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

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union ('the basic Regulation') ([1]), and in particular Article 9(4) thereof,

Whereas:

1. PROCEDURE

1.1. Initiation

(1) On 24 September 2020, the European Commission ('the Commission') initiated an anti-dumping investigation 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 5 of the basic Regulation. It published a Notice of initiation in the *Official Journal of the European Union* ([2]) ('the Notice of initiation').

(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. The complaint contained evidence of dumping and of resulting material injury that was sufficient to justify the initiation of the investigation.

(3) On 21 December 2020, the Commission initiated an anti-subsidy investigation with regard to imports of optical fibre cables originating in the People's Republic of China and commenced a separate investigation. It published a Notice of initiation in the *Official Journal of the European Union* ([3]).

1.2. Registration of imports

(4) Following a request from the complainant supported by the required evidence on 17 December 2020, the Commission made imports of the product concerned subject to registration under Article 14(5) of the basic Regulation by Commission Implementing Regulation (EU) 2021/548 of 29 March 2021 ('the registration Regulation') ([4]).

1.3. Interested parties

(5) 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 known Union producers, the known Union associations, the known exporting producers, the authorities of China, the known importers, the known traders and users about the initiation of the investigation and invited them to participate.

([1]) OJ L 176, 30.6.2016, p. 21.

([2]) 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).

([3]) Notice of initiation of an anti-subsidy proceeding concerning imports of optical fibre cables originating in the People's Republic of China (OJ C 442, 21.12.2020, p. 18).

([4]) Commission Implementing Regulation (EU) 2021/548 of 29 March 2021 making imports of optical fibre cables originating in the People's Republic of China subject to registration (OJ L 109, 30.3.2021, p. 71).

(6) 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. Hearings took place with the complainant and with one sampled importer (Cable 77 Danmark ApS ('Cable 77')).

1.4. **Comments on initiation**

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

(8) Connect Com claimed that there was a need for more information and clarification regarding the complaint. In particular, it claimed that the deterioration of the market situation of the EU industry was not due to favourably priced imports from the People's Republic of China but to relatively high internal transfer prices for intercompany transactions. Also, Connect Com claimed that the list of EU producers was incomplete in the complaint. As these comments concern the substance of the case rather than initiation, they are addressed below in recital (415) and in recitals (539) to (541).

(9) On the substantive requirements for the initiation of the investigation, the CCCME claimed that the complainant performed an incomplete injury assessment in the complaint, as the complainant did not provide figures on six of the fifteen injury indicators enumerated in Article 3.4 of the WTO Anti-Dumping Agreement ('ADA') (notably: productivity, return on investment, cash flow, wages, growth and the ability to raise capital or investments). Moreover, the CCCME argued that the complainant failed to provide any reliable/comparable data on sales prices.

(10) The Commission recalls, as the complainant already noted in its response to the comments of the GOC and the CCCME, that the applicable legal standard for the initiation of an anti-dumping investigation is Article 5.2 of the ADA, whereas Article 3.4 of the ADA constitutes the standard for the review by the investigating authority, in this case the Commission. Therefore, the complainant was bound to fulfil the requirements in Article 5.2 of the ADA, which is mirrored by Article 5(2) of the basic Regulation. Whereas, as the CCCME noted, Article 5.2. of the ADA makes reference to Article 3.4 of the ADA, and that Article 5(2) of the basic Regulation makes reference to Article 3(5) of the basic Regulation, such a reference is merely illustrative in both instances ('*such as* [factors and indices] *listed in paragraphs 2 and 4 of Article 3*' and '*such as* [factors and indices] *listed in Article 3(3) and (5)*') ([5]). Article 5.2 of the ADA and Article 5(2) of the basic Regulation provide that a complaint should include evidence of: a) dumping; b) injury; and c) a causal link between the dumped imports and alleged injury. The EU case-law clarifies that '*the quantity and quality of the information provided by the complainant do not need to be at the level required for a preliminary or final determination of the existence of dumping, injury or a causal link*' ([6]). As a consequence, '*evidence which is insufficient in quantity or quality to justify a preliminary or final determination of dumping, injury or causation, may nevertheless be sufficient to justify the initiation of an investigation*' ([7]).

(11) 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.

([5]) See in this respect, WTO Panel Report, *Mexico – Anti-Dumping Investigation of High Fructose Corn Syrup (HFCS) from the United States* (WT/DS132/R), 28 January 2000, para. 7.73.

([6]) Judgement of 15 December 2016, *Gul Ahmed Textile Mills v Council*, T-199/04 RENV, EU:T:2016:740, paras. 92-93.

([7]) Judgment of 11 July 2017, *Viraj Profiles v Council*, T-67/14, EU:T:2017:481, para. 98.

(12) Article 19 of the basic Regulation and Article 6(5) of the ADA 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.

(13) The Commission assessed and accepted that data on sales prices fell under these categories. In any event, the complainants provided a meaningful summary of the information contained in the limited annexes of the complaint so that interested parties may have a 'reasonable understanding of the substance of the information submitted in confidence' as set forth by Article 19(2) of the basic Regulation. The complainants adequately summarised information on sales prices, without disclosing sensitive company-specific data in annexes 44b and 67 of the complaint amongst other.

(14) The CCCME also submitted 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 is not in itself an indicator of material injury. Sales volumes increased as well, while the Union industry retains a market share of almost 80 % and the profitability trend is unclear and does not show injury. In this respect, the complainant replied that the increase in the Union consumption benefitted Chinese imports, that the remaining market share does not bear relevance for the assessment of the injury and that effects of tenders won by Chinese producers will materialise after a certain time lag. The CCCME responded that consumption, production and production capacity data show that the Union industry was able to supply most of the increase in EU consumption, while expanding its business.

(15) In addition, the CCCME claimed that the complaint contained no evidence of a causal link between dumped imports and injury. Firstly, the CCCME argued that there was no correlation between imports from China and the development of the Union industry. By way of example, the CCCME 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 cannot therefore be attributable to China, and, if there is injury, this is a self-inflicted injury due to the Union industry's slow reaction to market movements. The complainant reacted to this CCCME's claim, stating that a causal link can be established, since the injury happened at the same time as the increase in imports from China, and that third-country imports were not considered because they were either *de minimis* or showed no evidence of injurious dumping. 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.

(16) Furthermore, the CCCME stated that import data presented by the complainant are overstated because they were based on a wrong assumption in terms of volume, which would have resulted in a distorted increase in imports. Notably, imports from China would have decreased in 2019 instead of increasing. In addition undercutting calculations in the complaint were flawed because they referred only to one exporter in one specific tender. In this respect, the complainant replied 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. 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).

(17) The Commission considers that none of the CCCME allegations disproved the conclusion that there was sufficient evidence for the initiation of an anti-dumping proceeding. Indeed, the complaint contained sufficient evidence that dumped imports had a materially injurious impact on the state of the Union industry. The specific injury analysis of the complaint shows 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 own prices. This appears to have had a materially injurious impact upon the state of the Union industry, shown for example by decreases in sales and market share or by a deterioration of financial results.

(18) The Commission did not agree that the undercutting and underselling calculations in the complaint were incorrect. The methodology is explained in the complaint under section 8.1.2 and annexes cited therein, which contain separate undercutting and underselling calculations for each representative product type. At initiation stage, the Commission was satisfied with the evidence of the undercutting and underselling brought forward by the applicants and considered it sufficient evidence to initiate the investigation.

(19) In relation to sufficient evidence of a causal link, the following should be noted. Firstly, the situation of the Union industry deteriorated at the same time as the increase in dumped imports at prices which significantly undercut those of the Union industry. This strongly shows the existence of a causal link. Secondly, concerning other factors such as third-country imports, their impact is not as such as to cause deterioration of the Union industry, whereas, the analysis of the complaint did not reveal self-inflicted injury.

(20) During a hearing which took place following to the non-imposition of provisional measures, CCCME submitted a series of comments concerning the injury, causation and Union interest analysis contained in the complaint. The Commission considers that these comments concerning the complaint cannot be received as raised at this very late stage of the investigation beyond the deadline set at point 5.2 of the Notice of initiation. In any event, most of these comments are repetitions of arguments already raised and addressed in this section and do not show any lack of sufficient evidence when the Commission decided to initiate this investigation. As concerns the new elements submitted, in addition to the timeframe provided in point 5.2 of the Notice of initiation, the Commission recalls that this stage of the investigation is well beyond the deadlines for submission of new information as set out in point 7 of the Notice of initiation.

(21) In its comments on final disclosure, Connect Com claimed that the information in the complaint showed trends that do not justify the imposition of anti-dumping duties. Connect Com also requested the disclosure of the confidential information in paragraphs 105 and 109 of the complaint regarding the profit of certain Union producers and the tenders lost to the Chinese producers.

(22) In this respect the Commission recalled that pursuant to point 5.2 of the Notice of initiation, interested parties had a possibility to submit comments on the complaint and any aspects regarding the initiation of the investigation within 37 days of the date of publication of the Notice of initiation. Therefore, these comments cannot be considered after the definitive disclosure. In any event, the information requested by Connect Com is confidential by nature and cannot be disclosed to other interested parties.

(23) On the basis of the above, the Commission confirmed that the complainant provided sufficient evidence of dumping, injury and a causal link, thereby satisfying the requirements set out in Article 5.2 of the ADA and Article 5(2) of the basic Regulation. Therefore, the Commission complied with all the statutory requirements for initiation.

(24) The Commission considered and addressed all the other relevant comments in the sections below.

1.5. **Sampling**

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

1.5.1. *Sampling of Union producers*

(26) 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.

1.5.2. *Sampling of importers*

(27) 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.

(28) 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.

1.5.3. *Sampling of exporting producers in China*

(29) 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.

(30) Thirty exporting producers in the country concerned provided the requested information and agreed to be included in the sample. In accordance with Article 17(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 exporting producers of optical fibre cables from China to the Union during the investigation period.

(31) In accordance with Article 17(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.

(32) 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') and the Mission of the People's Republic of China to the European Union.

(33) YOFC and the Mission of the People's Republic of China to the European Union argued that considering the large number of cooperating exporting producers, the two sampled companies accounted for a low proportion of export volume to the Union that were not representative for the Chinese exporters. Furthermore, it was 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. The Mission of the People's Republic of China to the European Union referred to the anti-dumping investigation of imports of steel road wheels from China ([8]) in this regard, in which it was alleged that the rights of the other cooperating exporters were impaired as the sample made of two exporting producers was reduced to one after one sampled exporting producer decided, at a later stage, not to cooperate in the investigation. It was further stated that the Commission's practice in previous anti-dumping investigations was to sampled at least three companies. Finally, it was claimed that a sampled of three companies would be more appropriate in view of the fact that the exporters may have different sales channels, type of products and customers and different competition situation.

([8]) Commission Implementing Regulation (EU) 2019/1693 of 9 October 2019 imposing a provisional anti-dumping duty on imports of steel road wheels originating in the People's Republic of China (OJ L 259, 10.10.2019, p. 15).

(34) Pursuant Article 17(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 (30), 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 (five manufacturing entities and seven sales entities), and at least four exporting producers with a variety of sales channels and customers, and a large number of products. 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 17(1) of the basic Regulation. Regarding the alleged practice of the Commission to select a sample of at least three companies, it is noted that, as explained above, the selection of the sample was based on the largest representative volume of production, sales or exports which could be reasonably be investigated within the time available in this case. The claim of differences in competitive situation was rejected as the parties did not explain in what way this would put the representativity of the sample in question and furthermore how a third sampled company would address the differences in competition if any.

(35) YOFC stated that including YOFC in the sample would not be burdensome for the Commission as, due to COVID-19 pandemic, the Commission does not conduct on-spot verification visits.

(36) While the Commission's team has not conducted on-spot verifications visits in this case, it conducted remote cross-checking ('RCCs') of questionnaire replies. RCCs do not mean that the Commission saved time during the investigation. It is rather the opposite as more time is needed for the preparation of the verification of the information provided by companies when it is done remotely. Therefore, the claim was rejected.

(37) 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. It was also claimed that some of YOFC's Union customers were also cooperating in the investigation as unrelated importers and therefore including YOFC in the sample might help the Commission verify a complete sales chain from China to the Union market.

(38) 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. YOFC was not among the two largest exporting producers which were selected 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, neither the fact that one sampled Union producer holds shares in an exporting producer or that exporting producers' customers are cooperating in the investigation is relevant for the selection of the sample of the exporting producers. Therefore, these claims were rejected.

1.6. **Individual examination**

(39) Eight of the Chinese exporting producers that returned the sampling form informed the Commission of their intention to request individual examination under Article 17(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.

(40) 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.

1.7. **Questionnaire replies and verification visits**

(41) The Commission sent a questionnaire concerning the existence of significant distortions in China within the meaning of Article 2(6a)(b) of the basic Regulation to the Government of the People's Republic of China ('GOC'). The questionnaires for the Union producers, importers, users, and exporting producers in the China were made available online ([9]) on the day of initiation.

(42) The Commission sought and verified all the information deemed necessary for the determination of dumping, 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') ([10]), the Commission was unable to carry out verification visits at the premises of the sampled companies and cooperating users. Instead, the Commission performed RCCs of the information provided by the following companies via videoconference:

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 ('FTT'),

— Nanjing Wasin Fujikura Optical Communication Ltd., Nanjing ('NW'),

ZTT group:

— Jiangsu Zhongtian Technology Co., Ltd., Nantong ('ZT'),

— Zhongtian Power Optical Cable Co., Ltd., Nantong ('ZP')

Related trader in China:

— ZTT International Limited, Nantong,

Related trader in Hong Kong:

— Sumec Hong Kong Company Limited, Hong Kong,

([9]) https://trade.ec.europa.eu/tdi/case_details.cfm?id=2479

([10]) 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).

Related importers in the Union:

— FiberHome International Poland Sp. z o.o, Warszawa, Poland,

— FiberHome International Germany GmbH, Bonn, Germany,

— ZTT Europe GmbH, Tauberbischofsheim, Germany.

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

(43) Given the technical complexity of the case, the Commission decided not to impose provisional measures and to continue the investigation in order to collect further information.

(44) On 23 April 2021, in accordance with Article 19a(2) of the basic Regulation, the Commission informed Member States and all interested parties that no provisional duties would be imposed on imports of optical fibre cables originating in China and that the investigation would continue.

(45) Following the disclosure of the Commission's intention not to impose provisional measures, comments and requests for clarification were received from Cable 77, Eku Kabel, Infraconcept and Comel.

(46) The parties who so requested were granted an opportunity to be heard. A hearing took place with Cable 77 and with CCCME.

(47) The Commission continued seeking and verifying all information it deemed necessary for its definitive findings. In this respect, 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 verified by the Commission in an additional round of RCCs.

(48) Official import statistics are reported in kilograms, and CN code 8544 70 00 contains products other than the product concerned. To obtain a more precise picture of imports of the product concerned, 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.

1.9. **Disclosure**

(49) On 30 June 2021, the Commission informed all interested parties of the essential facts and considerations on the basis of which it intended to impose a definitive anti-dumping duty on imports of OFC originating in China ('final disclosure'). All parties were granted a period within which they could make comments on the final disclosure. The Commission received comments from the GOC, CCCME, the two sampled Chinese exporting producers, all cooperating unrelated importers and the complainant. On the basis of these comments, the Commission modified some of the considerations on the basis of which it intended to impose a definitive anti-dumping duty and informed all interested parties thereof ('additional final disclosure') on 2 September 2021.

(50) Following final disclosure and additional 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. Hearings took place with both sampled exporting producers, CCCME and one importer (Cable77).

1.10. **Investigation period and period considered**

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

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product concerned

(52) 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').

(53) 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).

(54) 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

(55) 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.

(56) The Commission decided at this stage that those products are therefore like products within the meaning of Article 1(4) of the basic Regulation.

2.3. Claims regarding product scope

(57) 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.

(58) In its comments following final disclosure, the ZTT group reiterated its claims to exclude OPGW and OPPC cables from the investigation, arguing that the sampled Union producers did not sell the product types sold by ZTT group during the investigation period.

(59) OPGW and OPPC cables involve 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 transmit power and have certain features (such as electrical features, no flame resistance requirement, high tensile strength requirement, etc.) does not detract from this fact.

(60) 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 fact that the specific PCNs sold by the ZTT group during the IP were not sold by the sampled Union producers does not detract from the fact that Union industry is producing OPGW and OPPC cables which compete with the Chinese exporters.

(61) Based on the foregoing, the Commission concluded that OPGW and OPPCare to be considered as a type of optical fibre cables 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, OPGW and OPPC cables are optical fibre cables as they include optical fibres, the construction of the cable core is the same and they are designed to be used for data transmission. Moreover, the product control numbers used by the Commission for the calculation of dumping and injury margins properly identify OPGW and OPPC cables and adequately enable the Commission to conduct a fair price comparison between Union and Chinese producers. Therefore, the claim was rejected.

(62) 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. **DUMPING**

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

(63) In view of the sufficient evidence available at the initiation of the investigation pointing to the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation with regard to China, the Commission considered it appropriate to initiate the investigation with regard to the exporting producers from this country having regard to Article 2(6a) of the basic Regulation.

(64) Consequently, in order to collect the necessary data for the eventual application of Article 2(6a) of the basic Regulation, in the Notice of initiation the Commission invited all Chinese exporting producers to provide information regarding the inputs used for producing OFC. Twenty-five Chinese exporting producers submitted the relevant information.

(65) In order to obtain the information it deemed necessary for its investigation with regard to the alleged significant distortions, the Commission sent a questionnaire to the GOC. In addition, in point 5.3.2 of the Notice of initiation, the Commission invited all interested parties to make their views known, submit information and provide supporting evidence regarding the application of Article 2(6a) of the basic Regulation within 37 days. No reply to the requested information was provided by the GOC. Subsequently, the Commission informed the GOC that it would use facts available within the meaning of Article 18 of the basic Regulation for the determination of the existence of the significant distortions in China.

(66) Submission on the application of Article 2(6a) of the basic Regulation was received within the deadline from the GOC and the CCCME.

(67) According to Article 2(1) of the basic Regulation, '*the normal value shall normally be based on the prices paid or payable, in the ordinary course of trade, by independent customers in the exporting country*'.

(68) However, according to Article 2(6a)(a) of the basic Regulation, *'in case it is determined […] that it is not appropriate to use domestic prices and costs in the exporting country due to the existence in that country of significant distortions within the meaning of point (b), the normal value shall be constructed exclusively on the basis of costs of production and sale reflecting undistorted prices or benchmarks'*, and *'shall include an undistorted and reasonable amount of administrative, selling and general costs and for profits'*.

(69) As further explained below, the Commission concluded in the present investigation that, based on the evidence available, and in view of the lack of cooperation of the GOC as stated in recital (65), the application of Article 2(6a) of the basic Regulation was appropriate.

3.1.1. *Existence of significant distortions*

3.1.1.1. Introduction

(70) Article 2(6a)(b) of the basic Regulation defines *'significant distortions are those distortions which occur when reported prices or costs, including the costs of raw materials and energy, are not the result of free market forces as they are affected by substantial government intervention. In assessing the existence of significant distortions regard shall be had, inter alia, to the potential impact of one or more of the following elements*:

— *the market in question being served to a significant extent by enterprises which operate under the ownership, control or policy supervision or guidance of the authorities of the exporting country;*

— *state presence in firms allowing the state to interfere with respect to prices or costs;*

— *public policies or measures discriminating in favour of domestic suppliers or otherwise influencing free market forces;*

— *the lack, discriminatory application or inadequate enforcement of bankruptcy, corporate or property laws;*

— *wage costs being distorted;*

— *access to finance granted by institutions which implement public policy objectives or otherwise not acting independently of the state'*.

(71) According to Article 2(6a)(b) of the basic Regulation, the assessment of the existence of significant distortions within the meaning of Article 2(6a)(a) shall take into account, amongst others, the non-exhaustive list of elements in the former provision. Pursuant to Article 2(6a)(b) of the basic Regulation, in assessing the existence of significant distortions, regard shall be given to the potential impact of one or more of these elements on prices and costs in the exporting country of the product concerned. Indeed, as that list is non-cumulative, not all the elements need to be given regard to for a finding of significant distortions. Moreover, the same factual circumstances may be used to demonstrate the existence of one or more of the elements of the list. However, any conclusion on significant distortions within the meaning of Article 2(6a)(a) must be made on the basis of all the evidence at hand. The overall assessment on the existence of distortions may also take into account the general context and situation in the exporting country, in particular where the fundamental elements of the exporting country's economic and administrative set-up provides the government with substantial powers to intervene in the economy in such a way that prices and costs are not the result of the free development of market forces.

(72) Article 2(6a)(c) of the basic Regulation provides that *'[w]here the Commission has well-founded indications of the possible existence of significant distortions as referred to in point (b) in a certain country or a certain sector in that country, and where appropriate for the effective application of this Regulation, the Commission shall produce, make public and regularly update a report describing the market circumstances referred to in point (b) in that country or sector'*.

(73) Pursuant to this provision, the Commission has issued a country report concerning the PRC (hereinafter 'the Report') ([11]), collecting information about the existence of substantial government intervention at many levels of the economy, including specific distortions in many key factors of production (such as land, energy, capital, raw materials and labour) as well as in specific sectors (such as chemicals). The Report was placed in the investigation file at the initiation stage. Interested parties were invited to rebut, comment or supplement the evidence contained in the investigation file at the time of initiation, of which the Report was an integral part.

(74) The complaint provided additional evidence on significant distortions in the OFC sector within the meaning of Article 2(6a)(b), complementing the Report. The complainant provided evidence that the production and sale of the product concerned is affected (at least potentially) by the distortions mentioned in the Report, in particular high levels of state interference in the OFC value chain, i.e. in the OFC sector and the sectors related to the production of OFC, in particular input sectors and the factors of production.

(75) The Commission examined whether it was appropriate or not to use domestic prices and costs in the PRC, due to the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation. The Commission did so on the basis of the evidence available on the file, including the evidence contained in the Report, which relies on publicly available sources, notably on Chinese legislation, published official Chinese policy documents, reports published by international organisations and studies/articles by renowned academics, specifically identified in the Report. That analysis covered the examination of the substantial government interventions in its economy in general, but also the specific market situation in the relevant sector including the product concerned. The Commission further supplemented these evidentiary elements with its own research on the various criteria relevant to confirm the existence of significant distortions in the PRC, as also found by its previous investigations in this respect.

3.1.1.2. Significant distortions affecting the domestic prices and costs in the PRC

(76) The Chinese economic system is based on the concept of a '*socialist market economy*'. That concept is enshrined in the Chinese Constitution and determines the economic governance of the PRC. The core principle is the '*socialist public ownership of the means of production, namely, ownership by the whole people and collective ownership by the working people*'. The State-owned economy is the '*leading force of the national economy*' and the State has the mandate '*to ensure its consolidation and growth*' ([12]). Consequently, the overall setup of the Chinese economy not only allows for substantial government interventions into the economy, but such interventions are expressly mandated. The notion of supremacy of public ownership over the private one permeates the entire legal system and is emphasized as a general principle in all central pieces of legislation. The Chinese property law is a prime example: it refers to the primary stage of socialism and entrusts the State with upholding the basic economic system under which the public ownership plays a dominant role. Other forms of ownership are tolerated, with the law permitting them to develop side by side with the State ownership ([13]).

(77) In addition, under Chinese law, the socialist market economy is developed under the leadership of the Chinese Communist Party ('CCP'). The structures of the Chinese State and of the CCP are intertwined at every level (legal, institutional, personal), forming a superstructure in which the roles of CCP and the State are indistinguishable. Following an amendment of the Chinese Constitution in March 2018, the leading role of the CCP was given an even greater prominence by being reaffirmed in the text of Article 1 of the Constitution. Following the already existing first sentence of the provision: '[t]*he socialist system is the fundamental system of the People's Republic of China*' a new second sentence was inserted which reads: '[t]*he most defining feature of socialism with Chinese characteristics is the leadership of the Communist Party of China*' ([14]). This illustrates the unquestioned and ever growing control of the CCP over the economic system of the PRC. This leadership and control is inherent to the Chinese system and goes well beyond the situation customary in other countries where the governments exercise general macroeconomic control within the boundaries of which free market forces are at play.

([11]) 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.
([12]) Report – Chapter 2, p. 6-7.
([13]) Report – Chapter 2, p. 10.
([14]) http://www.gov.cn/guoqing/2018-03/22/content_5276318.htm (last viewed on 17 June 2021).

(78) The Chinese State engages in an interventionist economic policy in pursuance of goals, which coincide with the political agenda set by the CCP rather than reflecting the prevailing economic conditions in a free market ([15]). The interventionist economic tools deployed by the Chinese authorities are manifold, including the system of industrial planning, the financial system, as well as other means by which the State acts in and affects the market, such as through public investment and procurement.

(79) First, at the level of overall administrative control, the direction of the Chinese economy is governed by a complex system of industrial planning which affects all economic activities within the country. The totality of these plans covers a comprehensive and complex matrix of sectors and crosscutting policies and is present on all levels of government. Plans at provincial level are detailed while national plans set broader targets. Plans also specify the means in order to support the relevant industries/sectors as well as the timeframes in which the objectives need to be achieved. Some plans still contain explicit output targets which was also a regular feature in previous planning cycles. Under the plans, individual industrial sectors and/or projects are being singled out as (positive or negative) priorities in line with the government priorities and specific development goals are attributed to them (industrial upgrade, international expansion etc.). The economic operators, private and State-owned alike, must effectively adjust their business activities according to the realities imposed by the planning system. This is not only because of the binding nature of the plans but also because the relevant Chinese authorities at all levels of government adhere to the system of plans and use their vested powers accordingly, thereby inducing the economic operators to comply with the priorities set out in the plans (see also Section 3.1.1.5 below) ([16]).

(80) Second, concerning the allocation of financial resources, the financial system of the PRC is dominated by the State-owned commercial banks. Those banks, when setting up and implementing their lending policy need to align themselves with the government's industrial policy objectives rather than primarily assessing the economic merits of a given project (see also Section 3.1.1.8 below) ([17]). The same applies to the other components of the Chinese financial system, such as the stock markets, bond markets, private equity markets etc. Also these parts of the financial sector other than the banking sector are institutionally and operationally set up in a manner not geared towards maximizing the efficient functioning of the financial markets but towards ensuring control and allowing intervention by the State and the CCP ([18]).

(81) Third, concerning the use of different State and regulatory instruments, the interventions by the State into the economy take a number of forms. For instance, the public procurement rules are regularly used in pursuit of policy goals other than economic efficiency, thereby undermining market based principles in the area. The applicable legislation specifically provides that public procurement shall be conducted in order to facilitate the achievement of goals designed by State policies. However, the nature of these goals remains undefined, thereby leaving broad margin of appreciation to the decision-making bodies ([19]). Similarly, in the area of investment, the GOC maintains significant control and influence over the destination and magnitude of both State and private investment. Investment screening as well as various incentives, restrictions, and prohibitions related to investment are used by authorities as an important tool for supporting industrial policy goals, such as maintaining State control over key sectors or bolstering domestic industry ([20]).

(82) In sum, the Chinese economic model is based on certain basic axioms, which provide for and encourage manifold government interventions. Such substantial government interventions are at odds with the free play of market forces, resulting in a distortion of the effective allocation of resources in line with market principles ([21]).

([15]) Report – Chapter 2, p. 20-21.
([16]) Report – Chapter 3, p. 41, 73-74.
([17]) Report – Chapter 6, p. 120-121.
([18]) Report – Chapter 6. p. 122-135.
([19]) Report – Chapter 7, p. 167-168.
([20]) Report – Chapter 8, p. 169-170, 200-201.
([21]) Report – Chapter 2, p. 15-16, Report – Chapter 4, p. 50, p. 84, Report – Chapter 5, p. 108-109.

3.1.1.3. Significant distortions according to Article 2(6a)(b), first indent of the basic Regulation: the market in question being served to a significant extent by enterprises which operate under the ownership, control or policy supervision or guidance of the authorities of the exporting country

(83) In the PRC, enterprises operating under the ownership, control and/or policy supervision or guidance by the State represent an essential part of the economy.

(84) The GOC and the CCP maintain structures that ensure their continued influence over enterprises, and in particular State-owned enterprises (SOEs). The State (and in many aspects also the CCP) not only actively formulates and oversees the implementation of general economic policies by individual SOEs, but it also claims its rights to participate in operational decision making in SOEs. This is typically done through the rotation of cadres between government authorities and SOEs, through the presence of party members on SOEs executive bodies and of party cells in companies (see also section 3.1.1.4), as well as through the shaping of the corporate structure of the SOE sector ([22]). In exchange, SOEs enjoy a particular status within the Chinese economy, which entails a number of economic benefits, in particular shielding from competition and preferential access to relevant inputs, including finance ([23]). The elements that point to the existence of government control or influence over enterprises in the OFC sector is further developed in sections 3.1.1.4 and 3.1.1.5 below.

(85) Specifically in the OFC value chain, the GOC owns stakes in many companies, a number of which it also controls.

(86) The Commission found that at least one major OFC producer - FiberHome Telecommunication Technologies Co., Ltd (FTT) ([24]) - acknowledges to be fully controlled by the State-owned Assets Supervision and Administration Commission (SASAC) ([25]), therefore by a State entity. FTT, while controlled by the State, exercises also majority ownership over other OFC producers, such as Changchun Fiberhome Technologies, Chengdu Datang Cable, Fiberhome Marine Network Equipment, Xinjiang Fiberhome Optical Communications. Another OFC producer - Nanjing Wasin Fujikura Optical Communication - was also found to be controlled by FTT, hence also to be controlled by the State.

(87) Apart from directly controlled companies, the GOC is also influencing the privately owned companies in the PRC. As confirmed by one of the sampled exporting producers in the course of the investigation, it was also established that the State, directly or indirectly (e.g. though various State-related entities, such as: the Bank of China, the Industrial and Commercial Bank of China, the Agricultural Bank of China, the China Development Bank, Changshu City Development Investment Co., or the Shanghai Financial Development Investment Fund) holds stakes in numerous OFC producing companies. It is worth noting that, among the latter, Yangtze Optical Fiber and Cable (YOFC) stands out, as State-controlled investors own 39 % of the company ([26]). This company is a large domestic producer and also a large exporter to the EU of the product concerned.

