August 2021.
([110]) Sinosure Annual Report 2019, p. 11, https://www.sinosure.com.cn/images/xwzx/ndbd/2020/08/27/38BBA5826A689D7D5B1DAE8BB66FACF8.pdf , last accessed on 18 August 2019.
([111]) Ibid, p. 28 and 29.

(c) Calculation of the subsidy amount

(460) As Sinosure held a predominant market position during the investigation period, the Commission could not find a market-based domestic insurance premium. Therefore, in line with previous anti-subsidy investigations, the Commission thus used the most appropriate external benchmark, for which information was readily available, i.e. the premium rates applied by the Export-Import Bank of the United States of America to non-financial institutions for exports to OECD countries.

(461) The Commission considered that the benefit conferred on the recipients is the difference between the amount that the company had actually paid as insurance premium and the amount that it should have paid by applying the external benchmark premium rate mentioned in recital (460).

(462) The subsidy rate established with regard to this scheme during the investigation period for FTT Group and for ZTT Group amounted to:

Preferential financing and insurance: export credit insurance

Company name	Subsidy rate
FTT Group: — FiberHome Telecommunication Technologies Co., Ltd — Nanjing Wasin Fujikura Optical Communication Ltd — Hubei Fiberhome Boxin Electronic Co., Ltd	0,08 %
ZTT Group: — Jiangsu Zhongtian Technology Co., Ltd — Zhongtian Power Optical Cable Co., Ltd	0,54 %

3.7. **Revenue foregone through tax exemptions and reduction programmes**

3.7.1. *Tax exemptions and reductions*

3.7.1.1. EIT privileges for High and New Technology Enterprises

(463) According to the Law of the People's Republic of China on Enterprise Income Tax ('EIT Law') ([112]), high and new technology enterprises to which the State needs to give key support benefit from a reduced enterprise income tax rate of 15 % rather than the standard tax rate of 25 %.

(a) Legal basis

(464) The legal basis of this programme is Article 28 of the EIT Law and Article 93 of the Implementation Rules for the Enterprise Income Tax Law of the PRC ([113]), as well as:

— Circular of the Ministry of Science and Technology, Ministry of Finance and the State Administration of Taxation on revising and issuing Administrative Measures for the Recognition of High-Tech Enterprises, G.K.F.H. [2016] No 32;

— Circular of the Ministry of Science and Technology, the Ministry of Finance and the State Administration of Taxation on Revising and Issuing the Guidelines for the Administration of Accreditation of High-tech Enterprises, Guo Ke Fa Huo [2016] No 195;

— Announcement [2017] No 24 of the State Administration of Taxation on the Application of Preferential Income Tax Policies to High-tech Enterprises;

— The 2016 Catalogue of High-tech Fields Supported by the State ([114]); and

— Ministry of Finance and State Administration of Taxation Announcement [2019] No 68.

([112]) Order No 23 of the President of the People's Republic of China.

([113]) Implementing Regulations of the Enterprise Income Tax Law of the People's Republic of China (Revised in 2019) - Order of the State Council of the People's Republic of China No 714.

([114]) http://kj.quanzhou.gov.cn/wsbs/xgxz/201703/t20170322_431820.htm, last accessed on 17 August 2021.

(465) Chapter IV of the EIT Law contains provisions regarding 'Preferential Tax Treatment'. Article 25 of the EIT Law, which stands as a chapeau for Chapter IV, provides that *'The State will offer income tax preferences to Enterprises engaged in industries or projects the development of which is specially supported and encouraged by the State'*. Article 28 of the EIT law provides that *'the rate of enterprise income tax on high and new technological enterprises needing special support of the State shall be reduced to 15 %'*.

(466) Article 93 of the Implementation Rules for the Enterprise Income Tax Law clarifies that:

'"The important high and new technology enterprises to be supported by the state" as referred to in Clause 2 of Article 28 of the Enterprise Income Tax Law refer to the enterprises which own key intellectual property rights and satisfy the following conditions:

1. *Complying with the scope of the Key State Supported High and New Technology Areas;*
2. *The proportion of the research and development expense in the sales revenue shall be no less than the prescribed proportion;*
3. *The proportion of the income from high-tech technology/product/service in the enterprise's total revenue shall be no less than the prescribed proportion;*
4. *The proportion of the technical personnel in the enterprise's total employees shall be no less than the prescribed proportion;*
5. *Other conditions prescribed in the Measures for the Administration of High-Tech Enterprise Identification.*

Measures for the Administration of High-Tech Enterprise Identification and Key State Supported High and New Technology Areas shall be jointly formulated by the technology, finance and taxation departments under the State Council and come into effect after approved by State Council'.

(467) The above-mentioned provisions clearly specify that the reduced enterprise income tax rate is reserved to *'important high and new technology enterprises to be supported by the State'* which own key intellectual property rights and satisfy certain conditions such as *'complying with the scope of the Key State Supported High and New Technology Areas'*.

(468) According to Article 11 of the Administrative Measures for the Recognition of High-Tech Enterprises (G.K.F.H. [2016] No 32), to be recognized as high-tech an enterprise must simultaneously meet certain conditions among which: *'it has obtained the ownership of intellectual property rights, which plays a central role in technically supporting its main products (services), through independent research, transfer, grant, mergers and acquisitions, etc.'* and *'the technology that plays a central role in technically supporting its main products (services) is within the range predetermined in the "high-tech fields supported by the state"'*.

(469) The key high technology fields supported by the State are listed in the 2016 Catalogue of High-tech Fields Supported by the State. This catalogue clearly mentions under 'I. Electronic Information', point 4. 'Communication technology' *'optical transmission network'* and *'optical transmission system technology'*, which cover optical fibre cables, as high technology fields supported by the State.

(470) Companies benefiting from this measure have to file their income tax return and the relevant annexes. The actual amount of the benefit is included in the tax return.

(b) Findings of the investigation

(471) The Commission found that companies within the sampled exporting producer groups qualified as high-tech companies during the investigation period and thus enjoyed a reduced EIT rates of 15 % or 12,5 %.

(472) The Commission considered that the tax offset at issue is a subsidy within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation because there is a financial contribution in the form of revenue foregone by the GOC that confers a benefit to the companies concerned. The benefit for the recipients is equal to the tax saving.

(473) This subsidy is specific within the meaning of Article 4(2)(a) of the basic Regulation as the legislation itself limits the application of this scheme only to enterprises that are operating in certain high technology priority areas determined by the State as demonstrated in recital (466) to (468). As pointed out in recital (469), the OFC industry is such a high technology priority.

(474) Following final disclosure, the GOC claimed that the tax exemption and deduction programs countervailed by the Commission do not constitute countervailable subsidies. According to the GOC, the alleged tax exemptions and deductions operate as a result of a system that *establishes objective criteria or conditions governing the eligibility* for accessing financial support, in which eligibility is automatic and the criteria and conditions laid down in the programmes are strictly adhered to, not favouring certain enterprises over others and purely economic and horizontal in nature. Therefore, the GOC claimed they are not specific within the meaning of Article 4(2)(b) of the basis Regulation.

(475) The Commission disagreed with this claim as it considered the tax schemes described in Sections 3.7.1.1 to 3.7.1.3 specific under Article 4(2)(a) of the basis Regulation, which provides that *'where the granting authority, or the legislation pursuant to which the granting authority operates, explicitly limits access to a subsidy to certain enterprises, such subsidy shall be specific'*. Indeed, the subsidy schemes at issue have their legal basis in Chapter IV 'Tax Preferences' of the EIT. By its name and content, this chapter explicitly provides for specific preferential treatment which *'explicitly limits access to a subsidy to certain enterprises'*. Consequently, the subsidies provided under these tax schemes are specific under Article 4(2)(a) of the basis Regulation. The Claim was therefore rejected.

(c) Calculation of the subsidy amount

(476) The amount of countervailable subsidy was calculated in terms of the benefit conferred on the recipients during the investigation period. This benefit was calculated as the difference between the total tax payable according to the normal tax rate and the total tax payable under the reduced tax rate.

(477) The subsidy rate established for this specific scheme was 0,10 % for the FTT Group and 0,48 % for the ZTT Group.

3.7.1.2. EIT offset for research and development expenses

(478) The tax offset for research and development entitles companies to preferential tax treatment for their R&D activities in certain high technology priority areas determined by the State and when certain thresholds for R&D spending are met.

(479) More specifically, R&D expenditures incurred to develop new technologies, new products and new techniques, which do not form intangible assets and are accounted into the current term profit and loss, are subject to an additional 75 % deduction after being deducted in full in light of the actual situation. Where the above-mentioned R&D expenditures form intangible assets, they are subject to amortization based on 175 % of the intangible asset costs. Since January 2021, the additional pre-tax deduction for R&D expenses was increased to 100 % ([115]).

(a) Legal basis

(480) The legal basis for the programme is Article 30(1) of the EIT Law, along with the Implementation Rules for the Enterprise Income Tax Law of the PRC as well as the following notices:

— Notice of the Ministry of Finance, the State Administration of Taxation and the Ministry of Science and Technology on Improving the Policy of Pre-tax Deduction of R&D Expenses (Cai Shui [2015] No 119);

— Circular on Raising the Proportion of Pre-tax Super Deduction of Research and Development Expenses (Cai Shui [2018] No 99)

([115]) Announcement [2021] No 13 of the Ministry of Finance and the State Taxation Administration on Further Improvements to the Policy of Weighted Pre-tax Deduction for Research and Development Expenses.

— Announcement [2015] No 97 of the State Administration of Taxation on Relevant Issues concerning Policies of Additional Pre-tax Deduction of Research and Development Expenses of Enterprises;

— Announcement 2017 No 40 of the State Administration of Taxation on Issues Concerning the Eligible Scope of Calculation of Additional Pre-tax Deduction of Research and Development Expenses; and

— The 2016 Catalogue of High-tech Fields Supported by the State.

(481) In previous investigations ([116]), the Commission established that the *'new technologies, new products and new crafts'*, which can benefit from the tax deduction, are part of certain high technology fields supported by the State. As mentioned in recital (469), the key high technology fields supported by the State are listed in the 2016 Catalogue of High-tech Fields Supported by the State.

(482) As set out in recital (468), Chapter IV of the EIT Law contains provisions regarding 'Preferential Tax Treatment', in particular Article 25. Article 30(1) of the EIT Law, which is also part of this Chapter, provides that *'research and development expenses incurred by enterprises in the development of new technologies, new products and new techniques'* may be additionally deducted at the time of calculating taxable income. Article 95 of the Implementation Rules for the Enterprise Income Tax Law clarifies the meaning of *'R&D expenditures incurred for the purpose to develop new technologies, new products and new crafts'* laid down in Article 30(1) of the EIT Law.

(483) According to the Circular on Raising the Proportion of Pre-tax Super Deduction of Research and Development Expenses (Cai Shui [2018] No 99), *'with respect to research and development (R&D) expenses actually incurred by an enterprise from its R&D activities, an extra 75 % of the actual amount of expenses is deductible before tax, in addition to other actual deductions, during the period from January 1, 2018 till December 31, 2020, provided that the said expenses are not converted into the intangible asset and balanced into this enterprise's current gains and losses; however, if the said expenses have been converted into the intangible asset, such expenses may be amortized at a rate of 175 % of the intangible asset's costs before tax during the above-said period'*.

(b) Findings of the investigation

(484) The Commission found out that companies within the sampled groups enjoyed *'additional deduction on research and development expenses incurred from the research and development of new technologies, new products and new techniques'*.

(485) The Commission considered that the tax offset at issue is a subsidy within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation because there is a financial contribution in the form of revenue foregone by the GOC that confers a benefit to the companies concerned. The benefit for the recipients is equal to the tax saving.

(486) This subsidy is specific within the meaning of Article 4(2)(a) of the basic Regulation as the legislation itself limits the application of this measure only to enterprises that incur R&D expenses in certain high technology priority areas determined by the State, such as the OFC sector.

(c) Calculation of the subsidy amount

(487) The amount of countervailable subsidy was calculated in terms of the benefit conferred on the recipients during the investigation period. This benefit was calculated as the difference between the total tax payable according to the normal tax rate and the total tax payable after the additional 75 % deduction of the actual expenses on R&D.

(488) The subsidy rate established for this specific scheme was 1,28 % for the FTT Group and 0,13 % for the ZTT Group.

([116]) See HRF, Tyres and GFF cases cited in footnote 5, recitals 330, 521 and 560 respectively.

3.7.1.3. Dividends exemption between qualified resident enterprises

(489) The EIT Law offers income tax preferences to Enterprises engaged in industries or projects the development of which is specifically supported and encouraged by the State and in particular, exempt from tax the income from equity investment, such as dividends and bonuses, between eligible resident enterprises.

(a) Legal basis

(490) The legal basis for the programme is Article 26(2) of the EIT Law, along with the Implementation Rules for the Enterprise Income Tax Law of the PRC.

(491) Article 25 of the EIT, which stands as a chapeau for Chapter IV 'Preferential Tax Policies', provides that *'The State will offer income tax preferences to Enterprises engaged in industries or projects the development of which is specially supported and encouraged by the State'*. Furthermore, Article 26(2) specifies that the tax exemption is applicable to income from equity investments between *'eligible resident enterprises'*, which appears to limit its scope of application to only certain resident enterprises.

(b) Findings of the investigation

(492) The Commission found that some companies in the sampled groups received an exemption from tax of dividend income between qualified resident enterprises.

(493) The Commission considered that this scheme is a subsidy under Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation because there is a financial contribution in the form of revenue foregone by the GOC that confers a benefit to the companies concerned. The benefit for the recipients is equal to the tax saving.

(494) This subsidy is specific within the meaning of Article 4(2)(a) of the basic Regulation as the legislation itself limits the application of this exemption only to qualified resident enterprises which have the major support of, and the development of which is encouraged by the State.

(495) Following final disclosure, the ZTT Group claimed that the exemption of dividends is destined to eliminate double taxation of the same income at both parent and subsidiary companies, which is an internationally accepted tax practice.

(496) In this respect, although the Commission agreed that the elimination of double taxation is an internationally recognised tax practice, Article 26(2) of the EIT is part of Chapter IV 'Tax Preferences', which provides for a number of preferential tax treatments that are exemptions to the general taxation rules. Furthermore, as explained in recital (491), Article 25 of the EIT, which stands as a chapeau for Chapter IV 'Preferential Tax Policies', provides that *'The State will offer income tax preferences to Enterprises engaged in industries or projects the development of which is specially supported and encouraged by the State'*. In addition, Article 26(2) specifies that the tax exemption is applicable to income from equity investments between *'eligible resident enterprises'*, which appears to limit its scope of application to only certain resident enterprises. Therefore, the Commission considered that such preferential tax policy is limited to certain industries, which are specifically supported and encouraged by the State, such as the OFC industry, and is therefore specific within the meaning of Article 4(2)(a) of the basic Regulation. Consequently, the Commission confirmed its conclusion described in recitals (493) and (494) that this scheme is a countervailable subsidy.

(c) Calculation of the subsidy amount

(497) The Commission has calculated the amount of the subsidy by applying the normal tax rate to the dividend income that has been deducted from taxable income.

(498) Following final disclosure, the ZTT Group claimed that the Commission should distinguish two different tax treatments in the income tax return, i.e. dividend income and the tax adjustment amount for investment, the latter not being a dividend income concerned by the provisions of Article 26(2) of the EIT. The Commission agreed with this claim and corrected the benefit calculations accordingly.

(499) The subsidy rate established for this specific scheme was 1,05 % for the FTT Group and 0,21 % for the ZTT Group.

3.7.1.4. Accelerated depreciation of equipment used by High-Tech enterprises

(500) According to Article 32 of the EIT law, *'where accelerated depreciation of fixed assets of an enterprise is really necessary due to technological advancement or other reasons, the number of years for the depreciation may be lessened or the accelerated depreciation method may be adopted'*.

(a) Legal basis

(501) The legal basis for the programme is Article 32 of the EIT Law, along with the Implementation Rules for the Enterprise Income Tax Law of the PRC as well as the following notices:

— Notice of the Ministry of Finance and the State Administration of Taxation on the Policies of Deduction of Equipment and Appliances for Enterprise Income Tax Purposes (Cai Shui [2018] No 54);

— Notice of the Ministry of Finance and the State Administration of Taxation on Fine-tuning the Enterprise Income Tax Policies Applicable to Accelerated Depreciation of Fixed Assets (Cai Shui [2014] No 75); and

— Notice of the Ministry of Finance and the State Administration of Taxation on Further Fine-tuning the Enterprise Income Tax Policies Applicable to Accelerated Depreciation of Fixed Assets (Cai Shui [2015] No 106).

