

**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**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union <sup>(1)</sup> ('the basic Regulation'), and in particular Article 14(5) thereof,

After informing the Member States,

Whereas:

- (1) On 24 September 2020, the European Commission ('the Commission') announced, by a notice published in the *Official Journal of the European Union* <sup>(2)</sup> ('the Notice of initiation'), the initiation of an anti-dumping proceeding with regard to imports of optical fibre cables originating in the People's Republic of China ('China') following a complaint by Europacable ('the complainant') on behalf of producers representing more than 25 % of the total Union production of optical fibre cables.

**1. PRODUCT SUBJECT TO REGISTRATION**

- (2) The product subject to registration is single mode optical fibre cables, made up of one or more individually sheathed fibres, with protective casing, whether or not containing electric conductors ('OFC'), originating in China ('the product concerned'). 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).
- (3) The product concerned is currently classified under CN code ex 8544 70 00 (TARIC code 8544 70 00 10). The CN and TARIC codes are given for information only.

**2. REQUEST**

- (4) On 17 December 2020, the complainant submitted a registration request pursuant to Article 14(5) of the basic Regulation. The complainant requested that imports of the product concerned be made subject to registration so that measures may subsequently be applied from the date of registration, provided all conditions set out in the basic Regulation are met.

**3. GROUNDS FOR REGISTRATION**

- (5) According to the complainant, registration was warranted because the conditions in Article 10(4) of the basic Regulation were met. In particular, the complainant argued that the product concerned was being dumped into the Union at increasing volumes after the initiation of the proceeding causing significant injury to the Union industry and undermining the remedial effect of potential definitive duties.
- (6) The Commission examined the request in the light of Article 10(4) of the basic Regulation. The Commission verified whether the importers were aware, or should have been aware, of the dumping as regards the extent of the dumping and the injury alleged or found. It also analysed whether there was a further substantial rise in imports which, in the light of its timing and volume and other circumstances, was likely to seriously undermine the remedial effect of the definitive anti-dumping duty to be applied.

<sup>(1)</sup> OJ L 176, 30.6.2016, p. 21.

<sup>(2)</sup> OJ C 316, 24.9.2020, p. 10.

### 3.1. Awareness of the importers of the dumping, the extent thereof and the alleged injury

- (7) The Commission has at its disposal sufficient evidence that imports of the product concerned from China are being dumped. In particular, the complainant provided evidence of dumping based on a comparison of a constructed normal value on the basis of costs of production and sale reflecting undistorted prices or benchmarks, established in accordance with Article 2(6a)(a) of the basic Regulation, with the export price (at ex-works level) of the product concerned when sold for export to the Union. On that basis, the 123 % dumping margin calculated in the complaint is significant.
- (8) That information was contained in the notice of initiation and therefore the Commission considers importers were aware, or should have been aware, of the dumping.
- (9) In response to the request for registration submitted by Europacable, China Chamber of Commerce for Import and Export of Machinery and Electronic Products (CCCME) claimed that the legal requirements for registration were not met, because the request for registration did not consider the importer's awareness of dumping together with the requirement of the further substantial rise in imports. In particular, according to the party, any increase in imports that would not be caused by the awareness of potential measures should not fulfil the legal requirements.
- (10) With respect to this claim, the Commission considers that those two requirements are to be considered separately. Indeed, CCCME supports its claims by referring to a Court finding <sup>(3)</sup> made when interpreting 10(4)(d) and not 10(4)(c), which is a distinct (and cumulative) requirement. <sup>(4)</sup> The CCCME reproduced the findings partially and took them out of context. A mere reading of the whole paragraph makes it clear that the finding is irrelevant for the interpretation of 'awareness'. In fact, the findings in that case support the Commission's position when it states that it is from the publication of the notice of initiation of investigation that importers were aware of the possibility that duties might subsequently be applied retroactively. This suggests that importers would also be (or should have been) aware of dumping.
- (11) Concerning the awareness of the importers of the dumping, the Commission considers that by initiating the investigation and providing all necessary information to the interested parties, the importers should be aware of the dumping. The Notice of initiation is published in the *Official Journal of the European Union* and is accessible to all interested parties, including to the importers. Furthermore, as interested parties in the investigation, importers have access to the non-confidential version of the complaint. Therefore, the Commission considered that the importers were aware, or should have been aware, of the alleged dumping practices, the extent thereof and the alleged injury at that moment.
- (12) Concerning the increase in imports, the analysis in the recitals (19) and (20) shows that the imports indeed significantly increased after initiation of this investigation, and that, because of the time needed between the order and the delivery, this trend became apparent not immediately, but more than one month following the initiation of the investigation. This shows that the further increase reported below is caused by conscious decisions of importers in the light of the existence of the investigation and of the possibility of duties imposed on the product concerned.
- (13) The Commission thus concluded that the first criterion for registration was met.