(88) With regard to privately owned OFC producers, the Commission also established that in the case of at least two of them – Jiangsu Zhongtian Technology (ZTT) ([27]) and Hengtong Group – the controlling (private) shareholders were CCP-affiliated and held Party positions (see recital (104)).

([22]) Report – Chapter 3, p. 22-24 and Chapter 5, p. 97-108.
([23]) Report – Chapter 5, p. 104-9.
([24]) 'FTT' hereafter refers to FiberHome Telecommunication Technologies Co. 'FTT group' is defined in recital (42).
([25]) See the company's Annual Report for 2019, p. 42. https://pdf.dfcfw.com/pdf/H2_AN202004291379049397_1.pdf, (last viewed on 7 April 2021).
([26]) 23,73 % is held by China Huaxin Post and Telecommunications and 15,82 % by Yangtze Communication Industry Group (YCIG) - both companies being controlled by SASAC (see YCIG's 2019 Annual Report, p. 64. http://www.sse.com.cn/disclosure/listedinfo/announcement/c/2020-04-30/600345_20200430_2.pdf (last viewed on 7 April 2021)).
([27]) 'ZTT' hereafter refers to Jiangsu Zhongtian Technology Co. 'ZTT group' is defined in recital (42).

(89) With respect to the providers of inputs for the production of OFC, one of the raw materials for manufacturing OFC is aramid yarn. Regarding the latter, the Commission also found significant State interference in the aramid sector. The company Yantai Tayho Advanced Materials (YTAM) is one of the key producers of aramid fibres in the PRC ([28]). YTAM's controlling shareholder is the Yantai Guofeng Investment Holdings Group ([29]), while the latter is fully owned by the Yantai SASAC ([30]), resulting in the full control of YTAM by State authorities. Other notable producers of aramid fibres in the PRC are Sinopec Yizheng Chemical Fibre Company ([31]) (subsidiary of State-owned Sinopec Group ([32])) or the State-owned enterprise Sinochem ([33]).

(90) The production of OFC involves also the use of chemical inputs such as: low, medium or high density polyethylene, or polybutylene terephthalate. These substances are chemical compounds obtained in chemical processes. Various chemical compounds are also used to produce the preform at the origin of the optical fibre. Therefore, producers of these inputs can also be considered as participants of the Chinese chemical sector. With regard to that sector, the Commission found that that, according to national statistics, State-owned enterprises (SOEs) represented 52 % of the total assets of chemical companies in 2015 ([34]). SOEs, in particular large central ones, have traditionally played a dominant role in the PRC's chemical industry due to their oligopoly position in upstream/feedstock, easy access to government-allocated resources (funds, loans, land etc.) and strong influence in government decision-making. In this respect, the Commission found specifically that certain key producers of high density polyethylene in the PRC, such as PetroChina, Sinopec Maoming Petrochemical Corporation, China National Offshore Oil Corporation ([35]), are State-owned enterprises.

(91) Furthermore, certain raw materials of steel are used in OFC manufacturing, such as certain types of steel wire or strip. In that respect, in the steel sector, a substantial degree of ownership by the GOC persists. While the nominal split between the number of SOEs and privately owned companies is estimated to be almost even, from the five Chinese steel producers ranked in the top 10 of the world's largest steel producers four are SOEs ([36]). At the same time, while the top ten producers only took up some 36 % of total industry output in 2016, the GOC set the target in the same year to consolidate 60 % to 70 % of iron and steel production to around ten large-scale enterprises by 2025 ([37]). This intention has been repeated by the GOC in April 2019, announcing a release of guidelines on steel industry consolidation ([38]). Such consolidation may entail forced mergers of profitable private companies with underperforming SOEs ([39]). An example of a recent merger are the steel producers Baosteel Group Corp. and Wuhan Iron & Steel Group Corp. in 2016, creating the world's second largest steel producer ([40]). The major stainless steel producers are state-owned, for example Tisco, Baosteel, Ansteel Lianzhong, Jiujuan Iron and Steel and Tangshan.

([28]) See http://en.tayho.com.cn/about/companyprofile.htm (accessed on 26 March 2021) and https://www.businesswire.com/news/home/20170925005664/en/Global-and-China-Aramid-Fiber-Industry-Report-2017-2021—Research-and-Markets

([29]) See: https://video.ceultimate.com/100009_2012105017/Wanhua_Annual_Report_of_2018.pdf, page 190 and note 1 at page 191 (last viewed on 26 March 2021).

([30]) See: https://www.fitchratings.com/research/international-public-finance/yantai-guofeng-investment-holdings-group-co-ltd-23-12-2020

([31]) See: https://www.prnewswire.com/news-releases/global-and-china-aramid-fiber-markets-2021-300532604.html

([32]) See: http://www.sinopec.com/listco/en/about_sinopec/our_company/company.shtml (last viewed on 26 March 2021).

([33]) See: http://www.sinochemintl.com/13873.html and http://www.sinochem.com/en/1250.html (last viewed on 26 March 2021).

([34]) Data for 2015 on the basis of the China Statistical Yearbook 2016, National Bureau of Statistics of China.

([35]) See: https://www.radiantinsights.com/research/high-density-polyethylene-hdpe-market-in-china

([36]) Report – Chapter 14, p. 358: 51 % private and 49 % SOEs in terms of production and 44 % SOEs and 56 % private companies in terms of capacity.

([37]) Source: www.gov.cn/zhengce/content/2016-02/04/content_5039353.htm (last viewed on 12 April 2021), https://policycn.com/policy_ticker/higher-expectations-for-large-scale-steelenterprise/?iframe=1&secret=c8uthafuthefra4e (last viewed on 2 March 2020), and www.xinhuanet.com/english/2019-04/23/c_138001574.htm (last viewed on 12 April 2021).

([38]) Available at http://www.xinhuanet.com/english/2019-04/23/c_138001574.htm (last viewed on 12 April 2021) and http://www.jjckb.cn/2019-04/23/c_137999653.htm (last viewed on 12 April 2021).

([39]) As was the case of the merger between the private company Rizhao and the SOE Shandong Iron and Steel in 2009 (See: https://www.steelonthenet.com/kb/history-rizhao.html (last viewed on 12 April 2021)), and the acquired majority stake of China Baowu Steel Group in Magang Steel in June 2019, see https://www.ft.com/content/a7c93fae-85bc-11e9-a028-86cea8523dc2 (last viewed on 2 March 2020).

([40]) See *China's Baosteel's takeover of Wuhan to create world's No 2 steelmaker* Reuters. https://www.reuters.com/article/us-chinabaosteel-mergers-idUSKCN11Q0U3 (last viewed on 12 April 2021).

(92) With the significant level of government intervention in inputs sectors of the OFC market (e.g. in the steel sector, in the chemical value chains, or through State control of certain leading aramid producing enterprises), coupled with the fact that - as found by the Commission - certain OFC producers are controlled or owned directly or indirectly by the State, or are subject to the influence of the State (e.g. through the corporate presence of the CCP), rely on its support and, in certain cases, implement the CCP's ideology, State-owned or State-controlled producers as well as privately-owned OFC producers are prevented from operating under market conditions. Both public and privately-owned enterprises active in the production of OFC and of the inputs used in the manufacturing of the latter, are also subject, directly or indirectly, to policy supervision and guidance as set out in Section 3.1.1.5 below.

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

(93) Apart from exercising control over the economy by means of ownership of SOEs and other tools, the GOC is in a position to interfere with prices and costs through State presence in firms. While the right to appoint and to remove key management personnel in SOEs by the relevant State authorities, as provided for in the Chinese legislation, can be considered to reflect the corresponding ownership rights ([41]), CCP cells in enterprises, state owned and private alike, represent another important channel through which the State can interfere with business decisions. According to the PRC's company law, a CCP organisation is to be established in every company (with at least three CCP members as specified in the CCP Constitution ([42])) and the company shall provide the necessary conditions for the activities of the party organisation. In the past, this requirement appears not to have always been followed or strictly enforced. However, since at least 2016 the CCP has reinforced its claims to control business decisions in SOEs as a matter of political principle. The CCP is also reported to exercise pressure on private companies to put 'patriotism' first and to follow party discipline ([43]). In 2017, it was reported that party cells existed in 70 % of some 1,86 million privately owned companies, with growing pressure for the CCP organisations to have a final say over the business decisions within their respective companies ([44]). These rules are of general application throughout the Chinese economy, across all sectors, including to the producers of OFC and the suppliers of their inputs.

(94) In addition, on 15 September 2020 a document titled 'General Office of CCP Central Committee's Guidelines on stepping up the United Front work in the private sector for the new era' ([45]) was released, which further expanded the role of the party committees in private enterprises. Section II.4 of the Guidelines state: '[w]e must raise the Party's overall capacity to lead private-sector United Front work and effectively step up the work in this area'; and section III.6 states: '[w]e must further step up Party building in private enterprises and enable the Party cells to play their role effectively as a fortress and enable Party members to play their parts as vanguards and pioneers.' The Guidelines thus emphasise and seeks to increase the role of the CCP in companies and other private sector entities ([46]).

(95) The following examples illustrate the above trend of an increasing level of intervention by the GOC in the OFC sector.

(96) As already pointed out, a certain number of OFC producers are owned or controlled by the State, which allows the latter to freely interfere with prices and costs. This interference is also exacerbated by the strong CCP's presence and influence in these companies.

(97) The Commission found, for example, that the China Information and Communication Technology Group, to which the exporting producer FTT belongs – states on its website that: '*Sticking to the Party's leadership and strengthening the Party building are the "root" and "soul" of State-owned enterprises. Since the establishment of China Information and Communication Technology Group Co., Ltd. (China Information and Communication Technology Group Co., Ltd.), the Party*

([41]) Report – Chapter 5, p. 100-101.
([42]) Report – Chapter 2, p. 26.
([43]) Report – Chapter 2, p. 31-32.
([44]) Available at https://www.reuters.com/article/us-china-congress-companies-idUSKCN1B40JU (last viewed on 27 October 2020).
([45]) Available at www.gov.cn/zhengce/2020-09/15/content_5543685.htm (last viewed on 10 March 2021)
([46]) Financial Times (2020) "Chinese Communist Party asserts greater control over private enterprise", available at: https://on.ft.com/3mYxP4j

Committee of the Group has fully implemented the spirit of the 18th National Congress, of the 19th National Congress, of the previous plenary sessions of the Party and as well as the spirit of the National Conference on Party Building of State-owned enterprises, and has ensure that the Party building as well and all aspects of the enterprise's work follow Xi Jinping's theory of the new era of socialism with Chinese characteristics. Establish the "four consciousnesses", strengthen the "four confidences", resolutely achieve the "two safeguards", deeply implement the general requirements of Party building in the new era, pay close attention to the Party governance's main responsibilities, and fully involve to the Group's Party Committee in corporate governance to exert leadership and "give direction, ensure the overall management, and ensure implementation" and continuously promote the "double integration and double promotion" of Party building with production and business work.' ([47])

(98) The Commission established also that Party building activities are extended to entire industrial zones, as reported by the website of the Wuhan Eastlake High-Tech Development zone: '*Conveying the whole city's state-owned enterprise Party building work conference and the district party (work) committee secretary's grass-roots Party building work and reporting on the general conference's spirit: On May 7, 2019, the local promotion conference for party building work in state-owned enterprises of Donghu High-tech Zone was held in Fiberhome Communications Group. Nearly 30 people attended the meeting, among which the Deputy director of the Party Working Committee Organization Department of Donghu High-tech Zone, Wan Ling and related comrades, as well as people in charge of managing and leading Party building work in SOEs centrally managed by the district and under direct management of the district.*' ([48]) The Donghu High-tech Zone (or Wuhan East Lake High-Tech Development Zone) is often referred to as the 'Optics Valley' ([49]) due to the focus on optoelectronics production, including OFC.

(99) It is to be noted that the activities cited in the previous recital involve Fiberhome Group, the parent company of FTT. The company's website mentions 'support to the Government's policies' as one of the key elements in its relationship with the GOC ([50]). Moreover, in relation to company party-building activities Fiberhome is portrayed as a model for other enterprises: '*On May 17, Optics Valley Construction Company organized a study visit for cadres and employees at Fiberhome Technology Group, to visit the exhibition of scientific and technological achievements, listen to expert lectures, and follow the inspection tour of General Secretary Xi Jinping, review the spirit of the important speech of General Secretary Xi Jinping during his inspection of Hubei […] Comrade Hua Xiaodong, Director of the Office of the President of Fiberhome Communications, focused on the Fiberhome Technology Group's grassroots Party building, innovative Party building measures and online Party building results, […] The general manager of the company, Comrade Zhou Aiqiang, emphasized that the company's cadres and employees must combine studying and implementing the spirit of General Secretary Xi Jinping's important speeches with the spirit of the high-tech zone promoting the implementation of the Optics Valley's high-quality development.*' ([51]) As evidenced in the latter excerpt, party building activities are intended to be closely related to the business development of the Optics Valley.

(100) As pointed in recital (94), the GOC is also further expanding the role of the CCP in the private sector, thereby further increasing its capacity to control and interfere with private companies' decisions and operations. The Commission found ample evidence of the latter interference in the case of privately-owned OFC producers.

(101) The company ZTT praises itself of the interest in the enterprise of the CCP and the authorities: '*ZTT has attracted the attention of the Communist Party and state leaders for its cross-domain development. The central, provincial and municipal leaders have inspected and given affirmation and encouragement to ZTT.*' ([52]) Additionally, the company's website gives accounts of its party-building activities and achievements, as well as the interactions with the CCP and authorities in that respect. For example, the company describes an inspection of the company's party-building work by provincial and municipal party and government leaders: '*Xue Jiping* [Secretary of the Party Committee and Chairman of ZTT], *said that Zhongtian Technology is a key manufacturing enterprise in Nantong, and that today's development is inseparable*

([47]) See the company's website: https://www.cict.com/portal/list/index/cid/8.html#about_1 (last viewed on 31 March 2021).
([48]) See http://www.wehdz.gov.cn/ggdj/djdt/202001/t20200116_875063.shtml (last viewed on 7 April 2021).
([49]) https://asiatimes.com/tag/donghu-high-tech-zone/
([50]) http://www.fiberhome.com/en/about/61.aspx
([51]) See article *Revisiting the spirit of General Secretary Xi Jinping's important speech during his visit to Hubei – Employees of the Optics Valley Construction visited Fiberhome Technology Group*. Wuhan Optics Valley Construction company website. 17 May 2018. http://ggjstz.cn/lzjs/6372.jhtml (last viewed on 7 April 2021).
([52]) https://www.zttcable.com/leadership.html

from the care and support of Party committees and government leaders at all levels, as well as that the Party committee of Zhongtian Technology Group, under the guidance of the superior Party organization, carefully set up the stage to foster mutual promotion, common progress and win-win of Party building together with enterprise development. He highlighted the two specific practices that Zhongtian Technology summarized and formed under the leadership of the Party flag. The first is the working system of the advanced spiritual homeland engineers. […]; *The second is the advanced intellectual property bank enhancing the enterprise's core competitiveness by involving the backbone of party members' initiatives, truly transforming the advantages of Party building into development advantages, and transforming the wisdom of the Party and the masses into development efficiency.*' ([53]) The company also stresses the prominence of its party-related activities and the importance of their integration in the company's operations: '*The Party Committee of Jiangsu Zhongtian Technology Co., Ltd. was awarded the honorary title of "Advanced Grassroot Party Organization of Jiangsu Province" and became the only enterprise in Nantong area to receive this honor. In recent years, under the leadership of Xue Jiping, a national model worker, party secretary, and chairman of the board of directors, the Zhongtian Technology Party Committee has always adhered to the guiding ideology of "focusing on Party building around development and promoting development through Party building", and actively explored standardized and integrated party building models, focussing on the integration of Party building work with enterprise production and business, detailed management, and culture development.*' ([54])

(102) The Commission also made findings on the influence of the CCP on another OFC producer with substantial domestic production and exports of the product concerned to the EU, that is Hengtong Group. The company, while being privately owned, has been publishing accounts on the role and influence of the CCP, CCP membership and Party committees within the company, as well as on how the company adheres to State strategies in its activities: '*Without the reform and opening policy, there would be no Hengtong today; as regards the future development of Hengtong, the banner of the Party must be flying high in the enterprise. Cui Genliang, Secretary of the Party committee and Chairman of the Board of directors of Hengtong Group, said that the Party committee of Hengtong Group has never forgotten its original intention, has always remembered its mission and will continue to forge the "red engine" of party building, cast the surging power of a new round of the enterprise's development, and strive to answer the questionnaire of the era of high-quality development. […] Through the "one person for two positions" system allowing the same person to be Party secretary and company leader, the current 32 party branch secretaries of Hengtong Group are all held by the general managers of each company, and the effectiveness of Party building work is included in the overall assessment of subsidiaries. […] The [Hengtong] Group's Party committee holds a Party building seminar every two years to formulate the group's Party building work plan as a "prescribed action" for the annual work of each Party branch while each Party branch chooses an innovative "optional action", to promote the corporate branch to grasp the fortress-type goal and to create a Group's Party building "combat team", to make sure that staff Party members focus on banner-type honours, to create group's Party building "special forces", and form a Group Party building paradigm of "strategic Party committees, Party fortress branches and banner Party members […] The enterprise's development is inseparable from the Party's correct leadership. We must always be grateful and take responsibility while remaining based on the society." The Hengtong Group's Party Committee has established a great responsibility to closely follow the national development strategy, and considers Party building work as way to achieve the close integration of corporate development with the national strategy and to seize major opportunities to grow bigger and stronger.*' ([55])

(103) Furthermore, the Commission established that the privately-owned company YOFC is also subject to the influence of the State, notably through the role of the CCP in the company's operations. The company's website gives accounts of such interaction when describing an event aimed at celebrating the 97th anniversary of the founding of the CCP: '*At the meeting, Comrade Ma Jie, Secretary of the Party Committee and Chairman of YOFC, delivered an important report. Secretary Ma Jie comprehensively summarized the company's party building work and operating conditions over the past year, and put forward work requirements for the future. He pointed out: In the past year, under the correct leadership of the higher-level organizations, in accordance with the overall deployment and requirements of the Donghu High-tech Zone Party Working Committee, the company's Party committee has carefully studied and implemented the spirit of the 19th National Congress of the Communist Party of China and focused on the overall development of YOFC. […] In the report, Secretary Ma Jie also analysed the challenges faced by YOFC in 2018 and required all Party members to effectively implement the company's five strategic measures to accelerate the company's transformation and development. […] He requested: "[…] Guided by the spirit of*

([53]) See article on ZTT's website of 31 October 2018: https://www.chinaztt.cn/news/show-48021.html (last viewed on 31 March 2021).

([54]) See article on ZTT's website of 2 July 2019: https://www.chinaztt.cn/news/show-48431.html

([55]) See article *Advanced Grassroot Party organization in Jiangsu Province: Party Committee of Hengtong Group Co., Ltd.* Jiangsu Province CCP website. 3 July 2019. http://www.jszzb.gov.cn/zzjs/info_15.aspx?itemid=27375 (last viewed on 7 April 2021).

the report of the 19th National Congress of the Communist Party of China, and taking the 30th anniversary of YOFC as an opportunity, we will make new contributions to the company's brand-new future, recreate new glories'" ([56]). One year later, at the occasion of the 98th CCP anniversary, YOFC also reported that in 2019 '*the party committee of YOFC was awarded the honourable title of "Advanced Party Organization" of the Donghu High-tech Zone*'. During the event, Chairman and Secretary Ma Jie '*called on all Party members to hold high the great banner of socialism with Chinese characteristics and firmly establish the "four consciousnesses", to strengthen the "four self-confidences", practice the "two maintenances", learn from the example, take the advanced ones as the benchmark, perform their duties with diligence, inherit and carry forward the older generation's pioneering and innovative spirit of revolutionaries and advanced model figures, fully involve grassroots Party branches as battle fortresses as well as pioneering and exemplary Party members, strive for the full completion of YOFC's business objectives in 2019, and present the outstanding achievements as a gift for the 98th anniversary of the founding of the Communist Party of China, and for the 70th anniversary of the founding of the People's Republic of China!*' ([57])

(104) CCP structures also personally overlap with the corporate management bodies in the case of a number of leading OFC producers. The Commission found that the Chairman and controlling shareholder of ZTT, Xue Jiping, is a CCP member and Party Committee Secretary ([58]). In the case of FTT, another major OFC producer, the chairman of the Board of Directors, Lu Guoqing, is a CCP member ([59]), while two other top managers hold also the positions of Secretary and Deputy-Secretary of the Party Committee ([60]). As also previously evidenced in recital (102), the controlling shareholder of the privately-owned OFC producer Hengtong Group – Cui Genliang – is not only the Chairman of the Board of Directors but also Secretary of the Party Committee. He also used to sit as Representative in the 12th and 13th National People's Congress ([61]). Furthermore, as established in recital (103), the Chairman of the Board of Directors of YOFC – Ma Jie – holds the position of the Secretary of the Party Committee and is a Member of the CCP ([62]).

(105) The State's presence and intervention in the financial markets (see also Section 3.1.1.8 below), as well as in the provision of raw materials and inputs further have an additional distorting effect on the market ([63]). Thus, the State presence in firms, including SOEs, in the OFC sector and other related sectors (such as the financial and input sectors) allows the GOC to interfere with respect to prices and costs.

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

(106) The direction of the Chinese economy is to a significant degree determined by an elaborate system of planning which sets out priorities and prescribes the goals the central and local governments must focus on. Relevant plans exist on all levels of government and cover virtually all economic sectors. The objectives set by the planning instruments are of binding nature and the authorities at each administrative level monitor the implementation of the plans by the corresponding lower level of government. Overall, the system of planning in 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 ([64]).

([56]) See article on the company's website, published on 28 June 2018: https://www.yofc.com/view/580.html (last viewed on 7 April 2021).
([57]) See article on the company's website, published on 29 June 2019 https://www.yofc.com/view/2480.html
([58]) https://baike.baidu.com/item/%E8%96%9B%E6%B5%8E%E8%90%8D (last viewed on 22 January 2021).
([59]) https://stock.qianzhan.com/item/geren-43059620fb44.html (last viewed on 7 April 2021).
([60]) http://www.fiberhome.com/invest/default.aspx#glc (last viewed on 7 April 2021).
([61]) http://zmfdz.news.cn/345/index.html (last viewed on 7 April 2021).
([62]) https://baike.baidu.com/item/%E9%A9%AC%E6%9D%B0/53398702 (last viewed on 7 April 2021).
([63]) Report – Chapters 14.1 to 14.3.
([64]) Report – Chapter 4, p. 41-42, 83.

(107) The OFC equipment is regarded as a key product by the GOC, as found in public policy documents and lists ([65]). 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 ([66]). 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, and are mutually interlinked. Examples of such key policy documents include, at central level: the 13th Five Year Plan (FYP) for Economic and Social Development of the People's Republic of China (2016-2020) ([67]), and the accompanying 13th FYP for Strategic Emerging Industries (SEI) ([68]), the 'Made in China 2025' Plan ([69]), the 'Internet Plus' Plan ([70]), the 'Broadband China' strategy ([71]), the Guiding Opinions of the General Office of the State Council on Accelerating the Building of a High-speed Broadband Network and Pushing forward Lower Tariffs for Faster Internet Connection ([72]), or the Three-year Action Plan for the Construction of Major Information Infrastructure Projects ([73]). These central policy provisions find also their reflection and follow-up at sub-central level, as for example in Guangdong Province's Action Plan on 'Internet Plus' (2015-2020) ([74]). In relation to this, planning documents pertaining to other sectors issued at sub-central level can make a link to the development of internet in terms of policy guidance, and notably the implementation of the 'Internet Plus' Plan - such as in the case of the Hebei province Petrochemical 13th FYP ([75]).

([65]) 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

([66]) Report – Chapter 2, p. 17.

([67]) See notably Chapter 25 - sections 1 and 4; Chapter 26; and internet penetration targets in Chapter 3 - box 2 of the FYP. https://en.ndrc.gov.cn/newsrelease_8232/201612/P020191101481868235378.pdf

([68]) In its section 2.1, the 13th FYP for SEI instructs notably to: '*1) Build the infrastructure of a strong network country. Deeply promote the "Broadband China" strategy. […] Vigorously promote the construction of high-speed optical fiber networks. Develop pilot projects for the large-scale application of new smart network technologies, and promote the upgrade of the national backbone networks towards high-speed transmission, flexible adjustment and smart adaptation. Fully realize the leap to all-optical networks, accelerate the promotion of optical network coverage in urban areas, provide access services of more than 1000 megabits per second (1000Mbps), and realize flexible choices of bandwidths of more than 100Mbps for household users in large and medium-sized cities; multi-party collaboration shall foster the improvement of rural fiber optic broadband coverage. More than 98% of the administrative villages shall have access to optical fiber, eligible areas shall provide access to services of more than 100Mbps, and more than half of rural household users shall have a flexible choice of bandwidths of more than 50Mbps. Promote the development of triple play infrastructure.*' http://www.gov.cn/zhengce/content/2016-12/19/content_5150090.htm (last viewed on 6 April 2021).

([69]) See notably Section 3.2: '*Strengthen the construction of Internet infrastructure. Strengthen the planning and layout of industrial Internet infrastructure construction, and build an industrial Internet with low latency, high reliability and wide coverage. Accelerate the deployment and construction of optical fiber networks, mobile communication networks and wireless local area networks in manufacturing clusters, implement broadband upgrades of information networks, and improve enterprise broadband access capacities.*' http://www.gov.cn/zhengce/content/2015-05/19/content_9784.htm

([70]) Report – Chapter 4, p. 56 and the following official information of 4 July 2015: http://english.gov.cn/policies/latest_releases/2015/07/04/content_281475140165588.htm

([71]) See: http://www.gov.cn/zwgk/2013-08/17/content_2468348.htm (last viewed on 30 March 2021).

([72]) http://www.gov.cn/zhengce/content/2015-05/20/content_9789.htm (last viewed on 29 March 2021).

([73]) See: http://www.gov.cn/xinwen/2017-01/12/content_5159124.htm and http://www.gov.cn/xinwen/2017-01/12/5159124/files/05242d361d164de587440d7e849f992e.pdf (last viewed on 30 March 2021). Notably the Action Plan instructs in Section 2: '*1) Accelerate the improvement of a new generation of high-speed optical fibre network. […] Support in priority the expansion of the effective coverage of fibre optic broadband networks in rural areas. Goal: By 2018, 90 000 kilometres of trunk optical cables will be added, 200 million fibre-to-home ports will be added, and optical network coverage will be achieved in urban areas, providing access service capacities exceeding 1 000 megabits per second, as well as a flexible choice exceeding 100 megabits per second to home broadband users in large and medium cities; the proportion of optical fibre in administrative villages shall increase from 75% to 90%.*'; in Section 4: '*Strengthen financial support. […] Use central budget investments to continue to support the construction of information infrastructure in rural areas, accelerate the implementation of a pilot program for universal telecommunications service compensation mechanisms focusing on broadband networks, and promote the realization of the rural network related goals set out in the "13th Five-Year Plan" as soon as possible. Strengthen financial support for key projects. […]*'.

([74]) Report – Chapter 4, p. 47.

([75]) Report – Chapter 4, p. 67.

(108) The above policies have been at the origin of the State's focus on the development of optical fibre networks and infrastructure, and by the same of the OFC market and the related State backing. Furthermore, the implementation of the above policies has been also closely related to and furthered by the implementation of superior policies, such as the development of the information industry (relevant document: '*Guide for the Development of the Information Industry*' of the Ministry of Industry and Information Technology (MIIT) and the NDRC), of the big data industry (relevant document: '*Big Data Industry Development Plan (2016-2020)* of the MIIT'), of cloud computing (relevant document '*Three-year Action Plan for Cloud Computing Development (2017-2019)* of the MIIT'), or of 'the Internet of Things' (relevant document: *the Notice of the General Office of the MIIT on Comprehensively Promoting the Construction and Development of the Mobile Internet of Things*) ([76]). In other words, 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 on policy documents cited in recital (107) and (108), the GOC intervenes to implement the related policies and interferes with the free play of market forces in the OFC sector, notably by promoting and supporting the latter sector through various means.

(109) The GOC steers the development of the OFC sector in accordance with a broad range of tools. The Commission found evidence of specific projects, and establishment of governmental guidance funds and industrial zones, which reflected the range of public authorities' support for the OFC producers and their value chain.

(110) A case of local guidance fund and authorities' actions supporting the OFC sector through a capacity building project in Shandong Province was evidenced as follows by a participating company: '*The phase I of the project has a total investment of RMB 1,8 billion and consists in the construction of 6 optical fibre drawing towers and 12 optical fibre production lines, achieving a breakthrough in the optical fibre industry in Shandong Province. […] The entry of government equity investment funds has enabled companies to reduce financing costs, enhance their financial solidity and security ratio, has guided the transformation of business concepts and has ensured upgrades*' ([77]). Another source confirms that the project's aim is to implement overarching State policies, such as those enumerated in recitals (106) to (108), which in turn rely on optical fibre: '*The development of the Internet is inseparable from high-speed transmission tools, and high-speed transmission tools are derived from good optical fibre. Shandong Zhiguang Communication Technology Co., Ltd. is a high-tech company built to implement the 'Made in China 2025' strategic action, the national strategy for the information-based economic development, as well as to meet the needs of national key projects such as "Big Data", "Internet Plus" and "Digital China". Optical fibre, a material with the natural "gene" of science and technology, has now taken root and blossomed in Zaozhuang City.*' ([78])

([76]) See *In-depth report on optical fibre and cable industry. Analysis of demand for optical fiber and cable in 2019*. Communication World website. 9 April 2018. http://www.cww.net.cn/article?id=429906 (last viewed on 30 March 2021). See in particular the excerpts: '*Historically, all sorts of favourable policies such as the "Broadband China" strategy have been the direct driving force of the development of China's optical communications. Driven by the "Broadband China" and "Internet+" strategies, as well as "raise speed and reduce fees" and other policies, China's optical fibre network construction has made considerable progress, and the FTTH penetration rate has increased to exceed 80%. Looking to the future, this kind of policy promotion is expected to continue in the long term. […] In 2017, the state successively issued four new policies to promote the development of the information industry, big data industry, cloud computing, and the Internet of Things, which will all eventually reach the basic optical communications industry. […] The industries concerned by the above four policies are the basis for the development of optical communication networks: promoting the development of these industries effectively provides a good policy and development environment for China's optical communication industry. On the supply side, the policy of protecting the optical communication industry is expected to continue. Since 2015, the anti-dumping policy on optical communication has effectively protected the development of the domestic fiber optic cable industry. As regards the important position of the optical communication industry, in the context of intensifying global trade conflicts, the relevant protection policies are expected to continue. The Ministry of Commerce has applied three anti-dumping measures against imported fiber optic cables in 2017 and will continue to maintain a good supply pattern in the fiber optic cable market. […] Thanks to the downstream industrial policy support on the one hand and the supply-side anti-dumping measures on the other hand, the advantages for China's optical fiber and optical cable industry policy will continue even get stronger.*'

([77]) See article *China's government guidance funds explore the way to support SME's transformation and upgrade*. Xinye Capital website. 14 June 2019. http://www.sinye.club/a/changjingsheying/2019/0614/247.html (last viewed on 6 April 2021).