(b) Findings of the investigation

(502) According to the Notice on the Policies of Deduction of Equipment and Appliances for Enterprise Income Tax Purposes (Cai Shui [2018] No 54), *'where the unit value of a piece of equipment or appliance newly purchased by an enterprise during the period from January 1, 2018 to December 31, 2020 does not exceed RMB five million, the enterprise is allowed to include such value in the cost and expenses of the current period on a lump-sum basis for deduction upon calculation of its taxable income, and is no longer required to calculate depreciation on an annual basis'*. This legislation is not industry-specific.

(503) As regards assets with unit value above 5 million RMB, the Notice on Fine-tuning the Enterprise Income Tax Policies Applicable to Accelerated Depreciation of Fixed Assets (Cai Shui [2014] No 75) and the Notice on Further Fine-tuning the Enterprise Income Tax Policies Applicable to Accelerated Depreciation of Fixed Assets (Cai Shui [2015] No 106) continue to apply. According to theses notices, fixed assets purchased by companies in 10 key industries may opt for the accelerated depreciation method.

(504) The Commission established that, during the investigation period, the sampled companies have not applied accelerated depreciation for assets with unit value that exceeds 5 million RMB. Therefore, since those assets did not fall under Notice Cai Shui [2014] No 75 and Notice Cai Shui [2015] No 106, the Commission found that the exporting producers did not benefit from countervailable subsidies.

(505) Following final disclosure, the complainant argued that the sampled exporting producers could have benefitted from accelerated depreciation of houses and buildings, which are excluded from the scope of the 5 million RMB threshold according to Article 2 of the Notice on the Policies of Deduction of Equipment and Appliances for Enterprise Income Tax Purposes (Cai Shui [2018] No 54). In this respect, the Commission confirmed that the sampled companies did not benefit from accelerated depreciation of houses and buildings during the investigation period.

(c) Conclusion

(506) The Commission considered that the exporting producers did not benefit from countervailable subsidies under this programme during the IP.

3.7.1.5. Land use tax exemption

(507) An organisation or individual using land in cities, county towns and administrative towns and industrial and mining districts shall normally pay urban land use tax. Land use tax is collected by the local tax authorities where the land is used. However, certain categories of land, such as land reclaimed from the sea, land for the use of government institutions, people's organisations and military units for their own use, land for use by institutions financed by government allocations from the Ministry of Finance, land used by religious temples, public parks and public historical and scenic sites, streets, roads, public squares, lawns and other urban public land are exempted from the land use tax.

(a) Legal basis

(508) The legal basis for this programme is:

— Provisional Regulations of the People's Republic of China on Real Estate Tax (Guo Fa [1986] No 90, as amended in 2011);

— Interim Regulations of the People's Republic of China on Urban Land Use Tax (Revised in 2019), Order of the State Council of the People's Republic of China No 709; and

— Several Opinions on Vigorously Supporting the Sustainable and Healthy Development of the Private Economy' (EFa [2018] No 33).

(b) Findings of the investigation

(509) One company in one of the sampled groups benefited from a reduction in the land use tax amount of 60 % based on special policy applicable to the high-tech companies in 2019 and 2020 pursuant to Article 2(1) of 'Several Opinions on Vigorously Supporting the Sustainable and Healthy Development of the Private Economy' (EFa [2018] No 33)'.

(510) The company at issue did not fall under any of the exempted categories set by Article 6 of the Interim Regulations of the People's Republic of China on Urban Land Use Tax (Revised in 2019).

(511) Furthermore, the same company was totally exempted from the payment of the land use tax in the first quarter of 2020 based on 'Notice of General Office of Hubei Provincial People's Government on Printing and Distributing the Relevant Policies and Measures for Coping with COVID-19 Situation and Supporting Small and Medium-sized Enterprises to Tide Over the Difficulties' (EZhengBanFa (2020) No 5) and 'Notice of Hubei Provincial People's Government on Printing and Distributing the Relevant Policies and Measures for Speeding up Development of Economy and Society in Hubei Province' (EZhengBanFa (2020) No 6).

(c) Conclusion

(512) The Commission considered that the land use tax reduction for high-tech companies described above is a subsidy within the meaning of either Article 3(1)(a)(i) or Article 3(1)(a)(ii), and Article 3(2) of the basic Regulation because there is a financial contribution in the form of either direct transfer of funds (refund of the tax paid) or revenue foregone by the GOC (the non-paid tax) that confers a benefit to the company concerned. The subsidy is specific as it targets only high-tech companies.

(513) The benefit for the recipients is equal to the amount refunded/tax saving. This subsidy is specific within the meaning of Article 4(2)(a) of the basic Regulation as the company received a tax reduction although it did not fit into any of the objective criteria mentioned in recital (507).

(514) As regards the land use tax exemption in the first quarter of 2020, the Commission considered that the measure is not specific in the meaning of Article 4(2)(a) of the basic Regulation as, in view of the COVID-pandemic, this tax exemption was not limited to a specific enterprise or industry or group, of enterprises or industries, but was applied to all industries.

(d) Calculation of the subsidy amount

(515) The amount of countervailable subsidy was calculated in terms of the benefit conferred on the recipients during the investigation period. This benefit was considered to be the refunded amount during the investigation period. The amount of subsidy established for this specific scheme was negligible for the FTT Group.

3.7.1.6. Total for all tax exemption schemes and reduction programmes

(516) The total subsidy rate established with regard to all tax schemes during the investigation period for the sampled exporting producers was as follows:

Tax exemptions and reductions

Company name	Subsidy rate
FTT Group: — FiberHome Telecommunication Technologies Co., Ltd — Nanjing Wasin Fujikura Optical Communication Ltd — Hubei Fiberhome Boxin Electronic Co., Ltd	2,43 %
ZTT Group: — Jiangsu Zhongtian Technology Co., Ltd — Zhongtian Power Optical Cable Co., Ltd	0,82 %

3.7.2. *Provision of electricity at reduced rate*

(a) Legal basis

— Circular of the National Development and Reform Commission and the National Energy Administration on Actively Promoting the Market-oriented Power Transactions and Further Improving the Trading Mechanism, Fa Gua Yun Xing [2018] No 1027, issued on 16 July 2018;

— Several Opinions of the Central Committee of the Communist Party of China and the State Council on Further Deepening the Reform of the Power System (Zhong Fa [2015] No 9);

— Notice on Fully Liberalizing the Electricity Generation and Consumption Plan for Commercially Operational Users (National Development and Reform Commission [2019] No 1105);

— Rules for Electricity Trading for Medium and Long-term Transactions Implementation Rules (Interim) in Hubei Province of 29 November 2019;

— Rules for Electricity Trading for Medium and Long Term Transactions in Jiangsu Province;

— Notice of the Price Bureau of Jiangsu Province about Reasonable Adjustment of the Electricity Price Structure, Su Jia Gong [2017] No 124; and

— Circular of the National Development and Reform Commission on Reducing Electricity Cost of Enterprises to Supporting Restoration of Work and Production Development and Reform Price [2020] No 258.

(b) Findings of the investigation

(517) All sampled companies purchased their electricity.

(518) Regarding some companies within the sampled groups, the purchase prices of electricity followed the official prices for large industrial users established at provincial level. As found in previous investigations ([117]), the provision of electricity at officially established prices does not confer a specific advantage.

(519) However, the Commission established that investigated companies within the two sampled groups benefitted from reductions or refunds/adjustments of part of their electricity cost.

(520) The Commission found that companies within one of the sampled groups benefitted from specific refunds/adjustments of their electricity cost because these companies were allowed to participate in a pilot programme for 'market-oriented electricity transactions'. These companies did not have a contract with a power generator for direct electricity supply. The refunds/adjustments were received because the companies concerned communicated in advance their power demand to the power plants.

(521) The Commission further found that, like in previous investigations, ([118]) certain investigated companies are allowed to purchase electricity directly from power generators by signing direct purchasing agreements. Such contracts provide for a certain quantity of electricity at a certain price, which is lower than the official prices set at provincial level for large industrial users.

(522) The possibility to enter into direct electricity supply contracts or to benefit from refunds/adjustments of the electricity cost by participating in *'market-oriented electricity transactions'* is currently not open to all large industrial users. At national level, the Opinions of the Central Committee of the Communist Party of China and the State Council on Further Deepening the Reform of the Power System specifies for example that *'enterprises that do not conform to the national industrial policy and whose products and processes are eliminated should not participate in direct transactions'* ([119]). The same Opinions also stipulate that *'after the access standards are determined, we should also upgrade the catalogues of local power generation enterprises and electricity retailers that meet the standards that are annually publicized by governments and implement dynamic regulation of the user catalogue. The power generation enterprises, electricity retailers and users included in the catalogue can voluntarily register with the trading institutions to become market players'*. Therefore, in order to participate in the direct trading system, a company should meet certain standards and be included in the *'user catalogue'*.

(523) In practice, direct electricity trading is executed by the provinces. Companies have to apply to provincial authorities for approval to participate in the direct electricity pilot scheme, and they have to fulfil certain criteria. For certain companies, there is no actual market-based negotiation or bidding process, since the quantities purchased under direct contracts are not based on the real supply and demand. Indeed, power generators and power users are not free to sell or purchase all of their electricity directly. They are restricted by quantitative quotas, which are allocated to them by the local government. Furthermore, although prices are supposed to be negotiated directly between the power generators and the power user or through intermediary service companies, the invoices to the companies are actually issued by the State Grid Company. Finally, all signed direct purchase contracts need to be submitted to the local government for the record.

(524) In 2018, the GOC issued the Circular of the National Development and Reform Commission and the National Energy Administration on Actively Promoting the Market-oriented Power Transactions and Further Improving the Trading Mechanism (Fa Gai Yun Xing [2018] No 1027). Although the Circular aims to increase the number of direct transactions on the electricity market, it specifically mentions certain industries, including high-tech industries such as the OFC industry, as supported and benefitting from liberalisation of the electricity market. In particular, Section III. 'Opening up to allow entry of user fulfilling requirements', point (2) provides that *'supporting emerging industries with high added value, such as high-tech, internet, big data and high-end manufacturing industries, as well as enterprises with distinct advantages and characteristics and high technology content, to participate in transactions, free from voltage levels and power consumption restrictions'*.

([117]) Recital 182 of Council Implementing Regulation (EU) No 215/2013 of 11 March 2013 imposing a countervailing duty on imports of certain organic coated steel products originating in the People's Republic of China (OJ L 73, 15.3.2013, p. 16).
Council Implementing Regulation (EU) No 451/2011 of 6 May 2011 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of coated fine paper originating in the People's Republic of China (OJ L 128, 14.5.2011, p. 1).

([118]) See GFF case, recital (531).

([119]) Several Opinions of the Central Committee of the Communist Party of China and the State Council on Further Deepening the Reform of the Power System (Zhong Fa [2015] No 9), Section III (4).

(525) Furthermore, the Notice on Fully Liberalizing the Electricity Generation and Consumption Plan for Commercially Operational Users [2019] No 1105, which aims for further liberalise the electricity market, provides that *'among the commercial electricity users, those who do not comply with the national industry policies shall provisionally not participate in market-oriented transactions, and the electricity users whose products and processes belong to the eliminated and limited categories of the "Guidance Catalogue for the Industry's Structural Adjustment" shall strictly implement the current differential prices policy for electricity.'*

(526) Therefore, the legislation provides for a selective application of 'market-oriented electricity transactions' on the electricity market limited to certain industries such as the industries which comply with the national industry policies, with a particular focus on high-tech industries. As a result, these industries pay lower prices for electricity.

(527) The Commission also found that certain investigated companies benefitted from refunds/adjustments of their electricity cost during the period March - June 2020 based on a nation-wide policy ([120]) aiming to relieve the burden on companies due to the COVID-19 pandemic. The Commission considered that this measure is not specific.

(c) Conclusion

(528) The Commission considered that the reduced electricity rate and the refunds/adjustments resulting from the participation in *'market-oriented electricity transactions'*, by means of a direct electricity supply contract or not, received by the sampled companies at issue constitute a subsidy within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation because there is a financial contribution in the form of revenue foregone by the GOC (i.e. the operator of the grid) that confers a benefit to the companies concerned. The benefit for the recipients is equal to the electricity cost saving, either through reduced electricity prices negotiated in the framework of direct electricity supply contracts or through refunds/adjustments because of the participation in a pilot programme for *'market-oriented electricity transactions'*, since the electricity was provided at a price below the normal grid price paid by other large industrial users that are not allowed by the State to participate in *'market-oriented transactions'* for the supply of electricity.

(529) This subsidy is specific within the meaning of Article 4(2)(a) of the basic Regulation as the legislation itself limits the application of this scheme only to enterprises that conform with certain industrial policy objectives determined by the State and whose products or process have not been eliminated as not eligible.

(530) Thus, the Commission concluded that the subsidy scheme was in place during the investigation period and that it is specific within the meaning of Articles 4(2)(a) and 4(3) of the basic Regulation.

(d) Calculation of the subsidy amount

(531) The amount of countervailable subsidy was calculated in terms of the benefit conferred on the recipients during the investigation period. This benefit was calculated as the difference between the total electricity price payable according to the official electricity price and the total electricity price paid by the sampled groups of companies under the reduced rate and/or by deducting various forms of refunds/adjustments.

(532) The subsidy rate established with regard to this scheme during the investigation period for the sampled exporting producers amounts to:

Provision of electricity at reduced rate

Company name	Subsidy rate
FTT Group: — FiberHome Telecommunication Technologies Co., Ltd	0,18 %

([120]) Circular of the National Development and Reform Commission on Reducing Electricity Cost of Enterprises to Supporting Restoration of Work and Production Development and Reform Price [2020] No 258.

— Nanjing Wasin Fujikura Optical Communication Ltd — Hubei Fiberhome Boxin Electronic Co., Ltd	
ZTT Group: — Jiangsu Zhongtian Technology Co., Ltd — Zhongtian Power Optical Cable Co., Ltd	0,06 %

3.8. **Provision of goods for less than adequate remuneration**

3.8.1. *Provision of land for less than adequate remuneration*

(533) All land in the PRC is owned either by the State or by a collective, constituted of either villages or townships, before the land's legal or equitable title may be patented or granted to corporate or individual owners. All parcels of land in urbanized areas are owned by the State and all parcels of land in rural areas are owned by the villages or townships therein.

(534) Pursuant to the constitutional law of the PRC and the Land Law, companies and individuals may however purchase 'land use rights'. For industrial land, the leasehold is normally 50 years, renewable for a further 50 years.

(535) According to the GOC, Article 137 of the Property Law of the People's Republic of China stipulates that '*the land used for purposes of industry, business, entertainment or commercial dwelling houses, etc. or the land for which there are two or more intended users shall be transferred by means of auction, bid invitation or any other public bidding method*.' Furthermore, the GOC refers to Article 3 of the Interim Regulations of the People's Republic of China Concerning the Assignment and Transfer of the Right to the Use of the State-owned Land in Urban Areas. This Article provides that '*any company, enterprise, other organization and individual within or outside the People's Republic of China may, unless otherwise provided by law, obtain the right to the use of the land and engage in land development, utilization and management in accordance with the provisions of these Regulations*.'

(a) Legal basis

(536) The land-use right provision in China falls under Land Administration Law of the People's Republic of China. In addition, the following documents also are part of the legal basis:

— Property Law of the People's Republic of China (Order of the President of the People's Republic of China No 62);

— Land Administration Law of the People's Republic of China (Order of the President of the People's Republic of China No 28);

— Law of the People's Republic of China on Urban Real Estate Administration (Order of the President of the People's Republic of China No 18);

— Interim Regulations of the People's Republic of China Concerning the Assignment and Transfer of the Right to the Use of the State-owned Land in the Urban Areas (Decree No 55 of the State Council of the People's Republic of China);

— Regulation on the Implementation of the Land Administration Law of the People's Republic of China (Order of the State Council of the People's Republic of China [2014] No 653);

— Provision on Assignment of State-owned Construction Land Use Right through Bid Invitation, Auction and Quotation (Announcement No 39 of the CSRC); and

— Notice of the State Council on the Relevant Issues Concerning the Strengthening of Land Control (Guo Fa (2006) No 31).

(b) Findings of the investigation

(537) According to Article 10 of the 'Provision on Assignment of State-owned Construction Land Use Right through Bid Invitation, Auction and Quotation', local authorities set land prices according to the urban land evaluation system, which is only updated every three years, and the government's industrial policy.

(538) In previous investigations, the Commission found that prices paid for land use rights ('LUR') in the PRC were not representative of a market price determined by free market supply and demand, since the auctioning system was found to be unclear, non-transparent and not functioning in practice, and prices were found to be arbitrarily set by the authorities. ([121]) As mentioned in the previous recital, the authorities set the prices according to the Urban Land Evaluation System, which instructs them among other criteria to consider also industrial policy when setting the price of industrial land.

(539) The current investigation did not show any noticeable changes in this respect. For instance, the Commission found that most of the sampled companies obtained their LUR through allocation by local authorities and not through a bidding procedure.