### 3.2. Further substantial rise in imports

- (14) In its request for registration of imports, the complainant claimed a further substantial rise in imports. For that purpose, the complainant used the Chinese Customs Statistics showing that over the period January – October 2020, Chinese producers of optical fibre cables exported +9,5 % higher volumes of the Chinese product code 8544.70.00 to the Union <sup>(5)</sup> when compared to the same period in 2019.

<sup>(3)</sup> Judgment of the General Court (Second Chamber) of 8 May 2019, *Stemcor London Ltd and Samac Steel Supplies Ltd v European Commission*, Case T-749/16, para. 74.

<sup>(4)</sup> *Id.* para. 46.

<sup>(5)</sup> This data refers to export to EU27.

- (15) CCCME contested the figures provided by the complainant, claiming that the Chinese export statistics were not reliable and that Eurostat figures did not show an increase in imports.
- (16) The Commission conducted its own assessment on the basis of complete and updated data available in the Surveillance database, without taking into account the Chinese export statistics.
- (17) The Commission compared the level of imports from the first full month after the investigation was initiated (October 2020) until the most recent full month available (January 2021) to the corresponding volumes of imports in the same period of the previous year (October 2019 – January 2020).
- (18) Prior to the initiation of this investigation there was no specific TARIC code for the product concerned. The Commission calculated the proportion for imports of the product concerned (declared under TARIC code 8544 70 00 10) in the period October 2020 – January 2021 (32,85 %). This proportion was also in line with the one provided in the complaint and considered adequate for the October 2019 to January 2020 period. This was considered a conservative approach since the remainder of the products included under CN code 8544 70 00 are not under investigation and the Commission did not identify any reason that would suggest an increase in those imports. Imports from China developed as follows:

Period after initiation	Imports EU-27 (kg – whole CN code)	Imports EU-27 (kg – product concerned)	Period before initiation	Imports EU-27 (kg – whole CN code)	Imports EU-27 (kg – estimate for the product concerned)	% increase (after v before initiation)
October 2020	2 302 136	744 914	October 2019	2 482 783	815 622	-8,7
November 2020	2 035 304	527 452	November 2019	1 871 467	614 798	-14,2
December 2020	2 519 501	745 918	December 2019	1 421 222	466 888	59,8
January 2021	3 615 579	1 422 058	January 2020	2 439 294	801 336	77,5
<b>Total</b>	<b>10 472 519</b>	<b>3 440 342</b>		<b>8 214 766</b>	<b>2 698 645</b>	<b>27,5</b>

Source: EU Customs surveillance data

- (19) The Commission also compared the average monthly imports during the investigation period (July 2019 to June 2020) with the average monthly imports in the four months after initiation (October 2020 to January 2021). The comparison, as detailed in the table below, showed an increase of 15,05 %.

Whole CN code		Product concerned		% Increase post initiation
Monthly average after initiation	Monthly average (July 2019 – June 2020)	Monthly average after initiation	Monthly average (July 2019 – June 2020)	
2 618 130	2 275 551	860 086	747 544	15,05

Source: EU Customs surveillance data

- (20) The Commission cross-checked the information above with other available sources of information, including sampling forms and questionnaire replies of exporting producers as well as Eurostat, which suggested that the above import volumes sourced from the EU Customs surveillance database might be underestimated. The Commission will investigate the reason for these discrepancies, including the conversion rate between different units of measurement. The Commission considered that this point did not put into question the fact that the import volumes reported above should be considered reliable for the present analysis. Moreover, a correction of an eventual underestimation of import volumes might only result in strengthening the conclusions reached in the present Regulation.
- (21) The Commission therefore found that the average increase of 27,5 % in the months after initiation of the investigation constituted a substantial rise in imports within the meaning of Article 10(4) of the basic Regulation. Likewise, the increase of 15,05 % on the basis of the monthly average of the four months after initiation with the average monthly imports during the IP were also found to be substantial.
- (22) Therefore, the Commission concluded that the second criterion for registration was also met.