([78]) See article about the Zhiguang Communication company on the official Shandong Dazhong website of 7 August 2019: https://sd.dzwww.com/sdnews/201908/t20190807_19032401.htm (last viewed on 7 April 2021).

(111) The Commission found also a case of establishment of municipality-backed fund in Suzhou City for an amount of up to RMB 1 billion, which was made available in order to ease financial pressure stemming out from business difficulties of one of the OFC producers - Tongding Interconnection Information. The fund's vocation is also to ease the path of companies to achieve stock exchange listing ([79]).

(112) Additionally, as mentioned in recital (98), the Commission found that among GOC-backed special industry development zones, one 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' – see recital (98)). OFC producers active in the zone have been benefitting from various forms of incentives and State support ([80]).

(113) Furthermore, among the instruments through which the GOC steers the development of the OFC sector, there are also direct State subsidies. The 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 ([81]). The 2019 annual report of 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 as of the end of 2019 ([82]). Furthermore, the 2019 annual report of OFC producer Hengtong Group substantiates that the company's deferred income consisting in governmental subsidies amounted to RMB 81,8 million and subsidies specified as being related to daily company activities amounted to RMB 268,3 million in 2019 ([83]).

(114) 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 – similarly to optical fibres (see recital (107)) – categorised as a key product by the GOC in the *Guiding Catalogue of key products and services in strategic emerging industries* ([84]). This qualification has put the latter raw material in focus of various GOC policies. As a consequence, aramid has been covered in the PRC by planning documents, such as the Implementation Plan for the Transformation and Upgrading of Chemical Fibre Manufacturing Industry (2017 – 2020) (the Implementation Plan), where it features as a key focus

([79]) See the following articles: *Tongding Internet subsidiary introduced a RMB 500 million external investment to strengthen the competitiveness of light rods*. SINA website. 29 April 2020. https://tech.sina.com.cn/roll/2020-04-29/doc-iircuyvi0538406.shtml (last viewed on 6 April 2021), and *Listing and Development Guiding Fund set up by Suzhou Municipality (limited partnership) and related capital participate in the establishment of a specific fund not exceeding RMB 1 billion*. Chipingnews. 3 February 2020. http://www.chipingnews.com.cn/system/2020/0203/content_945.html (last viewed on 9 April 2021). See excerpt in the latter: '[the fund] *shall ease the pressure weighing on operation and business of the controlling shareholder Tongding Group and support the sustainable development of Tongding Interconnection Information; […] The objective of Suzhou Wujiang Distrcit supporting the specific fund for private enterprise development is to reduce pledge ratio of key shareholders holding listed enterprises located in the Suzhou Wujiang district and benefit to the enterprises' sustainable development*.'

([80]) 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 viewed on 6 April 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.*'

([81]) https://pdf.dfcfw.com/pdf/H2_AN202004291379049397_1.pdf (last viewed on 7 April 2021), p. 133, 138-139.

([82]) https://pdf.dfcfw.com/pdf/H2_AN202004291379029468_1.pdf (last viewed on 7 April 2021), p. 205, 215.

([83]) http://download.hexun.com/ftp/all_stockdata_2009/all/120/769/1207690337.pdf (last viewed on 7 April 2021), p. 238, 249.

([84]) See section 3.3.1 of the Catalogue. http://www.gov.cn/xinwen/2018-09/22/5324533/files/dcf470fe4eac413cabb686a51d080eec.pdf.

item in terms of development acceleration ([85]). It was established that aramid was also covered by at least one additional planning document - the Hebei 2016 New Material Industry Development Promotion Plan, which instructed relevant stakeholders to notably speed up the development of aramid fibres, through the Handan national Torch Programme ([86]).

(115) More broadly, chemical fibres are subject to State regulation and market-management policies not only centrally (for example via the Implementation Plan) 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 ([87]), or the 13th FYP for the Development of the Chemical Industry in Jiangsu Province (2016 – 2020). In the latter's provisions 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 can encompass fibres used in the production of OFC. In that regard, the latter Plan also instructs industry to reduce production costs and '*break the supply bottlenecks as regards upstream key support materials*' ([88]).

(116) With regard to another basic input – polyethylene – there is evidence of production management by the State: the National Development and Reform Commission (NDRC) has included certain polyethylene production processes in its *Catalogue for Guiding Industrial Restructuring*, where one sub-section of the 'restricted list' covers petrochemicals, and notably includes '*polyethylene or polyvinyl chloride by acetylene process with an annual output of less than 200 000 tonnes*' ([89]).

(117) In general terms, the chemical industry, from which producers of OFC source a number of their inputs (see recitals (90) and (114)), is regarded as an important sector by the GOC. This is reflected in the many plans, directives and other documents pertaining to the chemical sector, which are issued at national, regional and municipal level. These documents aim at managing numerous aspects of the functioning of the chemical sector at large, thereby affecting, for example, the subsectors producing the various upstream chemical compounds used to manufacture the chemical raw materials used in OFC production (e.g. those enumerated in recitals (90) and (114)), notably in terms of value chain development, supply patterns, technology choice, production localisation, or policy support ([90]).

(118) Specifically also in the case of glass fibres, which constitute one of the inputs, the Commission confirmed that the State intervened into the geographical distribution of glass fibre production, through the provisions of the 13th FYP for the Construction Material Industry (2016-2020) ([91]), notably instructing production to be developed specifically in Jiangxi Province, thereby interfering in the free decision-making of the relevant economic operators.

(119) As also mentioned in the Report, the prices of electricity, which is one of the factors of OFC production, are not market-based in the PRC and are also affected by significant distortions (through central price-setting, price differentiation and in direct power purchase practices) ([92]).

([85]) See section 2.3 of the Plan: '*High-performance fibre: Accelerate the development of ultra-high-strength film, acid-resistant, alkali-resistant, and corrosion-resistant high-performance fibres, focus on promoting the series production of high-performance fibre product varieties such as carbon fiber, continuous basalt fiber, and aramid, and vigorously develop polyphenylene sulphide fibre and polyimide fibre and PTFE fibre and other products to further improve the performance index of the fibre*'. https://weixin.87188718.com/FourFlat/PeiXun.aspx?id=194161 (last viewed on 6 April 2021).

([86]) Report – Chapter 12, p. 294.

([87]) 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 viewed on 6 April 2021).

([88]) Report – Chapter 16, p. 419-420.

([89]) Report – Chapter 8, p. 177.

([90]) Report – Chapter 16, p. 406-424.

([91]) Report – Chapter 12, p. 283, 285.

([92]) Report – Chapter 10, p. 221-230.

(120) This involvement of the government and local authorities across the entire OFC value chain has, at least potentially, a distortive effect on prices. Through the means described above, the OFC sector and sectors producing raw materials used to manufacture OFC are subject to governmental intervention, with the GOC directing and controlling virtually every aspect in the development and functioning of the OFC value chain.

(121) In sum, the GOC has measures in place to induce operators to comply with public policy objectives, including the producers of OFC and of the inputs used in the manufacturing of OFC. Such measures impede market forces from operating freely.

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

(122) According to the information on file, the Chinese bankruptcy system delivers inadequately on its own main objectives such as to fairly settle claims and debts and to safeguard the lawful rights and interests of creditors and debtors. This appears to be rooted in the fact that while the Chinese bankruptcy law formally rests on principles that are similar to those applied in corresponding laws in countries other than the PRC, the Chinese system is characterised by systematic under-enforcement. The number of bankruptcies remains notoriously low in relation to the size of the country's economy, not least because the insolvency proceedings suffer from a number of shortcomings, which effectively function as a disincentive for bankruptcy filings. Moreover, the role of the State in the insolvency proceedings remains strong and active, often having direct influence on the outcome of the proceedings ([93]).

(123) In addition, the shortcomings of the system of property rights are particularly obvious in relation to ownership of land and land-use rights in the PRC ([94]). All land is owned by the Chinese State (collectively owned rural land and State-owned urban land). Its allocation remains solely dependent on the State. There are legal provisions that aim at allocating land use rights in a transparent manner and at market prices, for instance by introducing bidding procedures. However, these provisions are regularly not respected, with certain buyers obtaining their land for free or below market rates ([95]). Moreover, authorities often pursue specific political goals including the implementation of the economic plans when allocating land ([96]).

(124) Much like other sectors in the Chinese economy, the producers of OFC are subject to the ordinary rules on Chinese bankruptcy, corporate, and property laws. That has the effect that these companies are also subject to the top-down distortions arising from the discriminatory application or inadequate enforcement of bankruptcy and property laws. The present investigation revealed nothing that would call those findings into question. As such, the Commission preliminarily concluded that the Chinese bankruptcy and property laws do not work properly, thus generating distortions when maintaining insolvent firms afloat and when allocating land use rights in the PRC. Those considerations, on the basis of the evidence available, appear to be fully applicable also in the OFC sector and the sectors manufacturing the raw materials used to produce the product concerned.

(125) In light of the above, the Commission concluded that there was discriminatory application or inadequate enforcement of bankruptcy and property laws in the OFC sector and the sectors manufacturing the raw materials used to produce the product concerned.

([93]) Report – Chapter 6, p. 138-149.
([94]) Report – Chapter 9, p. 216.
([95]) Report – Chapter 9, p. 213-215.
([96]) Report – Chapter 9, p. 209-211.

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

(126) A system of market-based wages cannot fully develop in the PRC as workers and employers are impeded in their rights to collective organisation. The PRC has not ratified a number of essential conventions of the International Labour Organisation ('ILO'), in particular those on freedom of association and on collective bargaining ([97]). Under national law, only one trade union organisation is active. However, this organisation lacks independence from the State authorities and its engagement in collective bargaining and protection of workers' rights remains rudimentary ([98]). Moreover, the mobility of the Chinese workforce is restricted by the household registration system, which limits access to the full range of social security and other benefits to local residents of a given administrative area. This typically results in workers who are not in possession of the local residence registration finding themselves in a vulnerable employment position and receiving lower income than the holders of the residence registration ([99]). Those findings lead to the distortion of wage costs in the PRC.

(127) There was no evidence to the effect that companies producing OFC or related inputs would not be subject to the Chinese labour law system described. The OFC sector is thus affected by the distortions of wage costs both directly (when the product concerned is manufactured) as well as indirectly (when OFC producers have access to capital or inputs from companies subject to the same labour system in the PRC).

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

(128) Access to capital for corporate actors in the PRC is subject to various distortions.

(129) Firstly, the Chinese financial system is characterised by the strong position of State-owned banks ([100]), which, when granting access to finance, take into consideration criteria other than the economic viability of a project. Similarly to non-financial SOEs, the banks remain connected to the State not only through ownership but also via personal relations (the top executives of large State-owned financial institutions are ultimately appointed by the CCP) ([101]) and, again just like non-financial SOEs, the banks regularly implement public policies designed by the government. In doing so, the banks comply with an explicit legal obligation to conduct their business in accordance with the needs of the national economic and social development and under the guidance of the industrial policies of the State ([102]). This is compounded by additional existing rules, which direct finances into sectors designated by the government as encouraged or otherwise important ([103]).

(130) While it is acknowledged that various legal provisions refer to the need to respect normal banking behaviour and prudential rules such as the need to examine the creditworthiness of the borrower, the overwhelming evidence, including findings made in trade defence investigations, suggests that these provisions play only a secondary role in the application of the various legal instruments.

([97]) Report – Chapter 13, p. 332-337.
([98]) Report – Chapter 13, p. 336.
([99]) Report – Chapter 13, p. 337-341.
([100]) Report – Chapter 6, p. 114-117.
([101]) Report – Chapter 6, p. 119.
([102]) Report – Chapter 6, p. 120.
([103]) Report – Chapter 6, p. 121-122, 126-128, 133-135.

(131) For example, the GOC has very recently clarified that even private commercial banking decisions must be overseen by the CCP and remain in line with national policies. One of the State's three overarching goals in relation to banking governance is now to strengthen the Party's leadership in the banking and insurance sector, including in relation to operational and management issues in companies ([104]). Also, the performance evaluation criteria of commercial banks have now to, notably, take into account how entities '*serve the national development objectives and the real economy*', and in particular how they '*serve strategic and emerging industries*'. ([105])

(132) Furthermore, bond and credit ratings are often distorted for a variety of reasons including the fact that the risk assessment is influenced by the firm's strategic importance to the GOC and the strength of any implicit guarantee by the government. Estimates strongly suggest that Chinese credit ratings systematically correspond to lower international ratings ([106]).

(133) These issues are compounded by additional existing rules, which direct finances into sectors designated by the government as encouraged or otherwise important ([107]). This results in a bias in favour of lending to SOEs, large well-connected private firms and firms in key industrial sectors, which implies that the availability and cost of capital is not equal for all players on the market.

(134) Secondly, borrowing costs have been kept artificially low to stimulate investment growth. This has led to the excessive use of capital investment with ever lower returns on investment. This is illustrated by the growth in corporate leverage in the State sector despite a sharp fall in profitability, which suggests that the mechanisms at work in the banking system do not follow normal commercial responses.

(135) Thirdly, although nominal interest rate liberalization was achieved in October 2015, price signals are still not the result of free market forces, but are influenced by government-induced distortions. The share of lending at or below the benchmark rate still represented at least one-third of all lending as of the end of 2018 ([108]). Official media in the PRC have recently reported that the CCP called for '*guiding the loan market interest rate downwards*.' ([109]) Artificially low interest rates result in under-pricing, and consequently, the excessive utilization of capital.

(136) Overall credit growth in the PRC indicates a worsening efficiency of capital allocation without any signs of credit tightening that would be expected in an undistorted market environment. As a result, non-performing loans have increased rapidly in recent years. Faced with a situation of increasing debt-at-risk, the GOC has opted to avoid defaults. Consequently, bad debt issues have been handled by rolling over debt, thus creating so called 'zombie' companies, or by transferring the ownership of the debt (e.g. via mergers or debt-to-equity swaps), without necessarily removing the overall debt problem or addressing its root causes.

([104]) See official policy document of the China Banking and Insurance Regulatory Commission (CBIRC) of 28 August 2020: *Three-year action plan for improving corporate governance of the banking and insurance sectors (2020-2022)*. http://www.cbirc.gov.cn/cn/view/pages/ItemDetail.html?docId=925393&itemId=928 (last viewed on 3 April 2021). The Plan instructs to '*further implement the spirit embodied in General Secretary Xi Jinping's keynote speech on advancing the reform of corporate governance of the financial sector*'. Moreover, the Plan's section II aims at promoting the organic integration of the Party's leadership into corporate governance: '*we shall make the integration of the Party's leadership into corporate governance more systematic, standardised and procedure-based […] Major operational and management issues must have been discussed by the Party Committee before being decided upon by the Board of Directors or the senior management*.'

([105]) See CBIRC's *Notice on the Commercial banks performance evaluation method*, issued on 15 December 2020. http://jrs.mof.gov.cn/gongzuotongzhi/202101/t20210104_3638904.htm (last viewed on 12 April 2021).

([106]) See 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 Yu, and Longmei Zhang, October 2016, WP/16/203.

([107]) Report – Chapter 6, p. 121-122, 126-128, 133-135.

([108]) See OECD (2019), OECD Economic Surveys: China 2019, OECD Publishing, Paris. p. 29. https://doi.org/10.1787/eco_surveys-chn-2019-en

([109]) See: http://www.xinhuanet.com/fortune/2020-04/20/c_1125877816.htm (last viewed on 12 April 2021).

(137) In essence, despite the steps that have been taken to liberalize the market, the corporate credit system in the PRC is affected by significant distortions resulting from the continuing pervasive role of the state in the capital markets.

(138) No evidence was submitted to the effect that the OFC sector would be exempted from the above-described government intervention in the financial system. The Commission has also established that leading producers of OFC benefited from government subsidies (see recital (113)). Therefore, the substantial government intervention in the financial system leads to the market conditions being severely affected at all levels.

3.1.1.9. Systemic nature of the distortions described

(139) The Commission noted that the distortions described in the Report are characteristic for the Chinese economy. The evidence available shows that the facts and features of the Chinese system as described above in Sections 3.1.1.2 to 3.1.1.5 as well as in Part A of the Report apply throughout the country and across the sectors of the economy. The same holds true for the description of the factors of production as set out above in Sections 3.1.1.6 to 3.1.1.8 above and in Part B of the Report.

(140) The Commission recalls that in order to produce OFC a range of inputs is needed. In that respect, according to evidence on the file, the sampled exporting producers sourced most of their inputs in the PRC. When the producers of OFC purchase/contract these inputs in the PRC, the prices they pay (and which are recorded as their costs) are clearly exposed to the same systemic distortions mentioned before. For instance, suppliers of inputs employ labour that is subject to the distortions. They may borrow money that is subject to the distortions on the financial sector/capital allocation. In addition, they are subject to the planning system that applies across all levels of government and sectors.

(141) As a consequence, not only the domestic sales prices of OFC are not appropriate for use within the meaning of Article 2(6a)(a) of the basic Regulation, but all the input costs (including raw materials, energy, land, financing, labour, etc.) are also affected because their price formation is affected by substantial government intervention, as described in Parts A and B of the Report. Indeed, the government interventions described in relation to the allocation of capital, land, labour, energy and raw materials are present throughout the PRC. This means, for instance, that an input that in itself was produced in the PRC by combining a range of factors of production is exposed to significant distortions. The same applies for the input to the input and so forth. There was no accurate and appropriate evidence or argument adduced to the contrary in the present investigation.

3.1.1.10. Conclusion

(142) The analysis set out in Sections 3.1.1.2 to 3.1.1.9, which includes an examination of all the available evidence relating to the PRC's intervention in its economy in general as well as in the OFC sector and related supply chain showed that prices or costs of the product concerned, including the costs of raw materials, energy and labour, are not the result of free market forces because they are affected by substantial government intervention within the meaning of Article 2(6a)(b) of the basic Regulation as shown by the actual or potential impact of one or more of the relevant elements listed therein. On that basis, and in the absence of any cooperation from the GOC, the Commission concluded that it is not appropriate to use domestic prices and costs to establish normal value in this case.

(143) Consequently, the Commission proceeded to construct the normal value exclusively on the basis of costs of production and sale reflecting undistorted prices or benchmarks, that is, in this case, on the basis of corresponding costs of production and sale in an appropriate representative country, in accordance with Article 2(6a)(a) of the basic Regulation, as discussed in the following section.

3.1.1.11. Comments by interested parties

(144) In the course of the investigation, comments were received from the CCCME, the GOC and the exporting producer ZTT.

(145) Firstly, CCCME submitted that Article 2.2 of the WTO Antidumping Agreement (ADA) does not recognize the concept of significant distortions, and that there is no article in the ADA allowing data from a third country which cannot reflect the prices or cost level of the exporting country to be used for determining the normal value. The normal value in anti-dumping investigations must be determined based on the sales prices or costs of the companies in the country of origin or at least based on prices or costs that can reflect the price or cost level in the country of origin. In relation to that, CCCME considered that Article 2(6a) of the basic Regulation was inconsistent with the ADA and should not be applied in this case. According to CCCME, the EU's calculation of the constructed normal value would also need to be in conformity with Article 2.2.1.1 of the ADA and with the Appellate Body's interpretation thereof, provided in the *EU – Biodiesel (Argentina)* (DS473) case (hereafter '*EU-Biodiesel*'). The significant distortions in the exporting country would need to fall under the definition of either sales not in the 'ordinary course of trade' or a 'particular market situation.' Moreover, CCCME stated that pursuant to Article 2.2 of the ADA, the construction of the normal value is only allowed if there are no sales in the ordinary course of trade. The term 'ordinary course of trade' can be interpreted as representing regular sales and purchases characterized by the seller's intent to realize a profit. Additionally, Article 2.2.1 of the ADA provides that sales of a product may be treated as not being in the ordinary course of trade and disregarded 'only if…such sales are made within an extended period of time in substantial quantities and are at prices which do not provide for the recovery of all costs'. Against this background, CCCME claimed also that the Complainant had not proved that the alleged significant distortions fall under either of the category of sales 'not in the ordinary course of trade' or of a 'particular market situation'.

(146) The Commission considers that the provisions of Article 2(6a) are fully consistent with the European Union's WTO obligations and the jurisprudence cited by CCCME. At the outset, the Commission notes that the WTO Report on *EU – Biodiesel* did not concern the application of Article 2(6a) of the basic Regulation, but of a specific provision of Article 2(5) of the basic Regulation. In any event, WTO law as interpreted by the WTO Panel and the Appellate Body in *EU – Biodiesel*, allows the use of data from a third country, duly adjusted when such adjustment is necessary and substantiated. The existence of significant distortions renders costs and prices in the exporting country inappropriate for the construction of normal value. In these circumstances, Article 2(6a) of the basic Regulation envisages the construction of costs of production and sale on the basis of undistorted prices or benchmarks, including those in an appropriate representative country with a similar level of development as the exporting country. With regard to the claim concerning the Complainant, the legal basis and underlying evidence in the complaint concerned the conditions of application of Article 2(6a) of the basic Regulation. As specified at Point 3 of the Notice of initiation, the Commission considered that the complaint did provide sufficient evidence of significant distortions as required by Article 2(6a)(e) of the basic Regulation to initiate the investigation on this basis. There are no further evidentiary requirements of the type alleged by this party in Article 2(6a) of the basic Regulation. Therefore, the Commission rejected these claims.

(147) It was also alleged by the CCCME that the Complainant has not provided sufficient evidence to justify any findings of 'significant distortions' in the Chinese OFC industry. According the CCCME, the Report is only a general introduction to certain Chinese policies, market conditions and supposed government intervention in certain sectors, and the Complaint failed to present any concrete evidence pointing to how the government actually interferes in day-to-day commercial operations of the OFC companies. The CCCME referred in this respect to the WTO Appellate Body's ruling in the case *US – Countervailing Measures* (DS437), stating that the claim on the existence of 'significant distortions' should be supported by sufficient evidence, not merely the supposed existence of government intervention, and that such an analysis and determination should be done on a case-by-case basis.

(148) According to the CCCME, it was the responsibility of the Complainant and the Commission to provide further evidence which adequately proves the existence of the alleged 'significant distortions' in the OFC industry. The CCCME claimed that the Commission has the obligation to analyse the situation of each cooperating/sampled Chinese producer and decide whether any of the factors of costs of production and sales are distorted for each of them. It also considered that, even if the Commission eventually decided to apply Article 2(6a) of the basic

Regulation, replacing *all* the data and factors of costs used to construct the normal value for all the companies with data from a third country is unreasonable and not in line with the provisions of the basic Regulation - according to the wording of Article 2(6a), only those costs of production and sales which have been proved to be distorted would be replaced by undistorted prices or benchmarks.

(149) Substantiating this claim further, the CCCME stated that the Complainant and the Commission failed to prove that the domestic markets for the provision of all the raw materials of OFC were distorted and thus replacing the costs for all the raw materials cannot be justified. Also, even if the Complainant and the Commission would have evidence proving distortions in the sectors of *certain* raw materials, without sufficient evidence proving that there are also distortions in the sectors of *other* raw materials, the data source for the costs of the latter should be the records of the cooperating Chinese producers.

(150) The CCCME also submitted that labour costs in the records of the Chinese OFC producers were undistorted and as such should be treated as undistorted data in accordance with Article 2(6a)(a) basic Regulation and used to construct the normal value. In that respect, the CCCME claimed that the Complainant failed to provide sufficient evidence proving that these costs in the Chinese OFC sector were distorted. According to the CCCME, it was unreasonable and unfair to replace the labour costs with those in a third country, because labour costs are influenced by a combination of several factors and the average labour costs are different even between different Chinese producers, and even more so in different countries. The CCCME added that the representative country to be selected by the Commission was one of the 50 countries with a similar level of economic development to China, and in these countries the labour costs are significantly different. The CCCME made similar claims with regard to energy prices.

(151) In response to the claims on sufficient evidence at initiation stage, the Commission recalls that point 3 of the Notice of initiation referred to a number of *prima facie* elements in the Chinese OFC market, to substantiate that the market was affected by distortions across the OFC value chain in the PRC. The Commission considered that the evidence listed in the Notice of initiation was sufficient to warrant initiation of an investigation on the basis of Article 2(6a) of the basic Regulation. Indeed, while the determination on the actual existence of significant distortions and the consequent use of the methodology prescribed by Article 2(6a)(a) only occurs at the time of the provisional and/or definitive disclosure, Article 2(6a)(e) lays down an obligation to collect the data necessary for the application of this methodology when the investigation has been initiated on this basis. In this case, the Commission deemed the *prima facie* evidence submitted by the complainant on the significant distortions sufficient to initiate the investigation on this basis. The Notice of initiation clearly specified this at point 3 in accordance with the obligation stated in Article 2(6a)(e) of the basic Regulation. Therefore, the Commission took the steps necessary to enable it to apply the methodology under Article 2(6a) of the basic Regulation in case the existence of significant distortions would be confirmed during the investigation. The claim by CCCME was hence rejected.

(152) With regard to the claim concerning the general character of the evidence contained in the Report, the Commission notes that the existence of the significant distortions giving rise to the application of Article 2(6a) of the basic Regulation is not linked to the existence, in the Report, of a specific sectoral chapter or information regarding a specific market covering the product concerned, or specific companies. The Report describes different types of distortions present in the PRC, which are cross-cutting and applicable throughout the Chinese economy and affect the prices and/or the raw materials and costs of production of the product concerned. Furthermore, the Report is not the only source of evidence used by the Commission for its determination, as there are additional probationary elements used for this purpose.

(153) The Commission further recalls that the case *US – Countervailing Measures* did not concern the application of Article 2(6a) of the basic Regulation, which is the relevant legal basis for the determination of normal value in this investigation, nor even the area of dumping. That dispute concerned a different factual situation, and concerned the

interpretation of the WTO Agreement on Subsidies and Countervailing Measures, not the ADA. In any event, as explained above, the evidence put forward at initiation stage clearly related to the Chinese OFC market and thus to the product concerned in the case at hand. Therefore, this claim was rejected.

(154) With regard to the CCCME's claim concerning the replacing the costs of production and sales for Chinese producers with all data from a third country or on an individual basis, the Commission recalls that once it is determined that, due to the existence of significant distortions for the exporting country in accordance with Article 2(6a)(b), it is not appropriate to use domestic prices and costs in the exporting country, the Commission may construct normal using undistorted prices or benchmarks in an appropriate representative country for each exporting producer according to Article 2(6a)(a). Article 2(6a)(a) allows the use of domestic costs only if they are positively established not to be distorted. However, no costs of production and sale of the product concerned could be established as undistorted in light of the evidence available on the factors of production of individual exporting producers. The CCCME's claim was therefore rejected.

(155) Regarding the claims on distortions in raw materials and energy markets, the Commission addressed already above the issue of sufficiency of evidence at initiation stage, which also covers alleged distortions affecting inputs. In the course of the investigation, the Commission further established, in sections 3.1.1.3 to 3.1.1.8 above that markets for inputs used by OFC producers in the PRC were subject to numerous significant distortions, not only specific ones but also ones of a cross-cutting nature. The same situation applied to the producers of more basic inputs used to manufacture OFC raw materials, and so on. Therefore, the Commission found that all costs of inputs used in OFC production, including energy, were – at least potentially - distorted in the PRC. The fact that, as claimed by the CCCME, there are significant differences in the costs of energy between different countries does not alter the Commission's assessment with regard to the energy prices being distorted in the PRC. In that respect, Article 2(6a)(a) of the basic Regulation allows the use of domestic costs of inputs if they are positively established not to be distorted. While some interested parties provided information on the costs of inputs, there was no evidence on the file which would confirm that the price or cost of any specific raw material, including the cost of energy, would be undistorted. Therefore, no domestic cost or price of input could be used in the construction of the normal value and the claim was rejected.

(156) With regard to the claim concerning distortions in relation to wage costs, the Commission reiterates its explanation from the recitals above in terms of sufficiency of evidence at initiation stage. Furthermore, while the Commission acknowledges that wage costs can differ from country to country or even between sectors, the Commission, as a result of its investigation found, as specified in section 3.1.1.7, that the labour market was affected in the PRC by distortions at a country-wide level. The issues inherent to the Chinese labour market, including the lack of labour unions independent from the government and the workforce mobility restrictions due to the household registration system have a distortive impact on the wage creation in the PRC for all economic operators. The fact that wage costs could be different in other countries or could vary within the PRC does not alter this finding. In this respect, while Article 2(6a)(a) of the basic Regulation allows the use of domestic costs, including wage costs, if they are positively established not to be distorted, there is no evidence on the file establishing that the country-wide distortions are not applicable to OFC producers. Accordingly, no domestic wage cost could be used in the construction of the normal value and the claim was rejected.

(157) CCCME stated further that it was unreasonable to use the SG&A and profit of companies in a third country to construct the normal value for Chinese exporters. Since Article 2(6a)(b) refers to '*those distortions which occur when reported prices or costs, including the costs of raw materials and energy*', according to CCCME the effect of the alleged significant distortions should not be extended to SG&A and profit. CCCME added that no evidence has been provided to demonstrate that it was inappropriate to use the SG&A and profit of Chinese producers to construct the normal value. Furthermore, CCCME claimed that SG&A and profit of different producers in the same industry (or even within the same group) varies significantly, and if the producer in the finally selected representative country has a relatively higher proportion of SG&A and profit, then a higher normal value will be constructed, which is

unfair. CCCME also contested that in the case of the proposed relevant company in Turkey - Prysmian Kablo Ve Sistemleri AS - the sales income of the product concerned accounted for more than 89 % of its total income, while the available SG&A and profit data pertained to the whole company instead of exclusively to the product concerned. Against this background, according to CCCME, the SG&A and profit data used by the Commission to construct normal value could not be regarded as an 'undistorted and reasonable amount for administrative, selling and general costs and for profits', and ultimately SG&A and profit margins should also not be replaced by that of producers in third countries.