(540) The above evidence contradicts the claims of the GOC that the prices paid for LUR in the PRC are representative of a market price, which is determined by free market supply and demand.

(c) Conclusion

(541) The findings of this investigation show that the situation concerning acquisition of LUR in the PRC is non-transparent and the prices were arbitrarily set by the authorities.

(542) Therefore, the provision of land-use rights by the GOC should be considered a subsidy within the meaning of Article 3(1)(a)(iii) and Article 3(2) of the basic Regulation in the form of provision of goods, which confers a benefit upon the recipient companies. As explained in recitals (537) to (540) above, there is no functioning market for land in the PRC and the use of an external benchmark (see recitals (549) to (551) below) demonstrates that the amount paid for land-use rights by the sampled exporting producers is well below the normal market rate.

(543) In the context of preferential access to industrial land for companies belonging to certain industries, the Commission noted that the price set by local authorities has to take into account the government's industrial policy, as mentioned above in recital (538). Within this industrial policy, the OFC industry is listed as an encouraged industry ([122]). In addition, according to Decision No 40 of the State Council, public authorities take into account 'The Guiding Catalogue of the Industrial Restructuring' and the industrial policies when providing land. Article XVIII of Decision No 40 makes clear that industries that are 'restricted' will not have access to land use rights. It follows that the subsidy is specific under Article 4(2)(a) and 4(2)(c) of the basic Regulation because the preferential provision of land is limited to companies belonging to certain industries, in this case the OFC industry, and government practices in this area are unclear and non-transparent.

(544) Following final disclosure, the GOC claimed that no benefit has been conferred to the sampled companies through the provision of land use rights because there is a free market for land in the PRC. In this respect, the GOC referred to Article 347 of the Civil Code of the PRC, according to which, *'where land is used for industrial, commercial, tourist or entertaining purposes, as commodity residence, or for other profit-making purposes, or there are two or more persons who are willing to use the same piece of land, the right to the use of land for construction shall be assigned through bid invitation, auction or other open bidding. The price of the land is established through market competition'*.

([121]) See GFF, OCS, and Solar panels cases.
([122]) See section 3.1 above.

(545) The Commission found that, although 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, these provisions are regularly not respected, with certain buyers obtaining their land for free or below market rates ([123]). Moreover, authorities often pursue specific political goals including the implementation of the economic plans when allocating land ([124]).

(546) Furthermore, the GOC disagreed with the Commission that the measures are specific because the PRC does not have a special land policy for any industry. It further stated that Decision No 40 does not require that public authorities ensure that land is provided to encouraged industries.

(547) In this respect, Decision No 40 of the State Council does mention in Article XII that 'The Guiding Catalogue for Industry Restructuring' is an important reference for guiding the investment, government's management of investment projects and the formulation and implementation of policies of tax, credits, land (*emphasis added*) and import and export. Furthermore, the introduction of Decision No 40 states that *'All departments concerned shall accelerate the steps in formulating and amending the relevant policies in tax, credit, land (emphasis added) and import and export, etc., and strengthen the coordination with industrial policies so as to further perfect the policy system of promoting the industrial restructuring'*. Therefore, it is clear that public authorities have to take into account 'The Guiding Catalogue of the Industrial Restructuring' and the industrial policies when providing land to companies. Article XVIII of Decision No 40 states that for industries that are restricted, *'The departments governing investment shall not examine, approve or put on record, no financial institution may grant any loan, no other departments governing land management, city planning and construction, environmental protection, quality inspection, firefighting, customs, industry and commerce, etc., may go through relevant procedures'* (emphasis added). Therefore, departments governing land management are prohibited to provide land to restricted industries. The above-mentioned provisions of Decision No 40 read in the light of the spirit of 'The Guiding Catalogue for Industry Restructuring' point to a clear link between the industrial policies for encouraged industries and the policy for the provision of land. The GOC's claim was therefore rejected.

(548) Consequently, the Commission considered this subsidy countervailable.

(d) Calculation of the subsidy amount

(549) As in previous investigations ([125]) and in accordance with Article 6(d)(ii) of the basic Regulation, land prices from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu ('Chinese Taipei') were used as an external benchmark ([126]). The benefit conferred on the recipients is calculated by taking into consideration the difference between the amount actually paid by each of the sampled exporting producers (i.e., the actual price paid as stated in the contract and, when applicable, the price stated in the contract reduced by the amount of local government refunds/grants) for land use rights and the amount that should normally have been paid on the basis of the Chinese Taipei benchmark.

(550) The Commission considers Chinese Taipei as a suitable external benchmark for the following reasons:

— the comparable level of economic development, GDP and economic structure in Chinese Taipei and a majority of the provinces and cities in the PRC where the sampled exporting producers are based;

— the physical proximity of the PRC and Chinese Taipei;

— the high degree of industrial infrastructure in both Chinese Taipei and many provinces of the PRC;

— the strong economic ties and cross border trade between Chinese Taipei and the PRC;

— the high density of population in many of the provinces of the PRC and in Chinese Taipei;

([123]) Commission Staff Working Document on Significant Distortions in the Economy of the People's Republic of China for the purposes of Trade Defence Investigations, 20 December 2017, SWD(2017) 483 final/2 – Chapter 9, p. 213-215.

([124]) Commission Staff Working Document on Significant Distortions in the Economy of the People's Republic of China for the purposes of Trade Defence Investigations, 20 December 2017, SWD(2017) 483 final/2 – Chapter 9, p. 209-211.

([125]) See footnote 105.

([126]) Upheld by the General Court in Case T-444/11 Gold East Paper and Gold Huacheng Paper versus Council, Judgment of the General Court of 11 September 2014 ECLI:EU:T:2014:773.

— the similarity between the type of land and transactions used for constructing the relevant benchmark in Chinese Taipei with those in the PRC; and

— the common demographic, linguistic and cultural characteristics between Chinese Taipei and the PRC.

(551) Following the methodology applied in previous investigations ([127]), and absent any more appropriate information in this respect, the Commission used the average land price per square meter established in the six districts in Chinese Taipei where most Taiwanese industrial parks are located (i.e. Taipei, Taichung, Tainan, Kaohsiung, Taoyuan, Hsinchu) corrected for inflation and GDP evolution as from the dates of the respective land use right contracts. Since all the sampled exporting producers are located in industrial zones in the PRC, the Commission considered it appropriate to set a benchmark on transactions that also took place in an industrial zone. The information concerning industrial land prices as of 2013 was retrieved from the website of the Industrial Bureau of the Ministry of Economic Affairs of Taiwan ([128]). For the previous years, the prices were corrected using the inflation rates and evolution of GDP per capita at current prices in USD for Taiwan as published by the IMF.

(552) Following final disclosure, the GOC disagreed with the use of a benchmark outside mainland China, which resulted in a benefit calculation that is inconsistent with Article 6(d) of the basic Regulation and Article 14(d) of the SCM Agreement. The GOC claimed that undistorted benchmarks exist in mainland China because land use rights are transferred by public bidding quotation or auction according to the Land Administration Law and that since private companies owning land use rights can rent or sell them to unrelated buyers, the Commission should have used prices in mainland China as a benchmark. The GOC further claimed that the fact that prices are determined through competitive bidding and negotiation ensures that they are not distorted but reflect an adequate market price.

(553) However, the GOC failed to provide any statistics or data to allow the Commission to examine the proposal to use prices at which private companies rent or resell land use rights. The Commission could not find any publicly available data on the subject either. In addition, even if such information were to be received, it would only concern a secondary market of transfers, since there is only one player on the primary market (i.e. the original allocation of land use rights is always performed by the GOC). Indeed, the primary market of original allocation for 50 years is different from the rent on the secondary market, which normally should be for a much shorter period, or at least with different clauses for revaluation, termination, etc. Therefore, the Commission continued to rely on the information available for the primary market, which is the market under investigation in this case.

(554) Furthermore, the GOC claimed that if a benchmark outside mainland China were to be used, the method of comparison used by the Commission as well as the selection of Chinese Taipei was incorrect. First, the Commission incorrectly compared certain attributes of Chinese Taipei, such as economic development, state of industrial infrastructure, etc., with the attributes of provinces and cities of mainland China because both markets are not similar. Second, the GOC argued that the prices of land in Chinese Taipei are neither related nor connected with the prevailing market conditions in mainland China as required by Article 14(d) of the SCM Agreement since in Chinese Taipei land has to be purchased while in mainland China land is leased for a period of 50 years. Furthermore, the population density, size and GDP of mainland China and Chinese Taipei are very different and thus both markets are not comparable. For example, in 2020, China's population density was 149 people per square kilometre of land, while for Chinese Taipei the density was 650 people per square kilometre of land. Furthermore, the size of Chinese Taipei is about 36 197 km^2 which is much smaller than the provinces at issue like Hubei (185 900 km^2) and Jiangsu (102 600 km^2). Therefore, the GOC claimed that an adjustment needs to be made to reflect these factors. The GOC further claimed that no adjustment was made for inflation and requested a detailed disclosure of the data underlying the benchmark calculation, notably regarding the benchmark of Chinese Taipei prices used and the data used for the adjustment of previous years.

(555) The ZTT Group also claimed that the benchmark used by the Commission is manifestly inappropriate. First, the state of development of the Chinese provinces at the time of the acquisition of the land use right should be considered and compared with that of Chinese Taipei and not during the investigation period. Second, the Chinese Taipei's GDP was more than three times that of mainland China in the past three years and more than 50 % higher than that in Jiangsu

([127]) See GFF, OCS, and Solar panels cases.

([128]) https://idbpark.moeaidb.gov.tw/, last accessed on 18 August 2021.

Province in 2020. Third, the correction indexes to be applied should be those of the Chinese provinces where the sampled producers are based and not of Chinese Taipei. Finally, this party requested the Commission to provide meaningful statistics and the details for the calculation of the benchmark or the complete set of data used for such calculation.

(556) In this respect, the Commission noted that the selection of Chinese Taipei as a benchmark was based on the examination of several factors listed in recital (550). Although there are certain differences in the market conditions between land use rights in mainland China and sale of land in Chinese Taipei, these are not of such nature to invalidate the choice of Chinese Taipei as a valid benchmark. Moreover, the GOC compared population density figures at the level of the entire country. Looking closer at population density of the actual locations of the exporting producers, it appears that on average the population density figures are similar. For example, the population density of Hubei was 308 people per km^2 in 2020; however, the density of Wuhan city where most of the companies are located was 1 145 people per km^2 ([129]). The population density of Jiangsu was 830 people per km^2 ([130]). Therefore, the Commission considered that no adjustment was warranted.

(557) The subsidy rate established with regard to this subsidy during the investigation period for the sampled exporting producers amounts to:

Provision of land for less than adequate remuneration

Company name	Subsidy rate
FTT Group: — FiberHome Telecommunication Technologies Co., Ltd — Nanjing Wasin Fujikura Optical Communication Ltd — Hubei Fiberhome Boxin Electronic Co., Ltd	0,84 %
ZTT Group: — Jiangsu Zhongtian Technology Co., Ltd — Zhongtian Power Optical Cable Co., Ltd	0,40 %

3.8.2. *Provision of raw materials for less than adequate remuneration*

(558) In its complaint, the complainant provided evidence that Chinese OFC producers operate in an encouraged industry and that it is reasonable to conclude that the subsidies provided to producers of raw materials used in the production of OFC ultimately benefit OFC producers. This benefit would be accrued by OFC manufacturers directly, to the extent that they are vertically integrated, and indirectly, to the extent those subsidies result in lower prices for inputs on the Chinese domestic market than would otherwise be the case.

(559) While the GOC has, as set out in recitals (168) and (169) above, during the RCC provided documents regarding relevant provincial State policies in Yunnan, it has not been supportive in assisting the Commission to obtain information from private or State-owned enterprises and therefore was considered to be only partially cooperating with the Commission's requests to receive information on the provision of raw materials and the respective market.

(560) This finding was not altered by the argument of the GOC that the Commission had asked for information concerning an irrelevant market, since not germanium but germanium tetra-chloride was the raw material used in the production of OFC. Because germanium is the source material for germanium tetra-chloride, regulations on germanium and the respective market have an impact on the specific derivate germanium tetra-chloride.

([129]) Hubei - Wikipedia
([130]) Jiangsu - Wikipedia

(561) Since the investigated groups of companies were vertically integrated, the raw materials provided by related suppliers of the OFC producing entities have in principle been included in the investigation. Therefore, to the extent that certain investigated countervailable subsidies were received at the level of these related suppliers, they have been integrated into the calculations for each subsidy scheme analysed above.

(562) The Commission also investigated whether unrelated suppliers of basic raw materials provided inputs for less than adequate remuneration to the sampled exporting producers. The Commission focused in particular on the basic raw materials for the production of OFC that the sampled companies purchased to a large extent from unrelated suppliers, that is germanium tetrachloride and silicone chloride.

(563) The original input material of germanium tetrachloride is germanium, which is indispensable for many high-tech products. It is an important input material used in the production OFC in order to increase its refractive index and help minimizing signal loss over long distances ([131]). Because of the geological conditions, the Yunnan region has a rich supply of germanium.

(564) In view of the partial cooperation by the GOC, the Commission analysed the limited set of documents submitted by GOC and supplemented them by researching the government plans and policies concerning these inputs based on the information available, as well as the actors in the market of these inputs. The Commission found that the GOC has implemented plans and strategies to support the germanium industry in Yunnan. Plans addressing the production of this raw material include the '13th Five-Year Plan for National Economic and Social Development of Yunnan Province' ([132]), the 'Yunnan Province Government's Notice on Developing Yunnan's Industry 2016-2020' ([133]) and the 'Yunnan Province Government Notice on Several Measures to Support the Development of the Real Economy' ([134]).

(565) The '13th Five-Year Plan for National Economic and Social Development of Yunnan Province' refers explicitly to germanium when it formulates the aim to *'actively develop new solar cell materials such as germanium and thin film,'* and to *'support the development of new generation information technology industry, accelerate the development of new electronic information and semiconductor functional materials based on platinum group, germanium, indium and other rare and precious metals'*.

(566) The objectives of the Five-Year Plan are reflected and developed in further government notices and implementing measures. As set out in recital (79), the system of planning in the PRC results in resources being allocated to sectors designated as strategic or otherwise politically important by the GOC.

(567) In the 'Yunnan Province Government's Notice on Developing Yunnan's Industry 2016-2020' the government of the province explicitly sets as strategic tasks to *'vigorously promote Yunnan precious metal new material industrial park, […] national germanium industrial base Construction of new optoelectronic materials and devices'* and to *'break down foreign technical barriers and accelerate the cultivation of new rare metal materials such as […] germanium and germanium-based new materials'* and *'proactively deploy the research and development of cutting-edge new materials such as […] germanium'*.

(568) In the third document that sets out the mechanism to promote the germanium industry in Yunnan province a direct financial support is described: *'In accordance with the principle of "enterprise purchase and storage, bank loans, financial subsidies, market operation, self-financing", we have carried out commercial purchase and storage of […] germanium, […] and other key non-ferrous metal products in the whole province. The total amount of purchase and storage is about 800 000 tons, and the collection and storage time is one year. The funds needed for collection and storage shall be lent by the enterprise to the bank in the form of product pledge. A special fund of 1 billion yuan was allocated by the provincial government to subsidize the bank loans to enterprises. Among them, 80 % discount subsidy will be given to enterprises that purchase and store tin, germanium and indium.'*

([131]) https://www.earthmagazine.org/article/mineral-resource-month-germanium/, last accessed on 17 August 2021.
([132]) https://www.ndrc.gov.cn/fggz/fzzlgh/gjfzgh/201603/P020191104614882474091.pdf, last accessed on 4 August 2021.
([133]) http://www.yn.gov.cn/zwgk/zcwj/zxwj/201701/t20170106_143075.html, last accessed on 4 August 2021.
([134]) http://www.yn.gov.cn/zwgk/zcwj/zxwj/202004/t20200426_203069.html, last accessed on 4 August 2021.

(569) On the basis of publicly available information, the Commission found that companies operating in the germanium industry, including producers of germanium tetrachloride, located in the Yunnan Province have received subsidies from the State. For instance, the partially State-owned company YUNNAN Lincang Xinyuan Germanium and its subsidiaries, received multiple payments by the GOC. In its annual report from 2020 the company reports an amount of 21 847 627 RMB as income from subsidy payments for the year 2019. In 2020 the grants received from the GOC reached an amount of 55 361 284 RMB ([135]). The grants provided by the GOC to the germanium industry are not limited to one company. In its annual report for 2019 the State-owned company Yunnan Chihong Zinc and Germanium also stated that it received subsidies amounting to 43 771 439 RMB in that year ([136]).

(570) Therefore, it is evident that the GOC is involved across the entire OFC value chain, which is likely to have an effect on prices so that they do not reflect market forces. Through the means described above, sectors producing raw materials used to manufacture OFC, in particular germanium and germanium tetrachloride, are subject to governmental intervention.