### 3.3. Undermining of the remedial effect of the duty

- (23) The Commission has at its disposal sufficient evidence that additional injury would be caused by a continued rise in imports from China at further decreasing prices.
- (24) As established in recitals (13) to (18), there is sufficient evidence of a substantial rise in imports of the product concerned. This is likely to seriously undermine the remedial effect of the duties to be applied. It is indeed reasonable to assume that the imports of the product concerned may further increase market share prior to the adoption of provisional measures, if any, since the latter would occur at the latest around the second half of May 2021.
- (25) Indeed, the EU market is attractive for Chinese exporting producers as a large OFC market where no trade defence measures are in place, contrary to other markets like the United States (where 25 % duties apply <sup>(6)</sup>). This is the more so given the significant Chinese excess capacity for this product – estimated to amount to more than twice the entire EU market on the basis of specialised market intelligence provided by the complainants. Also, the timing is critical as a major tender for the product concerned started in January 2021 for a multi-year supply contract representing a sizeable proportion of consumption in France.
- (26) Furthermore, bearing in mind that the Union industry has high fixed costs, it is clear that falls in market share and production will lead to falls in profitability over the period between the initiation and the eventual imposition of measures.
- (27) In addition, import prices of the product concerned in the October 2020-January 2021 period are low. The Surveillance 2 database indicates that the average value per kg of Chinese imports under CN code 8544 70 00 was about 24 % lower in October 2020-January 2021 than in October 2019-January 2020. This is indicative of average prices of the product concerned, as the the proportion of imports of the product concerned in both periods is comparable (EU Customs surveillance data for the period October 2020-January 2021 indicates the product concerned accounts for about 33 % of the total imports under CN code 8544 70 00, the same proportion alleged in the complaint). The foregoing confirms the pricing behaviour of Chinese exporting producers described in the complaint.
- (28) The further substantial rise in imports observed after initiation (December and January in particular), facilitated by the existing overcapacity in China and fuelled by the attractiveness of the EU market, is likely seriously undermining the remedial effects of measures, not least in view of the concentrated impact in a short period of time, of the critical timing of certain tenders, and of the low prices involved. There is no information on file regarding other circumstances that would disprove this assessment.

<sup>(6)</sup> Please refer to: <https://hts.usitc.gov/view/China%20Tariffs?release=2020HTSARev16>

- (29) The Commission therefore concluded that the third criterion for registration of imports was also met.

#### 3.4. Conclusion

- (30) On the basis of the above, the Commission concluded that there was sufficient evidence to justify making the imports of the product concerned subject to registration in accordance with Article 14(5) of the basic Regulation.

#### 4. PROCEDURE

- (31) All interested parties are invited to make their views known in writing and to provide supporting evidence. Furthermore, the Commission may hear interested parties, provided that they make a request in writing and show that there are particular reasons why they should be heard.

#### 5. REGISTRATION

- (32) Pursuant to Article 14(5) of the basic Regulation, imports of the product concerned should be made subject to registration for the purpose of ensuring that, should the investigation result in findings leading to the imposition of anti-dumping duties, those duties can, if the necessary conditions are fulfilled, be levied retroactively on the registered imports in accordance with the applicable legal provisions.
- (33) Any future liability would emanate from the findings of the anti-dumping investigation.
- (34) The allegations in the complaint requesting the initiation of an anti-dumping investigation estimate an average dumping margin of 123 % and an average injury elimination level of 43 % for the product concerned. On that basis, the amount of possible future liability can be estimated at the level of the injury elimination level alleged in the complaint, namely up to 43 % *ad valorem* on the CIF import value of the product concerned.
- (35) Taking into account the difficulties in comparing volumes in different units of measurements, as reported above in recital (20), the Commission considers appropriate to have the import data including the information on the length of the cables in kilometres for monitoring purposes. Therefore the customs authorities are directed to collect them.

#### 6. PROCESSING OF PERSONAL DATA

- (36) Any personal data collected in this investigation will be treated in accordance with Regulation (EU) 2018/1725 of the European Parliament and of the Council (<sup>7</sup>),

HAS ADOPTED THIS REGULATION:

#### Article 1

1. The customs authorities are hereby directed, pursuant to Article 14(5) of Regulation (EU) 2016/1036, to take the appropriate steps to register 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).

<sup>7</sup>) Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

2. Registration shall expire nine months following the date of entry into force of this Regulation.
3. All interested parties are invited to make their views known in writing, to provide supporting evidence or to request to be heard within 21 days from the date of publication of this Regulation.

*Article 2*

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 <sup>(8)</sup>.

*Article 3*

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

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

Done at Brussels, 29 March 2021.

*For the Commission*  
*The President*  
Ursula VON DER LEYEN

---

<sup>(8)</sup> Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 7.9.1987, p. 1), Annex I 'Combined Nomenclature'.