(158) In response, the Commission notes that once it is determined that due to the existence significant distortions in the exporting country in accordance with Article 2(6a)(b) of the basic Regulation it is not appropriate to use domestic prices and costs in the exporting country, the normal value is constructed for each exporting producer by reference to undistorted prices or benchmarks in an appropriate representative country according to Article 2(6a)(a) of the basic Regulation. The Commission underlines that Article 2(6a)(a) also specifically requires that the constructed normal value includes a reasonable amount for undistorted administrative, selling and general costs and for profits. If in the course of its investigation based on all evidence on the file the Commission proves the existence of the significant distortions affecting the product concerned in the exporting country, it does not need to prove that the actual SG&A costs of this exporting producers were actually undistorted.

(159) With regard to the claim on the fairness of use of SG&A data of a proposed producer in a potential representative country, the Commission is guided in its choice by the criteria of recent publicly available financial statements and profitability. In such process, preference is given to data which emanate from a potential representative country. At all the stages of that assessment, interested parties have the opportunity to comment on subsequent proposed company data. In the present investigation, both the criteria mentioned in terms of final choice of company data, as well as the analysis of comments on subsequent notes on factors of production were duly applied and carried out. Therefore, the claim was rejected.

(160) With regard to the claim about the specific appropriateness of data of the company Prysmian Kablo Ve Sistemleri AS against the background of the share of its various product sales, the Commission has addressed the issue of the appropriateness of the company's financial data in recital (227), where it rejected the related general claim by CCCME.

(161) With regard to supporting policies and financial subsidies for producers of OFC referred to in the complaint, CCCME indicated that, as a high-tech industry, the introduction of policies to promote the development of this industry is normal, and not only occurs in China, but also in other countries where no significant distortions are alleged. Moreover, according to CCCME, the fact that companies received subsidies had no connection with the calculation method of dumping margin, and subsidies could not be equated with market distortions and must not result in unfair prices.

(162) The Commission recalls that, for the purpose of establishing the existence of significant distortions under Article 2(6a)(b) of the basic Regulation, the potential impact of one or more of the distortive elements listed in that provision is analysed with regard to prices and costs in the exporting country. In that context, firstly, aside from the fact that this claim is generic and unsubstantiated, the Commission notes that the cost structure and price formation mechanisms in other markets (including matters related to financial support) are in any event irrelevant for this investigation which concerns the existence of significant distortions in the PRC. Secondly, in the analysis under Article 2(6a)(b) of the basic Regulation, it is crucial to assess whether producers have, at least potentially, access to financing granted by institutions which implement public policy objectives or otherwise do not act independently, or if they receive other State funding which interferes with market forces and thus has an impact on their reported

prices or costs. Since the Chinese OFC producers and producers of inputs are subject to plans and directives of the government, as explained in section 3.1.1.5, they also enjoy access to financing, through the Chinese financial system, as found in section 3.1.1.8. The Commission also found that certain OFC producers did report subsidies in their annual reports, as specified at recital (113). Subsidies are just one of the elements, together with all other elements relevant in the context of Article 2(6a)(b) possibly showing the existence of significant distortions in the exporting country in that they represent another form of government intervention interfering with the free market forces and having an impact on prices or costs. As a consequence, the Commission rejected CCCME's claim.

(163) With regard to the Complainant's references to the findings in the investigation on *glass fibre fabrics originating in the PRC and Egypt* ([110]) (GFF), CCCME indicated that woven and/or stitched glass fibre fabrics and optical fibre cables were two different products and belonged to different product groups. Thus findings in that investigation have no relationship with OFC and should not be regarded as evidence on the significant distortions alleged in the current case. According to CCCME, the evidence provided by the Complainant did not specifically relate to the actual industry that was being investigated and was therefore insufficient and irrelevant.

(164) The Commission findings in the GFF investigation, which were referred to in the Complaint, are relevant for all industrial sectors in the PRC, at the very least as far as the cross-cutting distortions affecting the factors of production in all sectors or the distortions concerning the functioning of the socio-economic system in the PRC are concerned. Furthermore, some of the specific policies and plans covering the GFF sector may also cover the OFC sector directly or indirectly, especially when they are part of the same overarching programme or policy concerning similar sectors. The Commission deemed the evidence submitted by the Complaint to be related and applicable to the OFC sector and sufficient to initiate its investigation, pursuant to Articles 5(9) and 2(6a)(e). In any event, the Commission established through this investigation and detailed in sections 3.1.1.2 - 3.1.1.9 above that there are a number of policies and significant distortions warranting the application of Article 2(6a) in the present case. The claim was thus rejected.

(165) Finally, CCCME contested the claim put forward by the complainant that the role of SASAC as 'actual controller' of a company constitutes sufficient evidence of the existence of significant distortions. CCCME submitted additionally that the Commission should appreciate all the relevant factors in its entirety in order to properly assess whether or not State shareholding gives rise to the State's interference that materially and significantly influences the commercial behaviours of companies in respect of decision making, setting prices and arranging output. CCCME added that such interference is prohibited by the 'Law of the People's Republic of China on the State-Owned Assets of Enterprises', the Article 6 of which provides that '*the State Council and the local people's governments shall, according to law, perform the contributor's functions, based on the principles of separation of government bodies and enterprises, separation of the administrative functions of public affairs and the functions of the state-owned assets contributor, and non-intervention in the legitimate and independent business operations of enterprises*.' In that regard, CCCME stated that SASAC, in its role of indirect shareholder of FTT, only performs the function of contributor but does not interfere in the daily operation of the companies. CCCME also put into question how the company's relations with SASAC would in any shape or form indicate significant distortions. Finally, CCCME alleged that the Complainant when making the claim above failed to consider the interconnections between the Union producers and numerous exporters in the sense that the majority of the complaining and supporting Union producers have related companies or branches in the PRC and/or themselves import OFC from the PRC.

([110]) Commission Implementing Regulation (EU) 2020/492 of 1 April 2020 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 108, 6.4.2020, p. 1).

(166) In response, the Commission notes at the outset that the claim by CCCME is incorrectly conflating two different elements under Article 2(6a)(b) of the basic Regulation, that is the ones in the first and the second indent. Furthermore, the CCCME's claim ignores that the requisite legal standard in this provision is the 'potential' and not the actual impact of these elements. The first element concerns enterprises 'which operate under the ownership, control, or policy supervision or guidance' and is not limited to the role of 'actual controller' as CCCME seems to suggest. By contrast, the second element in Article 2(6a)(b) concerns the State presence allowing 'to interfere with respect to prices or costs.' These are two distinct elements and must be read in conjunction with the chapeau of Article 2(6a)(b) which refers to regard being had to their 'potential' and not actual impact. The analysis in section 3.1.1.3 shows the ownership and control by the PRC government in the OFC sector, including specifically with regard to the sampled exporting producers. Likewise, the analysis in section 3.1.1.4 shows how the government the PRC government may interfere with prices or costs in the activity of the OFC sector, including specifically with regard to the sampled exporting producers. This claim can therefore already be dismissed on this basis. In substance, the controlling capacity by a State entity, such as SASAC, is able to exercise significant market interference giving rise to market distortions as described in the mentioned above sections of this Regulation. The qualification as a mere 'contributor' not interfering with the day-to-day operation based on the cited Article 6 of the Law of the PRC on the State-Owned Assets of Enterprises does not alter the role of the State via SASAC within the meaning of the first indent of Article 2(6a)(b), and does not exclude this possibility according to the relevant 'potential impact' standard, also if read in conjunction with other articles of the said Law. The latter constitute clear evidence as to how the State aims at influencing the economy through State controlled enterprises, and through its role in these enterprises ([111]). Notably, with regard to the role of 'contributor', Article 12 of the said Law states that '*a body performing the contributor's functions on behalf of the corresponding people's government shall enjoy the return on assets, participation in major decision-making, selection of managers and other contributor's rights to the state-invested enterprises according to law*'. ([112]) The latter enumerated rights of the 'contributor' confirm its possible influence on the functioning of the enterprise controlled, at least in terms of key orientations of the company's business development and strategic corporate decisions, notably through appointments of key mangers involved in the decisions necessarily trickling down on the day-to-day business operations including with regard to prices or costs. Last but not least, notwithstanding the issue of control by SASAC the Commission found also ample evidence pointing to the existence of significant distortions in the OFC sector, in which e.g. the company FTT (and the other producers) operate, in sections 3.1.1.5 -3.1.1.8. Finally, with regard to the relationship between the EU producers and Chinese exporters, they are not relevant to assess the controlling role of SASAC in FTT in the PRC, and in any event have been analysed at length in recitals (408) - (415) of this regulation. CCCME's claims were therefore rejected.

(167) The GOC submitted that Article 2(6a) of the EU's basic Regulation does not comply with Article 2.2 and 2.2.1.1 of the ADA, citing the fact that the EU cost adjustment methodology was found to be incompatible with the WTO Appellate Body's interpretation given in the *EU – Biodiesel*, as well as by the panel in the *EU - Cost adjustment* (DS494) case.

(168) With regard to the GOC's argument concerning the *EU - Biodiesel* case, the Commission's views are expressed in recital (146). In relation to the case *EU - Cost adjustment*, the Commission recalls that both the EU and the Russian Federation appealed the findings of the Panel, which are not final and therefore, according to standing WTO case-law, have no legal status in the WTO system, since they have not been endorsed through decisions by WTO Members. In any event, the Panel Report in this dispute specifically considered the provisions in Article 2(6a) of the basic Regulation to be outside the scope of the dispute. The claim was therefore rejected.

(169) The GOC alleged also, with respect to the Report, that the Commission had issued reports of the same kind on only a few selected countries, which raised concerns on the violation of most-favoured nation treatment (MFN) and national treatment (NT). The GOC also stated that, with regard to the previous investigations on products originating in the PRC, no examination has been made regarding whether there were market distortions in the EU's industries and their upstream industries or whether the third-party data used in the proceedings were affected by market distortions. Therefore, the basic logic of the entire investigation system based on Article 2(6a) cannot be

([111]) Report – Chapter 5, p. 90-92.
([112]) See also Report – Chapter 5, p. 100-103.

self-consistent, let alone be fair. The GOC further alleged that there is no universally accepted concept of 'market distortion' among the economists and that the standard of 'significant market distortion' in Article 2(6a) of the basic Regulation has not been fully demonstrated and lacks theoretical support and international recognition. According to the GOC, the basic concepts and standards of 'market', 'distortion' and 'significant' should be discussed and defined and if there were no final conclusion or consensus on the latter, there is also no possibility of accurately defining 'significant market distortion' and thus it is absurd and non-operational to establish any legal provisions or international rules on that basis. The GOC noted finally that it was impossible for different economies adopting market economy principles to use identical arrangements, each economy possibly having institutional differences, and it was logically untenable to regard the differences in system or arrangement as evidence of significant market distortions. According to the GOC, the latter approach can only be regarded as discriminatory and protectionist.

(170) With regard to the GOC's claim concerning the violation of the MFN and NT clauses, the Commission recalls that, as provided for by Article 2(6a)(c) of the basic Regulation, a country report shall be produced for any country only where the Commission has well-founded indications of the possible existence of significant distortions in a certain country or sector in that country. Upon entry into force of the new provisions of Article 2(6a) of the basic Regulation in December 2017, the Commission had such indications of significant distortions for China. The Commission also published a report on distortions in Russia in October 2020 ([113]), and it is not excluded that other reports will follow. Furthermore, as stated above the reports are not mandatory for the application of Article 2(6a). Article 2(6a)(c) describes the conditions for the Commission to issue country reports, and according to Article 2(6a)(d) the complainants are not obliged to use the report nor is the existence of a country report a condition to initiate an investigation under Article 2(6a) following Article 2(6a)(e). According to Article 2(6a)(e), sufficient evidence proving significant distortions in any country brought by complainants fulfilling the criteria of Article 2(6a)(b) is sufficient to initiate the investigation on that basis. Therefore, the rules concerning country-specific significant distortions apply to all countries without any distinction, and irrespective of the existence of a country report. As a result, by definition the rules concerning country distortions do not violate the most favoured nation treatment. With regard to the alleged distortions in the EU, the Commission notes that in addition to this GOC claim being generic and fully unsubstantiated, distortions present in the EU and affecting EU companies are not the object of the analysis under Article 2(6a) of the basic Regulation which concerns the exporting country. Therefore, this concept is legally irrelevant in terms of the Union industry in the specific context of anti-dumping investigations. With regard to the claim concerning different countries adopting different market economy arrangements, the provisions of Article 2(6a) apply only if there are significant distortions in the exporting country where there is substantial government intervention interfering with costs and prices and thus it does not interfere with the different arrangements of the various market economies as long as there is no significant government intervention interfering with market forces. On the basis of all the above, the Commission rejected these claims.

(171) With regard to the allegation made at initiation stage by the GOC that third-party data used in the Commission proceedings were not examined as being affected or not by market distortions, the Commission recalls that, in accordance with Article 2(6a)(a), it proceeds to construct the normal value on the basis of chosen data other than domestic prices and costs in the exporting country only where it establishes that such data is the most appropriate to reflect *undistorted* prices and costs. In this process, the Commission is bound to use only undistorted data. In that respect, interested parties are invited to comment on proposed sources for the determination of the normal value in the early stages of the investigation. The Commission's ultimate decision as to which undistorted data should be used to calculate the normal value takes full account of those comments.

([113]) Commission Staff Working Document SWD(2020) 242 final, 22.10.2020, available at https://trade.ec.europa.eu/doclib/docs/2020/october/tradoc_158997.pdf

(172) Concerning the GOC's comment on the concept of 'significant market distortion', the Commission notes that this claim is generic and theoretical, and it does not indicate why and how the concept used in the basic Regulation would be somehow flawed. The Commission further recalls that in the context of the procedure leading to the adoption of the legislative proposal, the Commission released an impact assessment which also contained details on the concept of significant distortion and the criteria used, followed by a public consultation and a stakeholder conference. The GOC also actively intervened in this process and participated to the stakeholder conference. The result of this consultative process was fully taken into account in the procedure leading to the adoption of the legislative proposal, and further in the legislative process leading to the adoption of this provision. Article 2(6a) defines in a clear manner the concept of 'significant distortions' for the purpose of application of the EU basic Regulation. Additionally, Article 2(6a)(b) specifies what elements along with their potential impact would be taken into consideration when assessing the existence of significant distortions. Differences in economic systems do not play a role in that assessment, since the latter can be applied solely with respect to the country exporting the product concerned. With regard to the allegation of discrimination, the Commission notes that the basic Regulation and in particular its Article 2(6a) does not apply to any specific country nor does it discriminate between countries. It applies only when in the course of an investigation allegations are made as to the existence of significant distortions in the exporting country (any country) concerned by those proceedings, based on the evidence on the file. Accordingly, the Commission dismissed these claims.

(173) Additionally, the GOC submitted that the Report produced by the Commission services had substantial flaws from both factual and legal point of views. According to the GOC, the complaint is based on erroneous conclusions originating in the Report as well as past investigations, the latter having become new evidence used by the Complainant in the current investigation. The GOC alleged that by the same token the Commission has deviated from the neutral position of the investigation authority and encourages the EU industry to put forward accusations on significant market distortions in China in the complaint, which violates the most basic legal spirit of fairness and justice. The evidence put forward is according to the GOC insufficient, as it does not point to the market situation of the product concerned and the complainant has not provided any other report or evidence proving the distortion of the Chinese market of the products involved. Neither was the complainant or the Commission able to prove exactly how the GOC's policies and measures have affected the price mechanism of a specific industry's market in China.

(174) Regarding the GOC's claim on the flaws and erroneous conclusions of the Report, the Commission notes that this report is a comprehensive document based on extensive objective evidence, including legislation, regulations and other official policy documents published by the GOC, third party reports from international organisations, academic studies and articles by scholars, and other reliable independent sources. It was made publicly available since December 2017 so that any interested party would have ample opportunity to rebut, supplement or comment on it and the evidence on which it is based. While pointing to the Report's flaws in purely generic and abstract terms, the GOC has, at the same time, refrained from ever providing any rebuttal on the substance and evidence contained in the report. Complainants can rely on past investigations evidence and findings, to the extent they are relevant and that their legality has not been put aside by a judicial authority. Article 2(6a) ensures that proceedings are neutral and impartial, and that all parties' rights of defence are respected throughout the investigation. The Commission notes that the possibility offered to complainants to put forward allegations and evidence on possible distortions of prices and costs in countries where significant distortions induced by the State would possibly exist cannot be interpreted as an unfair and unjust practice which encourages the adducing of such allegations. With regard to the GOC's comment on the insufficiency of evidence at initiation stage, the Commission recalls that according to Article 2(6a)(e), if the Commission deems the evidence submitted by the complainant on the significant distortions sufficient, it can initiate the investigation on this basis. However, the determination on the actual existence and impact of significant distortions and the consequent use of the methodology prescribed by Article 2(6a)(a) occurs at the time of the provisional and/or definitive disclosure as result of an investigation. The existence and impact of the significant distortions are not confirmed at initiation stage as claimed by the GOC, but only during an in-depth investigation. Therefore, the claim was rejected.

(175) With regard to references in the complaint to subsidies granted by the PRC, the GOC commented that the EU granted many subsidies, which could point to its market being distorted, and the complainant has not proved that the subsidy was in fact a government intervention that had a significant impact on the market or had a distortive effect on the price or cost of the products involved. The GOC pointed out that, according to Article 32.1 of the WTO SCM Agreement, no specific action against a subsidy of another Member could be taken except in accordance with the provisions of GATT 1994.

(176) As explained by the Commission in recital (162), the allegation of the granting of subsidies by the EU, which is in any event completely unsubstantiated, has no relevance for the assessment of distortions in the exporting country under Article 2(6a)(b). As per the same recital, subsidies are to be considered as a one of the means of intervention through which specific distortive public policies are enacted by the State, and therefore their specific impact needs not be established. In any event, as stated in recital (174), the existence and impact of the significant distortions are not confirmed at initiation stage, but only after an in-depth investigation. Finally, with regard to the application Article 32.1 of WTO SCM Agreement, the current investigation and the methodology in Article 2(6a) concern the calculation of normal value in the context of dumping in the import of goods and cannot be seen as constituting a specific action against subsidies granted by the PRC. Therefore, any reference to the cited Article is irrelevant. These claims where thus rejected.

(177) Exporting producer ZTT commented that the construction by the Commission of the normal value on the basis of costs of production and sale or benchmarks in an appropriate representative country goes against the EU's commitment under the WTO agreements, in particular its commitment under Section 15 of China's Protocol of Accession to the WTO. According to ZTT, as from 12 December 2016, the EU should not deviate from the standard methodology in establishing the normal value of the exporting country producers, that is to use only domestic prices and costs of the exporting country, unless other provisions of the WTO agreements including the ADA permit otherwise. ZTT also claimed that Article 2 of the ADA does not permit the use of information other than that in the exporting country in order to establish the normal value. Even though in exceptional circumstances the normal value needs to be constructed, the data relating to the cost of production and SGA and profits have to be obtained from the sources in the country of export. There was, according to ZTT, nothing in the ADA which allowed to derogate from that general rule, and the notion of significant distortions did not exist in the ADA. In that respect, ZTT referred to the definition of normal value in Article 2.1 of the ADA and the exceptional circumstances described in article 2.2 of the ADA in which the normal value could be established on the basis of a comparable price of the like product when exported to an appropriate third country provided that this price is representative, or on the basis of the cost of production in the country of origin plus a reasonable amount for SGA and for profits. ZTT added that the ADA requires that costs shall normally be calculated on the basis of records kept by the exporter or producer concerned as long as such records are in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the product concerned, and that, likewise, the amounts for SGA and for profits shall be based on actual data pertaining to production and sales in the ordinary course of trade of the like product by the exporter or producer concerned, or if it cannot be determined on this basis, on the basis of other sources but always in the domestic market of the country of origin.

(178) Moreover, ZTT referred to the ruling in *EU – Biodiesel*, according to which the investigating authorities were not allowed to evaluate the costs reported in the records kept by the exporter/producer pursuant to a benchmark unrelated to the costs of production in the country of origin. ZTT stated that in light of the Appellate Body's report in that case, the comparison under Article 2.2.1.1 of the ADA is to be made between, on the one hand, the costs as they are reported in the producer/exporter's records and, on the other hand, the costs actually incurred by that producer. Finally, ZTT pointed to the fact that, according to the Appellate Body report in the case, distortions in

Argentina which were causing a difference between the domestic and international prices of the main raw material of the product concerned were not in itself a sufficient basis under Article 2.2.1.1 for concluding that producer's records did not reasonably reflect the costs of the raw material associated with the production and sale of the product concerned, or for disregarding those costs when constructing the normal value of the product concerned. Consequently, ZTT concluded that Article 2(6a) is incompatible with the WTO agreements, including China's Protocol of Accession to the WTO, and the jurisprudence of the DSB.

(179) In line with its comments in recital (146), the Commission rejected ZTT's claim regarding the alleged general incompatibility with the WTO agreements of the construction by the Commission of the normal value on the basis of costs of production and sale or benchmarks in an appropriate representative country. In the same recital, the Commission addressed the issue of relevance of the *EU – Biodiesel* case and the Appellate Body's findings in that regard for the present investigation. With regard to commitments under Section 15 of China's Protocol of Accession to the WTO, the Commission recalls that in anti-dumping proceedings concerning products from China, the parts of Section 15 of the Protocol that have not expired continue to apply when determining normal value, both with respect to the market economy standard and with respect to the use of a methodology that is not based on a strict comparison with Chinese prices or costs. For all these reasons, these claims were dismissed.

(180) ZTT also claimed that the optical fibre cable sector is not distorted and, at most, only certain inputs to that market might be distorted. To substantiate that claim, ZTT submitted that: the Report to which the complaint refers to contains no specific or detailed discussion of the optical fibre cable sector; it cannot be concluded that all inputs are distorted or that the optical fibre cable market itself is distorted; no evidence was adduced by the Complainant as to the fact that there was state presence in the Chinese firms which interfered with prices or costs in the optical fibre cable market, and only a general description of China being a socialist market economy was pointed to in the Complaint; the companies present in the OFC market are not controlled by the State, even if the latter might own stakes in these companies (the private sector owning in every instance the majority of the company), and no evidence was put forward to substantiate whether State ownership occurs in the majority of the OFC market in China or thus whether the market as a whole was distorted.

(181) The Commission already addressed the general claim regarding the lack of specific evidence in the Complaint pertaining to the OFC sector in recitals (152) and (154). In accordance with Article 5(9) of the basic Regulation, the evidence on the OFC industry being at least potentially subject to significant distortions in the PRC brought by the complainants fulfilling the criteria of Article 2(6a)(b) was enough to initiate the investigation on the basis of that provision. More specifically, the existence of the significant distortions giving rise to the application of Article 2(6a) of the basic Regulation is not linked to the existence of a specific sectoral chapter or information regarding a specific market covering the product concerned. In that respect, as evidenced in sections 3.1.1.2 to 3.1.1.9, the Commission has established in this investigation the existence of significant distortions in the OFC industry and related inputs sectors. The use of domestic costs in the construction of the normal value is allowed by Article 2(6a)(a) only if these costs are positively established not to be distorted *in the course of the investigation*. In that respect, however, there was no positive evidence of the factors of production of individual exporting producers being undistorted. Therefore, ZTT's claim concerning that aspect was rejected.

(182) Regarding ZTT's claim concerning the control by the State of OFC producers, the Commission found evidence of such control as described in section 3.1.1.3. The Commission recalls that majority ownership by the State is not a prerequisite for effective control by the latter. More generally, the Commission established in sections 3.1.1.3 to 3.1.1.5, that the OFC market (both in terms of OFC producers and the producers of inputs used in OFC manufacturing) was served to a significant extent by enterprises which operate under the ownership, control or policy supervision or guidance of the PRC authorities. Hence the above claim by ZTT in that respect was rejected.

(183) ZTT further stated that the Complainant's evidence on public policies or measures discriminating in favour of domestic suppliers of OFC or otherwise influencing free market forces in the OFC sector relates to downstream sectors, rather than the upstream OFC market. With regard to the Complaint references to inputs being distorted, the company alleged the evidence was 'flimsy' and pointed to the lack of clarity on whether the 'high performance fibres' encouraged by the 13th FYP were optical fibres (or what the Plan's support consisted in) or to the lack of information on aramid fibres in the Report at the indicated page. In addition, ZTT commented with regard to the Complainant's reference to the Report's evidence concerning support to glass fibres that the latter were a totally different sector and market as compared to optical fibres and cables, and therefore the allegation was irrelevant to the assessment of product concerned, while there was also no substantiation as to what support was provided and how the market was distorted.

(184) The issue of sufficiency of the Complaint's evidence was already addressed above, among others in recital (181). In its investigation, the Commission established that, OFC being the key component of optical fibre networks, the OFC sector was closely related to and dependent on the development of those networks, and therefore subject in the same degree to the effects of the State policies and related policy documents which managed the development of internet networks, and of the implementation of overarching policies concerning internet-based technologies, applications and services, as specifically described in recitals (107) and (108). These policy documents gave the State, through various means, the capacity to interfere with market forces in many areas and markets where optical fibre networks, and therefore OFC, were used. Therefore, the Commission findings confirmed that the PRC had public policies or measures in place influencing free market forces in the OFC sector. Notwithstanding this finding, the Commission also established that the OFC sector was also affected by other types of significant distortions, described in sections 3.1.1.3, 3.1.1.4 and 3.1.1.6 to 3.1.1.8. ZTT's claim was thus dismissed.

(185) With regard to allegations concerning the lack of clarity of the evidence contained in the Report and referred to in the Complaint, the Commission has established in the course of the investigation that at least one of the OFC inputs – aramid – is defined as a 'high performance fibre' in at least on policy document. In relation to the support foreseen for that product by the 13th FYP, the Commission established in its Report that support measures are an inherent accompanying element of planning documents in the PRC, in particular in the case of the 13th FYP at central level ([114]). The Commission also positively established that aramid was subject to various policy planning documents, including based on the Report evidence (see recital (114)). With regard to the Complainant's references to glass fibres in the body of evidence of the Report, the Commission notes that those fibres can be used as input in the manufacturing of OFC, and therefore such reference was relevant for the initiation of the investigation. In terms of the related distortion, the Commission described its finding in recital (118). The above claim was therefore rejected.

(186) Moreover, with regard to the application or inadequate enforcement of bankruptcy, corporate or property laws in the OFC markets, ZTT stated that no evidence have been brought forward, and that the findings of the GFF Regulation in that respect concerned a different market. ZTT also alleged that, similarly, only general evidence was brought forward with regard to distortions in wage costs, which did not prove that the labour market in the case of OFC was distorted.

(187) As explained in recital (163), the Commission's findings in the GFF investigation, to which ZTT refers to in the context of the Complaint, were based on evidence contained in the Report, relevant for all industrial sectors in the PRC, and therefore references to those findings by the Complainant were justified. In any event, the Commission established through its investigation, in section 3.1.1.6, that discriminatory application or inadequate enforcement of bankruptcy and property laws occurred – even potentially – in the OFC sector, including with respect to the

([114]) See Report – Chapter 4.

product concerned. Similarly, with regard to wage costs, the Complainant made references to evidence in the Report, which pertains to all the industrial fabric in the PRC, and which therefore is relevant for the OFC market. In any event, the Commission also established through its investigation, as described specifically in section 3.1.1.7, that the OFC sector is affected by the distortions of wage costs both directly and indirectly. The claim by ZTT was thus dismissed.

(188) Regarding references to subsidies in the complaint, ZTT claimed that it was not true that they served to implement public policy objectives or were granted to ensure those firms did not act independently of the State.

(189) The Commission is of the view that the Complainant provided sufficient evidence that the various subsidies appeared related to the fulfilling of policy objectives (e.g. such as industrialisation, technology development or industrial transformation), which the Commission found as pointing to the possible existence of a certain type of State-induced distortion and sufficient as one of the elements which warranted the initiation of an investigation on the basis of Article 2(6a) of the basic Regulation. Therefore, the Commission rejected the claim.

(190) With regard to distortions in relation to raw materials, ZTT submitted that it was a completely vertically integrated company, and therefore its inputs are sourced by related companies and it was unlikely that its prices were distorted by upstream markets. ZTT claimed also to have provided relevant information regarding the upstream material production by related companies. According to ZTT, as no evidence was adduced that the OFC market was itself distorted, and thus there was no evidence that the costs of ZTT were distorted. ZTT also pointed that those of its costs which have not been proven to be distorted should be used in the construction of the normal value.

(191) As stated above, notably in recital (181), the Commission deemed the evidence on the file as sufficient to initiate its investigation. As a result of the latter, the Commission established that not only the companies active in the OFC sector but also, as pointed in recital (155), the manufacturers of raw materials used by OFC producers in the PRC, as well as the producers of basic inputs to produce these raw materials in upstream levels of the value chain were affected by cross-sectoral significant distortions of various types described in sections 3.1.1.2 to 3.1.1.9. Even if ZTT would source its inputs from related companies, the latter inputs producers are subject, as is ZTT, to the distortions described in the sections cited. In the information provided by ZTT, there was no accurate and appropriate evidence confirming that any of its costs can positively be established as undistorted on the basis of Article 2(6a)(a) of the basic Regulation. That claim was thus rejected.

(192) Finally, ZTT commented that should the Commission find the State intervened to help the roll-out of high speed broadband through support to OFC or OFC inputs markets (notably through subsidies), the latter corrected a market failure and contributed to positive externalities, and therefore was not to be considered as a substantial intervention, and the related distortions cannot be considered as significant.

(193) In line with the Commission's explanation in recital (172), the issue of whether a State intervention corrects a market failure is without relevance for the application of Article 2(6a) of the basic Regulation. Any State interference that would lead or have the capacity to lead to a market distortion fulfilling the definition of 'significant distortion' under point (b) of Article 2(6a) is to be assessed under that Article. The Commission therefore rejected ZTT's claim.