(571) That being said, in view of the fact that the anti-dumping duty may be set at the level of the dumping margin, as explained in recital (769), and the potential relevance of the circumstances set out at recital (765), the Commission decided not to continue the investigation on this alleged subsidy and reserved its right to come back to this issue if necessary.

3.9. **Conclusion on subsidisation**

(572) Based on the information available, the Commission calculated the amount of countervailable subsidies for the sampled companies in accordance with the provisions of the basic Regulation by examining each subsidy or subsidy programme, and added these figures together to calculate a total amount of subsidisation for each exporting producer for the investigation period. To calculate the overall subsidisation below, the Commission first calculated the percentage subsidisation, being the subsidy amount as a percentage of the company's total turnover. This percentage was then used to calculate the subsidy allocated to exports of the product concerned to the Union during the investigation period. The subsidy amount per tonne of product concerned exported to the Union during the investigation period was then calculated, and the margins below calculated as a percentage of the Costs, Insurance and Freight ('CIF') value of the same exports per tonne.

(573) In accordance with Article 15(3) of the basic Regulation, the total subsidy amount for the cooperating companies not included in the sample was calculated on the basis of the total weighted average amount of countervailing subsidies established for the cooperating exporting producers in the sample with the exclusion of negligible amounts as well as the amount of subsidies established for items which are subject to the provisions of Article 28(1) of the basic Regulation. However, the Commission did not disregard findings partially based on facts available to determine those amounts. Indeed, the Commission considers that the facts available used in those cases did not affect substantially the information needed to determine the amount of subsidisation in a fair manner, so that exporters who were not asked to cooperate in the investigation will not be prejudiced by using this approach ([137]).

(574) Given the high rate of cooperation of Chinese exporting producers and the representativeness of the sample also in terms of subsidy eligibility, the Commission considered it appropriate to set the amount for 'all other companies' at the level of the highest amount established for the sampled companies. The 'all other companies' amount was applied to those companies which did not cooperate in the investigation.

([135]) https://pdf.dfcfw.com/pdf/H2_AN202104221487092732_1.pdf?1619123432000.pdf, p. 171, last accessed on 5 August 2021.
([136]) https://chxz.chinalco.com.cn/tzzgx/dqbg/202103/P020210325553668267186.pdf, p. 221, last accessed on 6 August 2021.
([137]) See also, *mutatis mutandis*, WT/DS294/AB/RW, US — Zeroing (Article 21.5 DSU), Appellate Body Report of 14 May 2009, para 453.

Company name	Subsidy rate
FTT Group: — FiberHome Telecommunication Technologies Co., Ltd — Nanjing Wasin Fujikura Optical Communication Ltd — Hubei Fiberhome Boxin Electronic Co., Ltd	10,33 %
ZTT Group: — Jiangsu Zhongtian Technology Co., Ltd — Zhongtian Power Optical Cable Co., Ltd	5,1 %
Other cooperating companies	7,8 %
All other companies	10,33 %

4. **INJURY**

4.1. **Unit of measurement**

(575) Although official import statistics are reported in kilograms, the Commission considered, in line with comments by exporting producers and Union industry, that this unit of measurement is not suitable for a proper measurement of the volumes concerned. The investigation shows that the industry commonly does not use weight but length as a main volume indicator. This could either measure the length of the cable (cable-km), or the total length of the fibres contained therein (fibre-km). Given that the current investigation concerns cables, cable-km is considered the most appropriate unit of measurement, which will be used in the injury determination below.

(576) In its comments on final disclosure, the CCCME claimed that import volumes should have been calculated on the basis of fibre kilometres instead of cable kilometres as fibre kilometre was the accepted industry standard and the only unit of measurement that reflected the immense differences in fibre numbers per cable.

(577) The Commission maintained that cable kilometre is the appropriate unit of measurement as the products subject to the investigation are cables and the number of fibres in a cable is a specific feature of the cable which is reflected in the PCN. Therefore this claim was rejected.

4.2. **Definition of the Union industry and Union production**

(578) The like product was manufactured by 29 producers in the Union during the investigation period. With the exception of the two companies mentioned in the next section, they constitute the 'Union industry' within the meaning of Article 9(1) of the basic Regulation. Following the withdrawal of the United Kingdom from the European Union, the injury determination is based on data of 27 Member States (EU27) for the whole period considered.

(579) The total Union production during the investigation period was established at 1.2 million cable-km. The Commission established the figure on the basis of all the available information concerning the Union industry, such as direct information from the 9 parties - 6 complainants, 3 companies supporting the complaint - and market intelligence for the remaining producers. As indicated in recital (41), three Union producers were selected in the sample representing 52 % of the total Union production of the like product.

4.3. **Exclusion of two producers from the Union industry**

(580) According to Article 9(1) of the basic Regulation, producers who are related to Chinese exporters or importers and/or are themselves importers of the allegedly subsidised product may be excluded from the Union industry. Article 9(2) defines when producers are to be considered related to exporters or importers.

(581) The Commission investigated the existing relationships of the Union industry with exporters or importers of the product concerned. The investigation showed that one sampled Union producer imported a marginal volume of optical fibre cables from China, and another one holds a minority shareholding in a non-sampled exporting producer. In light of the negligible volumes imported by the first producer and of the fact that the second one demonstrated that it does not control nor is controlled by this exporting producer and that the effect of this relationship did not cause it to behave differently from the non-related producers, the Commission concluded there was no reason to exclude either of these companies from the Union industry.

(582) Concerning a third non-sampled producer the Commission considered, in view of its relationship with a Chinese exporting producer (which is controlled by the same entity) and the significant quantities of imports from China, that it was appropriate to exclude such a producer from the definition of the Union industry, despite the significant production of this company within the Union.

(583) Similarly, concerning a non-cooperating producer in the Union, who declared significant amount of imports from China, the Commission decided that, taking into account the relationship with a Chinese exporting producer and the significant amounts of imports, it should be equally excluded from the Union industry.

(584) As the investigation did not show that any other producer was either related to Chinese exporters or imported from China, no further exclusions from the definition of the Union industry were necessary.

(585) CCCME argued that a number of Union producers had links to Chinese OFC producers and requested the Commission to conduct a segmented injury analysis by separately analysing this import stream.

(586) In its comments on final disclosure, CCCME reiterated this claim that the imports of the Union producers should be segregated and assessed separately from the imports of other parties. CCCME also considered that the Commission should disclose the volume and percentage of the Union producers' imports from related and unrelated Chinese producers during the IP.

(587) As set out above, the Commission has duly taken into account in its analysis the links of Union producers with Chinese companies by excluding producers with significant imports from China and also had regard to their relationship with Chinese exporters. The sampled Union producers imported marginal quantities (less than 1 % of their production) of the product concerned from related companies in China. Other companies producing in the Union importing significant quantities were not considered Union industry within the meaning of Article 9(1) of the basic Regulation as set out in recitals (582) to (584). Therefore, the claim was rejected.

(588) Connect Com submitted a list of other Union producers of optical fibre cables which were not taken into consideration in the complaint. The Commission noted that these companies did not cooperate with the investigation and that estimations for non-cooperating Union producers were provided on the basis of reliable market intelligence ([138]).

4.4. **Determination of the relevant Union market**

(589) To establish whether the Union industry suffered injury and to determine consumption and the various economic indicators related to the situation of the Union industry, the Commission examined whether and to what extent the subsequent use of the Union industry's production of the like product had to be taken into account in the analysis.

4.5. **Captive use**

(590) The Commission found that between 5,8 % and 4,4 % of the Union producers' production was destined for captive use during the period considered. The cables were in that case delivered within the same company or groups of companies for further downstream processing, in particular for the production of cables fitted with connectors.

([138]) CRU Cable Market Outlook (August 2020), complemented by complainants' market intelligence.

(591) The distinction between captive and free market is relevant for the injury analysis because products destined for captive use are not exposed to direct competition from imports. By contrast, production destined for free market sale is in direct competition with imports of the product concerned.

(592) To provide a picture of the Union industry that was as complete as possible, the Commission obtained data for the entire optical fibre activity and determined whether the production was destined for captive use or for the free market.

(593) The Commission examined certain economic indicators relating to the Union industry on the basis of data for the free market. These indicators are: sales volume and sales prices on the Union market; market share; growth; export volume and prices; profitability; return on investment; and cash flow. Where possible and justified, the findings of the examination were compared with the data for the captive market in order to provide a complete picture of the situation of the Union industry.

(594) However, other economic indicators could meaningfully be examined only by referring to the whole activity, including the captive use of the Union industry ([139]). These are: production; capacity, capacity utilisation; investments; stocks; employment; productivity; wages; and ability to raise capital.

(595) In its comments on final disclosure, CCCME claimed that the captive market should not be disregarded when analysing the overall market position of the Union industry.

(596) In this respect, as described below, the Commission did not disregard the captive market, but rather identified it and assessed its evolution over time. This provided a complete picture of the situation of Union industry. The small and decreasing size of such market underscores that it does not have any meaningful impact on the situation of the Union industry. The Commission further recalls that cables with connectors are not product concerned.

4.6. **Union consumption**

(597) The Commission established the Union consumption on the basis of data on sales as determined by the complainant plus import data established in line with the methodology described in recital (600) to (607).

(598) Union consumption developed as follows:

Table 1

Union consumption (cable-km)

	2017	2018	2019	IP
Total free market Union consumption	1 276 902	1 537 999	1 655 737	1 760 092
Index	*100*	*120*	*130*	*138*
Captive market	61 505	59 802	62 710	54 205
Index	*100*	*97*	*102*	*88*

Source: Cooperating exporting producers, EU customs authorities, Eurostat, complainants

(599) The free market consumption in the Union increased by 38 % during the period considered. Indeed, linked to the wide digital expansion in the EU, this is a market whose growth is strong and is slated to continue at a brisk pace ([140]). The consumption kept growing until the IP, despite the fact that the second part of the period (i.e. the first half of 2020) coincided with the first months of the disruptions linked to the COVID-19 pandemic. The

([139]) These indicators were based on direct data collected by the complainant on the 8 complaining or supporting Union producers (excluding one company for the reasons explained at recital (574) representing almost 80% of the Union production in the IP, plus an estimate for the remaining Union producers based on market research and intelligence.

([140]) CRU Cable Market Outlook (August 2020), p. 29, and CRU Worldwide Cable Market Summary by Application and Region, February 2021.

investigation's findings show that the pandemic which started in the last months of the IP and the related prevention measures did slow down the growth, but did not prevent consumption of the product concerned from increasing in the Union during the investigation period as a whole. The captive market is constituted by the use of optical fibre cables in connectivity solutions offered by the companies, including cables fitted with connectors; its volumes, very limited in proportion to the overall market, showed a decrease of 12 % throughout the period considered.

4.7. **Imports from the country concerned**

4.7.1. *Volume and market share of the imports from the country concerned*

(600) Official import statistics for CN code 8544 70 00 are reported in kilograms, and the same code contains products other than the product concerned. To obtain a more precise picture of imports, the Commission scrutinised detailed information from national customs authorities on the full set of single import transactions over the 2017-IP period, as reported by importers in their customs declarations and processed by the aforementioned authorities. The information pertained to imports into 9 Member States (Bulgaria, Denmark, France, Germany, Hungary, the Netherlands, Portugal, Romania and Spain) and was considered representative, as it covered 79 % of imports in the period considered. Granular analysis on this basis led to the conclusions presented below.

(601) In its comments on final disclosure, Connect com argued that imports were only examined in nine Member States and that this was not representative as large Member States such as Italy, Poland, Austria etc., were not included in this analysis. In this respect, the Commission notes that the information received from national customs authorities was an additional analysis to identify more precisely the product concerned within the full CN code 8544 70 00. The Commission used the information from all national authorities which replied in time to its request for information and it considered that 79 % of total imports gives a representative picture of the share of the product concerned among all imports under the CN code. Therefore the Commission considered this argument to be unfounded.

(602) Concerning the volume of imports from China, it was established on the same basis as for the separate anti-dumping investigation, that is, on the basis of the information provided by Chinese exporting producers in the sampling exercise.

(603) Imports from other third countries were established on the basis of the detailed exercise mentioned in recital (600), which identified imports of the product concerned in kg, and were converted into cable-km using the precise conversion factors declared by Chinese exporting producers in their replies to the additional request for information mentioned in recital (60).

(604) The market share of the imports was established on the basis of the import volume as compared to the volume of free market consumption shown in Table 1.

(605) Imports from the country concerned developed as follows:

Table 2

Import volume and market share

	2017	2018	2019	IP
Volume of imports from the country concerned (cable-km)	189 479	354 167	434 754	498 335
Index	*100*	*187*	*229*	*263*
Market share (%)	14,8	23,0	26,3	28,3
Index	*100*	*155*	*177*	*191*

Source: Cooperating exporting producers, Eurostat, EU customs authorities

(606) Against a backdrop of significant Chinese excess capacity (estimated to amount to more than twice the entire EU market, on the basis of market analysis provided by the complainants ([141])), imports from the country concerned increased from around 190 000 cable-km to around 500 000 cable-km over the period considered, a very rapid increase of more than two and a half times. This 163 % increase is more than four times higher than the increase in consumption, underscoring the depth and thrust of Chinese penetration of this market.

(607) As a result, the market share of those imports increased from 14,8 % to 28,3 % over the period considered, a massive increase of 91 %. It should be noted that the volumes of Chinese imports showed an increase in every year of the period considered, an element which highlights the rapidity and magnitude of the market penetration.

(608) In its comments on final disclosure, CCCME argued that the market share of the Union industry was understated and the market share of the Chinese imports was inflated. In this regard, CCCME further claimed that the market data should be based on fibre kilometres instead of cable kilometres which would result in a lower market share of Chinese imports.

(609) The investigation revealed that cable-kilometre was the most appropriate unit of measurement for the product concerned as explained in recital (575). Therefore, the claim was rejected.

4.7.2. *Prices of the imports from the country concerned, price undercutting, price depression*

(610) The Commission established the prices of imports on the basis of the replies provided by cooperating exporters in response to a request for information.

(611) The average price of imports from the country concerned developed as follows:

Table 3

Import prices (EUR/cable-km)

	2017	2018	2019	IP
China	452,9	401,9	468,5	349,1
Index	*100*	*89*	*103*	*77*

Source: Cooperating exporting producers

(612) Import prices from China decreased from 452 to 349 EUR/cable-km over the period considered, a fall of 23 %. This development should be seen in the light of the increased aggressiveness of Chinese exporting producers, which is connected to the excess capacity in that country (see recital (606)). This indicator should further be seen against the backdrop of significant price variations for a given length between different product types as well as large differences in the product mix from year to year. The variation in product stemmed both from the variability and therefore price in the types of cables sold, and also from the fact that not all types of products were tendered or sold each year.

(613) To avoid the variations in product mix inherent to the price series over the period considered, and to obtain more accurate and representative data, the Commission also analysed the comprehensive information from sampled Chinese exporters and Union producers based on more aggregated groups of directly comparable products. This led to the identification of 35 identical (matching) groups which are sold by both Chinese exporters and the Union industry, and for which there were sales in each of the years examined. In other words, the Commission obtained a complete time series with price per product type for each year in the period under consideration. These prices can be seen as representative of overall Chinese exports over the period, covering 62 % of exports of the sampled companies during the IP. The resulting representative time series developed as follows, on a weighted aggregated basis:

([141]) Estimations based on public sources (CRU Article of 10 January 2020 'Further instability on the horizon as tumultuous year ends' and slides from CRU Wire Cable Conference, June 2019), provided as Annex 6.1 and 6.5 to the complaint and further elaborated on in the complaint.

Table 3-bis

Chinese imports (EUR/cable-km)

	2017	2018	2019	IP
Average price	854	720	593	320
Index	*100*	*84*	*69*	*38*
Representativeness (%)	94	35	59	62

(614) This shows a significant, continuous price drop by Chinese exports. In other words, when sales of the same product types are compared on a year by year basis, there is a clear and discernible price drop of Chinese import prices in each year, which were well below the prices of the Union producers during the period 2018-IP (Table 7-bis).

(615) Against this backdrop, the Commission determined the price undercutting during the investigation period by comparing:

— the weighted average sales prices per product type of the sampled Union producers charged to unrelated customers in the Union market, adjusted to an ex-works level; and

— the corresponding weighted average prices per product type of the imports from the sampled Chinese producers to the first independent customer in the Union market, established on a Cost, insurance, freight (CIF) basis, with appropriate adjustments for post-importation costs.

(616) The price comparison was made on a type-by-type basis for transactions at the same level of trade, duly adjusted where necessary. The result of the comparison was expressed as a percentage of the sampled Union producers' turnover during the investigation period. It showed a weighted average undercutting margin for the two sampled exporting producers were 30,0 % and 33,2 %, giving an overall undercutting margin of 31,5 %. As described in recital (673) , the analysis of tenders confirms the existence of price undercutting at the level of tenders.