(194) Upon final disclosure, several interested parties submitted comments concerning the application of Article 2(6a) of the basic Regulation, reiterating to a large extent their previous submissions.

(195) The GOC submitted, first, that the Report is flawed and decisions based on it lack factual and legal basis. More specifically, the GOC claimed that the Report is not what the EU legislation calls 'a report'. There are thus doubts if the Report can represent the official position of the Commission. On the factual side, the Report is, according to the GOC, misrepresentative, one-sided and out of touch with reality. Moreover, the fact that the Commission has issued country reports for only a few select countries raises concerned about MFN treatment. Furthermore, reliance by the Commission on the evidence in the Report is, in the GOC's view, not in line with the spirit of fair and just law, as it effectively amounts to judging the case before trial.

(196) Second, the GOC argued that constructing normal value in accordance with Article 2(6a) of the basic Regulation is inconsistent with the ADA, in particular with Article 2.2. of the ADA which provides an exhaustive list of situations where the normal value can be constructed, 'significant distortions' not being listed among such situations. Moreover, using data from an appropriate representative country is, according to the GOC, inconsistent with GATT Article VI.1(b) and Article 2.2.1.1 of the ADA, which require using the cost of production in the country of origin when constructing normal value.

(197) Third, the GOC claimed that the Commission investigating practices under Article 2(6a) of the basic Regulation are inconsistent with WTO rules insofar as the Commission, in violation of Article 2.2.1.1 of the ADA, disregarded records of the Chinese producer without determining whether those records are in accordance with the generally accepted accounting principles in China. The GOC disagrees in this connection with the response given by the Commission earlier (see recitals (146) and (168)).

(198) Fourth, the GOC submits that the Commission should be consistent and fully examine whether there are so-called market distortions in the representative country. Readily accepting the representative country's data without such evaluation represents 'double standards'. The same applies, in the GOC's view, to evaluating the price and costs of the EU industry. Fifth, the GOC noted that there are widespread market distortion within the EU, such as guidance of the authorities, social considerations being taken into account by commercial banks, tax exemptions, financial support or economic bailouts.

(199) With respect to the first argument regarding the Report, the Commission addressed the MFN issue in great detail in recital (170) above. Similarly, the remarks on the Report being factually flawed were addressed in recital (174). The same recital also addressed the argument about the Commission's impartiality. As to the status of the Report under the EU legislation, the Commission recalled Article 2(6a)(c) of the basic Regulation does not prescribe a specific format for the reports on significant distortions, neither does that provision define a channel for publication. The Commission recalled that the report is a fact-based technical document used only in the context of trade defence investigations. The report was therefore appropriately issued as a Commission staff working document as it is purely descriptive and does not express any political views, preferences or judgements. That does not affect its content, namely the objective sources of information concerning the existence of significant distortions in the Chinese economy relevant for the purpose of the application of Article 2 (6a)(c) of the basic Regulation. Concerning the second and third arguments on the alleged incompatibility of Article 2(6a) of the basic Regulation with the WTO law, the Commission noted that GOC did not present any new evidence, except for referring back to the AB report in *EU-Biodiesel* and the panel report in *EU – Cost adjustment*. However, these arguments were already sufficiently addressed in recitals (146) and (168). The fourth argument on evaluation of third country data was already addressed in recital (171) above. As to the fifth argument on alleged distortions in the EU market, the Commission noted that recital (170) already explained in detail why such concerns are not relevant in the context of the present investigation. Consequently, the Commission rejected the GOC's arguments.

(200) The ZTT Group, first, reiterated its view that Article 2(6a) of the basic Regulation is incompatible with the WTO agreements and submitted that since the Commission's reply to its previous arguments lacks clear reasoning, in particular it does not indicate the legal basis in the WTO Agreements (see recital (146)). Consequently, the disclosure does not, in the ZTT Group's view, meet the legal standards of adequate statement of reasons justifying the Commission's decision. Second, the ZTT Group claimed that it is not proven that the group is subject to significant distortions since, on the one hand, the ordinary political activities of the party within the company or

membership of the company managers in the CCP are not indicative of direct influence of the CCP over the group and, on the other hand, the ZTT Group being a private and publicly listed company, it is subject to market oriented corporate governance and listing requirements. In this connection, the ZTT Group noted that existence of state intervention does not amount to significant distortions since governmental intervention could also serve to correct market failure, such as in the broadband sector where the product under investigation is widely used.

(201) The Commission extensively addressed the issue of WTO compatibility of Article 2(6a) of the basic Regulation with WTO law in recitals (146) and (179) and (168). In particular, the Commission explained that while the WTO jurisprudence referred to by the ZTT Group does not refer to the application of Article 2(6a) of the basic Regulation, that jurisprudence in any event allows the use of data from a third country, duly adjusted when such adjustment is necessary and substantiated. As to the ZTT Group's argument concerning the absence of significant distortions in the OFC sector, the Commission noted that these issues were already discussed at great length in recitals (154) and (181). While it is not entirely clear from the ZTT Group's submission whether it suggests itself that the broadband sector in China is characterised by market failures, its general remarks, not supported by evidence, that CCP's activities in the company are not indicative of CCP's influence or that state interventions do not amount to significant distortions cannot reverse the Commission's conclusions based on investigating various elements pointing to the existence of significant distortions in the sector, as demonstrated in sections 3.3.1.2 to 3.3.1.9. The Commission therefore rejected the arguments brought forward by the ZTT Group.

(202) The CCCME reiterated its view that Article 2(6a) of the basic Regulation is inconsistent with the ADA. In particular the CCCME noted that according to the Commission, the WTO law as interpreted by the Appellate Body in the EU-Biodiesel dispute allows the use of data from a third country, duly adjusted when such adjustment is necessary and substantiated. However, CCCME pointed out that the methodology pursuant to Article 2(6a) of the basic Regulation is not explicitly linked to the provisions of Article 2(5) of the basic Regulation which were at issue in DS473. Moreover, CCCME submitted that the Commission did not explain how the second sub-paragraph of Article 2(5) of the basic Regulation is consistent with Article 2.2 of the ADA.

(203) The Commission agrees with CCCME that the methodology pursuant to Article 2(6a) of the basic Regulation is indeed not explicitly linked to the provisions of Article 2(5) of the basic Regulation, as already pointed out in recital (146). In any event, the Commission noted that the conditions for the application of Article 2(6a) of the basic Regulation and the substance of the corresponding assessment are different from those under Article 2(5) of the basic Regulation. The argument concerning the compatibility of the latter provision with WTO is therefore not relevant in the present investigation. In view of the above, the Commission rejected the arguments of CCCME.

(204) FTT, referring also explicitly to the comments by CCCME, submitted that the allegations on market distortions are not substantiated. In FTT's view, instead of relying on factual evidence, the complainant merely recites previous Commission findings and refers to the Report which in turn deals with China's market and economic structures 'in broader spheres' and without specific evidence pertaining to the OFC sector. FTT therefore fails to see how elements such as state ownership, the structure of the chemical industry, policy objectives or role of CCP in a company have proved that commercial activities of the OFC sector are distorted.

(205) FTTs arguments are misplaced. As already explained in recital (152), far from being unspecific and dealing with the economics structure in China in 'broader spheres', the Report describes various types of distortions, cross-cutting in nature, present throughout the Chinese economy and affecting the prices and/or the raw materials and costs of production of the product concerned. The Commission noted furthermore that the Report is not the only source of evidence used by the Commission for its determination concerning the existence of significant distortions. The additional probationary elements used by the Commission and the conclusions at which the Commission arrived

on the basis of that evidence are laid out in sections 3.3.1.2 to 3.3.1.9. Consequently, while the elements referred to by FTT, such as State ownership or the role of CCP in companies are among the relevant factors indicative of significant distortions, the Commission's overall determination as to the existence of significant distortions in the sense of Article 2(6a) of the basic Regulation is based on a substantially broader range of evidence. Consequently, the Commission dismissed FTT's arguments.

3.2. **Representative country**

3.2.1. *General remarks*

(206) The choice of the representative country was based on the following criteria pursuant to Article 2(6a) of the basic Regulation:

— A level of economic development similar to China. For this purpose, the Commission used countries with a gross national income per capita similar to China on the basis of the database of the World Bank ([115]);

— Production of the product concerned in that country;

— Availability of relevant public data in the representative country;

— Where there is more than one possible representative country, preference should be given, where appropriate, to the country with an adequate level of social and environmental protection.

(207) As explained in recitals (209) and (210), the Commission issued two notes for the file on the sources for the determination of the normal value. These notes described the facts and evidence underlying the relevant criteria, and also addressed the comments received by the parties on these elements and on the relevant sources. In the Second Note on production factors, the Commission informed interested parties of its intention to consider use Argentina as an appropriate representative country in the present case if the existence of significant distortions pursuant to Article 2(6a) of the basic Regulation would be confirmed.

(208) In point 5.3.2 of the Notice of initiation the Commission identified Turkey as a potential representative country pursuant to Article 2(6a)(a) of the basic Regulation for the purpose of determining the normal value based on undistorted prices or benchmarks. The Commission further stated that it would examine other possibly appropriate representative countries in accordance with the criteria set out in 2(6a)(a) first indent of the basic Regulation.

(209) On 19 November 2020, the Commission informed by a note ('the First Note') interested parties on the relevant sources it intended to use for the determination of the normal value. In that note, the Commission provided a list of all factors of production such as raw materials, labour and energy used in the production of OFC. In addition, based on the criteria guiding the choice of undistorted prices or benchmarks, the Commission identified six potential representative countries, namely Colombia, Malaysia, Serbia, South Africa, Thailand and Turkey and considered Turkey the most appropriate representative country. The Commission received comments on the First Note from Connect Com, the CCCME and the ZTT group. These comments were analysed in detail in recitals (226) to (237).

(210) On 12 March 2021, the Commission informed by a second note ('the Second Note') interested parties on the relevant sources it intended to use for the determination of the normal value, with Argentina as the representative country. It also informed interested parties that it would establish selling, general and administrative costs ('SG&A') and profits based on available information for the relevant company Prysmian Energia Cables y Sistemas de Argentina S.A. in the representative country. The Second Note also addressed the comments received to the First Note. Comments to the Second Note were received from Connect Com, the CCCME and the ZTT group. These comments were analysed in detail in recitals (247) to (292).

([115]) World Bank Open Data – Upper Middle Income, https://data.worldbank.org/income-level/upper-middle-income

3.2.2. *A level of economic development similar to China*

(211) In the First Note on production factors, the Commission identified Colombia, Malaysia, Serbia, South Africa, Thailand and Turkey as countries with a similar level of economic development as China according to the World Bank, i.e. they are all classified by the World Bank as 'upper-middle income' countries on a gross national income basis where production of the product concerned was known to take place. Comments were received on 30 November 2020 from Connect Com and from the CCCME and the ZTT group on 3 December 2020 (extended deadline).

(212) Connect Com argued that the Commission should also look at Mexico, Russia and Kazakhstan as possible representative countries. However, the Commission has not found any producer of OFC in these countries with readily available financial information and therefore it did not assess these countries further.

(213) The ZTT group claimed that the Turkish economy suffered from significant distortions, in particular in the energy market as well as electronics and optics markets, and referred in this regard to the Commission Staff Working Document 'Turkey 2020 Report' ([116]). Given the conclusion below in recital (294) to select Argentina as an appropriate representative country, this claim became moot.

(214) The ZTT group claimed that gross national income ('GNI') was not an appropriate indicator to assess the level of economic development of a country as GNI per capita did not adequately summarize a country's level of development or measure welfare and that the gross domestic product ('GDP') per capita was much more accurate. ZTT group also noted that Malaysia had a closer level of economic development to China than that of Turkey when looking at GDP per capita and therefore Malaysia was closer to the level of development in China than Turkey. The ZTT group claimed that productivity should also be taken into account in such analysis and although both countries' productivity was higher than China's, Malaysia was closer than Turkey in terms of economy similarity. The ZTT group also noted that based on the United Nations Human Development Index (which combines various measures of development such as life expectancy, years of schooling and GNI per capita into one index in which the higher the number the greater the level of development), Malaysia was closer to the level of development of China than Turkey. Finally, the ZTT group noted that based on Gini Index (a measure of inequality which ranges from 0 to 100, with inequality increasing the higher the number) Malaysia was closer to the inequality level of China than Turkey.

(215) Connect Com claimed that the Commission should also take into account the production conditions in the industry, given that, contrary to Turkey, China had highly advanced technologies, as well as the number of companies operating on the market.

(216) When constructing the normal value in case of countries with significant distortions, Article 2(6a)(a) of the basic Regulation establishes that the Commission may use a representative country with a similar level of economic development as the exporting country. In order to define which countries are at similar level of economic development as the exporting country in each case, the Commission uses countries classified in the same income category by the World Bank. The Commission does so by exercising its discretion in the interpretation and application of the basic Regulation as repeatedly confirmed by the Court of Justice in circumstances where it is left to the Commission to do so ([117]). The Commission considers that this categorisation allows having a sufficient number of potentially suitable countries with a similar level of development to choose an appropriate representative country according to Article 2(6a)(a) of the basic Regulation, while ensuring a consistent and objective pool of countries.

(217) The basic Regulation does not require that the representative country be the closest in terms of level of economic development, productivity, life expectancy, level of development, inequality level, production conditions or competition level to the exporting country. Therefore, none of the elements above is relevant in the selection of an appropriate representative country. In this case, the relevant World Bank category where China is classified was the

([116]) https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/turkey_report_2020.pdf

([117]) See, for example, judgment of 17 December 2008, *HEG and Graphite India v Council*, T-462/04, EU:T:2008:586, para. 68 and the case-law cited.

upper-middle income countries. Therefore, all countries in that list and analysed in the two notes have similar level of economic development as China and were considered to meet the criterion laid down in Article 2(6a)(a) first indent of the basic Regulation.

3.2.3. *Availability of relevant public data in the representative country*

(218) In the First note the Commission indicated that for Colombia, Malaysia, Serbia, South Africa, Thailand and Turkey, the availability of public data needed to be further verified in particular with regard to the public financial data from producers of the product concerned. The Commission identified one producer of OFC in Colombia, four in Malaysia, one in Serbia, two in South Africa, three in Thailand and four in Turkey as explained in recitals (219) to (224).

(219) With regard to Colombia, the readily available financial data for Furukuwa Industrial Colombia S A S dated back from 2018 and, as a consequence, could not be considered suitable for the investigation period. More recent data was available for other producers in other possible representative countries as stated in recital (238).

(220) With regard to Malaysia, the Commission identified four producers with readily available financial data i.e. Fujikura Federal Cables SDN BHD ('Fujikura'), Lite Kabel SDN BHD ('Lite Kabel'), Opcom Cables SDN BHD ('Opcom') and Tenaga Cable Industries SDN BHD ('Tenaga'). The readily available financial data for Lite Kabel and Tenaga dated back to 2018 and for Opcom to the first quarter of 2019 and, as a consequence, could not be considered suitable for the investigation period. For Fujikura, the readily financial data were available for 2019, however the company was loss making.

(221) With regard to Serbia, while the readily financial data for Novkabel Doo Novi Sad were available for 2019, the company was loss making.

(222) With regard to South Africa, the Commission identified two producers of OFC i.e. CBI-Electric Telecom Cables (PTY) LTD and Malesela Taihan Electric Cable (PTY) LTD. However, no financial data were readily available for these companies.

(223) With regard to Thailand, the Commission identified three producers of OFC i.e. Futong Group Communication Technology (Thailand) Co Ltd ('Futong'), Siam Fiber Optics Co Ltd ('Siam Fiber') and Thai Fiber Optics Co Ltd ('Thai Fiber') with readily available financial data for 2019. Futong was profitable in 2019 while Siam Fiber and Thai Fiber were loss making.

(224) With regard to Turkey, the Commission identified four producers of OFC with readily available financial data i.e. Cen Kablo Sanayi Ve Ticaret AS ('Cen Kablo'), Corning Optik Iletisim Sanayi Limited Sirketi ('Corning Optik'), ETK Kablo Sanayii Ve Ticaret AS ('ETK Kablo') and Turk Prysmian Kablo Ve Sistemleri AS ('Turk Prysmian'). The readily available financial data for Cen Kablo and Corning Optik dated back to 2018 and for ETK Kablo to 2017. For Turk Prysmian, the readily available financial data were available for 2019. However, the company registered a low profit margin in 2019, which was found not to be a 'reasonable amount' within the meaning of the last paragraph of Article 2(6a)(a) of the basic Regulation.

(225) Since more recent data was available for other producers in other possible representative countries as stated in recital (238), Colombia, Malaysia and Turkey were not considered as potential appropriate representative countries at this stage. In any event, the Commission addressed below the claims concerning these countries.

(226) The CCCME and the ZTT group argued that the producers in the possible representative countries for which the financial data had been disclosed in the First Note produced and sold both the product concerned and other products. Specifically, the CCCME and the ZTT group claimed that according to the Annual Report of Turk Prysmian for 2019, 89 % of their sales were energy cables, and only 11 % telecommunications cables, and therefore they would not be a good source of financial data regarding their optical fibre cable business. Furthermore, the ZTT group claimed that also the activity of Corning Optik was not limited to OFC production.

(227) In this respect, the Commission noted that the activity of these companies remained the production of cables including the product concerned, and therefore financial data from these companies would be a representative proxy for the financial performance of OFC production in Turkey for 2019. Furthermore, the application of the methodology in Article 2(6a) of the basic Regulation relies on readily available data, and it may well be the case that the public data is not available at the most granular level of the product concerned but at a more aggregate level. This argument is thus not acceptable.

(228) Connect Com claimed that due to the relationship between the Union producer Prysmian and the Turkish producer Turk Prysmian, the overheads, SG&A and the profits of the Turkish company would be unreliable. Connect Com did not explain why that relationship would make the SG&A and profit unreliable and therefore the claim was dismissed.

(229) The CCCME and ZTT group noted that several large Turkish producers, such as Turk Prysmian and Corning Optik, imported optical fibres from their related companies and therefore such related import prices could not reflect the market prices. On the other hand, the complainant argued that this was not the case. As this claim was not substantiated, it is thus not acceptable.

(230) The ZTT group submitted annual reports from two producers in Malaysia, Opcom Cables for 2019 and 2020 and Lite for 2019, which were publically available. Both companies were identified in the First Note as producers of OFC as stated in recital (220). The ZTT group proposed that the availability of financial data from these two Malaysian producers should be used to determine the representative country. The ZTT group noted that the two Malaysian companies were not profitable in 2019 and 2020 respectively, but suggested that data from other years could be used for this indicator, as Lite Kabel was profitable in 2018.

(231) As both Malaysian companies were unprofitable in 2019 and 2020 respectively, their data could not be used as they did not represent a 'reasonable amount' within the meaning of the last paragraph of Article 2(6a)(a) of the basic Regulation. As regards the use of data for 2018, before the investigation period, preference is always given to data for the investigation period. In this particular case, there is financial data available for the investigation period in another potential representative country and thus there is no reason to resort to data pertaining to a different period. Therefore, the claim was rejected.

(232) The CCCME also argued that in case there was no producer in Malaysia, which was profitable in 2019 and had readily available financial information, the Commission should use the data of the Union producers for SG&A and profit, as it did in the expiry review investigation of anti-dumping measures on tungsten electrodes from China ([118]).

(233) The Commission notes that the basic Regulation gives preference to data which emanates from a representative country at a similar level of development as the exporting country and, therefore, this claim cannot be accepted.

(234) The ZTT group claimed that the Commission should not rely on Global Trade Atlas ('GTA') ([119]) to determine the value of the factors of production but on the import statistics of the Chinese customs or of the national customs services in the representative country as, allegedly, those would be more reliable than the data in GTA.

([118]) Commission Implementing Regulation (EU) 2019/1267 of 26 July 2019 imposing a definitive anti-dumping duty on imports of tungsten electrodes originating in the People's Republic of China following an expiry review under Article 11(2) of Regulation (EU) 2016/1036 (OJ L 200, 29.7.2019, p. 4).

([119]) https://www.gtis.com/gta/

(235) The Commission noted that the interested parties did not provide evidence showing that GTA was less reliable than the official customs statistics. In fact, the Commission noted that the official customs statistics in the country concerned were the source of GTA data according to bilateral contracts concluded by GTA with all the countries covered. The Commission also observed that a number of public administrations have a longstanding practice of using GTA to access customs statistics, and that this database was also extensively used by private operators for a number of different purposes and in different contexts. Therefore, the Commission rejected this claim.

(236) The CCCME and the ZTT group argued that a large proportion of imports of optical fibres under commodity code 9001 10 by Turkey were not materials used for the production of the product concerned, such as multimode fibres and therefore the GTA import price of Turkey could not reasonably reflect the undistorted price of single mode fibres. The CCCME also claimed that the Commission should use Malaysia as a possible representative country as the proportion of single mode optical fibres in the imports under the commodity code 9001 10 of Malaysia was much higher than that of Turkey and therefore the GTA import data of Malaysia was more reliable than that of Turkey. The CCCME further argued that as Turkey mainly imported optical fibres from the United States and Malaysia mainly from India, the import data of Malaysia would be less influenced by the delivery expenses.

(237) With regard to the arguments concerning Malaysia, and, in particular, the representativeness of the import value of single mode optical fibres given the higher proportion of this input under the commodity code 9001 10 and the lower incidence of delivery expenses (as compared to Turkey), the Commission noted that when comparing imports of the various inputs in the various countries it did check that there were sufficient representative imports into the potential countries. Furthermore, once an appropriate representative country has been selected, the Commission uses more detailed, country specific goods codes going beyond the HS 6-digits as far as possible as stated in recital (318).

(238) Since the Commission did not find available information for the investigation period on financial data for producers in Colombia and South Africa or for profitable producers in Malaysia and Serbia, these jurisdictions were not considered suitable representative countries. The Commission carried out additional research on potential appropriate representative countries and, as described in the Second Note, further identified one producer of OFC in Argentina (i.e. Prysmian Energia Cables y Sistemas De Argentina S.A.), one in Brazil (i.e. Prysmian Cabos e Sistemas do Brasil S/A) and one additional producer of power cables in Thailand (i.e. Venine Cable) with readily available financial information for 2019.

(239) The Commission also analysed the imports of the main factors of production (such as optical fibre, high and low density polyethylene, aluminium clad steel wire, glass fibre yarns, low smoke zero halogen sheath material, phosphating steel wire with PE layer, and tubes) into Argentina, Brazil, Thailand and Turkey.

(240) For all factors of production, data on imports in the representative country from China was excluded in the context of the significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation. Furthermore, data on imports into the representative country from non-members of the WTO and listed in Annex I to Regulation (EU) 2015/755 ([120]) (Azerbaijan, Belarus, Democratic People's Republic of Korea, Turkmenistan, Uzbekistan) were also excluded as the prices thereof were not considered to be undistorted prices.

(241) Regarding Argentina, half of the optical fibres, the main input, were imported from China at 6-digit level. An analysis at 8-digit level however showed that only for one of the three relevant codes imports coming from China were in considerable quantities (52 %). Therefore, the representativeness of this input and its underlying value were found to be adequate overall. The other main factors of production were imported in significant volumes from market economy countries. Therefore, the representativeness of undistorted imports in Argentina was considered to be high.

([120]) Regulation (EU) 2015/755 of the European Parliament and of the Council of 29 April 2015 on common rules for imports from certain third countries (OJ L 123, 19.5.2015, p. 33).

(242) Regarding Brazil, optical fibres were imported mainly from China at 6-digit level. Furthermore, at 8-digit level, optical fibres were imported through three codes and for two of them, almost all the imports came from China. Therefore, the representativeness of this input and its underlying value were deemed unreliable. Furthermore, the Commission noted that at 6-digit level, 72 % of imports of aluminium clad steel wire used by one exporting producer in significant volumes in the production of optical fibres cables was imported from China. At 8-digit level, this factor of production was imported through two codes and for both of these codes more than 60 % of imports came from China. Therefore, the representativeness of this input and its underlying value were deemed unreliable and, as it was a substantial input in the manufacturing process of the optical fibre cables, it affects a significant share of the normal value. In addition, 80 % of glass fibres yarns were imported mainly from China at 6-digit level. At 8-digit level, this factor of production was imported through two codes and for both of these codes more than 60 % of imports were coming from China. Given the foregoing, the overall representativeness of undistorted imports into Brazil was considered to be low.

(243) For Thailand, similarly to Brazil, the major input, i.e. optical fibres, was imported mainly from China. Only 15 % of total optical fibres imports came from other sources that were undistorted (at 6-digit level). Furthermore, at 8-digit level, optical fibres were imported through two codes and, for both codes, more than 70 % of imported volumes were coming from China. Therefore, the representativeness of this input and its underlying value were found unreliable. In addition, 96 % of glass fibre yarns were imported mainly from China at 6-digit level. This code does not have an 8-digit level code. Therefore, the representativeness of this input and its underlying value were also found unreliable. Given the foregoing, the overall representativeness of undistorted imports in Thailand was considered to be low.

(244) Regarding Turkey, only two factors of production that are used in small volumes in the cost of production of the optical fibre cables were imported in significant volumes from China. Therefore, the representativeness of undistorted imports in Turkey was high.

(245) In light of the above considerations (recitals (224), (241) to (244)), the Commission informed the interested parties with the Second Note that it intended to use Argentina as an appropriate representative country and Prysmian Energia Cables Y Sistemas de Argentina S.A., in accordance with Article 2(6a)(a), first ident of the basic Regulation in order to source undistorted prices or benchmarks for the calculation of normal value.

(246) Interested parties were invited to comment on the appropriateness of Argentina as a representative country and of Prysmian Energia Cables Y Sistemas de Argentina S.A. as producer in the representative country. Comments were received from Connect Com, the CCCME and the ZTT group.

(247) The ZTT group reiterated its claim that GNI was not an appropriate indicator to assess the level of economic development in a country as it included not only the income produced within that country but also the one generated out of that country and argued that the Commission made a manifest error in its assessment of the facts when it considered only that the World Bank income category based on GNI per capita in the assessment of similarity of economic development to China. As in the case of Turkey as explained in recital (214), the ZTT group argued that Malaysia had a closer level of economic development to China than that of Argentina when measured on a GDP per capita basis, productivity level, and United Nations Human Development Index and therefore it was claimed that Malaysia was a better representative country than Argentina.

(248) The Commission disagrees with the ZTT group's claim that it made a manifest error when using GNI for assessing the level of economic development of possible representative countries. As explained in details in recitals (216) and (217), in order to define which countries are at similar level of economic development as the exporting country in each case, the Commission uses countries classified in the same income category by the World Bank. The basic Regulation does not contain any further requirement to choose the country with the closest GDP per capita,

productivity level or United Nations Human Development Index as the exporting country. In this case, the relevant World Bank category, where China is classified, was that of the upper-middle income countries. Therefore, both Malaysia and Argentina have similar level of economic development as China and were considered to meet the criterion laid down in Article 2(6a)(a) first indent of the basic Regulation. The claim that Malaysia was a better representative country than Argentina was thus rejected.

(249) The CCCME claimed that the cost of raw materials imported by Chinese producers from international markets should not be considered as distorted and should therefore not be replaced.

(250) The sampled Chinese exporting producers were given the opportunity to claim that their (imported) raw materials were not distorted in accordance with Article 2(6a)(a) of the basic Regulation. With their claims, they were required provide supporting evidence (i.e. country of origin of the goods, contract of purchase, invoices) in this regard. The ZTT group claimed that none of its materials and energy purchases were distorted and that the imported raw materials during the investigation period were made at undistorted prices. Although the ZTT group identified these purchases in the listing of the material purchases in the questionnaire reply, it did not submit any supporting evidence. Therefore, the Commission rejected that claim.

(251) Furthermore, the FTT group submitted certain elements of supporting evidence for five raw materials, but these were partial (covering only a few transactions) and inconsistent with other information provided in the relevant listing. This did not allow the Commission to assess this claim, which thus could not be accepted at this stage.

(252) The CCCME also claimed that third country import prices were not representative replacements for domestic prices in the normal value calculation as the import price may include higher deliver expenses than domestically purchased raw materials, which would artificially inflate the replaced raw material cost and these differences in cost effects could not be properly distinguished by the Commission.

(253) As explained in recital (69), the Commission concluded in this investigation that the application of Article 2(6a) of the basic Regulation was appropriate. Article 2(6a)(a) of the basic Regulation prescribes the use of corresponding data in an appropriate representative country. The Commission uses the GTA import prices as the starting point to calculate an undistorted price in the representative country, to which it adds the corresponding import tariff. This is considered a conservative estimation to construct an appropriate undistorted proxy of the market price in the representative country, given that additional costs might be incurred on top of this value such as importation fees and taxes other than import tariffs (such as value added tax), depending on the country concerned. Furthermore, if all delivery expenses in the case of import would not be taken into account, the resulting price would not reflect the undistorted price on the Argentinian market, but the average ex-works price (when sold for export) in the countries that sell to Argentina. This would be contrary to Article 2(6a)(a) of the basic Regulation and thus this claim was dismissed.

(254) In the absence of evidence showing that the data and methodology used would not be representative of the undistorted costs for each of the inputs, the Commission rejected this claim.

(255) The CCCME claimed that there were significant differences in the costs of labour and energy between different countries and therefore third country labour costs and energy prices could not be used in the normal value determination.

(256) As explained in recital (69), the Commission concluded in this investigation that the application of Article 2(6a) of the basic Regulation was appropriate. Article 2(6a)(a) of the basic Regulation prescribes the use of corresponding data in an appropriate representative country. As explained in recital (245), at this stage of the investigation the Commission selected Argentina as a representative country. Therefore, the undistorted cost of labour and electricity have been sourced from Argentina as explained in recitals (345) and (348).

(257) CCCME requested the Commission to clarify the standard for determining whether the profitability of a company in the representative country is low or high.

(258) According to the last paragraph of Article 2(6a) of the basic Regulation, the constructed normal value must include undistorted and a reasonable amount for SG&A and profits. This is the legal standard applied by the Commission when assessing whether a profit level is low or high. As required by that Article, the profit needs to be reasonable. In determining what is a reasonable amount in each case, the Commission will look at the particularities of each investigation, such as the product concerned and sector. Needless to say that a reasonable profit level cannot be (virtually) negative or close to break-even.