(617) This is in line with the prices identified in recitals (613) and (614).

(618) In its comments on final disclosure, the ZTT Group also argued that the Commission gave no explanation on the aggregated PCN groups which were therefore arbitrary. CCCME claimed that the use of these groups implied there was a problem of matching and comparability of Union industry and Chinese prices. CCCME referred to the Panel report in China – X-Ray Equipment ([142]) which held that an investigation authority was under an obligation to ensure that the products that it was comparing in its price undercutting and suppression analysis were actually comparable and argued that the Commission failed to ensure such price comparability.

(619) The Commission disagreed with this claim for two reasons. First, these groups were not used for the purpose of undercutting and underselling calculations. Second, they were used to make a price comparison on a type-by-type basis set out in recital (613) precisely to ensure that price trends over time were not polluted by significant changes in product mix over the period, thus enhancing the accuracy of comparability over time, based on groups which as explained above were representative of the product concerned.

(620) The Commission noted that when assessing undercutting and underselling margins, the models exported to the Union from the country concerned constituted the reference for comparison. It lies in the nature of comparing export sales of exporting producers with sales of the Union industry that not all models exported were sold by the Union industry. In the current case, the matching rate was around 70 % for the sampled Chinese exporting producers, which the Commission considered amply sufficient to ensure a broad and fair comparison of the exported models and those sold by the Union industry.

([142]) Panel Report, China – Definitive Anti-Dumping Duties on X-Ray Security Inspection Equipment from the European Union, WT/DS425/R, para. 7.67.

4.8. **Economic situation of the Union industry**

4.8.1. *General remarks*

(621) In accordance with Article 8(4) of the basic Regulation, the examination of the impact of the subsidised imports on the Union industry included an evaluation of all economic indicators having a bearing on the state of the Union industry during the period considered.

(622) The Commission have received several comments from parties concerning injury. The GOC claimed that imports from China did not cause injury or threat of injury, because the indicators showed that the situation of the Union industry was good and that the Union industry still occupied a dominant position with its market share. Connect Com noted that the decrease in market share of the Union industry was very limited and happened in the context of a possibly oligopolistic market.

(623) Connect Com submitted that injury, even if it existed, was insignificant if profits were made up to a minimum profit margin of 5 % and it recalled in this regard Commission Decision of 23 December 1988 terminating the anti-dumping proceeding concerning imports of certain cellular mobile radiotelephones originating in Canada, Hong Kong and Japan ([143]), and the judgment of 17 December 1997, *EFMA v Council* ([144]). However, it should be recalled that the Decision on radiotelephones considered the profit margin in the light of other improving indicators and that the mentioned Court case concerned a claim which the General Court rejected that the target profit established by the Commission during the investigation should have been higher. Therefore, these precedents do not support the view that injury would be insignificant when profit margins are above 5 %. Injury is established on a holistic assessment of all the factors mentioned in Article 8(4) of the basic Regulation, analysed in the context of the specific market and industry concerned. Furthermore, the profit achieved by the industry was below the target profit established taking into consideration all the elements relating to the industry concerned, as required under Article 12(1a) of the basic Regulation.

(624) For the injury determination, the Commission distinguished between macroeconomic and microeconomic injury indicators. The Commission evaluated the macroeconomic indicators on the basis of data contained in the response to the questionnaire submitted by the complainant covering data related to all Union producers. The Commission evaluated the microeconomic indicators on the basis of data contained in the questionnaire replies from the sampled Union producers.

(625) The macroeconomic indicators are: production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity, magnitude of the subsidy margin, and recovery from past subsidisation.

(626) The microeconomic indicators are: average unit prices, unit cost, labour costs, inventories, profitability, cash flow, investments, return on investments, and ability to raise capital.

4.8.2. *Macroeconomic indicators*

4.8.2.1. Production, production capacity and capacity utilisation

(627) The total Union production, production capacity and capacity utilisation developed over the period considered as follows:

Table 4

Production, production capacity and capacity utilisation

	2017	2018	2019	IP
Production volume (cable-km)	1 062 482	1 195 017	1 250 881	1 229 252
Index	*100*	*112*	*118*	*116*

([143]) OJ L 362, 30.12.1988, p. 59, recital 7.
([144]) Judgment of 17 December 1997, *EFMA v Council*, T-121/95, EU:T:1997:198, paras. 105 et seq.

Production capacity (cable-km)	1 585 738	1 748 667	2 019 526	2 084 082
Index	*100*	*110*	*127*	*131*
Capacity utilisation (%)	67	68	62	59
Index	*100*	*102*	*92*	*88*

(628) Throughout the period considered, the production volume of the Union industry increased by 16 %. A detailed analysis shows that from 2017 to 2019 Union production increased by 18 %, while in the investigation period Union production fell slightly by 2 percentage points.

(629) The overall increase over the period considered was due to the growth in demand described in Table 1. However, the Union industry only managed to increase their production by 16 % during the period considered, in a market growing by 38 %. The Union industry was therefore unable to fully benefit from the market growth.

(630) During the period considered, Union production capacity increased by 31 %. This reflects the investments made by some Union producers' to follow market growth. This attempt was frustrated by the increased penetration of Chinese products, which, relying on unfair pricing strategies, increasingly absorbed market shares from the Union industry.

(631) As a result, capacity utilization fell by 12 %, reaching a level below 60 % in the IP: Union producers were prevented from increasing production in line with market growth.

4.8.2.2. Sales volume and market share

(632) The Union industry's sales volume and market share developed over the period considered as follows:

Table 5

Sales volume and market share

	2017	2018	2019	IP
Sales volume on the Union market (cable-km)	882 772	945 842	1 009 439	995 703
Index	*100*	*107*	*114*	*113*
Captive market	61 505	59 802	62 710	54 205
Index	*100*	*97*	*102*	*88*
Captive market as a % of Union sales	7,0	6,3	6,2	5,4
Index	*100*	*91*	*89*	*78*
Free market sales	821 268	886 040	946 729	941 498
Index	*100*	*108*	*115*	*115*
Market share of free market sales (%)	64,3	57,6	57,2	53,5
Index	*100*	*90*	*89*	*83*

Source: Union industry

(633) Throughout the period considered, the total Union sales volume of the Union industry increased by 13 %. Yet, because of the increase in consumption, the market share in the free market decreased during the period considered from 64,3 % to 53,5 %, a drop of more than 10 percentage points (-17 %).

(634) Union sales volume on the free market also increased by 15 % over the period considered. Union sales followed the trend of Union production very closely because the industry largely operates a production to order system.

(635) The Union's industry captive market (expressed as a percentage over total sales in the Union) was at very low levels throughout the period considered, with a decreasing trend which saw the percentage decrease from 7 % in 2017 to 5,4 % in the IP. This had a marginal impact due to the limited size of this market.

4.8.2.3. Growth

(636) It results from the fall in market share of Union sales volumes that the Union industry was not able to benefit from the growth on the Union market over the period considered.

4.8.2.4. Employment and productivity

(637) Employment and productivity developed over the period considered as follows:

Table 6

Employment and productivity

	2017	2018	2019	IP
Number of employees (FTE ([145]))	4 088	4 589	4 815	4 659
Index	*100*	*112*	*118*	*114*
Productivity (cable-km/FTE)	260	260	260	264
Index	*100*	*100*	*100*	*102*

Source: Union industry

(638) The Union industry employment rose by 18 % from 2017 to 2019 on an FTE basis. This rise was followed by a fall of 4 percentage points in the investigation period. This development largely follows the trend in production volume shown in Table 3.

(639) As the figures for production and employment mirrored each other closely, productivity in terms of cable-km per employee remained largely stable.

4.8.2.5. Magnitude of the subsidy margin and recovery from past subsidisation

(640) All subsidy margins were significantly above the *de minimis* level. The impact of the magnitude of the actual margins of subsidy on the Union industry was substantial, given the volume and prices of imports from the country concerned.

(641) This is the first anti-subsidy investigation regarding the product concerned. Therefore, no data were available to assess the effects of possible past subsidisation.

([145]) Full time equivalent.

4.8.3. *Microeconomic indicators*

4.8.3.1. Prices and factors affecting prices

(642) The weighted average unit sales prices of the sampled Union producers to unrelated customers in the Union developed over the period considered as follows:

Table 7

Sales prices in the Union

	2017	2018	2019	IP
Average unit sales price in the Union (EUR/ cable-km)	816	861	944	821
Index	*100*	*105*	*116*	*101*
Unit cost of production (EUR/ cable-km)	756	785	860	758
Index	*100*	*104*	*114*	*100*

Source: Sampled Union producers

(643) Sales prices on the Union market to unrelated parties (the free market) increased in the period 2017-2019 by 16 %, and then in the IP decreased, reaching a similar level as the one recorded in 2017 (+1 %). However, the level of prices is largely dependent on the complexity of the products sold, given that the price can vary greatly based on the characteristic of the cable (including the number of fibres, the number and type of coating, etc.).

(644) This is evident when comparing the evolution of the prices with the evolution of the cost of production, given that more complex cables, which can be sold at higher prices, also entail higher cost of production.

(645) The unit cost of production increased in the period 2017-2019 by 14 %, roughly in line with average prices in the free Union market (16 %). Subsequently, it dropped by 14 %, also, in line with the drop of prices in the same period 2019-IP (15 %).

(646) As mentioned in recital (613), to avoid the variations in product mix inherent to the price series over the period considered, the Commission analysed the comprehensive information from sampled Chinese exporters and Union producers based on more aggregated groups of directly comparable products. This led to the identification of 35 identical (matching) groups which are sold by both Chinese exporters and the Union industry, and for which there is a complete time series over each year in the period under consideration.

(647) These are representative of EU industry sales over the period, with more than 34 % of sales of such matching products in the investigation period. The resulting representative time series is as follows:

Table 7-bis

Union industry (EUR/cable-km)

	2017	2018	2019	IP
Average price	817	780	792	719
Index	*100*	*95*	*97*	*88*
Representativeness (%)	42	38	35	34

(648) This shows a significant drop of Union industry prices, similar to the price drop observed for Chinese exports mentioned in recital (613).

(649) Moreover, given that customers often ask for made-to-measure OFC types tailored to their specific needs, and that certain Member States also define specific technical requirements, comparing prices over time for the same customer and Member State generates an even more precise picture of price developments. The Union industry provided additional detailed information in this regard. The price trends for the most important twenty such product group-customer-Member State combinations developed as follows ([146]):

Table 7-ter

Union industry (EUR/cable-km, index)

2017	2018	2019	IP
100	*73*	*56*	*59*

(650) This shows again a clear drop in Union industry prices over the period, following the price drops by Chinese exports mentioned in recitals (610) to (614).

4.8.3.2. Labour costs

(651) The average labour costs of the sampled Union producers developed over the period considered as follows:

Table 8

Average labour costs per employee

	2017	2018	2019	IP
Average labour costs per employee (EUR/FTE)	39 511	35 826	39 157	38 966
Index	*100*	*91*	*99*	*99*

Source: Sampled Union producers

(652) The average labour cost per employee remained relatively stable in the period 2017-IP. The slight decrease in the year 2018 corresponds with the increase of 13 % in the number of FTE, and reflects the cost of this additional workforce.

4.8.3.3. Inventories

(653) Stock levels of the sampled Union producers developed over the period considered as follows:

Table 9

Inventories

	2017	2018	2019	IP
Closing stocks (cable-km)	134 925	161 561	161 878	171 058
Index	*100*	*120*	*120*	*127*
Closing stocks as a percentage of production (%)	12,7	13,5	12,9	13,9

([146]) These are representative, covering 36 % of EU industry sales in the IP.

Index	*100*	*106*	*102*	*110*

Source: Sampled Union producers

(654) The stocks of the sampled Union producers increased by 27 % over the period considered. While, the increase in stocks signifies a slower turnover of the sale of certain recurring items and could be linked to the increasing difficulty of the Union industry in selling its products because of very aggressive price competition from Chinese exporting producers, the increase in the period 2019-IP can also be connected to a seasonal effect. In any case, given that the majority of the production takes place based on orders and customers specifications, inventories do not constitute a main indicator of injury.

4.8.3.4. Profitability, cash flow, investments, return on investments and ability to raise capital

(655) Profitability, cash flow, investments and return on investments of the sampled Union producers developed over the period considered as follows:

Table 10

Profitability, cash flow, investments and return on investments

	2017	2018	2019	IP
Profitability of sales in the Union to unrelated customers (% of sales turnover)	8,1	8,4	8,5	7,9
Index	*100*	*104*	*104*	*97*
Cash flow (EUR)	33 254 746	48 644 480	41 707 715	39 805 852
Index	*100*	*146*	*125*	*120*
Investments (EUR)	60 405 839	67 794 023	82 761 718	59 886 812
Index	*100*	*112*	*137*	*99*
Return on investments (%)	34	36	24	20
Index	*100*	*105*	*70*	*58*

Source: Sampled Union producers

(656) 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.

(657) The profitability of the sampled producers was positive but abnormally low throughout the period considered and declined from 8,1 % in 2017 to 7,9 % in the investigation period.

(658) In its comments on final disclosure, the ZTT Group claimed that, through a reverse engineering analysis, the Union industry made very high profits by excessively pricing in the Union market which casted serious doubt about the injurious status of the Union industry and that the price undercutting was due to unreasonable pricing of the Union industry and not to the low-priced imports from China.

(659) The Commission disagreed with this claim. The reverse engineering analysis presented by the ZTT Group was partial and not based on a full assessment of costs and prices. The Commission verified the profit margins on the basis of comprehensive information and this analysis showed them to be as just described in recitals (655) to (657). Therefore, the claim was rejected.

(660) The complainants claimed that the need for investments and research in the sector would require a profit margin of 15 %. The investigation showed that level of already planned investments that would have taken place under normal circumstances to keep up with market developments would need to be sustained by profits of 13,4 % on average on the basis of the period considered. These investments covered the following issues: retooling and maintenance costs to ensure efficiency of existing capacity, adapting capacity to changing product mix; expansion of capacity; research and development expenses (product and process innovation).

(661) The Commission found that the aforementioned order of magnitude is in line with historical profits in the absence of Chinese subsidised imports, which as underlined in the analysis made in Table 10-*bis* is in the range of 12 %.

(662) This underscores that the profit level in the range of 8 % over the period considered is insufficient to sustain activity in an expanding high-tech market and are thus an expression of injury to the Union industry.

Table 10-bis

Union industry pre-2017 profitability

	2014	2015	2016
Profit margin (in %)	10,4	12,6	12,4

(663) However, this was not observed in the present case. Indeed profitability dropped as compared to 2014-2016. The lower level of profits throughout the period considered reflects significant price injury throughout the period considered. Because of the downward pressure caused by imports from China (both in terms of increased volumes and of low prices), the Union industry was unable to raise prices, to minimise costs and as a result reach the normal profit levels achieved before the brunt of the expansion let alone any increase.

(664) After an increase in 2018, the cash flow decreased towards the second half of the period considered.

(665) As a direct result of the pressure from imported goods, Union industry had to postpone investments, including some which were already planned and approved. These investments, which were aimed at expanding existing Union production capacity, were put to a halt (even when the execution had already started) in the course of the period considered as a direct effect to the changed market circumstances caused by the aggressive pricing of Chinese imports. This led the investments to fall sharply towards the end of the period considered, in contrast to the previous years' trend and overall growth of the market.

(666) The return on investments undertaken developed negatively over the period considered and in fact fell by 42 %. This negative development shows that, although investments continued to be made, in order to maintain and improve efficiency and competitiveness, the returns on those investments have fallen substantially over the period considered due to the impossibility for the Union industry to improve the profitability rate.

(667) With returns on investments falling so quickly, the sampled producing entities ability to raise capital in the future is clearly in jeopardy should the situation fail to improve.

4.9. **Analysis of sales based on tenders**

(668) A vast majority of OFC is sold through tender procedures. In order to obtain the necessary insight into this important aspect of the market and to complement the rest of its injury analysis, the Commission requested detailed information on tenders from the sampled Chinese exporting producers, sampled Union producers, importers and users. Questions were asked on the nature, process, timing, and other relevant characteristics, covering both concluded and ongoing tenders. From the tendering entities' side the Commission had very little cooperation. No public tendering entity participated in the investigation and among the large telecom operators only Deutsche Telekom provided detailed information on tenders.

(669) After the non-imposition of provisional measures, the Commission requested from the sampled Union producers additional, detailed information on all tenders in which they participated during the period considered including information on bids, prices and competitors where available.

(670) The information submitted showed a highly heterogeneous and fragmented picture with a very large number of tenders organised every year in different Member States, a wide variety of tendering entities and bidders and different durations and terms. On the tendering entity's side, tenders can be either public, organised by municipalities or other public entities, or private, organised by large telecom or network operators. There are also many other smaller types of bids, quotations, e-auctions and smaller amounts can also be sourced through direct customer contact. Each tender process is highly specific to the tendering entity, which may use a variety of processes depending on the specific tender at hand and market developments. There is also a wide variety of players bidding in the tenders. Chinese exporting producers participate directly (also through their subsidiaries) and indirectly by partnering with local companies in the different Member States. Importers, traders and distributors also compete with Union producers. There are also sometimes installers involved and sales by the winning suppliers to the telecom operators are made through these installers.

(671) The investigation has also shown that the number of tenders organised in the Union is very high. The three sampled Union producers reported a total of more than 500 tenders in which they participated directly during the investigation period. One of the cooperating unrelated importers participates in 150-200 tenders per year focusing on the German market alone.

(672) The duration of the tenders is highly variable, from immediate delivery to three years. In longer tenders, while prices are agreed, volumes are not fixed and therefore tendering entities can issue further tenders that replace existing ones when prices drop. Thus, while tenders provide a kind of general 'ceiling' to price conditions, prices can and do change dynamically throughout the lifetime of the tender. As a result, they tend to adjust and to largely reflect the current market conditions.

(673) The Commission has analysed the detailed information on tenders reported by the sampled Union producers in response to its request. Of the reported tenders in which the Union producers presented a bid during the period considered, the Commission analysed those for which there was concrete evidence of Chinese participation. There were 55 such tenders during the period considered. The analysed tenders amount to 45 % of sampled Union producer sales, and for 14 % of total EU consumption during the investigation period. For these tenders, a granular analysis of price and volume injury per tender has been made, showing significant losses of sales (between 25 % and 100 %), and/or price depression (between 5 % and 55 %), and/or price undercutting (between 8 % and 39 %). This tender-specific analysis further confirmed the price depression and undercutting already established above throughout the period.

(674) Connect Com submitted comments in relation to tender procedures and pointed out that Union producers represented by the complainant did not lose a large number of tenders in general, but only one or a few large private tenders. It underlined that the complainant referred to a single invitation to a private tender and the pricing behaviour of a single Chinese producer as evidence of the price undercutting. Connect Com submitted a notice of the contracts awarded in a German district, where prices of the winning bidder were explicitly stated. It submitted that the complainant had omitted the entire market segment of public tenders from its presentation. According to Connect Com, the Union producers represented by the complainant were not successful in these tenders because they did not meet the requested criteria (e.g. warehouses, stock, wide range of products, logistics concept). In particular, Connect Com underlined the low storage capacity of Prysmian and Corning. Connect Com claimed that rejecting the existence of a market segment of public tenders would be wrong, because the prices on the public and the private tender markets correspond to a large extent or are mutually interdependent. According to Connect Com, it would not be right to impose duties in an entire market which is segmented in public and private tenders. Reference was made to recital 42 of Commission Decision 98/230/EC ([147]). On the basis of that decision, Connect Com argued that in the case of segmented markets, there is no overall injury to the Union industry if, although there is a certain decline in sales in one market segment (here private tenders), the Union industry has sales opportunities in another market segment (here public tenders) which compensate for the decline in sales volume.

([147]) Commission Decision 98/230/EC of 20 March 1998 terminating the anti-dumping proceeding concerning imports of tungstic oxide and tungstic acid originating in the People's Republic of China (OJ L 87, 21.3.1998, p. 24).

(675) The arguments and analysis in recital (673) contradict those claims. Despite significant efforts from the Union industry to maintain price competitiveness, large shares of the markets were taken over by Chinese exporters, whose offers could not be matched by the Union industry in terms of prices. As concerns the 1998 Commission Decision concerning imports of tungstic oxide and tungstic acid, the Commission found in that case that the decrease in market share of the Union industry on the open market should be seen in the light of Union industry's tendency to use an increasing proportion of its production of the product concerned to produce downstream products. The underlying factual situation concerning these two different market segments of the Union industry (open market and captive use) is different from the competitive situation in this case where the size of the captive market is slightly decreasing throughout the period considered and represents a very small part of the production of the product concerned. Therefore those claims were rejected.

(676) In its comments on final disclosure, Connect Com claimed that the Commission did not disclose how many of the tenders were won by a Chinese producer and for what reason, and reiterated its argument that price was never the only decisive criterion but rather quality and logistics. Also, Connect Com requested the disclosure of the results of the analysis in recital (673).

(677) In this respect, the Commission collected detailed information on tenders during the period considered. The Commission verified and analysed this information which is highly confidential and therefore cannot be disclosed to interested parties.

(678) The analysis on tenders points to a process of accelerated replacement of Union industry products by Chinese products, which is confirmed by tenders at the end of the investigation period. This revealed price erosion and further significant losses of volumes for the Union industry which are in line and confirm the overall injury picture.

4.10. **Conclusion on injury**

(679) Several indicators showed a positive trend such as production, capacity, sales volume on the Union market and employment. However, the development of these indicators did not match the increase in consumption and, in fact, such indicators should have increased more strongly, if the Union industry had been able to fully benefit from the growing market. Indeed, despite the increase in sales volume, the Union industry lost 10,8 percentage points of market share (from 64,3 % to 53,5 %) in a growing market. This is linked to the price pressure generated by Chinese exports, with significant undercutting and, in any event, price depression throughout the period considered.

(680) The foregoing led to financial injury in the form of lower profits and a drop in investments and on the return thereon.

(681) In addition to that, as explained above in recital (673), the analysis of sales through tenders indicates that the market share and price erosion is accelerating and will continue to do so due to the extremely aggressive behaviour from Chinese exporting producers.

(682) In its comments on final disclosure, CCCME claimed that several key indicators did not show that the Union industry suffered injury as its productivity remained stable and even increased during the IP, its production volume and employment remained stable, its capacity increased, its sales prices remained stable with a slight decrease and its profitability and investments remained at high levels. Also, CCCME argued that the Panel in *Thailand – H-Beams* ([148]) stated that 'such positive movements in a number of factors would require a compelling explanation of why and how, in light of such apparent positive trends, the domestic industry was, or remained, injured within the meaning of the Agreement'. CCCME claimed that the Commission had not provided such a compelling explanation. CCCME also claimed that in *Tartaric Acid* ([149]), the Commission concluded that there was no injury to the industry concerned since the profitability, cash flow, investments and employment increased during the period considered, despite the industry's declining trends as regards production, sales volume and market share.

([148]) Panel Report, Thailand – Anti-Dumping Duties on Angles, Shapes and Sections of Iron or Non-Alloy Steel and H Beams from Poland, WT/DS122/R, paras. 7.245-7.256

([149]) Commission Implementing Decision (EU) 2016/176 of 9 February 2016 terminating the anti-dumping proceeding concerning imports of tartaric acid originating in the People's Republic of China and produced by Hangzhou Bioking Biochemical Engineering Co. Ltd (OJ L 33, 10.2.2016, p. 14), recital (140)

(683) As stated in recital (679), these indicators have to be assessed against the increased consumption on a growing market and this analysis showed that the Union industry could not adequately benefit from an expanding market, underscoring actual negative effects on Union industry growth. Furthermore, the detailed tender analysis showed very clear undercutting and mounting sales losses of the Union industry. Therefore, the claim was rejected.

(684) The Commission recalls that the weighing of injury factors vary in each case, depending on the industry and factual situation. Nevertheless, neither of the cases cited by CCCME is factually comparable with the present case. For example, in *Tartaric Acid,* the Union industry's profitability showed a steady positive trend during the period considered and even exceeded the target profit during the investigation period, which is not the case here. Similarly, the factual situation in the investigation subject to the Panel in *Thailand – H-Beams* was fundamentally different. Most importantly, the Panel took issue with the fact that the Thai investigating authority had not explained how the positive trends (in particular profitability) would support their affirmative injury determination. Again, the facts in this case are not similar to H-Beams. Apart from the fact that in this case several injury indicators showed a negative trend, the Commission has fully explained its analysis and conclusions of the injury factors. Therefore, the Commission found that the conclusion of the cases cited by CCCME above were not applicable in the present investigation.

(685) CCCME also argued that the market share criteria alone could not be the basis of findings of material injury in accordance with the Panel in *EC and certain member States – Large Civil Aircraft* ([150]) and, as demand increased, all market participants gained sales which was indicative of an open and competitive market. Moreover, CCCME claimed that the future deterioration of the Union industry's situation and the excess capacity of the exporters could not be the basis of material injury as this investigation did not assess the threat of injury and did not meet the evidentiary standard required for such a case in line with case T-528/09 - *Hubei Xinyegang Steel v Council* ([151]) where the General Court regarded the assessment of the excess capacity of the exporters as a part of the *'threat of injury'* test.

(686) In this respect the Commission recalls that the finding of material injury is not based on market shares alone, but on the totality of several economic indicators assessed in recitals (599), (606), (612), and (661), which included *inter alia* actual negative impacts on growth, price depression, price undercutting, price underselling, and depressed profits, which show material injury. Therefore, the claim was rejected.

(687) On the basis of the above, the Commission concluded at this stage that the Union industry suffered material injury within the meaning of Article 8(4) of the basic Regulation.

5. **CAUSATION**

(688) In accordance with Article 8(5) of the basic Regulation, the Commission examined whether the subsidised imports from the country concerned caused material injury to the Union industry. In accordance with Article 8(6) of the basic Regulation, the Commission also examined whether other known factors could at the same time have injured the Union industry. The Commission ensured that any possible injury caused by factors other than the subsidised imports from the country concerned was not attributed to the subsidised imports. These factors are: imports from third countries, the export performance of the Union industry, captive sales, and raw material prices.

5.1. **Effects of the subsidised imports**

(689) The deterioration in the Union industry market share throughout the period considered was simultaneous and directly connected with significant penetration of the Union market by substantial volumes of imports from China, which significantly undercut the Union industry's prices and, in any event, exercised significant price depression on Union sales.

([150]) Panel Report, European Communities and Certain member States – Measures Affecting Trade in Large Civil Aircraft, WT/DS316, para. 7.2083.

([151]) Judgment of the General Court, 29 January 2014, Hubei Xinyegang Steel Co. Ltd v Council of the European Union, T-528/09, EU:T:2014:35, paras. 79-80.

(690) The volume of imports from China increased (as shown in Table 2) from around 189 000 cable-km in 2017 to around 498 000 cable-km in the investigation period, a double and a half increase (+163 %). In terms of market share the increase over the same period was from 14,8 % to 28,3 %, an almost double increase (+91 %). Over the same period (as shown in Table 5), the Union industry sales on the free market increased by only 14 % and its market share fell from 64,3 % to 53,5 %, a fall of 10,8 percentage points (or -17 %). The sales on the smaller captive market showed a moderate decrease (-12 %). The subsidised imports have increased in both absolute and relative terms. As shown by Table 1, consumption on the Union market has increased by 38 % over the period considered, and it is evident that it has been mainly imports from China that took advantage of this growth.

(691) The prices of the subsidised imports decreased significantly over the period considered, for example by 62 % according to Table 3-bis. Comparable sales prices of the Union industry on the Union market to unrelated parties (the free market) dropped overall by 12 % over the period on the basis of the analysis in Table 7-bis and by 41 % with the more refined analysis in Table 7-ter. The level of prices is largely dependent on the complexity of the product types sold, and a type by type comparison of domestically produced and imported products from the country concerned (on the basis of the sampled companies) is the most accurate tool to examine price trends. During the investigation period, this shows weighted average undercutting margins for the two sampled exporting producers above 30 %.

(692) This aggressive behaviour started eroding the Union industry market share since the beginning of the period considered, and during the IP the availability on the market of Chinese products at extremely low prices (well below the Union industry's cost of production) has continued. This occurred *inter alia* via the mechanisms described above in the section on tenders in recitals (670) to (673) and has generated price depression, losses in sales, decreasing market share, and financial injury both in terms of depressed profitability and waning investments jeopardising the existence of Union industry.

(693) As described in recital (665) above, there was also evidence that certain planned investments and expansion projects of the Union industry had been cancelled or suspended due to the increase in aggressively priced Chinese imports and consequent loss in Union industry market share.

5.2. **Effects of other factors**

5.2.1. *Imports from third countries*

(694) Imports from other third countries developed over the period considered as follows.

Table 11

Imports from third countries

Country		2017	2018	2019	IP
Korea	Volume (cable-km)	20 450	51 339	44 405	45 908
	Index	*100*	*251*	*217*	*224*
	Market share (%)	1,6	3,3	2,7	2,6
	Average price (EUR/ cable-km)	796	873	1 627	1 073
	Index	*100*	*110*	*204*	*135*
Turkey	Volume (cable-km)	26 732	32 932	22 922	37 008
	Index	*100*	*123*	*86*	*138*
	Market share (%)	2,1	2,1	1,4	2,1
	Average price (EUR/ cable-km)	428	501	776	594
	Index	*100*	*117*	*181*	*139*

Norway	Volume (cable-km)	12 143	11 622	22 728	26 471
	Index	*100*	*96*	*187*	*218*
	Market share (%)	1,0	0,8	1,4	1,5
	Average price (EUR/ cable-km)	330	271	279	261
	Index	*100*	*82*	*85*	*79*
Other third countries	Volume (cable-km)	126 307	114 520	77 787	107 334
	Index	*100*	*91*	*62*	*85*
	Market share (%)	9,9	7,4	4,7	6,1
	Average price (EUR/ cable-km)	1 631	1 728	2 447	1 218
	Index	*100*	*106*	*150*	*75*
Total of all third countries except the country concerned	Volume (cable-km)	185 633	210 414	167 842	216 721
	Index	*100*	*113*	*90*	*117*
	Market share (%)	14,5	13,7	10,1	12,3
	Average price (EUR/ cable-km)	1 280	1 247	1 708	964
	Index	*100*	*97*	*133*	*75*

Source: Data from EU Customs Authorities, Comext (Eurostat)

(695) Imports from Korea increased over the period considered from around 20 000 cable-km in 2017 to around 45 000 in the investigation period. The market share of these imports increased from 1,6 % in 2017 to 2,6 % in the investigation period. Average prices from Korea appear significantly higher than both the ones from the Union industry and the exporting producers. Therefore, given the high prices and the limited volumes, imports from Korea did not appear to play a role in the injury suffered by the Union industry.

(696) Imports from Turkey appear to have been sold at a low price, although higher than the Chinese imports in the period 2018-IP and gradually increasing. The market share of Turkish exporters was basically stable in the period considered at just over 2 %. These trends are based on statistics which include many product types and therefore, given the overall limited volumes, the Commission cannot precisely estimate the impact of these imports on the situation of the Union industry. While it cannot be excluded that Turkish imports might have contributed to injury suffered by the Union industry, given their relative volume in relation to the imports of the product concerned and stable market share throughout the period, the Commission concluded that, even if these imports had a limited impact on the situation of the industry, they did not attenuate the causal link between subsidised Chinese imports and the injury suffered by the Union industry

(697) Finally, imports from Norway also increased in the period considered. Norwegian prices, which were already low in 2017, kept decreasing in the period considered (-21 % in the period 2017-IP), at a price level well below both the one of the Union industry and the one of the Chinese exporters. The market share of Norwegian exporters increased in the same period from 1 % to 1,5 %. These trends are based on statistics which include many product types and therefore, given the overall limited volumes, the Commission cannot precisely estimate the impact of these imports

on the situation of the Union industry. While it cannot be excluded that Norwegian imports might have contributed to injury suffered by the Union industry, given their relative volume in relation to the imports of the product concerned, the Commission concluded that, even if these imports had a limited impact on the situation of the industry, they did not attenuate the causal link between subsidised Chinese imports and the injury suffered by the Union industry.

(698) Imports from other third countries decreased slightly in the period considered in absolute terms, and lost significant market share in the process. Average prices were high and therefore there are no indications that they caused material injury to the Union industry.

(699) CCCME claimed that there was a complete absence of correlation between imports from China and the development of the Union industry. In particular, CCCME argued that amidst the strongest increase in import volume from China between 2017 and 2018, the Union industry increased its profitability. CCCME also claimed that during the period 2018 to 2019 when Chinese imports increased and prices decreased, the Union producers increased their sales prices without losing market share.

(700) In this respect the Commission recalls that the vast majority of the market is based on long term supply contracts as explained in recitals (668) to (678). Moreover, the profitability of the Union industry was below the target profit throughout the period considered, which shows that the Union industry was already injured in 2018 and 2019 when, as observed by CCCME, dumped imports from China strongly increased. Therefore, the Commission considers that the above arguments of CCCME do not point to the absence of a causal link between dumping and injury. Indeed it only confirmed that there was a certain time gap between the rise of imports of the product concerned from China and the negative trend of some of the injury indicators.

(701) In view of the above, imports from countries other than China could not have caused the observed deterioration in the Union industry's performance, and at any rate do not attenuate the causal link between the latter and Chinse import penetration.