(259) The CCCME also claimed that Argentina was not an appropriate representative country as the sole producer in Argentina identified by the Commission (i.e. Prysmian Energia) was related to one of the complainants and the company held a large share in the Argentinian market. In this regard, the CCCME referred to the anti-dumping investigation on imports of glyphosate from China ([121]) where Argentina, Australia, India, and Malaysia were rejected as analogue countries because their markets were largely dominated by companies related to the main EU complainant. The CCCME also claimed that because the telecommunication market of Argentina has grown strongly in 2020, and the Argentinian government provided support to local producers, the SG&A and profit data of a company which holds a large share of a growing market cannot reflect a reasonable and market-oriented level, and should not be used for the construction of normal value. Connect Com also claimed that the Argentinian producers of OFC were not independent companies but affiliated with Prysmian and Nexans and therefore (i) there was no sufficient competition in the Argentinian domestic market and it referred to European Court of Justice judgment C-16/90 ([122]); (ii) the cost and profit of these producers would be above the competitive level; (iii) the intra-group transfer prices of the affiliated manufacturers were excessive. Connect Com also claimed that the profit of Prysmian Energia at 20 % was excessive while the profit of the Venine Cable in Thailand of 9,5 % was more in line with competitive conditions. Furthermore, Connect Com claimed that Brazil would be a better representative country as more producers are active in this market and at least four of them were independent from the complainants.

(260) The fact that the selected company in the representative country is related to a Union producer has no bearing on the choice of the representative country. The CCCME has not provided any reason or evidence that would make this fact relevant in this case. Furthermore, the fact that the company holds a large share on the Argentinian market does not mean that there is no competition in Argentina nor would automatically render the financial data of such company inappropriate. This claim was also not backed by any evidence that the Argentinian market was anticompetitive. In fact, the profit margin found for the Argentinian company was 10,6 % as stated in recital (362), which is in line with the profit of 9,5 % defended by Connect Com as 'in line with competitive conditions'. Therefore, these claims were rejected.

(261) The CCCME reiterated its request for the Commission to use Malaysia as a representative country. It submitted that in the absence of profitable data for the investigation period, the Commission could use the financial data of a profitable company for 2018, as the OFC industry is a relatively stable industry, in which the level of SG&A and profit did not vary greatly year by year. The CCCME also highlighted that in the anti-dumping investigation of citric

([121]) Council Regulation (EC) No 368/98 of 16 February 1998 imposing a definitive anti-dumping duty on imports of glyphosate originating in the People's Republic of China and collecting definitively the provisional duty imposed (OJ L 47, 18.2.1998, p. 1), recital (15).

([122]) Judgment of 22 October 1991, *Nölle v Hauptzollamt Bremen-Freihafen*, C-16/90, EU:C:1991:402, para. 27.

acid from China ([123]) although the producer identified in Colombia incurred a loss in 2019, the Commission still selected Colombia as the appropriate representative country and for the SG&A and profit the Commission used the data of companies in Colombia producing products in a close category of products to citric acid.

(262) As explained in recital (231), preference is given to the data available for the investigation period and such data exist for a company in Argentina. The CCCME has not provided any reason for departing from the same period for which the normal value is being constructed. Therefore, the claim was rejected.

(263) Furthermore, the ZTT group argued that Malaysia was a better representative country than Argentina as (i) the products manufactured by the three Malaysian companies suggested by the ZTT group were more akin to the ones that the ZTT group manufactured, as compared to the products manufactured by Prysmian Energia; (ii) more producers of OFC have been identified in Malaysia than in Argentina.

(264) Aside from the fact that the first allegation was not supported by the necessary evidence, these two items are irrelevant as these Malaysian companies were either loss making or did not register reasonable profits in the sense of Article 2(6a)(a) of the basic Regulation during the investigation period. As it was explained in recital (230), Lite and Opcom Cables and were not profitable in 2019 and 2020 respectively, while Tenaga Cable profit in 2019 did not represent a 'reasonable amount' within the meaning of Article 2(6a)(a) of the basic Regulation as stated in recital (268). Therefore, the claim was rejected.

(265) The ZTT group claimed that the Commission could use the profitability margin of the Malaysian company for 2018 in the same manner as it uses estimates of profitability prior to the investigation period when calculating the injury elimination margin.

(266) Article 2(6a) indicates as a first method the use of corresponding costs of production and sale in an appropriate representative country within the investigation period. In this context, profits would naturally emanate from the same period. If profits are not reasonable as in this case, another representative country is selected. The claim can thus not be accepted.

(267) The ZTT group also submitted the financial statements for 2019 of a Malaysian company Tenaga Cable Industries SDN BHB that was listed in the First Note as stated in recital (220) and asked the Commission to choose Malaysia as a representative country and use the SG&A and profit margin of this company for constructing the normal value.

(268) The Commission noted that indeed this company was profitable in 2019, however, the profit margin did not represent a 'reasonable amount' within the meaning of the last paragraph of Article 2(6a)(a) of the basic Regulation. Therefore, the Commission rejected this claim.

(269) The ZTT group also claimed the Commission should use Malaysia instead of Argentina as a representative country as the import data was better than for Argentina. Malaysia had a tariff code at 8-digit level dedicated to optical fibres (9001 10 10), which matched the raw material type used in the production of the product concerned (for telecommunication use) and there were no import custom duties–while the Argentinian tariff nomenclature did not provide for such specific split of optical fibres for telecommunication use and customs duties apply.

([123]) Commission Implementing Regulation (EU) 2021/607 of 14 April 2021 imposing a definitive anti-dumping duty on imports of citric acid originating in the People's Republic of China as extended to imports of citric acid consigned from Malaysia, whether declared as originating in Malaysia or not, following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ L 129, 15.4.2021, p. 73).

(270) This claim is factually incorrect. The 8-digit code for Malaysia (i.e. 9001 10 10) is both for telecommunication and electrical use. In the case of Argentina, the two relevant 8-digit codes of optical fibres (9001 10 19 and 9001 10 11) do not specify the use but clearly identify the product i.e. optical fibres. The main use of optical fibres is clearly in the telecommunications. At any rate, as explained in recital (231), the Commission was not able to find a relevant company in Malaysia with readily available financial data during the investigation period that recorded reasonable amounts of profit in the sense of Article 2(6a)(a) of the basic Regulation. Therefore, the claim was rejected.

(271) The ZTT group also claimed the Commission should use Malaysia instead of Argentina as a representative country as the energy market in Argentina was distorted. It referred in this regard to a 2019 report from Fitch Rating ([124]) which stated that the Argentinian electricity sector relied on government subsidies paid to Compania Administradora del Mercado Mayorista Eléctrico S.A. (CAMMESA), which were transferred to power-generation companies. The ZTT group also claimed that according to the World Bank, there were four state-owned enterprises which operated in the Argentinian electricity market.

(272) The Commission noted that the report of Fitch Rating was published on 13 June 2019 and the subsidies received by the CAMMESA referred to the period up to 2018. Furthermore, the extracts from the report provided by this party only stated that the subsidies were transferred to power-generation companies, and did not conclude that these companies further transferred these subsidies to the final customers. In any event, even if this were to be the case, then the electricity costs used as a benchmark would be lower and as a result the normal value would also be lower, thus benefiting the exporting producers. In any event, as explained in recital (348), for calculating the benchmark for electricity, the Commission used the tariffs published by electricity distributors Edesur and Edenor during the investigation period. As also stated in the report submitted by the ZTT group, Edenor and Edesur are private entities (Edenor is majority owned by Pampa Energia and Edesur by Enel Americas) and thus did not appear to receive these subsidies. Moreover, no evidence was provided of the effect of the alleged subsidies on the market. Therefore, the Commission rejected this claim.

(273) The ZTT group also claimed that in case Argentina was used as a representative country instead of Malaysia, the import statistics under Argentinian code 9001 10 19 should be excluded from the calculation of undistorted price of that input as the import quantity is low (688 kg) and highly priced, and therefore allegedly not made in the ordinary course of trade. Furthermore, it was claimed that the data of Argentinian code 9001 10 20 (Haces Y Cables De Fibras Ópticas – fibre optic cables and bundles) should be included as this was imported in much larger and more usual amounts (1 212 473 kg).

(274) Regarding Argentinian code 9001 10 19, the ZTT group has not submitted any evidence showing that the imports under this code were not made in the ordinary course of trade. The higher price is not an indicator in this regard. In addition, the investigation revealed that some of the Chinese exporting producers were purchasing optical fibres at similar prices. Furthermore, it is noted the Argentinian code 9001 10 20 is for optical cables and not optical fibres and, therefore, it cannot be used in the calculation of the benchmark for optical fibres. Therefore, this claim was rejected.

(275) The ZTT group also argued that based on the annual report of Prysmian Group for 2019, 16 % of the group's total revenue was derived from its projects business (customized high tech and high voltage cables for submarine and terrestrial use), 70 % was derived from its energy business (complete product portfolio of energy cabling), but only 14 % was derived from its telecom business. Therefore, it was argued that to use a member of the Prysmian Group as a basis for the cost, SG&A and profits in the optical fibre cable market would be misleading as they constitute only a small fraction of what they produced.

(276) The financial information of Prysmian Energia disclosed to interested parties in the Second Note are not at the level of the whole Prysmian Group but at the level of the entity in Argentina. Furthermore, based on the information available on the website of Prysmian Energia ([125]) the activity of this company covers the product concerned and

([124]) https://your.fitch.group/rs/732-CKH-767/images/Fitch_10069753.pdf?mkt_tok=eyJpIjoiWmpSa1pXWTROREJpWkRVMCIsInQiOiJ1NnhzNGptTmpwaUQrcUNiM2ZERDAycU1UV3dwcEQzaG5ORGNlUVFHTlBLZTduYXhPS1BhaHNaQVdQUzVUTmFkRzRBQk9PQ2pkSFR3V1c0Y24wMEZPdz09In0%3D

([125]) https://ar.prysmiangroup.com/en

therefore the financial data of this company is a representative proxy of the financial performance of OFC activity in Argentina. Furthermore, as explained in recital (227), the application of the methodology in Article 2(6a) of the basic Regulation relies on readily available data, and it may well be the case that the data is not available at the most granular level of the product concerned but at a more aggregate level. This claim was thus rejected.

(277) The ZTT group also argued that the quality of the data in Argentina was not reliable as Prysmian Energia was related to Prysmian S.p.A, a Union producer part of the current investigation. As a consequence, any injury suffered by the Prysmian S.p.A, would affect the financial results of the whole group as well, including those of Prysmian Energia. Furthermore, it argued that the financial result of Prysmian Energia alone could well have been affected by the transactions concerning the inputs supplied by related parties.

(278) As explained in recital (276), the financial information of Prysmian Energia disclosed to interested parties in the Second Note were not at the level of the whole Prysmian Group but at the level of the entity in Argentina. Furthermore, the ZTT group did not explain how the financial data of a company in Argentina could be affected by the injury suffered by a related company in Italy. This claim is purely speculative as it was not backed by any supporting evidence. The claim that the financial result of Prysmian Energia could have been affected by the transactions concerning the inputs supplied by related parties is also speculative as again no evidence was submitted to back this claim. These claims were just rejected.

(279) The ZTT group asked the Commission to provide a more detailed breakdown of the contents of operating expenses of Prysmian Energia that were available to the Commission or if they were not currently available to obtain and disclose them.

(280) The Commission confirms that it disclosed to interested parties the relevant readily available financial information of Prysmian Energia from Dun & Bradstreet in the Second Note.

(281) Connect Com claimed that, as in the case of Turkey, it cannot be assumed for Argentina that sufficiently representative quantities of fibre optic cables are produced in Argentina to meet the benchmark of 5 % of production in China, as provided for in the Commission's guidance for complaints ([126]). According to this party, the total production volume of the OFC producers in Argentina would lag far behind the total production of the Chinese manufacturers.

(282) Connect Com also argued that the producers in Argentina did not have access to the key raw materials such as glass fibres, aramid or polyethylene and unlike the Chinese producers, these raw materials have to be imported in a relatively complex and costly manner. It relied on the ECJ judgment of Case C-16/90 of October 22, 1991 ([127]) in this regard which says that access to raw materials must be taken into account when choosing the reference country.

(283) As a preliminary remark, it should be noted that Connect Com's arguments and the reference to the judgment in case C-16/90 is misplaced. This Court case discussed the choice of the analogue country under former Article 2(7) of the basic Regulation which specified that the normal value for non-market economy countries could be based on actual domestic prices charged or actual costs incurred by domestic producers in a third market economy country. Under that provision, factors such as access to raw materials and production volume by the analogue country producers could have a bearing on the choice of the analogue country because they could influence the domestic prices and costs of the analogue country producers for the production and sale of the like product. As such, it was reasonable

([126]) Guide 'How to make an anti-dumping complaint', p. 17.
([127]) C-16/90, *Nölle v Hauptzollamt Bremen-Freihafen*, para. 20.

to select an analogue country where such factors were comparable to those observed in a non-market economy under investigation. Those considerations are no longer relevant for the application of Article 2(6a). This is because, under Article 2(6a), the normal value is based on the factors of production of the exporting producers under investigation. The representative reference country is solely used to source undistorted data to value the factors of production of, in this case, the Chinese exporting producers under investigation.

(284) Without prejudice to the above, the Commission noted the following.

(285) In relation to the claim pertaining to the Guide for complainants, all the text referred to by Connect Com is an explanatory guide for complainants that is not legally binding and is only meant to provide general advice ([128]). Furthermore, this guide is only meant to provide guidance for the complainants at complaint stage and does not cover the investigation stage, which is the context of the claim by this party. In any event, the Commission notes that the text quoted was an oversight from a previous version discussing the choice of the analogue country under former Article 2(7) and that in the meantime the guide has been revised ([129]). Therefore, this claim was dismissed.

(286) In relation to the claim pertaining to access to raw materials, it is both wrong and purely speculative. Based on the data reported by GTA, companies in Argentina are importing glass fibres, aramid or polyethylene in significant volumes. Furthermore, Connect Com has not submitted any evidence showing the allegedly complex and costly manner in which the Argentinian companies import these raw materials. Therefore, the claim was rejected.

(287) Furthermore, Connect Com wrongly claimed that the Commission excluded Colombia, Malaysia, Serbia and South Africa as possible representative countries based on an analysis of import data at 6-digit level that was done in the First Note, while for Argentina it carried out an analysis at 8-digit level.

(288) As explained in recital (238), the Commission has not considered Colombia, Malaysia, Serbia and South Africa suitable representative countries as it did not find available information for the investigation period on financial data for producers in these countries. Therefore, no analysis of import data was carried out. Therefore, the claim was rejected.

(289) Connect Com also claimed that the Commission could not exclude Brazil based on the fact that a high proportion of aluminium clad steel wire was imported from China as aluminium clad steel wire was not a relevant raw material that would be required for the production of OFC and that if this decision was based on the import volume from China of insignificant factors of production, then also Argentina should be rejected as a representative country as for other insignificant factors of production such as aluminium allow wire and aluminium rods, Argentina imports significant volumes from China.

(290) Connect Com misunderstood the reasons why the Commission did not consider Brazil as an appropriate representative country. As explained in recital (242), the Commission concluded that the overall representativeness of undistorted imports into Brazil was low as several raw materials, that were used in significant volumes in the cost of production of OFC, were mainly imported from China. More specifically, the Commission highlighted that the representativeness of optical fibres and its underlying value were significantly undermined as most of the imports

([128]) The legal disclaimer of the Guide reads as follows: "This Guide is not a legally binding document. Its contents are not compulsory. The information provided by complainants may vary depending on the specific circumstances of the case. This Guide is meant only to provide general advice. There may be circumstances where another approach may be reasonable due to the particular nature of the case. It also follows that no conclusions can be drawn from this Guide on what constitutes standards of acceptability in anti-dumping complaints. Equally, using this Guide does not imply the automatic acceptance of the complaint: Each case is analysed on its own merits."

([129]) https://trade.ec.europa.eu/doclib/docs/2006/december/tradoc_112295.pdf

were coming from China either when assessed at 6-digit level or at 8-digit level. Furthermore, as explained in recital (242), aluminium clad steel wire is used by one exporting producer in significant volumes in the production of OFC. This producer manufactures OFC that, in addition to data transmission, is also used for power transmission and as explained in recital (59), these products are also covered by the current investigation. Moreover, also glass fibres were mainly imported from China. Therefore, the claim is rejected.

(291) Connect Com reiterated its claim that the Commission should examine whether Mexico, Kazakhstan and the Russian Federation might be considered as suitable representative countries as OFC was produced in greater quantities in these countries than in Argentina. It further stated that based on the case law of the European Court of Justice ([130]), the Commission could not rely on the fact that it had not found a manufacturer with readily available figures but that it must make every effort to find a manufacturer in the third country concerned who was willing to cooperate in the investigation.

(292) As explained in recital (212), the Commission did not assess Mexico, Kazakhstan and the Russian Federation further as it was not able to find any producer of OFC in these countries with readily available financial information. It is further noted that Connect Com did not submit any such information either. Furthermore, the financial information of the relevant company in the representative country is based on readily available information and the Commission does not need to seek the cooperation from companies in the representative country. Therefore, the claim was rejected.

3.2.4. *Level of social and environmental protection*

(293) Having established that Argentina was the only appropriate representative country, based on all of the above elements, there was no need to carry out an assessment of the level of social and environmental protection in accordance with the last sentence of Article 2(6a)(a) first indent of the basic Regulation.

3.2.5. *Conclusion*

(294) In view of the above analysis, Argentina met the criteria laid down in Article 2(6a)(a), first indent of the basic Regulation in order to be considered as an appropriate representative country.

3.2.6. *Comments on final disclosure*

(295) In its comments on final disclosure, the ZTT group reiterated its arguments concerning the choice of representative country claiming that Malaysia was a better representative country than Argentina. In this regard it reiterated its arguments stated in recitals (265), (267) and (269) without providing any new elements. Furthermore, it claimed without any evidence, that there was no optical fibre production in Argentina and that the imports of optical fibres were insufficient for normal operation needs.

(296) For the reasons stated in recitals (266), (268) and (270) and lack of supporting evidence, these claims were rejected.

(297) In its comments on final disclosure, in reference to the selection of the representative country from a list of countries with a similar level of economic development as the exporting country, Connect Com argued that although the Commission used countries classified in the same income category by the World Bank by exercising its discretion in the interpretation and application of the basic Regulation, Connect Com considers that it did not seem correct to select a country with similar level of economic development only on the basis of the general categorization of the World Bank. Furthermore, it argued that the European courts have not confirmed this practice. Therefore, Connect Com claimed that the Commission should not have dismissed as irrelevant Connect Com's claims that the Commission should also take into account the production conditions in the industry and the level of technological development in the representative countries, as compared to China.

([130]) Judgment of 22 March 2012, *GLS*, C-338/10, EU:C:2012:158, para. 34.

(298) For the reasons explained in recitals (216) and (217) these claims were rejected.

(299) Connect Com also claimed that the Commission should disclose for which of the three Argentinian commodity codes for optical fibres the volume of imports from China represented 52 % and what was the volume of imports for the other products.

(300) It is noted that on 12 March 2021 the Commission has added to the non-confidential file of the investigation the complete extraction of imports of the factors of production of Argentina, Brazil, Thailand and Turkey. In sheet 'QTY share', the imports volume from China in the total volume of imports for the Argentinian commodity code 9001 10 20 was 51,55 % (52 % rounded), for 9001 10 19 was 21,83 % and for 9001 10 11 was 1,55 %.

(301) Connect Com also claimed that the Commission excluded Colombia, Malaysia, Serbia and South Africa as suitable representative countries based on an analysis of imports at 6-digit level while for Argentina it carried out the analysis on 8-digit level.

(302) The Commission disagrees with this claim. As stated in recital (238) Colombia and South Africa were not considered suitable representative countries as the Commission did not find readily available information for the investigation period on financial data for producers in these countries. Malaysia and Serbia were also not considered suitable representative countries as the Commission did not identify profitable producers in these countries. Therefore, the claim was rejected.

(303) Connect Com also claimed that Brazil should not have been excluded as a suitable representative country because a high volume of imports of aluminium clad steel wire in Brazil was imported from China. Connect Com also claimed that aluminium clad steel wire was not a relevant raw material for the production of OFC. Connect Com also asked the Commission to disclose which Chinese exporting producer allegedly used aluminium clad steel wire in the production of OFC.

(304) As explained in recital (242) the overall representativeness of undistorted imports into Brazil was considered to be low and not only for aluminium clad steel wire. The aluminium clad steel wire is used in the production of OPGW and OPPC which are also covered by the investigation and are exported to the Union by the sampled Chinese exporting producers.

(305) Connect Com also reiterated the claims raised by CCCME as well as its claims in recital (259) without providing any new elements.

(306) For the reasons explained in recital (260) these claims were rejected.

(307) Connect Com also reiterated its claims made in recital (281) without bringing forward new elements.

(308) For the reasons explained in recitals (283) to (285) these claims were rejected.

(309) Connect Com also claimed that since OPGW and OPPC are also covered by the investigation, the selected Argentinian producer should manufacture these type of OFC as well and the Commission should disclose if this is the case.

(310) The Commission notes that there is no such requirement that the selected producer from a representative country should manufacture all the product type exported by the Chinese producers. Therefore, this claim was rejected as being irrelevant.

(311) In its comments on final disclosure, CCCME reiterated its claims in recital (259) that Argentina was not an appropriate representative country as the sole producer in Argentina identified by the Commission (i.e. Prysmian Energia) was related to one of the complainants and the company held a large share in the Argentinian market. It referred again to the anti-dumping investigation on imports of glyphosate from China ([131]) where Argentina, Australia, India, and Malaysia were rejected as analogue countries because their markets were largely dominated by companies related to the main EU complainant. It further argued that the Commission did not address the claim regarding the investigation of glyphosate and also did not demonstrate that the SG&A and profit data of the Argentinian producer could be used in the construction of normal value.

(312) As stated in recital (260) the fact that the selected company in the representative country is related to a Union producer is not decisive in the choice of the representative country. The CCCME refers to a case that concerned the application of the former Article 2(7)(a) of the basic Regulation, which was repealed in December 2017 ([132]). Article 2(7)(a) required the choice of an appropriate market economy third country, also known as an 'analogue country' and the choice of a producer located in that country. Under Article 2(6a), rather than requesting and verifying the data of an analogue country producer, the Commission instead relies on readily available information relating to the IP. As such, the procedure under Article 2(6a) is fundamentally different and the Commission does not consider that the alleged relationship in the present case can have any bearing on the appropriateness of relying on the readily available data of the Argentinean producer. Furthermore, the fact that the company holds a large share on the Argentinian market does not mean that there is no competition in Argentina. Therefore, the claim was rejected.

(313) CCCME also claimed that the Commission did not specify the standard it referred to when determining whether the profit margin of a producer in a representative country is reasonable or not. It further claimed that the Commission did not explain why the actual profit margin of a producer in market which has not been found to be distorted cannot be used in the construction of the normal value.

(314) The Commission disagrees with this claim. These explanations were provided in recitals (258) and (294) where the Commission concluded that Argentina met the criteria laid down in Article 2(6a)(a), first indent of the basic Regulation in order to be considered as an appropriate representative country and therefore the Commission needed to use the profit for a producer from Argentina. Therefore, the claim was rejected.

3.3. **Sources used to establish undistorted costs**

(315) In the First Note, the Commission listed the factors of production such as materials, energy and labour used in the production of the product concerned by the exporting producers and invited the interested parties to comment and propose readily available information on undistorted values for each of the factors of production mentioned in that note.

(316) Subsequently, in the Second Note, the Commission stated that, in order to construct the normal value in accordance with Article 2(6a)(a) of the basic Regulation, it would use GTA to establish the undistorted cost of most of the factors of production, notably the raw materials. In addition, the Commission stated that it would use ILO statistics and the electricity tariffs published by two electricity distributors, i.e. Edenor and Edesur, for establishing undistorted costs of labour and energy respectively, as detailed in recital (348).

([131]) Council Regulation (EC) No 368/98 of 16 February 1998 imposing a definitive anti-dumping duty on imports of glyphosate originating in the People's Republic of China and collecting definitively the provisional duty imposed (OJ L 47, 18.2.1998, p. 1), recital (15).

([132]) Article 2(7) of 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, 30.06.2016, p. 21) was replaced by the current text of Article 2(7) of the basic Regulation pursuant to Article 1(2) of Regulation (EU) 2017/2321 of the European Parliament and of the Council 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 of 12 December 2017.

(317) In the Second Note, the Commission also informed the interested parties that due to the extremely large number of factors of production of the sampled exporting producers that provided complete information, it might group the ones representing a negligible weight of cost of manufacturing under 'consumables'. As for their treatment in the calculation of normal value, the Commission informed that it would calculate the percentage of the consumables on the total cost of raw materials and apply this percentage to the recalculated cost of raw materials when using the established undistorted benchmarks in the appropriate representative country. The Commission did follow this approach as explained further below at recital (320).

3.4. **Undistorted costs and benchmarks**

3.4.1. *Factors of production*

(318) Considering all the information submitted by the interested parties and collected during the verification visits, the following factors of production and their sources have been identified in order to determine the normal value in accordance with Article 2(6a)(a) of the basic Regulation:

Table 1

Factors of production of OFC

Factor of Production	Commodity Code in Argentina	Undistorted Value	Unit of Measurement
Raw materials			
Aluminium alloy wire	7605 29 90	32,60	CNY/kg
Aluminium clad steel wire	7217 30 10, 7217 30 90	10,17	CNY/kg
Aluminium rods	7605 21 10 7605 21 90	27,59	CNY/kg
Aluminium strip	7606 12 20, 7606 12 90	21,68	CNY/kg
Aluminium strip/tape	7606 91 00	29,03	CNY/kg
Aramid yarn	5402 11 00	148,37	CNY/kg
Cable jelly	4002 99 90	26,58	CNY/kg
Cable paste	2710 19 93, 2710 19 99	9,26	CNY/kg
Ethylene vinyl acetate	3905 29 00	15,93	CNY/kg
Fill rope	5607 49 00	33,44	CNY/kg
Flame retardant sheath material	3901 90 10, 3901 90 20, 3901 90 50, 3901 90 90	16,22	CNY/kg
Glass fibre reinforced polymer	3921 90 19	25,31	CNY/kg
Glass fibre reinforced plastic	3921 90 19	25,31	CNY/kg
Glass fibre reinforced polymer-covered with glue	3919 90 10, 3919 90 90	48,53	CNY/kg

Glass fibre yarn	7019 19 00	135,88	CNY/kg
High density polyethylene conventional sheath material	3901 20 19, 3901 20 29	7,81	CNY/kg
Low density polyethylene	3901 40 00	8,26	CNY/kg
Low density polyethylene conventional sheath material	3901 10 10, 3901 10 91, 3901 10 92	7,88	CNY/kg
Low smoke zero halogen sheath material	3901 30 10, 3901 30 90	13,39	CNY/kg
Optical fibre	9001 10 11,	660,5	CNY/kg
Phosphating rubber coated steel wire	7217 90 00	12,54	CNY/kg
Polybutylene terephthalate	3907 99 11, 3907 99 19	14,00	CNY/kg
Polyolefin elastomer	3901 90 10, 3901 90 20, 3901 90 50, 3901 90 90, 3902 90 00	19,06	CNY/kg
Stainless steel optical unit	8544 70 90	114,79	CNY/kg
Stainless steel strip	7219 32 00	16,63	CNY/kg
Stainless steel strip/tape	7220 20 10, 7220 20 90	17,03	CNY/kg
Steel strand	7312 10 10, 7312 10 90	16,82	CNY/kg
Steel strip	7212 50 90	26,16	CNY/kg
Steel wire	7217 10 11, 7217 10 19, 7217 10 90	7,99	CNY/kg
Tape	3919 10 20	66,66	CNY/kg
Yarn	5402 20 00	16,01	CNY/kg
Labour			
Labour wages in producing sector	[N/A]	40,1	CNY/h
Energy			
Electricity	[N/A]	0,3390	CNY/Kwh

Raw materials

(319) In order to establish the undistorted price of raw materials as delivered at the gate of a representative country producer, the Commission used as a basis the weighted average import price to the representative country as reported in the GTA to which import duties and transport costs were added. An import price in the representative country was determined as a weighted average of unit prices of imports from all third countries excluding China and countries which are not members of the WTO, listed in Annex 1 of Regulation (EU) 2015/755 of the European Parliament and the Council. The Commission decided to exclude imports from China into the representative country as it concluded in recital (69) that it is not appropriate to use domestic prices and costs in China due to the existence

of significant distortions in accordance with Article 2(6a)(b) of the basic Regulation. Given that there is no evidence showing that the same distortions do not equally affect products intended for export, the Commission considered that the same distortions affected export prices. After excluding the imports into Argentina from China and non-market economy countries, the Commission found that imports of the main raw materials from other third countries remained representative (more than 70 % of total volumes imported to Argentina).

(320) Given the exceptionally high number of factors of production used by the exporting producers, for a number of them the actual costs incurred by the cooperating exporting producers represented a negligible share of total raw material costs in the investigation period. The Commission decided to include those costs into consumables, as the impact on the calculation of the normal value was considered very limited. The actual raw materials included in consumables were listed in the company-specific disclosure. The Commission calculated the percentage of the consumables on the total cost of raw materials and applied this percentage to the recalculated cost of raw materials when using the established undistorted prices.

(321) In order to establish the undistorted price of raw materials, as provided by Article 2(6a)(a), first indent of the basic Regulation, the Commission applied the relevant import duties of the representative country.

(322) The Commission expressed the transport cost incurred by sampled exporting producers for the supply of raw materials as a percentage of the actual cost of such raw materials and then applied the same percentage to the undistorted cost of the same raw materials in order to obtain the undistorted transport cost. The Commission considered that, in the context of this investigation, the ratio between the exporting producer's raw material and the reported transport costs could be reasonably used as an indication to estimate the undistorted transport costs of raw materials when delivered to the company's factory.

(323) In its comments on final disclosure, the FTT group claimed that the commodity code in Argentina for optical fibre 9001 10 19 was not for single mode fibres but for multimode fibre and special fibres which were not used in the manufacturing of the product concerned. This was due to the fact that the fibres covered by the code had a diameter higher than 11 microns which was for multimode fibre.