5.2.2. *Export performance of the Union industry*

(702) The volume of exports of the Union industry developed over the period considered as follows:

Table 12

Export performance of the Union producers

	2017	2018	2019	IP
Export volume (cable-km)	85 676	99 295	95 397	108 672
Index	*100*	*116*	*111*	*127*
Average price (EUR/cable-km)	1 329	1 111	1 282	949
Index	*100*	*84*	*96*	*71*

Source: Union industry

(703) Exports of the Union industry increased by 27 % over the period considered from around 85 000 cable-km in 2017 to around 108 000 cable-km in the investigation period.

(704) The average price of the exports of the sampled Union producers decreased by 29 % over the period considered from 1 329 EUR/cable-km in 2017 to 949 EUR/cable-km in the investigation period. Price levels were above those in the Union.

(705) Against a backdrop of increasing exports and relatively high price levels, it is clear that these exports would not have caused injury to the Union industry.

5.2.3. *Captive volumes*

(706) As shown at Table 4, during the period considered the Union industry's captive use decreased by 12 %.

(707) Bearing in mind the limited size of the market (estimated at less than 5 % of the Union production in the IP), the Commission found that the slight decrease in captive use did not cause material injury to the Union industry.

5.2.4. *Price of raw materials*

(708) The main raw material used by the Union industry is optical fibres, either produced in the Union or imported. Several importers have argued that the sampled Union producers buy optical fibre from their related companies outside the Union at transfer prices which do not correspond to the market price of this raw material. In fact, importers suspected that this transfer price was too high and therefore resulted in a lower profit rate for the sampled EU producers.

(709) In particular, Connect Com raised concerns on internal transfer prices for intercompany transactions taking place within the Prysmian and Corning groups.

(710) In order to investigate this claim, the Commission requested additional information from the sampled Union producers of their purchases of optical fibre used for the production of optical fibre cables in the IP. The Commission also requested information on the optical fibre produced by related companies of the sampled Union producers and on the sales of these fibres (volume and quantity) to both related and unrelated customers inside and outside the Union. By comparing sales of the same product types of fibre to related and unrelated parties, the Commission could establish that prices were in the same order of magnitude and therefore the sales of fibre to related companies were performed at arms' length. Data on this activity is company-specific and confidential, it can thus not be disclosed.

(711) The Commission concluded therefore that the material injury suffered by the Union industry was not caused by the impact of transfer prices on the profitability of the sampled Union producers.

5.2.5. *Effect of COVID-19 pandemic*

(712) In its submission on initiation mentioned at recital (5), CCCME claimed that there is a clear correlation between the downturn in sales for the EU (and global) OFC industry and the beginning of the pandemic and that this situation should not be exploited to impose unjustified trade defence measures. In its comments on final disclosure, Connect Com claimed that it was not clear which part of the IP data related to 2019 and which part of it related to 2020 and therefore, the expected effect of the COVID-19 pandemic could not be assessed and requested a breakdown of the IP data. With regards to this claim, the Commission notes that it requested all IP data provided by the parties broken down to quarters in order to assess any potential effect of the COVID-19 pandemic on the IP. The investigation revealed that the COVID-19 pandemic only had a very limited and temporary impact on the industry (as described in recitals (599) and (729)), and did not prevent the significant increase of consumption in the Union during the period considered.

5.3. **Conclusion on causation**

(713) The Commission distinguished and separated the effects of all known factors on the situation of the Union industry from the injurious effects of the subsidised imports. None of the other factors explained the Union industry's negative developments in terms of loss of market share, price depression and low profitability, decreasing investments and return on investments.

(714) The adverse impact on profitability caused by the subsidised imports and continuous price pressure did not allow the Union industry to undertake the necessary investments for the long term survival of the industry. This is supported by the decreasing trend as described in recital (657) and the cancelling of planned investments discussed in recital (665).

(715) On the basis of the above, the Commission concluded at this stage that the subsidised imports from the country concerned caused material injury to the Union industry. The other known factors, individually or collectively, were not capable of attenuating the causal link between the subsidised imports and the material injury.

6. **UNION INTEREST**

(716) In accordance with Article 31 of the basic Regulation, the Commission examined whether it could clearly conclude that it was not in the Union interest to adopt measures in this case, despite the determination of injurious subsidies. The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, importers, users and other relevant economic operators.

(717) Several comments were submitted concerning the Union interest. In particular, the GOC claimed that imports from China effectively promote the development of technology in the industry and foster competition in the Union market. According to the GOC, if over protected, the optical fibre cables industry in the Union will only lose ground in comparison with third countries, therefore there is no Union interest in pursuing an investigation in the sector, which could damage the bilateral cooperation between China and the Union in the digital field.

(718) Also Connect Com claimed that the imposition of measures would be detrimental to the industry because importers from China could no longer submit attractive offers to tenders. As a consequence, price level in tender procedures would rise with a negative outcome for public budgets.

(719) CCCME noted that the EU's digitalization agenda and the 5G transition would be best served by not further restricting high-quality optical fibre cables supplies from China.

(720) Cable 77, instead, underlined that the imposition of duties on optical fibre cables would influence also other industries and that, if duties were to be imposed on cables, they should also be imposed on fibres because Union producers employ also fibres produced outside the Union.

(721) However, as detailed in the following recitals, the Commission found no compelling reasons to conclude it is not in the Union interest to impose measures on imports of optical fibre cables originating in China.

6.1. **Interest of the Union industry**

(722) There are 29 companies producing OFC in the Union, having around 4 700 employees (FTE). The producers are widely spread throughout the Union.

(723) The imposition of measures would allow the Union industry to maintain a competitive position on the market and recover lost market share, while improving their profitability towards sustainable levels.

(724) The absence of measures is likely to have a significant negative effect on the Union industry in terms of further price depression and lower sales and production, with further financial deterioration in terms of profitability and investments, jeopardising its future.

6.2. **Interest of unrelated importers**

(725) Relatively low cooperation was received from the importing sector. Five unrelated importers submitted a sampling form within the deadline. Out of these five importers, four submitted a questionnaire reply. A new importer came forward after the initiation of the anti-subsidy investigation into optical fibre cables from China and requested to cooperate also in the present investigation. The Commission granted interested party status to this importer for the present investigation as from the day in which it came forward, and to consider the information submitted for this investigation without prejudice to the procedural steps already lapsed.

(726) The five cooperating importers represent around 12 % of Chinese imports. Two importers provided complete information in their questionnaire reply, while three others were not in a position to provide accurate profit data for the product concerned for the IP. All cooperating importers opposed the measures.

(727) The cooperating importers are located in four different Member States and they mainly focus their activity there. They import 70-90 % of their OFC purchases from China and they source the remaining part from Union producers and from producers in other third countries. They underlined the importance of having different sources of supply. Imports of OFC from third countries are not subject to customs duty in the Union.

(728) An important part of cooperating importers' activity is to bid for smaller projects. Beyond these bids, they also offer additional products (e.g. ducts, connectors and cabinets) and complex services to customers (e.g. design and installation of network). On average, the product concerned accounts for around one third of their total turnover.

(729) None of the importers claimed that the COVID-19 pandemic would have had a major impact on their business activity. One importer stated that there was a certain slowdown in March 2020 due to the lockdown but stressed that the importance of fibre to the home ('FTTH') projects was amplified by this crisis.

(730) Importers consider that their competitive advantage over the Union producers lies in their efficient sales structure and logistics. They shorten their delivery times by keeping a high amount of stock in their warehouse and aim to respond in a swift and flexible way to their customers' needs.

(731) The importers claimed that they cannot source all their OFC from the Union industry because the industry cannot supply the required quantities under the required deadlines. They alleged there was a shortage of OFC and of its main raw material, optical fibre on the market in 2017-18 when the Union industry could not cover their demand and therefore they had to find other suppliers. Some importers stressed that with the rollout of fibre optic and 5G networks, the demand for OFC has been rising and is expected to rise further. They argued that this increased demand, in combination with potential trade defence measures, could lead to a new shortage on the market and to delays in the expansion of the fibre optic and 5G network.

(732) The Union industry rebutted the claim of supply issues stating that the Union industry has ample spare capacity. Indeed, the investigation found that the capacity utilisation of the Union industry was 59 % during the IP and the production capacity of optical fibre cables is over 2 million cable-km, well above the estimated Union consumption of OFC for the coming years. The Union industry provided evidence that the Union producers have capacity to produce more OFC if needed. Furthermore, alternative sources of supply exist in third countries.

(733) Importers have also claimed that they have long term supply contracts with their customers in which fixed prices are agreed for the total term of 2-4 years and there is no price adjustment clause for unforeseen increases in their purchase prices. Therefore it would not be possible to pass on the increased costs to their customers. Moreover, importers have argued that they are not able to bid in tenders which are announced during the present investigation as they do not know what price they will pay for OFC in case measures are imposed.

(734) Importers also argued that it would not be possible to shift the source of supply to other third countries in the case of current contracts as the cables have undergone complex approval processes, and therefore there would be the risk of serious time delays and considerable difficulties in the blowing process, which must be adapted to the rigidity of the cable which varies from supplier to supplier even for products of the same technical specification.

(735) In addition, some importers have also claimed that Chinese cables are of higher quality than the cables produced by the Union industry. Although the technical specifications are the same, they claim that Chinese OFC is produced on newer production lines and the finishing, the rolling up and the technical characteristics are of higher standard. These importers also argue that the difference in quality does not only concern the product, but Chinese producers serve their clients' individual needs in a more flexible and timely manner and they provide better after sales services.

Also, one importer claims that the price difference between Union and Chinese optical fibre cables is lower than stated in the complaint. This importer also claims that Union producers supply other products (ducts, handholes, closures) and considers that measures would allow Union producers to tie these other products to OFC and sell them part of a project. It also considers that measures would create a disincentive for Union producers to innovate as they would protect them from competition. In its view, this would lead to a slowdown of the deployment of networks.

(736) In its comments on final disclosure, Connect Com claimed that the proposed level of duties significantly exceeded their profit margins. This situation would cause substantial losses as they would not be able to pass on the duties to their customers, with whom they have existing long term contracts with fixed prices. Moreover, Connect Com argued that its profit margin for public contracts was usually significantly lower than 20 % and that the anti-subsidy measures combined with the anti-dumping duties would not allow the fulfilment of their current contracts. Therefore the duties could eventually lead to their bankruptcy. They also maintained that Union producers were not able or willing to supply the OFC corresponding to their requirements on time and that there would be a shortage of OFC and a considerable delay in lead times and in the rollout of networks if measures were introduced. In addition, Connect Com argued that it was not correct to give EU producers an increase in their profit margin from 8 % to 12 % while reducing the profit margin of the importers to zero or even to losses.

(737) The Commission has found that while the cooperating importers have stable business ties with their suppliers of OFC in China, they do not have long-term contracts with these suppliers fixing volumes or purchase prices. In fact, the importers place regular orders for larger volumes of OFC and they receive a price offer for each order from the Chinese producers. Although the importers claim that it would be costly and time consuming to switch suppliers, they all buy from other sources too (i.e. in the Union, United States, India, Kazakhstan, Belarus, Ukraine) and they had successfully found new suppliers during the alleged 2017-18 shortage. This indicates that, while the importers would indeed need to pay a higher price for the orders already placed but not yet received before the imposition of measures, it would not be excessively difficult for them to switch to new suppliers in a relatively short time.

(738) While the countervailing measures are likely to have a certain negative impact on importers and may reduce their profitability, the importers will be able to absorb and/or pass on some of the cost increase caused by the duty to their customers given their significant profit margins of over 20 %. They also have the possibility to find alternative sources of supply, including from other third countries and the Union industry. Therefore, the combination of other sources of supply for the product concerned and the ability to absorb and/or at least partially pass on the effect of the duties to their customers would mean that the unrelated importers are not disproportionally affected by the imposition of the measures.

(739) In its comments on final disclosure, CCCME argued that the imposition of countervailing measures would be detrimental the EU's digitalization agenda and connectivity targets as they will result in critical shortages of this crucial product for 5G networks and will lead to a price increase, without providing evidence in this respect.

(740) The allegations regarding quality differences, shortage of supply, inability or unwillingness of the Union industry to supply the market, price differences, profitability of importers, risks of monopoly or oligopoly, incentives to innovate and deployment times for telecom networks were unsubstantiated and could not thus be accepted.

(741) In any event, the investigation has shown that one of the important facets of injury in this case is precisely the fact that, due to Chinese dumped imports, Union industry could not achieve the level of profits that would enable it to continue to invest *inter alia* in further capacity to meet the growing demand on the expanding Union market. The expected impact of measures is precisely to restore a level playing field and allow for such profits, investment and expansion of capacity to take place.

(742) In its comments on final disclosure, Connect Com argued that raw material costs were rising significantly across all sectors and that the production of broadband cables was also affected. In this regard, Connect Com gave examples of price increase of an undisclosed Chinese supplier from the second quarter of 2020 to the second quarter of 2021. In this respect, Connect Com argued that there was an urgent need to expand broadband cable networks in Europe but the demand could not be met by the Union producers in the short term at competitive and acceptable prices and therefore duties should not be imposed or should at least be suspended.

(743) Neither the representativeness nor the effect of this price increase on users and importers was substantiated. Therefore, the claim was rejected.

6.3. **Interest of users and distributors**

(744) The product concerned is sourced by several industries, mainly large telecom operators, public bodies (such as municipalities) responsible for expanding the broadband network, installers and operators, and distributors.

(745) A modest number of users cooperated in the investigation: two large telecom operators (Deutsche Telekom in Germany and Proximus in Belgium), five network installers and operators, one distributor and a small user. Together the cooperating users account for under 12 % of the total volume of imports of OFC from China and for under 9 % of the total volume of consumption of OFC in the EU during the IP.

(746) Many of the users' replies to the questionnaire were very deficient and did not contain any arguments or information on Union interest. None of the public bodies which procure OFC cooperated in the investigation.

(747) BYCN Axione and another user who buy OFC mainly from Union producers did not express opposition to measures. Deutsche Telekom and Spanish distributor Comercial Electro Industrial S.A. ('Comel') would oppose imposition of measures.

(748) Deutsche Telekom expects an increase in demand for OFC due to the massive 5G rollout and maintains that OFC is a worldwide market with standardized technology, global deployment and suppliers. It argues that duties on OFC from China can lead to significant issues to secure Union cable demands and risk hindering or delaying network rollouts and would lead to a significant cost increase for EU customers. It also claims that prices have decreased due to existing overcapacities and all players have invested in increasing capacity during the alleged shortage of supply a few years ago.

(749) The Commission concluded that it was inevitable that countervailing duties would have cost implications for users who purchase their OFC from China, but that this was due to the unfair export behaviour of Chinese exporters. Furthermore, the investigation established that OFC represents only a minor share of the total rollout cost of digital networks projects - in the case of 5G being much less than 5 %. The purchases of the product concerned by the cooperating telecom operators represent a marginal percentage of company turnover, and the firm purchase a significant part of its OFC from other sources. With regard to the claim of the other user that it is difficult to switch suppliers, as explained at recital (737) other importers have also found to buy from different sources in third countries. Likewise, users also have the possibility to find alternative sources of supply, including suppliers from other third countries. As demand for OFC is expected to expand in the coming years, users and distributors will compete on a larger market than previously. This is an opportunity for them to keep and develop their business even if their prices increase due to the countervailing duties.

(750) It is further underlined that the existence of overcapacity driven by China does not justify unfair trade practices whose injury to the Union industry jeopardises its future, as well as diversity of supply and thus competition in the Union market.

(751) Therefore, the Commission concluded that users and distributors are not disproportionally affected by the imposition of the measures.

6.4. **Other factors**

(752) Optical fibre cables are needed to build fast broadband networks and are therefore of high importance for citizens, businesses and public entities across the EU who depend on these networks for home working, home learning, for running a business or providing services. The investment through the NextGenerationEU program ([152]) is one of the main priorities of the European Union which also aims to deploy high technology broadband infrastructure reaching every corner of the EU. Optical fibre cables are thus key for the EU's Digital Decade ([153]) and also for its digital sovereignty.

(753) Given the importance of the product concerned in light of the above public objectives, the Commission has carefully analysed the impact of potential measures on the rollout of broadband network projects.

(754) Several parties argued that consumers and public budgets in the Union would be harmed in case measures were imposed as the price of OFC and thus the total price of network projects would rise.

(755) The Commission has therefore analysed the cost of OFC in the total cost of the network projects. The investigation has shown that OFC represents only a minor share of the total rollout cost of digital networks. In fact, the construction works (i.e. digging the ground in order to place the cables) is the most significant cost item in these projects accounting to around 80 % of the costs. The remaining 20 % is constituted by material costs which include also other products such as ducts, cabinets and connectors. The Commission has found that OFC represents a minor proportion of total network project costs in the case of 5G being less than 5 % according to one of the large users. EU producers and the cooperating importers have also claimed that OFC represents around 5-10 % of the total costs of network projects.