(324) This claim was found to be justified and therefore the Commission agreed to revise the benchmark for optical fibres accordingly.

(325) In its comments on final disclosure, the ZTT group claimed that the Commission was wrong not to include in the calculation of the benchmark for optical fibres the imports via the Argentinian commodity code 9001 10 20 on the grounds that it included optical cables as stated in recital (274) as the optical fibre cables were imported via the Argentinian commodity code 8544 70 00. However, the FTT group stated that it had no objection to the Commission's decision to disregard this Argentinian commodity code.

(326) The Commission notes that the HS code 8544 70 is for single mode optical fibre cables, made up of one or more individually sheathed fibres, with protective casing, whether or not containing electric conductors and excludes the cables in which all the optical fibres are individually fitted with operational connectors at one or both extremities and plastic insulated cables for submarine use containing a copper or aluminium conductor in which fibres are contained in metal module(s). On the other hand the heading 9001 is for optical fibres and optical fibre bundles as well as for optical fibre cables other than those of heading 8544. The description of the Argentinian commodity code 9001 10 20 reads 'optical fibre bundles and cables'. Therefore, the claim was rejected.

(327) The FTT group also claimed that the data used by the Commission for calculating the benchmark for optical fibre includes both coloured and non-coloured fibres and asked the Commission to deduct the cost of colouring the fibre that it incurred from the value of the benchmark.

(328) The Commission noted that the evidence submitted by FTT only in the confidential version of its submission cannot be properly assessed as it was only an excerpt of a certain set of data. Nevertheless, the Commission recalled that the calculation of the benchmarks is made on readily available data and the excerpt of the information provided by FTT in this regard is clearly not readily available. Therefore, the claim was rejected.

(329) The ZTT group claimed that for constructing the benchmark for the raw material 'cable jelly', out of the four commodity codes used by the Commission, i.e. 4002 99 10, 4002 99 20, 4002 99 30, and 4002 99 90, only 4002 99 90 should be used. The ZTT group put forward supporting evidence that the other three commodity codes were not used for the manufacturing of the product concerned.

(330) This claim was also find to be justified and therefore the Commission revised the benchmark for cable jelly accordingly.

(331) The ZTT group also claimed that the commodity code for the raw material 'aluminium rods' was not correct as under the Argentinian nomenclature they refer to aluminium hollows and other profiles, rather than bars and rods, which are not used for the manufacture of the product concerned and therefore the Commission should identify another code. The ZTT group did not suggest another alternative commodity code.

(332) The Commission confirmed that the Argentinian code covered aluminium hollows and other profiles and not bars and rods. After further analysis, the Commission decided to revise the code and instead use HS code 7605 21, which pertains to aluminium alloy rods that are used to manufacture aluminium clad steel wires for optical ground wires (OPGW) ([133]).

(333) The ZTT group also claimed that it did not use glass fibre yarns to manufacture OFC but glass fibre rovings and therefore the correct HS code would be 7019 12. The ZTT group stated that the decisive factor distinguishing yarns and rovings was whether the filaments are twisted or not. ZTT group claimed that the filaments it used were not twisted and therefore the correct HS code was the one for rovings i.e. 7019 12.

(334) The Commission disagreed with this claim. The HS code 7019 12 is for glass fibre rovings which are the raw materials to manufacture glass fibre yarns. Furthermore, the Union producers confirmed that glass fibre rovings are raw materials used by the suppliers of glass yarns and glass reinforced rods of the OFC industry. Therefore, the correct HS code is 7019 19.

(335) The FTT group stated that the factor of production 'water' was wrongly included by the Commission in 'consumables' while this factor of production was not a direct raw material cost but a direct cost.

(336) The Commission included the factor of production 'water' in consumables as it represented less than 0,05 % of the total direct cost and therefore its impact on the dumping margin was negligible.

(337) The FTT group argued that the Commission was required to construct a benchmark for each factor of production as it concluded that all factors of production were distorted. Therefore, it claimed that the Commission was not allowed to group several factors of production under consumables and apply the calculation methodology explained in recital (320) as this would distort the data. The FTT group asked the Commission to use the reported data of FTT group for these factors of production. The ZTT group also disagreed with the Commission's methodology for consumables and claimed that the Commission should calculate a benchmark for consumables separately from other inputs.

(338) As explained in recital (320), due to the high number of factors of production (for example more than 60 factors of production for FTT), the Commission included several factors of production (around 30 factors of production for FTT) that represented a negligible share of total raw material costs in the investigation period (around 4 % for FTT) into consumables. The Commission considered that the sourcing of all these factors of production would have entailed a significant administrative burden, also considering that for some of them the import values into the representative country was not representative, whereas the impact on the calculation of the normal value, of which these factors of production represent only a part, was considered very limited. Therefore the Commission applied its standard methodology for calculating the undistorted value of consumables i.e. by calculating the percentage of

([133]) https://www.prysmiangroup.com/sites/default/files/business_markets/markets/downloads/datasheets/OPGW-TUBAL_1.pdf

the consumables on the total cost of raw materials and applied this percentage to the recalculated cost of raw materials when using the established undistorted prices. This methodology, concerning such a small share of the cost of manufacturing and an even smaller share of the normal value calculations, is considered to lead to very similar results to the methodology based on sourcing each factor of production. In any event, this methodology could very well result in a favourable outcome for the exporting producers, if the underlying actual value of the inputs would be higher than that calculated as a percentage of the total cost of raw materials. No interested party provided evidence that the approach followed by the Commission would lead to a less favourable result. Furthermore, the Commission noted that significant distortions were established in section 3.1.1 above. In that case, according to Article 2(6a) of the basic Regulation, domestic costs may be used but only to the extent that they are positively established not to be distorted, on the basis of accurate and appropriate evidence. No such evidence with regards to factors of production grouped under consumables was put forward by the exporting producers, nor found by the Commission. Therefore, the Commission cannot use the data reported by the FTT group. The Commission considers that its methodology for calculating an undistorted value for consumables is appropriate as no better information is available. The ZTT group also did not attempt to put forward the benchmark as calculated by using GTA import values into the representative country, nor has it suggested an alternative undistorted benchmark for consumables. Therefore, the claim was rejected.

(339) The ZTT group claimed that the six by-products/waste reported as factors of production should not be included in the consumables and the Commission should construct a benchmark for each of them.

(340) The Commission disagreed with this claim. As explained in recital (320) given the exceptionally high number of factors of production used by the exporting producers, the Commission included several factors of production whose actual costs incurred by the cooperating exporting producers represented a negligible share of total raw material costs in consumables. The six by-products/waste reported by the ZTT group represented, depending on the by-products/waste, between less than 0,005 % and less than 0,050 % of the total direct costs and in total less than 0,10 % of the total direct costs. Therefore, their potential impact on the normal value was immaterial, and the same considerations summarised at recital (338) are relevant in this respect. The claim was thus rejected.

(341) The FTT group stated that by using CIF values to construct benchmarks which includes transport costs outside Argentina, ocean freight charges and insurance, the Commission negates any comparative advantage producers may have on account of the availability of certain raw materials in their home market.

(342) Article 2(6a)(a) of the basic Regulation prescribes the use of corresponding data in an appropriate representative country 'provided the relevant data are readily available.' The Commission did not have at its disposal on file data on domestic prices in the possible representative countries. By contrast, data on import prices are readily available and the Commission uses the GTA as the source of this data. This party also failed to submit possible relevant data from the representative country that could be used in the investigation. Therefore, the claim was rejected.

(343) The ZTT group also disagreed with the Commission's methodology for calculating an undistorted cost of the transport of raw materials explained in recital (322). The ZTT groups argued that the Commission should calculate individually the transport cost for each raw material. It was further added that the transport cost might vary significantly from one factor of production to the other.

(344) The Commission notes that the ZTT group did not suggest how the Commission should calculate individually the transport cost for each raw material. As explained in recital (322) the Commission considered that, in the context of this investigation, the ratio between the exporting producer's raw material and the reported transport costs could reasonably be used as an indication to estimate the undistorted transport costs of raw materials when delivered to the company's factory. Therefore, the claim was rejected.

3.4.1.1. Labour

(345) The Commission used the ILO statistics to determine wages in Argentina. The ILO statistics provide information on average labour cost for 2018 for several occupations. However, the average labour cost for the manufacturing sector was not available. Therefore, to establish the benchmark for labour cost, the Commission used the total average labour cost provided by ILO statistics together with readily available information on additional labour costs (such as taxes) incurred by an employer in Argentina ([134]). The Commission also used the index ([135]) to adjust the 2018 data for inflation.

(346) In their comments on final disclosure, the ZTT group claimed that the Commission should use the labour cost of 'plant and machines operators and assemblers' as they were mostly close to the type of labour force in the OFC.

(347) The Commission disagreed with this claim. ZTT group did not submit any evidence showing that most of the employees of ZTT group were plant and machines operators and assemblers. As the OFC industry is a high-tech industry, the OFC producers employ many engineers and technicians which are classified by ILO under the category 'professionals' as well as information and communications technicians which are classified by ILO under 'technicians and associate professionals'. The average labour cost of these three occupations is more than 20 % higher than the value of total labour cost used by the Commission for the calculation of the benchmark for labour. As the Commission does not have a breakdown of the proportion of the number of employees in these main categories in the total number of employees, it considered appropriate to use the average labour cost provided by ILO. Therefore, the claim was rejected.

3.4.1.2. Electricity

(348) The price of electricity for companies (industrial users) in Argentina is published by the distributors of electricity Edenor and Edesur ([136]) during the investigation period. The information enables to identify the price of electricity paid by the industrial users (Tarifa T3). It also provides details on prices paid by industrial users that opted for differentiated rates based on the time of day when electricity is consumed and the voltage used. The Commission used these tariffs for calculation.

(349) Following final disclosure, the ZTT group claimed that there was an error in the formula for the calculation of the benchmark for electricity.

(350) The Commission corrected this error, whose impact was minor.

3.4.2. *Manufacturing overhead costs, SG&A, and profits*

(351) According to Article 2(6a)(a) of the basic Regulation, '*the constructed normal value shall include an undistorted and reasonable amount for administrative, selling and general costs and for profits*'. In addition, a value for manufacturing overhead costs needs to be established to cover costs not included in the factors of production referred to above.

(352) The manufacturing overheads incurred by the cooperating exporting producers were expressed as a share of the costs of manufacturing actually incurred by the exporting producers. This percentage was applied to the undistorted costs of manufacturing.

(353) For establishing an undistorted and reasonable amount for SG&A and profit, the Commission relied on the financial data for 2019 for Prysmian Energia Cables y Sistemas de Argentina S.A. as extracted from Dun and Bradstreet (D&B) ([137]). The Commission made this data available to interested parties in the Second Note.

([134]) https://www.doingbusiness.org/content/dam/doingBusiness/country/a/argentina/ARG.pdf (page 44); https://www.argentina.gob.ar/trabajo/casasparticulares/empleador/remuneracionesyrecibos/aguinaldo; https://www.mondaq.com/argentina/employee-rights-labour-relations/536000/labor-costs-in-argentina

([135]) https://www.indec.gob.ar/indec/web/Nivel4-Tema-4-31-61

([136]) https://www.argentina.gob.ar/enre/cuadros_tarifarios

([137]) https://globalfinancials.com/index-admin.html

(354) In its comments on final disclosure, FTT group disagreed with the calculation methodology applied to the overheads explained in recital (352) arguing that the Commission based 'distorted data' to recalculate 'distorted' valued which was contradictory to the legal principles and practice of the Commission and asked the Commission to keep the original data reported by FTT group. ZTT also disagreed with the Commission's methodology for overheads and asked the Commission to build a benchmark for this separately from other inputs.

(355) The Commission noted that the overheads data was not readily available separately in the financial statements of the producer in the representative country. Furthermore, once significant distortions are established, according to Article 2(6a) of the basic Regulation, domestic costs may be used but only to the extent that they are positively established not to be distorted, on the basis of accurate and appropriate evidence. No such evidence with regards to overheads was put forward by the exporting producers, nor found by the Commission. Therefore, the claim was rejected. The Commission considered that its methodology for calculating an undistorted value for overheads is appropriate as no better information is available. The ZTT group has also not suggested an alternative undistorted benchmark for overheads. Therefore, the claim was rejected.

(356) In its comments on final disclosure, the ZTT group claimed that its own SG&A and profit should not be excluded from consideration as the Commission did not prove that it was distorted.

(357) The Commission disagreed with this claim. As explained in recital (142) the Commission concluded that it was not appropriate to use domestic prices and costs to establish normal value in this case. Therefore, in this case, as stated in recital (158), the Commission does not need to prove that the actual SG&A costs of the exporting producers were undistorted.

3.4.3. *Calculation*

(358) On the basis of the above, the Commission constructed the normal value per product type on an ex-works basis in accordance with Article 2(6a)(a) of the basic Regulation.

(359) First, the Commission established the undistorted manufacturing costs (covering the consumption of raw materials, labour and energy). The Commission applied the undistorted unit costs to the actual consumption of the individual factors of production of the sampled exporting producers. The Commission multiplied the usage factors by the undistorted costs per unit observed in the representative country, as described in recital (318).

(360) Second, to arrive at the undistorted costs of production, the Commission added manufacturing overheads. Manufacturing overheads incurred by the cooperating exporting producers were increased by the costs of raw materials and consumables referred to in recital (317) and subsequently expressed as a share of the costs of manufacturing actually incurred by each of the exporting producers. This percentage was applied to the undistorted costs of manufacturing.

(361) Once the undistorted manufacturing cost established, the Commission applied the SG&A and profit as noted in recitals (351) to (353). They were determined on the basis of the financial statements of Prysmian Energia Cables y Sistemas de Argentina S.A. as explained in recital (353).

(362) To the costs of production established as described in the previous recital, the Commission applied SG&A and profit of Prysmian Energia Cables y Sistemas de Argentina S.A. SG&A expressed as a percentage of the Costs of Goods Sold ('COGS') and applied to the undistorted costs of production, amounted to 15 %. The profit expressed as a percentage of the COGS and applied to the undistorted costs of production, amounted to 10,6 %.

(363) On that basis, the Commission constructed the normal value per product type on an ex-works basis in accordance with Article 2(6a)(a) of the basic Regulation.

3.5. **Export price**

(364) The sampled group of exporting producers exported to the Union either directly to independent customers or through related companies acting either as an agent, trader or an importer.

(365) The export price for sales made directly to independent customers in the Union and through related trading companies was the price actually paid or payable for the product concerned when sold for export to the Union, in accordance with Article 2(8) of the basic Regulation.

(366) The export price for sales made through related importers was established based on the price at which the imported product was first resold to independent customers in the Union, in accordance with Article 2(9) of the basic Regulation. In this case, adjustments to the price were made for all costs incurred between importation and resale, including SG&A expenses, and a reasonable profit.

(367) The weighted average of the profits of cooperating importers (see recital (28)) was used as a reasonable profit margin. This profit margin ranges between 15 % and 25 %.

(368) In its comments on final disclosure, the ZTT and FTT groups claimed that there was double counting of certain allowances that were deducted both from the sales listing as well as in the selling, general and administrative expenses.

(369) These claims were found justified and the Commission revised the export price accordingly. The detailed assessment of this claim was provided to both groups in the specific disclosure as it contains confidential information.

(370) The FTT group claimed that the Commission should not deduct from the export price the total agent fee, which was made of four different types of fees, but only the export agent fee.

(371) The Commission requested FTT group to submit additional information concerning the payment of the agent fee to its related agent. The information submitted by the FTT group showed that in fact FTT paid its related agent the total amount of the agent fee and not only the export agent fee. Therefore, the claim was rejected.

(372) The FTT group claimed that the Commission used the wrong agent fee for the product concerned for 2020 and deducted twice the ocean freight and handling expenses; once as an allowance in the sales listing, and once as part of the agent fee.

(373) These claims were found to be justified and therefore they were accepted. The calculation of the export price was revised accordingly.

(374) The FTT group also claimed that when constructing the export price for the sales of its related entity NW, the Commission should not deduct the agent fee applied to the sales of FTT as (1) there was no agreement between NW and FTT nor with the FTT's export agent, (2) such fees were reflected in transactions between FTT and its agent and (3) the transactions between NW and FTT were domestic transactions expressed by VAT invoice value.

(375) The contract between FTT and its related agent does not specify that the agent fee applies only to the sales of the OFC manufactured by FTT. As FTT also exports OFC manufactured by NW, the agent fee should be deducted for all exports of FTT irrespective of the manufacturer. Therefore, the claim was rejected.

(376) The FTT group also claimed that the profit margin of the unrelated importer stated in recital (367) is unrepresentative and not normally realized by importers. FTT group also claimed that the importers selected by the Commission have different business scope compared to the related importers part of FTT group.

(377) At the outset it is noted that the Commission has not selected the importers. The cooperation in the anti-dumping investigation of importers is on a voluntary basis. As explained in recital (28) five unrelated importers provided the requested information and agreed to be included in the sample. The Commission asked all cooperating importers to submit their replies to the questionnaire. As stated in recital (42) the Commission cross-checked the information submitted by the importers. Furthermore, as stated in recital (367) the profit margin used is the weighted average of the profits of cooperating importers mentioned in recital (28) that were able to submit data for the investigation period. Therefore, the Commission considered that this profit margin was representative and accurate.

3.5.1. *Comparison*

(378) The Commission compared the normal value and the export price of the sampled exporting producers on an ex-works basis.

(379) Where justified by the need to ensure a fair comparison, the Commission adjusted the normal value and/or the export price for differences affecting prices and price comparability, in accordance with Article 2(10) of the basic Regulation. Adjustments were made for transport, insurance, handling and loading, credit costs, bank charges, other import charges, packaging expenses, agent fee, commissions and year-end rebates.

(380) An adjustment under Article 2(10)(i) was also made for sales through related trading companies. It was found that the functions of the traders in China or Hong Kong were similar to those of an agent. Those traders were looking for customers and established contact with them. They bore the responsibility of the selling process and received a mark-up for their services. The adjustment consisted of the SG&A of the trading companies and a 10 % profit. This profit margin was considered a conservative estimate of the appropriate level of profitability in view of the high margins (typically in the 20 % range) obtained in this sector by unrelated importers.

(381) The ZTT group claimed that its producing and selling companies form a single economic entity as regards the export sales of the OFC.

(382) The Commission disagreed with this claim. It is noted that this claim was made strictly for the product concerned and not for all products sold by the ZTT group. As confirmed by the General Court ([138]), the examination of whether a related company forms a single economic entity with the producing entities must go beyond the sales of the product concerned to the Union. An examination of the role of the producing entity and the selling entity for all products produced or sold by the group is required. The Commission's examination revealed *inter alia* that there were significant direct sales and a lack of economic control. It was thus found that the ZTT Group's sales companies could not be considered to be operating as merely internal sales departments. The further details of the Commission's assessment have been disclosed to the ZTT group in their specific disclosure as they include business confidential information. Based on this assessment, this claim was rejected.

(383) In its comments on final disclosure, the ZTT group disagreed with the Commission's conclusion that the ZTT group's sales companies could not be considered to be operating as merely internal sales departments. It claimed that even if one of the producing entities had no share ownership in or economic control over the Chinese trader, there was control common to both of those companies.

(384) The Commission noted that even if this is the case, this condition is only a prerequisite and it is not decisive.

(385) Furthermore, ZTT group claimed that the Commission has not provided evidence that the trading company sold products from unrelated companies and that there was a written contract which indicated the arm's length transactions between producers and the trader for export sales. It also argued that only the export sales were relevant for this assessment, while the domestic sales were irrelevant and that only the sales of the product concerned should be assessed. In this regard it claimed that it was irrelevant whether the producing entities sold other products directly as the trading company did not function as the internal sales department for those products.

([138]) Judgment of 25 June 2015, *PT Musim Mas v Council*, T-26/12, EU:T:2015:437, para. 53.

It was stated that that there might be several sales departments in a company each specialised in a particular product. It was also stated that neither producer had export sales departments nor any sales staff to handle the exporting functions. ZTT group also claimed that it was not relevant what the business license of the trader stated, as that concerned the 'form' and not the economic reality.

(386) The Commission maintains its conclusions that the Chinese trader could not be considered to be operating merely as an internal sales department. The examination of whether a related company forms a single economic entity with the producing entities must go beyond the sales of the product concerned to the Union ([139]). One of the producing entities had significant direct export sales of other products ranging between 17 % and 22 % of total sales and therefore it needed to have an export sales department and sales staff despite what ZTT claimed. Regarding the business license of the trader, it is noted that the documentary evidence on the nature of the functions is indeed relevant for the assessment of the role of the trader.

(387) The ZTT group also reiterated its claim that the related importer in the Union formed a single economic entity.

(388) The Commission maintained its conclusion that regarding the exports via the related importer in the Union, the existence or not of a single economic entity is not relevant to the application of Article 2(9) of the basic Regulation. Such a provision applies to adjust the export price in cases where the export price is unreliable because of an association or a compensatory arrangement between the exporter and the importer or a third party. In this case, it was not disputed that the ZTT group sells to the EU through a related importer and thus this provision is fully applicable.

(389) In their comments on final disclosure, the FTT group and CCCME claimed that the Commission did not explain the source of the 10 % profit margin and if this amount was reasonable and prevailing in the market.

(390) The Commission disagrees with this claim. This information was provided in recital (380).

(391) The FTT group and CCCME also claimed that when establishing the export price for NW no adjustments could be made for the SG&A (other than direct selling expenses) and profit incurred by its related traders in China and Hong Kong as the Commission had not demonstrated that the functions of these traders were similar to those of an agent working on a commission basis.

(392) The Commission disagreed with this claim. The Commission reiterated its assessment developed in recital (380). Furthermore, the Commission noted that there was a significant price variation when comparing the different sections of the sales flow to the Union ranging between 18 % and 30 % depending on the section. Therefore, it was clear that each trader received a mark-up which was in fact higher that the profit of the unrelated trading company deducted by the Commission as stated in recital (380).

(393) The FTT group also stated that it believed that the amount of SG&A of Prysmian Energia Cables y Sistemas de Argentina S.A. contained all its expenses incurred during the accounting period. FTT group asked the Commission to deduct the direct selling expenses (such as transport and handling expenses) from the total amount of SG&A as comparing an export price net of selling and financial expenses with a normal value without such deduction was not objective and fair. CCCME made a similar claim arguing that the Commission seemed to have adjusted only the export price pursuant to Article 2(10) and not also the normal value. The ZTT group also claimed that the financial data of Prysmian Energia Cables y Sistemas de Argentina S.A. were not adequately detailed to allow a full understanding of the SG&A items and their corresponding amounts. It argued that the further details were critical to ensure the fair comparison between ZTT group's export price and the constructed normal value, as well as to

([139]) Judgment of 26 October 2016, *PT Musim Mas v Council*, C-468/15 P, EU: C:2016:803, para. 46.

ascertain that the profit derived from the main business operation (such as selling cables), rather than from another business activity or non-operating income. Such income shall not be included in the profit used for constructing the normal value. Furthermore, the ZTT group stated that if the Commission was not able to provide a more meaningful disclosure of the financial data related to Prysmian Energia Cables y Sistemas de Argentina S.A., then the Commission should use the data of the Malaysian producers whose audited financial statements were available.

(394) The Commission disagreed with this claim. The SG&A was calculated as the difference between the cost of goods sold and the other operating expenses based on the readily available information. The Commission noted that the claim alleging that such expenses were included in SG&A costs reported for the producer in the representative country was not substantiated. Furthermore, the sampled exporting producers did not provide any quantification for this adjustment. As explained in recital (280) the Commission disclosed to interested parties the relevant readily available financial information of Prysmian Energia from Dun & Bradstreet in the Second Note. No interested party provided any more suitable SG&A data for a producer in Argentina. Furthermore, as the Commission concluded that Argentina met the criteria laid down in Article 2(6a)(a), first indent of the basic Regulation in order to be considered as an appropriate representative country as stated in recital (294), the Commission needs to use the SG&A for a producer from Argentina and not Malaysia. As the Malaysian producer did not register reasonable profits, the Commission could not use its financial data. Therefore, the claim was rejected.

3.5.2. *Dumping margins*

(395) For the sampled cooperating exporting producers, the Commission compared the weighted average normal value of each type of the like product with the weighted average export price of the corresponding type of the product concerned, in accordance with Article 2(11) and (12) of the basic Regulation.

(396) On this basis, the weighted average dumping margins expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

Company	Definitive dumping margin
FTT group: — FiberHome Telecommunication Technologies Co., Ltd — Nanjing Wasin Fujikura Optical Communication Ltd — Hubei Fiberhome Boxin Electronic Co., Ltd	44,0 %
ZTT group: — Jiangsu Zhongtian Technology Co., Ltd — Zhongtian Power Optical Cable Co., Ltd	19,7 %

(397) For the cooperating exporting producers outside the sample, the Commission calculated the weighted average dumping margin, in accordance with Article 9(6) of the basic Regulation. Therefore, that margin was established on the basis of the margins of the sampled exporting producers.

(398) On this basis, the definitive dumping margin of the non-sampled cooperating exporting producers outside the sample is 31,2 %.

(399) For the margin for all other exporting producers in China, the Commission determined the level of cooperation of the exporting producers. The level of cooperation was established considering the volume of exports of the cooperating exporting producers to the Union and the total export volume based on imports – as reported in Eurostat import statistics – from China.

(400) The level of cooperation in this case was high. The Commission considered it appropriate to base the residual dumping margin at the level of the sampled company with the highest dumping margin.

(401) The definitive dumping margins, expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

Company	Definitive dumping margin
FTT group: — FiberHome Telecommunication Technologies Co., Ltd — Nanjing Wasin Fujikura Optical Communication Ltd — Hubei Fiberhome Boxin Electronic Co., Ltd	44,0 %
ZTT group: — Jiangsu Zhongtian Technology Co., Ltd — Zhongtian Power Optical Cable Co., Ltd	19,8 %
Other cooperating companies	31,2 %
All other companies	44,0 %

4. **INJURY**

4.1. **Unit of measurement**

(402) 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.

(403) In its comments on final disclosure, the CCCME claimed that import volumes should be 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.

(404) 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**

(405) 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 4(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.

(406) 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 (26), three Union producers were selected in the sample representing 52 % of the total Union production of the like product.

4.2.1. *Exclusion of two producers from the Union industry*

(407) According to Article 4(1) of the basic Regulation, producers who are related to Chinese exporters or importers and/or are themselves importers of the allegedly dumped product may be excluded from the Union industry. Article 4(2) defines when producers are to be considered related to exporters or importers.

(408) 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.

(409) 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.

(410) 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.

(411) 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.

(412) 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.

(413) In its comments on final disclosure, CCCME reiterated this claim concerning the segregation and separate assessment of imports. 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.

(414) As set out above, the Commission duly took into account the links of Union producers with Chinese companies, 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. Therefore, the claim was rejected.

(415) 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 ([140]).

4.3. **Determination of the relevant Union market**

(416) 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.

([140]) CRU Cable market outlook (August 2020), complemented by complainants' market intelligence.

4.4. **Captive use**

(417) 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.

(418) 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.

(419) 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.

(420) 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.

(421) However, other economic indicators could meaningfully be examined only by referring to the whole activity, including the captive use of the Union industry ([141]). These are: production; capacity, capacity utilisation; investments; stocks; employment; productivity; wages; and ability to raise capital.

(422) 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.

(423) 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 that 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 the product concerned.

4.5. **Union consumption**

(424) 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 (427) - (432).

(425) Union consumption developed as follows:

Table 2

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.

([141]) 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 (409)), representing almost 80% of the Union production in the IP, plus an estimate for the remaining Union producers based on market research and intelligence.

(426) 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 ([142]). 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 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 under investigation 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.

4.6. **Imports from the country concerned**

4.6.1. *Volume and market share of the imports from the country concerned*

(427) The volume of imports from China was established on the basis of the information provided directly by Chinese exporting producers pursuant to recital (47). This was highly representative, as the volume of imports in the IP constituted 89 % of the total imports declared by Chinese exporting producers in the sampling exercise at the outset of the investigation. Total imports were thus established at 11 % more than the quantities declared pursuant to recital (47).

(428) Imports from other third countries were established on the basis of the detailed exercise mentioned in recital (48), 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 (47).

(429) 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 2.

(430) Imports from the country concerned developed as follows:

Table 3

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.

([142]) CRU cables market outlook report, August 2020, page 29, and CRU Worldwide Cable Market Summary by Application and Region, February 2021.

(431) 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 ([143])), 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.

(432) 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.

(433) 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.

(434) In this respect the Commission recalled that the investigation revealed that cable kilometre was the most appropriate unit of measurement for the product concerned as explained in recitals (402) to (404). Therefore, the claim was rejected.

4.6.2. *Prices of the imports from the country concerned, price undercutting, price depression*

(435) The Commission established the prices of imports on the basis of the replies to the request for additional information from the cooperating exporters mentioned in recital (47).

(436) The average price of imports from the country concerned developed as follows:

Table 4

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.

(437) 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 (431)). 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.

(438) To avoid the variations in product mix inherent to the price series over the period concerned, 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

([143]) 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), elaborated on by the complainants (Complaint, footnote 36).

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 by sampled companies during the IP. The resulting representative time series developed as follows, on a weighted aggregated basis:

Table 4-bis

Chinese imports (EUR per cable-km)

	2017	2018	2019	IP
Average price	854	720	593	320
Index	*100*	*84*	*69*	*38*
Representativeness	94 %	35 %	59 %	62 %

(439) 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 8-bis).

(440) 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.

(441) When the export price is adjusted pursuant to Article 2(9) of the basic Regulation for the dumping calculation, for the calculation of undercutting and injury margin in recital (444), the export price ('constructed CIF') was calculated on the basis of the invoice value to the first independent customer, from which importation related allowances to the CIF point, as well as the SG&A and profit of the related importer were deducted, applying Article 2(9) of the basic Regulation by analogy.

(442) In its comments on final disclosure, the ZTT group stated that the post-importation costs were calculated as a percentage of the CIF value and suggested that the Commission should actually calculate them as pro rata per volume of exports to be consistent with the same adjustments made to the export price in the dumping calculation. It was claimed that these costs were more relevant to the volume than to the value of the export transactions.

(443) This claim was found justified and therefore it was accepted.