(756) The modest level of cooperation of the major EU network operators and public bodies responsible for the large network projects also suggests that possible measures on OFC would not have a substantial impact on the cost and the timing of these projects.

6.5. **Conclusion on Union interest**

(757) The investigation found that there is sufficient capacity in the Union and in other third countries to replace imports originating in China. Furthermore, the imposition of countervailing measures would enable the Union industry to invest in their Union production sites and new technologies to the benefit the user industry. At the same time, measures would not prevent imports from third countries (including China) from competing fairly on the Union market. Even if the demand for OFC increases in the coming years as expected by market players, importers and users of the product concerned would not run any noticeable risks of shortage of supply and the rollout of the optical fibre broadband network to homes and businesses would thus not be delayed.

(758) Overall, while in the absence of measures users, importers, final customers and public budgets may benefit from cheaper products in the short term, the subsidised imports from China would inevitably drive the Union producers out of the Union market, resulting in the loss for the users industry of valuable sources of supply and potentially in increase of import prices in the absence of competition from the Union producers. Finally, survival of the Union producers is key for the EU's digital sovereignty.

(759) On the basis of the above, the Commission concluded that there were no compelling reasons that it was not in the Union interest to impose measures on imports of OFC originating in the People's Republic of China at this stage of the investigation.

([152]) In her 2020 State of the Union address, Commission President Ursula von der Leyen stated: *"The investment boost through NextGenerationEU is a unique chance to drive expansion to every village. This is why we want to focus our investments on secure connectivity, on the expansion of 5G, 6G and fibre. NextGenerationEU is also a unique opportunity to develop a more coherent European approach to connectivity and digital infrastructure deployment."*
https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_20_1655.

([153]) Communication from the Commission to the European Parliament, the Council, the European Economic And Social Committee and the Committee of The Regions: 2030 Digital Compass: the European way for the Digital Decade, Brussels, 9.3.2021 COM(2021) 118 final.

7. DEFINITIVE COUNTERVAILING MEASURES

(760) In view of the conclusions reached with regard to subsidisation, injury, causation, and Union interest, and in accordance with Article 15 of the basic Regulation, a definitive countervailing duty should be imposed.

7.1. Level of the definitive countervailing measures

(761) Article 15(1), third subparagraph of the basic Regulation provides that the amount of the definitive countervailing duty shall not exceed the amount of countervailable subsidies established.

(762) Article 15(1), fourth subparagraph states that *'where the Commission, on the basis of all the information submitted, can clearly conclude that it is not in the Union's interest to determine the amount of measures in accordance with the third subparagraph, the amount of the countervailing duty shall be less if such lesser duty would be adequate to remove the injury to the Union industry'*.

(763) No such information has been submitted to the Commission, and therefore the level of the countervailing measures will be set with reference to Article 15(1), third subparagraph.

(764) On the basis of the above, the definitive countervailing duty rates, expressed on the CIF Union border price, customs duty unpaid, should be as follows:

Company	Countervailing duty rate
FTT group: — FiberHome Telecommunication Technologies Co., Ltd — Nanjing Wasin Fujikura Optical Communication Ltd — Hubei Fiberhome Boxin Electronic Co., Ltd	10,3 %
ZTT group: — Jiangsu Zhongtian Technology Co., Ltd — Zhongtian Power Optical Cable Co., Ltd	5,1 %
Other companies cooperating in both anti-subsidy and anti-dumping investigation listed in Annex I	7,8 %
Other companies cooperating in the anti-dumping investigation but not in the anti-subsidy investigation listed in Annex II	10,3 %
All other companies	10,3 %

(765) The anti-subsidy investigation was carried out in parallel with a separate anti-dumping investigation concerning the same product concerned originating from the PRC, in which the Commission imposed anti-dumping measures at the level of the dumping margin. The Commission made sure that the imposition of a cumulated duty reflecting the level of subsidisation and the full level of dumping would not result in offsetting the effects of subsidisation twice ('double-counting') in accordance with Article 24(1) and Article 15(2) of the basic Regulation.

(766) The normal value was constructed in accordance with Article 2(6a) of Regulation (EU) 2016/1036 of the European Parliament and of the Council ([154]) with reference to undistorted costs and profits in an appropriate external representative country. Consequently, in accordance with Article 15(2) of the basic Regulation and in order to avoid double counting, the Commission first imposed the definitive countervailing duty at the level of the established

([154]) 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 (OJ L 176, 30.6.2016, p. 21).

definitive amount of subsidisation and then imposed the remaining definitive anti-dumping duty, which corresponds to the relevant dumping margin reduced by the amount of the countervailing duty and up to the relevant injury elimination level established in the separate anti-dumping investigation. Since the Commission reduced the dumping margin found with the entire amount of subsidisation established in the PRC, there was no double counting issue within the meaning of Article 24(1) of the basic Regulation

(767) Given the high rate of cooperation of Chinese exporting producers, the Commission found that the level of the highest duty imposed on the sampled companies would be representative as the 'all other companies'. The 'all other companies' duty will be applied to those companies, which did not cooperate in this investigation.

(768) In accordance with Article 15(3) of the basic Regulation, the total subsidy amount for the cooperating exporting producers not included in the sample was calculated on the basis of the total weighted average amount of countervailing subsidies established for the cooperating exporting producers in the sample with the exclusion of negligible amounts as well as the amount of subsidies established for items, which are subject to the provisions of Article 28(1) of the basic Regulation. However, the Commission did not disregard findings based partially on facts available to determine those amounts. Indeed, the Commission considered that the facts available and used in those cases did not affect substantially the information needed to determine the amount of subsidisation in a fair manner, so that exporters who were not asked to cooperate in the investigation will not be prejudiced by using this approach.

(769) On the basis of the above, the rates at which such duties will be imposed are set as follows:

Company	Dumping margin	Subsidy rate	Injury elimination level	Countervailing duty rate	Anti-dumping duty rate
FTT Group: — FiberHome Telecommunication Technologies Co., Ltd — Nanjing Wasin Fujikura Optical Communication Ltd — Hubei Fiberhome Boxin Electronic Co., Ltd	44,0 %	10,3 %	61,3 %	10,3 %	33,7 %
ZTT Group: — Jiangsu Zhongtian Technology Co., Ltd — Zhongtian Power Optical Cable Co., Ltd	19,7 %	5,1 %	42,0 %	5,1 %	14,6 %
Other companies cooperating in both anti-subsidy and anti-dumping investigation listed in Annex I	31,2 %	7,8 %	52,7 %	7,8 %	23,4 %
Other companies cooperating in the anti-dumping investigation but not in the anti-subsidy investigation listed in Annex II	31,2 %	10,3 %	52,8 %	10,3 %	20,9 %
All other companies	44,0 %	10,3 %	61,3 %	10,3 %	33,7 %

(770) The individual company countervailing duty rate specified in this Regulation was established on the basis of the findings of the present investigation. Therefore, it reflects the situation found during the investigation with respect to the company concerned. This duty rate (as opposed to the countrywide duty applicable to 'all other companies') is thus exclusively applicable to imports of products originating in the country concerned and produced by the company mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this Regulation, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.

(771) A company may request the application of these individual duty rates if it changes subsequently the name of its entity. The request must be addressed to the Commission. 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 regulation informing about the change of name will be published in the *Official Journal of the European Union*.

7.2. **Special monitoring clause**

(772) To minimise the risks of circumvention due to the difference in duty rates, special measures are needed to ensure the application of the individual countervailing duties. The companies with individual countervailing duties must present a valid commercial invoice to the customs authorities of the Member States. The invoice must conform to the requirements set out in Article 1(3) of this Regulation. Imports not accompanied by that invoice should be subject to the countervailing duty applicable to 'all other companies'.

(773) While presentation of this invoice is necessary for the customs authorities of the Member States to apply the individual rates of countervailing duty to imports, it is not the only element to be taken into account by the customs authorities. Indeed, even if presented with an invoice meeting all the requirements set out in Article 1(3) of this Regulation, the customs authorities of Member States should carry out their usual checks and should, like in all other cases, require additional documents (shipping documents, etc.) for the purpose of verifying the accuracy of the particulars contained in the declaration and ensure that the subsequent application of the lower rate of duty is justified, in compliance with customs law.

(774) Should the exports by one of the companies benefiting from lower individual duty rates increase significantly in volume after the imposition of the measures concerned, such an increase in volume could be considered as constituting in itself a change in the pattern of trade due to the imposition of measures within the meaning of Article 23(1) of the basic Regulation. In such circumstances and provided the conditions are met an anti-circumvention investigation may be initiated. This investigation may, inter alia, examine the need for the removal of individual duty rate(s) and the consequent imposition of a countrywide duty.

(775) In order to ensure a proper enforcement of the countervailing duty, the duty level for all other companies should not only apply to the non-cooperating exporting producers, but also to those producers, which did not have any exports to the Union during the investigation period.

8. **DISCLOSURE**

(776) Interested parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive countervailing duty on imports of optical fibre cables originating in the PRC. Interested parties were given the opportunity to provide comments on the accuracy of the calculations specifically disclosed to them.

9. **FINAL PROVISIONS**

(777) In view of Article 109 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council ([155]), 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.

(778) As explained in recitals (765) and (769) above, the Commission deducted from the dumping margin part of the subsidy amount in order to avoid double counting. Thus, should any modification or removal of the definitive countervailing duties occur, the level of anti-dumping duties should be automatically increased by the same proportion in order to reflect the actual extent of double counting as a result of this modification or removal. This change of the anti-dumping duties should take place as from the entry into force of this regulation.

(779) The measures provided for in this Regulation are in accordance with the opinion of the Committee, established by Article 15(1) of Regulation (EU) 2016/1036 ([156]),

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive countervailing duty is imposed on imports of single mode optical fibre cables, made up of one or more individually sheathed fibres, with protective casing, whether or not containing electric conductors currently falling under CN code ex 8544 70 00 (TARIC code 8544 70 00 10) and originating in the People's Republic of China.

The following products are excluded:

(i) cables in which all the optical fibres are individually fitted with operational connectors at one or both extremities; and

(ii) cables for submarine use. Cables for submarine use are plastic insulated optical fibre cables, containing a copper or aluminium conductor, in which fibres are contained in metal module(s).

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

Company	Definitive countervailing duty	TARIC additional code
FTT Group: 1. FiberHome Telecommunication Technologies Co., Ltd 2. Nanjing Wasin Fujikura Optical Communication Ltd 3. Hubei Fiberhome Boxin Electronic Co., Ltd	10,3 %	C696
ZTT Group: — Jiangsu Zhongtian Technology Co., Ltd — Zhongtian Power Optical Cable Co., Ltd	5,1 %	C697
Other companies cooperating in both anti-subsidy and anti-dumping investigation listed in Annex I	7,8 %	

([155]) 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).

([156]) As last amended by Regulation (EU) 2018/825 of the European Parliament and of the Council of 30 May 2018 amending Regulation (EU) 2016/1036 on protection against dumped imports from countries not members of the European Union and Regulation (EU) 2016/1037 on protection against subsidised imports from countries not members of the European Union (OJ L 143, 7.6.2018, p. 1).

Other companies cooperating in the anti-dumping investigation but not in the anti-subsidy investigation listed in Annex II	10,3 %	
All other companies	10,3 %	C999

3. The application of the individual countervailing duty rates specified for the companies mentioned in paragraph 2 shall be conditional upon presentation to the Member States' customs authorities of a valid commercial invoice, on which shall appear a declaration dated and signed by an official of the entity issuing such invoice, identified by his/her name and function, drafted as follows: 'I, the undersigned, certify that the (volume) of (product concerned) sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in the People's Republic of China. I declare that the information provided in this invoice is complete and correct.' 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.

5. The customs declaration shall indicate the length in kilometres of the product described in Article 1(1), provided this indication is compatible with Annex I to Council Regulation (EEC) No 2658/87 ([157]).

6. In cases where the countervailing duty has been subtracted from the anti-dumping duty for certain exporting producers, refund requests under Article 21 of Regulation (EU) 2016/1037 shall also trigger the assessment of the dumping margin for that exporting producer prevailing during the refund investigation period.

Article 2

Commission Implementing Regulation (EU) 2021/2011 ([158]) is amended as follows:

(1) Article 1(2) is replaced by the following:

'2. The rates 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 produced by the companies listed below shall be as follows:

Company	Definitive anti-dumping duty	TARIC additional code
FTT Group: — FiberHome Telecommunication Technologies Co., Ltd — Nanjing Wasin Fujikura Optical Communication Ltd — Hubei Fiberhome Boxin Electronic Co., Ltd	33,7 %	C696
ZTT Group: — Jiangsu Zhongtian Technology Co., Ltd — Zhongtian Power Optical Cable Co., Ltd	14,6 %	C697
Other companies cooperating in both anti-subsidy and anti-dumping investigation listed in Annex I	23,4 %	
Other companies cooperating in the anti-dumping investigation but not in the anti-subsidy investigation listed in Annex II	20,9 %	
All other companies	33,7 %	C699'

([157]) Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 7.9.1987, p. 1), Annex I 'Combined Nomenclature'.

([158]) Commission Implementing Regulation (EU) 2021/2011 of 17 November 2021 imposing a definitive anti-dumping duty on imports of optical fibre cables originating in the People's Republic of China (OJ L 410, 18.11.2021, p. 51).

(2) a new Article 1(7) is inserted:

'7. Should the definitive countervailing duties imposed by Article 1 of Commission Implementing Regulation (EU) 2022/72 (*) be modified or removed, the duties specified in paragraph 2 or in Annexes I or II shall be increased by the same proportion limited to the actual dumping margin found or the injury margin found as appropriate per company and from the entry into force of this Regulation.

(*) Commission Implementing Regulation (EU) 2022/72 of 18 January 2022 imposing definitive countervailing duties on imports of optical fibre cables originating in the People's Republic of China and amending Implementing Regulation (EU) 2021/2011 imposing a definitive anti-dumping duty on imports of optical fibre cables originating in the People's Republic of China (OJ L 12, 19.1.2022, p. 34)';

(3) a new Article 1(8) is inserted:

'8. In cases where the countervailing duty has been subtracted from the anti-dumping duty for certain exporting producers, refund requests under Article 21 of Regulation (EU) 2016/1037 shall also trigger the assessment of the dumping margin for that exporting producer prevailing during the refund investigation period.';

(4) Annex I is replaced by Annexes I and II to this Regulation.

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, 18 January 2022.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX I

Other companies cooperating in both anti-subsidy and anti-dumping investigation

Name of the company	TARIC additional code
Dongjie Optical Technology (Suzhou) Co., Ltd	C700
Fasten Group: Jiangsu Fasten Optical Communication Technology Co., Ltd Jiangsu Fasten Optical Cable Co., Ltd	C701
Hangzhou Futong Communication Technology Co., Ltd	C702
Hangzhou Tuolima Network Technologies Co., Ltd	C703
Jiangsu Etern Co., Ltd	C704
Jiangsu Hengtong Group: Hengtong Optic-Electric Co., Ltd Guangdong Hengtong Optic-electronical Technology Co., Ltd Jiangsu Hengtong Smart Grids Co., Ltd Zhejiang Dongtong Optical Network and IOT Technology Co., Ltd	C705
Jiangsu Tongguang Optical Fiber Cable Co., Ltd	C706
LEONI Cable (China) Co., Ltd	C707
Nanjing Huamai Technology Co., Ltd	C708
Ningbo Geyida Cable Technology Co., Ltd	C709
SDG group: — Shenzhen SDG Information Co., Ltd — Shenzhen SDGI Optical Network Technologies co., Ltd	C725
Shanghai Qishen International Trade Co., Ltd	C712
Shenzhen Wanbao Optical Fiber Communication Co., Ltd	C713
Sichuan Huiyuan Optical Communications Co., Ltd	C714
Suzhou Furukawa Power Optic Cable Co., Ltd	C715
Suzhou Torres Optic-electric Technology Co., Ltd	C716
Twentsche (Nanjing) Fibre Optics Ltd	C717
XDK Communication Equipment (Huizhou) Ltd	C718
Yangtze Optical Fibre and Cable group: — Yangtze Optical Fibre and Cable Joint Stock Limited Company — Yangtze Optical Fibre and Cable (Shanghai) Company Ltd — Yangtze Zhongli Optical Fibre and Cable (Jiangsu) Co., Ltd — Sichuan Lefei Optoelectronic Technology Company Limited — Everpro Technology Company Limited	C719

ANNEX II

Other companies cooperating in anti-dumping investigation but not in anti-subsidy investigation

Name of the company	TARIC additional code
Anhui Tianji Information Technology Co., Ltd	C698
Prysmian Wuxi Cable Co., Ltd	C710