(444) 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 (502), the analysis of tenders confirms the existence of price undercutting at the level of tenders.

(445) In its comments on final disclosure, the ZTT group also argued that the Commission gave no explanation for the aggregated PCN groups which were therefore arbitrary. The CCCME claims that the use of these groups implies there is a problem of matching and comparability of Union industry and Chinese prices.

(446) 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 precisely to ensure that price trends over time were not affected 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. Absent any evidence showing that the grouping was manifestly inappropriate, the Commission rejected this claim.

(447) The FTT group also argued that the Commission did not establish price undercutting for around 30 % of its exports to the Union as there was no matching with the PCNs sold by the Union industry. The FTT group considered that the Commission was not allowed to limit its analysis to only those product types or market segments for which there were actual sales by the Union industry. It referred in this regard to *Changshu City Standard Parts Factory and Ningbo Jinding Fastener Co. Ltd. v Council of the European Union* ([144]) that stated that the dumping margin should be calculated for all exports to the Union, and the FTT group further argued that this requirement should apply by analogy to the undercutting as well.

(448) The Commission disagreed with the FTT group's interpretation of the Court of Justice's judgement in *Changshu City*. The requirement to consider all exports applies only to the calculation of the dumping margin. Furthermore, the Commission noted that when assessing undercutting and underselling margins, the models exported to the Union from the countries concerned constitute the reference for comparison. It is in the nature of the comparison of the export sales of exporting producers and the sales of the Union industry that not all models exported are necessarily 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. Third, the basic Regulation does not require the Commission to carry out the price analysis for each product type separately. Rather, the legal requirement is a determination at the level of the like product. Finally, the Commission concluded that all PCNs were part of the product concerned and competed with each other, at least to a certain extent. Therefore, the percentage of the exports of the sampled exporting producers not sold by the Union industry does not constitute a separate category of the product concerned but competes in full with the remaining grades for which a matching was found.

(449) This is in line with the prices identified in recitals (438) and (439) above.

4.7. **Economic situation of the Union industry**

4.7.1. *General remarks*

(450) In accordance with Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports on the Union industry included an evaluation of all economic indicators having a bearing on the state of the Union industry during the period considered.

(451) 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.

(452) 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 ([145]), and the judgment of 17 December 1997, *EFMA v Council* ([146]). 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

([144]) Judgment of 5 April 2017, *Changshu City Standard Parts Factory and Ningbo Jinding Fastener v. Council*, C-376/15 P and C-377/15 P, EU:C:2017:269, paras. 58-60.

([145]) OJ L 362, 30.12.1988, p. 59, recital 7.

([146]) Judgment of 17 December 1997, *EFMA v Council*, T-121/95, EU:T:1997:198, paras. 105 et seq.

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 3(5) 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 7(2c) of the basic Regulation.

(453) 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.

(454) The macroeconomic indicators are: production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity, magnitude of the dumping margin, and recovery from past dumping.

(455) 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. **Macroeconomic indicators**

4.8.1. *Production, production capacity and capacity utilisation*

(456) The total Union production, production capacity and capacity utilisation developed over the period considered as follows:

Table 5

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*
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*

(457) 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.

(458) The overall increase over the period considered was due to the growth in demand described in Table 2. 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.

(459) 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.

(460) 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. *Sales volume and market share*

(461) The Union industry's sales volume and market share developed over the period considered as follows:

Table 6

Sales volume and market share

	2017	2018	2019	Investigation period
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.

(462) 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 concerned from 64,3 % to 53,5 %, a drop of more than 10 percentage points (-17 %).

(463) 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.

(464) 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.

4.8.3. *Growth*

(465) 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.

4.8.4. *Employment and productivity*

(466) Employment and productivity developed over the period considered as follows:

Table 7

Employment and productivity

	2017	2018	2019	Investigation period
Number of employees (FTE)	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.

(467) 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 4.

(468) As the figures for production and employment mirrored each other closely, productivity in terms of cable-km per employee remained largely stable.

4.8.5. Magnitude of the dumping margin and recovery from past dumping

(469) All dumping margins were significantly above the *de minimis* level. The impact of the magnitude of the actual margins of dumping on the Union industry was substantial, given the volume and prices of imports from the country concerned.

(470) This is the first anti-dumping investigation regarding the product concerned. Therefore, no data were available to assess the effects of possible past dumping.

4.9. **Microeconomic indicators**

4.9.1. *Prices and factors affecting prices*

(471) 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 8

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.

(472) 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.).

(473) 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.

(474) 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 %). As set out in recital (540), the investigation confirmed that the cost of the main raw material (optical fibres), when purchased from related companies, reflected the market price for this input.

(475) As mentioned in recital (438) above, to avoid the variations in product mix inherent to the price series over the period concerned, 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.

(476) 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 8-bis

Union industry (EUR per cable-km)

	2017	2018	2019	IP
Average price	817	780	792	719
Index	*100*	*95*	*97*	*88*
Representativeness	42 %	38 %	35 %	34 %

(477) This shows a significant drop of Union industry prices, similar to the price drop observed for Chinese exports mentioned in recital (438).

(478) 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 ([147]):

([147]) These are representative, covering 36 % of EU industry sales in the IP.

Table 8-ter

Union industry (EUR per cable-km, index)

2017	2018	2019	IP
100	*73*	*56*	*59*

(479) This shows again a clear drop in Union industry prices over the period, following the price drops by Chinese exports mentioned in recitals (435) to (438).

4.9.2. *Labour costs*

(480) The average labour costs of the sampled Union producers developed over the period considered as follows:

Table 9

Average labour costs per employee

	2017	2018	2019	Investigation period
Average labour costs per employee (EUR/FTE)	39 511	35 826	39 157	38 966
Index	*100*	*91*	*99*	*99*

Source: Sampled Union producers.

(481) 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.

4.9.3. *Inventories*

(482) Stock levels of the sampled Union producers developed over the period considered as follows:

Table 10

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 %
Index	*100*	*106*	*102*	*110*

Source: Sampled Union producers.

(483) 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.

4.9.4. *Profitability, cash flow, investments, return on investments and ability to raise capital*

(484) Profitability, cash flow, investments and return on investments of the sampled Union producers developed over the period considered as follows:

Table 11

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.

(485) 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.

(486) 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.

(487) 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 cast serious doubt on the injurious state of the Union industry, and claimed that the price undercutting was due to unreasonable pricing of the Union industry and not to the low-priced imports from China.

(488) The Commission disagrees with this claim. The reverse engineering analysis was partial and not based on a full assessment of costs and prices. The Commission verified the profit margins on the basis of such a comprehensive analysis and found them to be as just described. Therefore, the claim was rejected.

(489) 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).

(490) The Commission found that the aforementioned order of magnitude is in line with historical profits in the absence of Chinese dumped imports, which as underlined in the analysis made in Table 11-*bis* is in the range of 12 %.

(491) 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 11-bis

Union industry pre-2017 profitability

	2014	2015	2016
Profit margin (in %)	10,4 %	12,6 %	12,4 %

(492) 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.

(493) After an increase in 2018, the cash flow decreased towards the second half of the period considered.

(494) 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.

(495) 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.

(496) 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.

4.10. **Analysis of sales based on tenders**

(497) 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.

(498) 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.

(499) 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.

(500) 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.

(501) 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.

(502) 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.

(503) 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 anti-dumping duties in an entire market which is segmented in public and private tenders. Reference was made to recital 42 of Commission Decision 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 (98/230/EC) ([148]). 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.

(504) The arguments and analysis in recital (502) 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.

(505) In its comments on final disclosure, Connect Com claimed that the Commission did not disclose information about 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 (502).

(506) 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 beyond the summary provided in the above recitals.

(507) 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.

4.11. **Conclusion on injury**

(508) 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.

(509) The foregoing led to financial injury in the form of lower profits and a drop in investments and on the return thereon.

(510) In addition to that, as explained above in recital (502), 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.

([148]) OJ L 87, 21.3.1998, p. 24.

(511) In its comments on final disclosure, CCCME claimed that several key indicators did not show that the Union industry was suffering from injury as 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.

(512) As stated in recital (508), 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. Therefore, the claim was rejected.

(513) CCCME also argued that the market share criteria alone could not be the basis of findings of material injury 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 could not be the basis of material injury as this investigation did not assess threat of injury, nor did it meet the evidentiary standard required for such a case.

(514) 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 (426), (431), (437), (444) and (490), which included *inter alia* actual negative impacts on growth, price depression, price undercutting, price underselling, and depressed profits which indicate material injury. Therefore, the claim was rejected.

(515) On the basis of the above, the Commission concluded at this stage that the Union industry suffered material injury within the meaning of Article 3(5) of the basic Regulation.

5. **CAUSATION**

(516) In accordance with Article 3(6) of the basic Regulation, the Commission examined whether the dumped imports from the country concerned caused material injury to the Union industry. In accordance with Article 3(7) 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 dumped imports from the country concerned was not attributed to the dumped 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 dumped imports**

(517) 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.

(518) The volume of imports from China increased (as shown in Table 3) 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 6), 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 dumped 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.

(519) The prices of the dumped imports decreased significantly over the period considered, for example by 62 % according to Table 4-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 8-bis and by 41 % with the more refined analysis in table 8-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 of between 30,0 % and 33,2 %.

(520) 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 (499) to (502) 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.

(521) As described in recital (494) 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*

(522) Imports from other third countries developed over the period considered as follows.

Table 12

Imports from third countries

Country		2017	2018	2019	Investigation period
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).

(523) 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.

(524) 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 dumped Chinese imports and the injury suffered by the Union industry.

(525) 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 dumped Chinese imports and the injury suffered by the Union industry.

(526) 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.

(527) In its comments on final disclosure, the GOC claimed that the Commission had not established that imports of the product concerned from China had an impact on the Union industry and argued, in particular, that the increase of inventory levels and decrease in the capacity utilisation rates were the result of an unreasonable capacity expansion by the Union industry resulting in overcapacity. Moreover, 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 and the GOC 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.

(528) In this respect the Commission recalled that the vast majority of the market is based on long term supply contracts as explained in recitals (497) to (507). Moreover, the profitability of the Union industry was below the target profit throughout the period considered which shows that there was injury during this period. Therefore, the Commission considered that the above arguments of CCCME and GOC do not point to the absence of a causal link between dumping and injury. Indeed it only confirms that there was a certain delay between the rise of imports of the product concerned from China and the point at which the injury materialised and could be ascertained from the relevant trends.

(529) In its comments on final disclosure, Eku Kabel claimed in that the import volumes of OFC decreased from 2018 to 2019 and that a further decrease could be recorded for 2020 and that due to these declining imports no duties should be imposed.

(530) The investigation revealed a constant increase in the volume of imports of OFC from the PRC throughout the period considered. However, should circumstances change, measures may be reviewed pursuant to Article 11(3) of the basic Regulation.

(531) 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 Chinese import penetration.

5.2.2. Export performance of the Union industry

(532) The volume of exports of the Union industry developed over the period considered as follows:

Table 13

Export performance of the Union producers

	2017	2018	2019	Investigation period
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.

(533) 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.

(534) 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.

(535) 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*

(536) As shown at Table 5, during the period considered the Union industry's captive use decreased by 12 %.

(537) 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*

(538) 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.

(539) In particular, Connect Com and Cable 77 raised concerns on internal transfer prices for intercompany transactions taking place within the Prysmian and Corning groups.

(540) In order to investigate this claim, the Commission requested additional information from the sampled EU 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 EU producers and on the sales of these fibres (volume and quantity) to both related and unrelated customers inside and outside the EU. 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.

(541) 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.

5.3. **Conclusion on causation**

(542) The Commission distinguished and separated the effects of all known factors on the situation of the Union industry from the injurious effects of the dumped 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.

(543) The adverse impact on profitability caused by the dumped 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 (486) and the cancelling of planned investments discussed in recital (494).

(544) On the basis of the above, the Commission concluded at this stage that the dumped 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 dumped imports and the material injury.

6. **LEVEL OF MEASURES**

(545) To determine the level of the measures, the Commission examined whether a duty lower than the margin of dumping would be sufficient to remove the injury caused by dumped imports to the Union industry.

(546) The Commission first established the amount of duty necessary to eliminate the injury suffered by the Union industry in the absence of distortions under Article 7(2a) of the basic Regulation. In this case, the injury would be eliminated if the Union industry was able to cover its costs of production, including those costs resulting from Multilateral Environmental Agreements, and protocols thereunder, to which the Union is a party, and of ILO Conventions listed in Annex Ia of the basic Regulation, and to obtain a reasonable profit ('target profit').

(547) In accordance with Article 7(2c) of the basic Regulation, for establishing the target profit, the Commission took into account the following factors:

— the level of profitability before the increase of imports from the country under investigation,

— the level of profitability needed to cover full costs and investments, research and development (R&D) and innovation, and

— the level of profitability to be expected under normal conditions of competition.

Such profit margin should not be lower than 6 %.

(548) The complainants claimed that a target profit of at least 15 % was required in this industry, which is particularly capital intensive and requires very high levels of investment in particular in the light of the upcoming 5G revolution.

(549) The Commission examined this claim, together with comments submitted and the data available on the case file relevant to the requirements of Article 7(2c) of the basic Regulation in order to set the target profit.

(550) CCCME submitted that the target profit of 15 % identified in the complaint was widely inflated. The complainant replied that this target profit was merely sufficient to cover costs of development and implementation of the Union's digitalisation agenda and the 5G transition. CCCME responded that future investment opportunities cannot justify resorting to an unrealistically high profit margin and that since 2016 the Union industry was able to achieve developments for 4G technology with lower profit margins.

(551) The investigation shows that Union industry's prices were depressed throughout the period considered due to the dumped imports. Therefore, the profits during this period were not considered a suitable basis for establishing the target profit. The Commission therefore examined the profitability of the Union industry on the basis of the profits achieved before the period considered.

(552) During 2015 and 2016, the sampled Union producers were able to maintain consistent profits of 12,6 % and 12,4 % respectively. These years represent the period just before the period under consideration and the sharp increase of significant volumes of injurious imports from China in 2017. Therefore, 2016 was considered to be the most representative year for the profitability under the normal conditions of competition in this industry. On that basis, the Commission considered that a target profit of 12,4 % would reflect the level of profitability before the increase of imports from the country concerned, and the level of profitability to be expected under normal conditions of competition.

(553) In its comments on final disclosure, the GOC claimed that the Commission used an excessively high target profit rate. Furthermore, CCCME also contested the use of the profit margin of 12,4 %, claiming that the Chinese imports were similar in 2016 and 2017, and that profits in the complaint for 2016 were between 5-10 %. Therefore CCCME considered that it would be more adequate to use 2017 as a base year for the target profit.

(554) The figures CCCME refer to show a more than 40 % increase between 2016 and 2017, indicating that import levels are clearly not similar in these two years. Given this significant increase in exports from China and their equally significant volume in 2017, the conditions of competition were affected by the dumped imports—excluding the use of that year as a reference period for profitability. The investigation confirmed 12,4 % as the profit margin of the sampled Union industry in 2016 on the basis of the responses to the questionnaire by such parties, as verified by the Commission. The claims by CCCME and GOC in this respect are thus rejected.

(555) The GOC further claimed that the injury elimination level was inconsistent with the situation of industry.

(556) This claim was not substantiated and can thus not be accepted on formal grounds. In any event, substantively this level results directly from the analysis of the information from parties as explained above, and is thus fully consistent.

(557) This level of target profit also appears adequate when comparing it with the profit needed by the industry in order to sustain the level of investment needed in order to ensure long-term viability, as mentioned at recital (489).

(558) In accordance with Article 7(2d) of the basic Regulation, the Commission assessed the future costs resulting from Multilateral Environmental Agreements, and protocols thereunder, to which the Union is a party, and of ILO Conventions listed in Annex Ia that the Union industry will incur during the period of the application of the measure pursuant to Article 11(2). There were no such future costs reported by the Union industry.

(559) On this basis, the Commission calculated a non-injurious price of the like product for the Union industry.

(560) The Commission then determined the injury elimination level on the basis of a comparison of the weighted average import price of the sampled cooperating exporting producers, as established for the price undercutting calculations, with the weighted average non-injurious price of the like product sold by the sampled Union producers on the Union market during the investigation period. Any difference resulting from this comparison was expressed as a percentage of the weighted average import CIF value.

(561) In its comments on final disclosure, the FTT group claimed that when establishing undercutting and underselling, the SG&A and the profit of its related importers in the Union should not be deducted. It referred in this regard to *Jindal and Hansol Court rulings (Case T-301/16, Jindal Saw Ltd and Jindal Saw Italia SpA v European Commission and Case T-383/17, Hansol Paper Co. Ltd v European Commission)*. This should be particularly the case if sales prices by the Union industry do not only include direct sales by production entities but also sales through related selling entities. Furthermore, the ZTT group, also with reference to *Jindal,* claimed that when establishing undercutting the Commissions needs to ensure that the comparison between export prices and Union industry sales prices is made at

the same level of trade. Furthermore, it was stated that even if the target price for calculating the injury elimination level was calculated based on cost of production plus target profit, it was not clear whether the cost also included the SG&A or profit of the Union industry's related trading entities. It was claimed that as the SG&A and profit were deducted from the export price of ZTT's group, similarly the SG&A and profit shall be deducted from the trade entities of the Union OFC producers.

(562) When it comes to the elements taken into account for calculation of undercutting (in particular the export price), the Commission has to identify the first point at which competition takes (or may take) place with Union producers in the Union market. This point is in fact the purchasing price of the first unrelated importer because that company has in principle the choice to source either from the Union industry or from overseas suppliers. In this case, the import price for some of the export sales cannot be taken at face value because the exporting producer and the importer are related. Therefore, in order to establish a reliable import price at arm's length basis, such price has to be constructed by using the resale price of the related importer to the first independent customer as a starting point. In order to carry out this reconstruction, the rules on the construction of the export price as contained in Article 2(9) of the basic Regulation are pertinent, and are applied by analogy, just as they are pertinent for the determination of the export price for dumping purposes. The application by analogy of Article 2(9) of the basic Regulation allows the establishment of a price that is fully comparable to the price that is used when examining sales made to unrelated customers and also comparable to the sales price of the Union industry. Therefore, in order to allow for a fair comparison, a deduction of SG&A and profit from the resale price to unrelated customers made by the related importer is warranted in order to arrive to a reliable price.

(563) Such a deduction must also be applied to the calculation of underselling ([149]). The target price of the Union industry is based on its cost of production plus the target profit, without taking into consideration whether it is then sold in the Union to related or unrelated customers, which does not include by definition the SG&A and profit of related importers in the Union and therefore it must be compared to the CIF (landed) price of the exports.

(564) As stated in recitals (508), price depression on the Union market was clearly established. Furthermore, only around 30 % of the total export sales of the sampled Chinese exporters were made via related importers in the Union and thus a comparison on the basis of the landed price at the EU border for all imports is appropriate. Finally, it should be noted that the finding of undercutting would not be undermined even if the calculations would be adjusted for SG&A and profit of the traders in the Union.

(565) The injury elimination level for 'other cooperating companies' and for 'all other companies' is defined in the same manner as the dumping margin for these companies. The following injury margins were found, showing that they were higher than the dumping margins and thus the level of the measures should correspond to the dumping margins:

Company	Dumping margin	Injury elimination level
FTT group: — FiberHome Telecommunication Technologies Co., Ltd — Nanjing Wasin Fujikura Optical Communication Ltd — Hubei Fiberhome Boxin Electronic Co., Ltd	44,0 %	61,3 %

([149]) See also judgment of 22 September 2021, T-753/16, *PAO Severstal*, ECLI:EU:T:2021:612, paras. 260 – 273.

ZTT group: — Jiangsu Zhongtian Technology Co., Ltd — Zhongtian Power Optical Cable Co., Ltd	19,7 %	42,0 %
Other cooperating companies	31,2 %	52,7 %
All other companies	44,0 %	61,3 %

7. **UNION INTEREST**

(566) In accordance with Article 21 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 dumping. 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.

(567) 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 anti-dumping investigation in the sector, which could damage the bilateral cooperation between China and the Union in the digital field.

(568) Also Connect Com claimed that anti-dumping 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.

(569) 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.

(570) Cable 77, instead, underlined that the imposition of anti-dumping 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.

(571) 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.

7.1. **Interest of the Union industry**

(572) There are 29 companies producing OFC in the Union, employing around 4700 staff. The producers are widely spread throughout the Union.

(573) 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.

(574) 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.

7.2. **Interest of unrelated importers**

(575) 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.

(576) 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 under investigation for the IP. All cooperating importers opposed the measures.

(577) 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.

(578) 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.

(579) 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.

(580) 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.

(581) 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.

(582) 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.

(583) 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.

(584) 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.

(585) 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.

(586) In their comments on final disclosure, the cooperating importers claimed that the proposed level of duties significantly exceeded their calculated margins and this would cause substantial losses to them 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. Therefore the duties could eventually lead to the bankruptcy of importers and distributors. 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. One importer also claimed that Union producers could not increase their production capacities to compensate for the loss of quality products from the PRC. The cooperating importer have also expressed their disagreement with the finding that a 10 % margin would be sufficient for a distributor and claimed that with warehousing and pre-financing costs, a much higher margin of 20-25 % was needed. Some of the cooperating importers also claimed that they would be forced to import from other third countries if duties were imposed although this would entail serious difficulties, delays and additional costs and the quality of the product would be lower. Several cooperating importers considered that the different duty rates proposed for the cooperating Chinese producers was incomprehensible to them and they perceived it as unequal treatment. Also, it was claimed that measures would lead to a monopoly or oligopoly in the market.

(587) 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.

(588) While the anti-dumping 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 %, which have been confirmed by the comments mentioned in recital (586). 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 under investigation 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. Different duty levels reflect differences in behaviour amongst exporters, and in impact of Chinese exports on the Union industry, and not discrimination.

(589) It is further noted that 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 thus cannot be accepted.

(590) It is further noted that the investigation has shown that one of the important facets of injury in this case is precisely the fact that the Union industry cannot 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.

(591) Cable 77 also considers that if there shall be duty on cables, there shall also be duty on fibres at much higher level than on the cable. In this respect, the Commission recalls that this investigation covers OFC and thus measures can only be imposed on the product concerned. In fact, fibres are an input into OFC, but not the product concerned.

(592) 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 increases 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.

(593) Neither the representativeness nor the effect of this price increase on users and importers was substantiated. Therefore, the claim was rejected.

7.3. **Interest of users and distributors**

(594) The product under investigation 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.

(595) 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.

(596) 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.

(597) 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.

(598) 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 anti-dumping 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.

(599) The Commission concluded that it was inevitable that anti-dumping 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 under investigation 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 (587) 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 anti-dumping duties.

(600) 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.

(601) Therefore, the Commission concluded that users and distributors are not disproportionally affected by the imposition of the measures.

7.4. **Other factors**

(602) 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 programme ([150]) 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 ([151]) and also for its digital sovereignty.

(603) Given the importance of the product under investigation in light of the above public objectives, the Commission has carefully analysed the impact of potential measures on the rollout of broadband network projects.

(604) Several parties argued that consumers and public budgets in the Union would be harmed in case anti-dumping measures were imposed as the price of OFC and thus the total price of network projects would rise.

(605) 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.

(606) 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.

([150]) 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

([151]) 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.

7.5. **Conclusion on Union interest**

(607) 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 anti-dumping 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.

(608) Overall, while in the absence of measures users, importers, final customers and public budgets may benefit from cheaper products in the short term, the dumped 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.

(609) 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.

8. **DEFINITIVE ANTI-DUMPING MEASURES**

(610) On the basis of the conclusions reached by the Commission on dumping, injury, causation and Union interest, definitive measures should be imposed to prevent further injury being caused to the Union industry by the dumped imports.

(611) On the basis of the above, the definitive anti-dumping duty rates, expressed on the CIF Union border price, customs duty unpaid, should be as follows:

Company	Definitive anti-dumping duty
FTT group: — FiberHome Telecommunication Technologies Co., Ltd — Nanjing Wasin Fujikura Optical Communication Ltd — Hubei Fiberhome Boxin Electronic Co., Ltd	44,0 %
ZTT group: — Jiangsu Zhongtian Technology Co., Ltd — Zhongtian Power Optical Cable Co., Ltd	19,7 %
Other cooperating companies	31,2 %
All other companies	44,0 %

(612) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of this investigation. Therefore, they reflected the situation found during this investigation with respect to these companies. These duty rates are exclusively applicable to imports of the product concerned originating in the country concerned and produced by the named legal entities. Imports of the product concerned produced by any other company not specifically mentioned in the operative part of this Regulation, including entities related to those specifically mentioned, should be subject to the duty rate applicable to 'all other companies'. They should not be subject to any of the individual anti-dumping duty rates.

(613) A company may request the application of these individual anti-dumping duty rates if it changes subsequently the name of its entity. The request must be addressed to the Commission ([152]). 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 about the change of name will be published in the *Official Journal of the European Union*.

(614) The individual company anti-dumping duty rates specified in this Regulation are exclusively applicable to imports of the product concerned originating in the People's Republic of China and produced by the named legal entities. Imports of the product concerned produced by any other company not specifically mentioned in the operative part of this Regulation, including entities related to those specifically mentioned, should be subject to the duty rate applicable to 'all other companies'. They should not be subject to any of the individual anti-dumping duty rates.

(615) To ensure a proper enforcement of the anti-dumping duties, the anti-dumping duty for all other companies should apply not only to the non-cooperating exporting producers in this investigation, but to the producers which did not have exports to the Union during the investigation period.

(616) In its brief submitted after the non-imposition of measures, CCCME claimed that there was a clear correlation between the downturn in sales for the Union (and global) OFC industry and the beginning of the pandemic, and that this situation would need to be addressed by either a suspension of the application of the anti-dumping measures for nine months, or by limiting the duration of the measures to two years. Furthermore, in its comments on the definitive disclosure of findings, CCCME claimed that the Commission did not take into account the effects of the COVID-19 pandemic and that the effects of the economic downturn that came with the pandemic were falsely attributed to Chinese imports. Moreover, two importers also argued that the Commission did not take into due consideration the effects of the pandemic. In addition, CCCME also argued that in the post-COVID-19 recovery phase, products like OFC would be crucial to industries in the Union in particular for the implementation of the 5G program. In this respect, CCCME maintained that the imposition of anti-dumping measures would result in critical shortages of the product concerned in the Union and that its price would increase significantly. According to CCCME, these latter circumstances also justify the suspension of the application of duties for a period of nine months or, alternatively, the limitation of the duration of the measures to two years. Connect Com also claimed that rising raw material costs and the effects of the COVID-19 pandemic were not duly taken into consideration and it required the suspension of measures.

(617) With regards to these claims, the investigation revealed that the COVID-19 pandemic only had a very limited and temporary impact on the industry (as described in recitals (426) and (579)), and did not prevent the significant increase of consumption in the Union during the period considered. In any event, as for suspension under Article 14(4) the request by the parties was generic and unsubstantiated. If evidence than market conditions temporarily changed in a way that injury would be unlikely to resume, and only if it would be in the Union interest, the Commission may examine whether the suspension would be warranted in due course. With regard to the shorter duration of measures, the findings on injury, causality and Union interest confirmed that the Union industry has been injured by the dumped import by the Chinese exporting producers and also that there are no compelling Union interest considerations to consider a shorter duration of the measures. For these reasons, these requests were rejected.

9. **RETROACTIVE IMPOSITION OF ANTI-DUMPING DUTIES**

(618) As stated in recital (4) the Commission made imports of the product concerned originating in China subject to registration by the registration Regulation in view of the possible retroactive application of any anti-dumping measures under Article 14(5) of the basic Regulation.

([152]) European Commission, Directorate-General for Trade, Directorate G, Rue de la Loi 170, 1049 Brussels, Belgium.

(619) Pursuant to Article 10(4) of the basic Regulation, duties may be levied retroactively 'on products which were entered for consumption no more than 90 days prior to the date of application of provisional measures'.

(620) Since no provisional duties were imposed, no retroactive application could occur. Thus, the registration of imports should be discontinued.

10. **FINAL PROVISIONS**

(621) In view of Article 109 of Regulation 2018/1046 ([153]), 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.

(622) The measures provided for in this regulation are in accordance with the opinion of the Committee established by Article 15(1) Regulation (EU) 2016/1036,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping 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 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	44,0 %	C696

([153]) 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).

ZTT group: — Jiangsu Zhongtian Technology Co., Ltd — Zhongtian Power Optical Cable Co., Ltd	19,7 %	C697
Other cooperating companies listed in Annex I	31,2 %	
All other companies	44,0 %	C999

3. The application of the individual 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 ([154]).

Article 2

Where a new exporting producer from the People's Republic of China provides sufficient evidence to the Commission, the Annex may be amended by adding that new exporting producer to the list of cooperating companies not included in the sample and thus subject to the appropriate weighted average anti-dumping duty rate, namely 31,2 %. A new exporting producer shall provide evidence that:

(a) it did not export the goods described in Article 1(1) originating in the People's Republic of China during the period of investigation (1 July 2019–30 June 2020);

(b) it is not related to an exporter or producer subject to the measures imposed by this Regulation; and

(c) it has either actually exported the goods described in Article 1(1) originating in the People's Republic of China or has entered into an irrevocable contractual obligation to export a significant quantity to the Union after the end of the period of investigation.

Article 3

Customs authorities are hereby directed to discontinue the registration of imports established in accordance with Article 1 of Commission Implementing Regulation (EU) 2021/548 of 29 March 2021 making imports of optical fibre cables originating in the People's Republic of China subject to registration.

Article 4

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

([154]) Annex I 'Combined Nomenclature' to Council Regulation (EEC) No 2658/87 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 7.9.1987, p. 1).

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

Done at Brussels, 17 November 2021.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

Cooperating exporting producers not sampled

Name	TARIC additional code
Anhui Tianji Information Technology Co., Ltd	C698
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 Company Limited	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
Liangang Optoelectronic Technology Co., Ltd	C724
Nanjing Huamai Technology Co., Ltd	C708
Ningbo Geyida Cable Technology Co., Ltd	C709
Prysmian Wuxi Cable Co., Ltd	C710
SDG Group: — Shenzhen SDG Information Co., Ltd — Shenzhen SDGI Optical Network Technologies co., Ltd	C711
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
YOFC 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